

# Submission to Commerce Commission on Proposed Economic Regulation of Tiaki Wai

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## Section 1 — Introduction and scope

This is a submission by Bernard Jennings made as an interested person under the Commerce Act 1986. The submitter is not a regulated entity, a representative body, nor a lawyer. The submission responds to two linked Commerce Commission consultations on the economic regulation of Tiaki Wai, both closing 28 May 2026:

1. the proposed additional information disclosure requirements for Tiaki Wai, in the draft amendment determination and the draft economic regulation determination; and
2. the proposed recommendation to the Minister of Commerce and Consumer Affairs to impose performance requirement regulation on Tiaki Wai under section 57G.

The submission supports the Commission's proposed package on both consultations and proposes a set of marginal additions to the disclosure requirements. Those additions are justified by a pattern identified in the published material (sections 3 to 6): that Tiaki Wai appears to be carrying forward major decisions inherited from Wellington Water without visible independent re-evaluation, and that this bears directly on the residual risks the Commission has identified and on the risk controls the Commission is relying on outside its own framework. The submission is confined to the two consultations above. It does not address price-quality regulation, which the Commission has not proposed to activate, and does not seek to bring storm-water into the Commission's regulatory scope. Where storm-water is mentioned, it is only to the extent that wastewater-network investment, a regulated service, is affected by unresolved questions about contamination sources.

The submission draws on Tiaki Wai's draft Water Services Strategy (March 2026) and supporting pricing documents, on the Commission's consultation papers and draft determinations, and on the submitter's earlier submission to Tiaki Wai on the draft strategy (21/04/2026). Where the submission describes what those documents say, it relies on the published versions. Where it reads a pattern from what the published material does not show, it says so and is explicit about the basis for that reading.

## Section 2 — Summary

Recommendations are grouped by what they ask the Commission to do. Each is tied to the section that supports it.

### **Proposed additional ID requirements (supporting, with strengthening)**

1. Confirm the proposal to require earlier disclosure of the SAMP, IDP and ADR without the transitional approach. (section 7)
2. Confirm the proposal to require an assessment of whether forecast operating and capital expenditure can be delivered alongside the forecast itself. (section 7)
3. Confirm the proposal to require an asset management maturity and capability assessment, and extend it to cover whether Tiaki Wai has independently re-evaluated inherited business cases and major decisions where re-evaluation is likely to change the answer. (sections 7 and 9)

4. Confirm the proposal to require independent verification of forecast capex/opex and the assessment of whether that expenditure can be delivered, and extend that verification to the business cases for programmes above a defined materiality threshold, as part of the published business case disclosure. (sections 7 and 9)
5. Confirm the proposal to require quarterly delivery reporting, and require that reporting to separate one-off establishment and transition costs from ongoing service delivery costs, with defined wind-down profiles and separate variance reporting for each cost category, building on the proposed opex-by-shareholding-council breakdown. (sections 7 and 9)
6. Confirm the proposal to continue quarterly fault metrics, data confidence grading, and operations and maintenance dashboards. (section 7)

### **Performance requirement regulation**

7. Support the recommendation to the Minister to impose performance requirement regulation. The reasoning is set out in section 8 and rests on the structural argument developed in sections 3 to 6.

### **Additional disclosures not in the draft determinations**

8. Require Tiaki Wai to publish, as part of its asset management maturity and capability assessment and business case disclosure for material programmes, the extent to which the underlying analysis is inherited from Wellington Water and what re-evaluation has been undertaken. (sections 4, 7 and 9)
9. Require published options analysis for material programmes above a defined materiality threshold, with a commercial sensitivity carve-out, and require independent verification of the published business case. This extends Rec. 4 by adding programme-level business-case verification as a new disclosure obligation alongside the strengthening of the Commission's existing verification proposal. (sections 4 and 9)
10. Require disclosure of related-party transactions with shareholding councils, including the basis on which the level of payment reflects services received by Tiaki Wai and is recoverable from consumers. (sections 5.1, 6 and 9)
11. Require disclosure of the board's assurance framework for material decisions involving inherited analysis, at the level of framework and scope rather than deliberation content. (sections 6 and 9)
12. Require disclosure of the conditions attached to forecast regulated waste-water investment, including the proportion dependent on unresolved questions of responsibility, standard, cost, or measurable benefit. (sections 5.3 and 9)

