

2008 Auckland's Water and Wastewater Policy Statement

Policy Objectives

1. To clarify and modernise the statutory arrangements that apply to the provision of water and wastewater services in the Auckland region;
2. To achieve governance, management and operational outcomes that maximise the value of water and wastewater services provided to customers in the Auckland region, while concurrently seeking to minimise price;
3. To affirm an efficient and effective relationship between trade waste customers and Watercare as a superior management of trade waste treatment; and
4. To promote vertical integration of water and wastewater services in the Auckland region.

Application

Property Council New Zealand will advocate for outcomes that are consistent with the objectives of this policy.

Rationale

Auckland's water industry is characterised by a split between a bulk water and wastewater provider (Watercare Services Limited) and a series of water and wastewater retail companies (Local Network Operators).

Fragmentation of the water industry compromises the industry's overall ability to optimise service delivery at a minimal price to consumers. The industry is characterised by a lack of competition given the barriers to entry for potential water retailers.

Analysis of the industry's assets demonstrates that the bulk water and wastewater provider (Watercare) has been remarkably successful at building and maintaining assets that allow for the collection, treatment

and reticulation of water and wastewater.¹ Watercare’s ability to fund, develop and maintain assets and infrastructure is due to –

- its ability to use powers the powers of the Auckland Metropolitan Drainage Act 1960; and
- its current ownership, governance and management structure.

The greater Auckland region is home to around 1 million residents. Watercare provides bulk water and wastewater services to the majority of those residents (but does not provide wastewater services to North Shore and Rodney District residents and businesses).

In addition to Watercare, no less than six retail water companies currently operate in the Auckland region, within or in proximity to the metropolitan urban limit. Each of the water companies is owned by a territorial authority. Two of the retail water companies (Metrowater and Manukau Water) are council-controlled organisations that directly invoice residential and business customers. United Water, a foreign-owned water company directly invoices residential and business customers in Papakura.

Seven water companies is an excessive number for a region the size of Auckland. In light of a need to maximise efficiency and minimise fragmentation between water and wastewater providers, retailers and the customer, it is appropriate that the Auckland region’s Local Network Operators are vertically integrated into Watercare, which ideally should be the sole water and wastewater provider operating within the metropolitan urban limit.

Watercare is a council-owned organisation, which is owned by six territorial authorities. Property Council considers that despite being a regional asset, the current ownership structure of Watercare is adequate. Statutory provisions set out in the Local Government Act 1974 (Watercare provisions), the Auckland Metropolitan Drainage Act 1960, and the ARC Trade Waste Bylaw 1991 have contributed to the governance effectiveness of Watercare.

POLICY REQUIREMENTS

Watercare’s operating powers

When the Auckland Metropolitan Drainage Act (the AMDA) was passed in 1960, it was designed to ensure consistent planning in terms of the Auckland region’s main wastewater infrastructure. The AMDA gave the Auckland Metropolitan Drainage Board the sole right to construct, maintain and manage all main sewers and drains, all main pump stations, all storage tanks and outfalls, and treatment works for sewage and all other main sewerage works.

¹ Pursuant to the Local Government Act 1974 Watercare is statutorily obliged to “... manage its business efficiently with a view to maintaining prices for water and wastewater services at the minimum levels consistent with the effective conduct of that business and the maintenance of the long-term integrity of its assets”.

The Auckland Metropolitan Drainage Board's sole right to construct, maintain and manage all main sewers and drains enabled it to effectively plan for the treatment of the region's (excluding North Shore) wastewater at the Mangere Wastewater Treatment Plant or other plants within the district. That main sewerage system and treatment plant, along with the general powers vested in the disbanded Auckland Metropolitan Drainage Board, was subsequently transferred to Watercare.

To provide an efficient wastewater service throughout the region, Watercare's wastewater network has been geographically optimised to maximise the use of gravity and to minimise the need for pumping. The AMDA contains provisions, which allows for Watercare's main sewage works (including pipes, pump stations, tunnels, and ancillary works) to occupy any land and also for Watercare to have access to the land to ensure the efficient construction, operation and maintenance of these works.

Watercare does not hold easements for its wastewater network. In total approximately 210km of wastewater pipes cross over more than 5,000 individual private parcels of land. The estimated the cost to retrospectively obtain easements would exceed \$200 million.

Property Council New Zealand considers that certain powers vested in Watercare, in accordance with the AMDA, should be preserved and set out in the Local Government 2002, to allow Watercare to –

- (a) Maintain, manage and protect its existing main sewerage system and treatment works;
- (b) Maintain its power to carry out its wastewater functions, including the power to enter land to access the main sewerage system, and to construct new main sewerage works; and
- (c) Allow Watercare to construct, maintain and manage future main sewerage systems and treatment works.

It is necessary to maintain these provisions of the AMDA in the Local Government Act 2002 in order to enable it to carry out its functions as a wholesale provider of wastewater services. In the absence of a statutory reference preserving Watercare's right to maintain, manage and protect its existing main sewerage system and treatment works, Watercare would need to and obtain agreement with individual Local Network Operators (LNOs) in order to ensure efficient regional planning of wastewater services.

It is also necessary for Watercare's assets to be protected. The statutory safeguard of assets should be provided by granting Watercare the protection codified in section 225 of the Local Government Act 2002.

Granting Watercare protection pursuant to section 225 would mean any person or persons who access water or wastewater services without an agreement to be supplied would be committing an offence and is liable on summary conviction to a penalty (this protection is granted to other water and wastewater companies in New Zealand).

Trade Waste Bylaw

Trade waste is the term that defines the by-product of manufacturers that is either treated onsite or is reticulated and treated at a wastewater treatment plant. The AMDA gives Watercare statutory monopoly, which means the Auckland region has one main wastewater network (owned and controlled by Watercare).

Allowing Watercare to maintain its sole right to discharge trade waste through its sewers would mean –

- the region's (excluding North Shore) trade waste discharges would continue to be managed by a single service provider, responsible for treatment and maintaining the standards of trade waste discharge.
- Watercare would continue to be required to manage the risk of potential damage to the main sewers and the Mangere Wastewater Treatment Plant, resulting from trade waste discharges.
- Watercare would continue to manage the risk (and impact) of potential trade waste overflow on natural ecosystems such as the Manukau Harbour.

Watercare has developed a strong working relationship with trade waste customers. This in turn has contributed to a high level of industry compliance with the trade waste discharge consents.

Trade waste discharge potentially impacts upon the entire sewerage system. Both Watercare and the LNOs have a significant interest in the control and management of trade waste in the sewerage network. However, because Watercare has responsibility for managing the main sewerage system, the health and safety of workers who work within it, and the Mangere Wastewater Treatment Plant, that council organisation carries the greater risk associated with managing the treatment of trade waste.

Trade waste discharges in the Auckland region (excluding North Shore) is managed via the Auckland Regional Council (ARC) Trade Waste Bylaw 1991. Although that bylaw is the ARC's, administration of that bylaw falls to Watercare as the council organisation responsible for performing the functions of the AMDA.

Watercare has approximately 700 trade waste customers throughout the Auckland region (excluding North Shore²). The relationship between Watercare and its trade waste customers is transacted in terms of: (a) trade waste charges; and (b) environmental monitoring. This relationship has previously been commended by the Employers and Manufacturers Association (EMA) on behalf of the trade waste customers.

It is necessary to continue the current arrangement whereby Watercare manages the relationship with trade waste customers. This arrangement provides for –

- the ARC Trade Waste Bylaw 1991 to continue;

² North Shore administers trade waste separately pursuant to the North Shore Drainage Act (NSDA) 1963. Pursuant to the provisions of the NSDA, North Shore has over 1,000 trade waste customers alone.

- Watercare to continue managing the relationship directly with trade waste customers in order to ensure: (a) superior stewardship of trade waste discharge and wastewater reticulation infrastructure; (b) continued reductions in heavy metal discharge; and (c) a positive relationship with individual customers.

North Shore Drainage Act 1963

In addition to the AMDA, the North Shore Drainage Act (NSDA) 1963 has survived previous local government reforms and continues to apply today. The NSDA allowed the North Shore Drainage Board to plan and manage North Shore's wastewater and trade waste. The NSDA has remained in force despite the North Shore Drainage Board being disestablished. Some of the provisions of the NSDA continue to be applied by the North Shore City Council.

The NSDA is largely redundant and could be repealed on the proviso that several important sections (such as the requirement under s35 to protect drains from damage) are saved and incorporated in the Local Government Act 2002. The repeal of the NSDA removes North Shore City Council's monopoly on the control of wastewater services in North Shore City. Property Council considers that in any event the duplication of wastewater services and separate statutory powers exclusively for North Shore City is unnecessary and inefficient.