### **Scope and proportionality**

13. The additional disclosures proposed in this submission should be assessed against three things together: the scale of the investment decisions they are intended to test, the opportunity cost of management and board attention during establishment, and the limited nature of the additions relative to the disclosures the Commission is already proposing. The per-item compliance burden is in section 9.7.

## **Section 3 — The pattern: adoption without re-evaluation**

### **3.1 Rationale for a new entity**

The argument for replacing Wellington Water with a new council-controlled organisation was that a separate entity, with its own board, expertise, and direct ownership of assets, would bring a more independent and rigorous approach to investment, prioritisation, and delivery than Wellington Water had been able to provide.

The Commerce Commission's assessment is consistent with that view. It states that Tiaki Wai will inherit significant weaknesses in asset management from Wellington Water, including limited asset condition information, immature planning approaches, and basic information systems, and that without a step change its investments are unlikely to provide value for money for consumers.

Some inherited analysis will need to be carried forward during establishment. A new entity cannot revisit every prior decision before commencement. Doing so would discard work that may be sound and delay delivery when the network is already in poor condition. The test proposed in this submission is threshold-based: where the scale of a decision justifies independent re-evaluation, that re-evaluation should be visible in the published record.

### **3.2 What the evidence suggests**

This submission identifies a pattern in the published material. Internal re-evaluation may have occurred without being visible in public consultation documents. The submission's position is not that Tiaki Wai has failed to test inherited analysis. It is that the published record does not show independent testing of major inherited decisions, and that the Commission's disclosure framework should require that testing to be visible. For that reason, the remainder of this submission uses formulations such as "the published material does not present".

The draft Water Services Strategy released by Tiaki Wai for consultation in March 2026, and the supporting pricing documents, suggest a pattern. In several large and consequential items, the published material does not show that Tiaki Wai has independently re-evaluated decisions, business cases, or framings inherited from Wellington Water before adopting them.

The smart metering programme. The strategy identifies smart metering as the preferred solution, indicates a total programme cost in the range of 500 to 590 million, and acknowledges that the figure is indicative and that procurement still has to inform the final approach. The strategy does not present a published options analysis comparing smart metering against alternatives such as dumb meters, leased meters installed and owned by a third party, or a staged pilot ahead of full roll-out. The preference for smart, utility-owned meters appears consistent with the position developed under Wellington Water.

A similar pattern appears elsewhere in the strategy and pricing package. Rates on water assets paid to shareholding councils are forecast at over \$50 million in 2026/27, more than double the level in 2024/25, and are presented as costs that must be recovered through water service charges. The strategy does not set out an independent test of whether this level is appropriate, why it has risen so sharply, or how it compares with arrangements in comparable jurisdictions. The proposed pricing approach also follows existing council pricing mechanisms for 2026/27, while noting that these inherited mechanisms produce material differences across council boundaries.

In each case, the published record does not show independent re-evaluation of the inherited position, although the strategy itself acknowledges a limited evidence base, several assumptions, and areas requiring substantial further work to refine the plans, and that this first strategy is only for one year for that reason.

### **3.3 Implications for the Commission's risk assessment**

The Commission has identified material risks in asset management, delivery, financial sustainability, and non-financial performance, and states that the residual risk after the proposed additional ID requirements remains significant. The Commission's assessment also relies on risk controls outside ID regulation, including the independent skills-based board, the Partners Committee, owner council oversight, and LGFA financial and non-financial reporting requirements.