Watercare's Reporting Arrangements

The statutory provisions of sections 707ZZZR and 707ZZZS of the LGA 1974 have not been repealed and continue to apply.

Section 707ZZZR (Vesting of shares in Watercare Services Limited) codifies the:

- ownership of Watercare;
- the division of shares between the shareholder councils; and
- the requirement for a Shareholders' Agreement.

Both sections 707ZZZR and 707ZZZS of the LGA 1974 should be transferred to the Local Government Act 2002.

The current distribution of existing shareholdings (s707ZZZR(3)) and the requirement to issue any new shares in proportion to these shareholdings should remain. Section 707ZZZR of the LGA 1974 confirms that Watercare is collectively owned by its six shareholding councils. Section 707ZZZR also confirms a) the division of shares between the shareholding councils, and b) the requirement that any subsequent shares must be issued so that their shareholdings are in the same proportions as the shareholdings specified that section. The division of shares and the division of any subsequent shares should also be set out in Watercare's constitution and shareholders' agreement.

To preserve the ability of the Board of Watercare to operate objectively and without political interference, a statutory restriction on *local authority members* or *employees* being appointed to the Board of Watercare (s707ZZZR(6)).

Watercare has a regional-focus that operates for the benefit of the region. Therefore it is appropriate that the Board of Watercare is an independent board and should not include directors who represent the views of one city or district in particular.

Section 58(3) of the Local Electoral Act 2001 states that no member of constituent authority of a region may be a candidate for election to the regional council of that region. This principle establishes the separation whereby members of a local authority are barred from serving as a member of a regional authority. This principle should be extended to exclude a member or employee of a local authority from serving on the board of a regionally focussed organisation such as Watercare.

Section 707ZZZS (Water services) codifies the:

- requirement for Watercare to manage its business and maintain its assets;
- authority of Watercare to apply the provisions of the ARC Trade Waste Bylaw 1991 (dealt with elsewhere in this paper policy paper);
- authority of Watercare to apply the provisions of the AMDA; and
- prepare and supply of an asset management plan, funding plan, and SCI.

Section 707ZZZS(1)(a) of the LGA 1974 should be retained in the Local Government Act 2002. This provision states –

“Notwithstanding anything in this Act or any other Act, Watercare Services Limited –

- (a) Must manage its business efficiently with a view to maintaining prices for water and wastewater services at the minimum levels consistent with effective conduct of that business and the maintenance of the long-term integrity of its assets”*

Corporate Governance

Watercare complies with the definition of a council organisation. Section 6(1) of the Local Government Act 2002 defines a council organisation to mean a company in which equity securities carrying voting rights at a meeting of the shareholders of the company are –

- (a) held or controlled by one or more local authorities, or
- (b) one or more local authorities have the right, directly or indirectly, to appoint one or more of the directors of the organisation.

The LGA 2002 is silent on the requirement for a council organisation to produce a Statement of Intent. The only reporting requirement governing a council organisation is set out in s65(1) of the LGA 2002, which requires local authorities to –

“...regularly undertake performance monitoring of that organisation to evaluate its contribution to the achievement of –

- (a) the local authority’s objectives for the organisation; and*
- (b) the desired results, as set out in the organisation’s statement of intent; and*
- (c) the overall aims and outcomes of the local authority.”*

Watercare continues to prepare and complete its Statement of Intent in accordance with the provisions set down in sections 707ZZZS(1)(m) and 707ZZZS(1)(n) of the LGA 1974. The requirement to prepare and complete its SCl is also set out in Watercare’s constitution.

Watercare should be statutorily defined as a council controlled organisation (CCO). The beneficial outcomes of statutorily defining Watercare as a CCO include –

- (a) Watercare would be statutorily required to produce a Statement of Intent;
- (b) Watercare would be able to take ownership of water services from a local authority or other local government organisation;
- (c) Watercare would be obliged, as a local government organisation, to consult in respect of any proposal to enter a partnership or joint venture to provide water and wastewater services³.

Section 707ZZZS(1)(c) of the LGA 1974 states that Watercare –

“...must not pay any dividend or distribute any surplus in any way, directly or indirectly, to its owners or any shareholder”

Watercare’s core business is to provide water and wastewater services, and manage trade waste. Watercare does not exist to pay dividends to its shareholding councils.

Property Council considers that Section 707ZZZS(1)(c) of the LGA 1974 should be transferred to the Local Government Act 2002. This would continue to prevent Watercare from paying any dividend or distributing any surplus to its shareholders.

Who owns Watercare?

Watercare has a regional focus. That focus is reflected in the fact that Watercare is jointly owned by –

³ The requirement for a local government organisation to consult in respect of any proposal to enter into a partnership or joint venture to deliver any aspect of a water service is set out in s137 of the LGA 2002.

- Auckland City Council;
- Manukau City Council;
- North Shore City Council;
- Papakura District Council;
- Rodney District Council; and
- Waitakere City Council.

Property Council considers that the governance, management and operation of Watercare since 1998 have been wholly successful. In that time Watercare has successfully completed a number of key projects, including:

- the Waikato Pipeline;
- the onland wastewater treatment plant at Mangere; and
- decommission of the oxidation ponds and the return of the Manukau Harbour foreshore.

A large majority of territorial authorities in the Auckland region support the current ownership arrangement pertaining to Watercare. All current shareholding councils list the respective shareholding of Watercare as a significant asset.⁴

Property Council considers that transferring partial or the whole ownership of Watercare to any other territorial authority, agency or organisation would fail to achieve any material gain in terms of improved service deliver, lower price, enhanced environmental stewardship or asset management. Therefore the current ownership arrangement should remain.

The statutory provisions for who owns Watercare is covered elsewhere in this paper (see *Watercare's Reporting Arrangements*).

Vertical Integration of Auckland's water and wastewater services

In addition to owning shares in Watercare, all the cities and districts in the Auckland region continue to own retail water and wastewater services. This arrangement is managed in various ways –

Territorial Authority	Water and Water Retail Arrangement
Auckland City Council	Council-controlled organisation (Metro Water Limited) provides retail water and wastewater services to Auckland City residential and business customers.
Manukau City Council	Council-controlled organisation (Manukau Water Limited) provides retail water and wastewater services to Manukau City residential and business customers.

⁴ Pursuant to the Policy on Significance.

Territorial Authority	Water and Water Retail Arrangement
North Shore City Council	Council unit provides retail water and wastewater services to North Shore City residential and business customers.
Papakura District Council	Franchise (United Water) provides retail water and wastewater services to Papakura District residential and business customers.
Rodney District Council	Council unit provides retail water and wastewater services to Rodney District residential and business customers.
Waitakere City Council	Council unit provides retail water and wastewater services to Waitakere City residential and business customers.

In effect the existence of separate retail water and wastewater organisations leaves the Auckland region with no fewer than seven service providers. This arrangement is inefficient because it creates –

- confusion and conflict about roles and responsibilities;
- duplication of services;
- an oversupply of water management and governance in the Auckland region; and
- duplication of asset management plans.

Property Council considers that the six water and wastewater retail providers should be vertically integrated with Watercare.⁵ This outcome would not necessarily be harmful to territorial authorities and would achieve beneficial outcomes on behalf of the population of the greater Auckland region, including –

- the elimination of duplication, confused roles and unnecessary cost;
- a centralised billing arrangement;
- one set of asset management plans; and
- one agency controlling one network in the Auckland region, from the dams to the tap, from the toilet to the treatment plant.

⁵ An interim provider arrangement may be necessary for United Water given that it has signed a long-term retail franchise contract with Papakura District Council. Any attempt to breach the contractual conditions of that franchise contract would likely expose Papakura District Council to litigation.

Section 263(1)(ea) of the Local Government Act 2002 states that at the request of any territorial authority that holds shares in Watercare, that council organisation may –

“... operate, repair, and maintain waterworks necessary to distribute water to consumers within such area within that territorial authority’s district, and on such terms and conditions, as it agrees with that territorial authority.”

Section 263(2A) of the Local Government Act 2002 prohibits Watercare from entering into a vertical integration arrangement codified under s263(1)(ea) unless that agreement is supported by the territorial authorities holding at least 75 per cent of the shares in Watercare services.

Property Council considers that both section 263(1)(ea) and 263(2A) are appropriate. Shareholders must exercise judgement without prejudice pertaining to any decision by one of more territorial authority to enter into a vertical integration arrangement with Watercare.