The pattern of adoption without visible re-evaluation has three implications for that assessment.

First, it suggests the underlying risks identified by the Commission may not be mitigated at the rate assumed by the Commission's framework. If significant investment decisions are adopted from Wellington Water analysis without visible re-evaluation, the asset management maturity gap is not narrowing for those decisions; it is being committed past.

Second, it raises a question about how the risk controls the Commission relies on are operating. If the published record does not show the board, the Partners Committee, and the owner councils testing inherited positions, then whether those controls operate as the Commission's framework assumes is an empirical question rather than an assumption. This is addressed further in section 6.

Third, it changes what additional ID requirements need to do. Requirements aimed at improving disclosure of asset management maturity, whether forecast expenditure can be delivered, and forecast verification will only be effective where underlying decisions are the product of independent evaluation. Where they are not, additional ID requirements will still accurately disclose the maturity of a process that has been bypassed for the largest decisions.

## **Section 4 — Case study: the smart metering programme**

### **4.1 The strategy**

The draft Water Services Strategy identifies smart metering as the preferred metering solution across the Tiaki Wai service area. It states that full implementation may take five to seven years and that the indicative total programme cost is in the range of 500 to 590 million. It also states that the cost may change and that procurement still has to inform the final approach.

The Water Services Strategy is a transitional planning instrument. Inclusion of a programme in the strategy is not equivalent to final commitment; programmes typically proceed through business case, procurement, board approval, and financial close. This submission is not concerned with whether the metering programme has been finally committed at the strategy stage. It is concerned with the visibility of decision quality at each stage, including the strategy stage where consumer expectations and spending envelopes are being set.

### **4.2 What the strategy does not present**

The strategy does not contain a published options analysis for the metering programme. There is no published comparison of:

- whether metering at the proposed scale is needed at all, and what specific problems it is intended to solve;
- demand-side alternatives to metering, including leak detection and repair programmes targeting network losses, pressure management, public information and behaviour change programmes, and targeted high-user interventions;
- universal residential metering compared with targeted metering of high users, large properties, or commercial connections only;
- smart meters compared with simpler (non-smart) meters that are read manually or periodically;
- utility ownership of meters compared with a leased model in which a third party installs, owns, and maintains the meters;
- private retailer or sub-metering models used in other jurisdictions, where the meter and customer relationship sit outside the network owner;

- full district-wide roll-out compared with a staged or piloted approach informed by early data, including the option of deferring full roll-out until billing systems and asset data have matured;
- alignment with the timing of other capital programmes, including whether metering should follow or precede major renewal investment so that data informs renewal prioritisation rather than the reverse;
- expected costs, benefits, and timing of each option in quantified form, including the avoided capital expenditure that metering is expected to defer.

The strategy presents a preferred solution and an indicative cost. It does not present the analysis that led to that preference being selected over the alternatives.

### **4.3 Inherited position**

The preference for smart, utility-owned meters appears consistent with the position developed under Wellington Water. The strategy does not identify the analysis as inherited, and the published material does not show what independent re-evaluation Tiaki Wai has performed before adopting it.

### **4.4 Scale relative to rest of programme**

A programme with an indicative cost of 500 to 590 million is material in absolute terms and relative to the scale of investment Tiaki Wai is being established to deliver. It is the type of decision the new entity was created to test independently. The cost of an independent re-evaluation is small compared with the cost of getting the decision wrong.

The threshold rationale developed in this submission is illustrated by metering but is not specific to metering. It would apply to any programme of similar scale, including future renewal programmes, treatment-plant investments, or other capital expenditure of comparable magnitude.

### **4.5 Implications under Part 4**

The Part 4 purpose is to promote the long-term benefit of consumers by promoting outcomes consistent with those produced in competitive markets, so that suppliers have incentives to innovate and invest in replacement, upgraded, and new assets; to improve efficiency and provide services at a quality that reflects consumer demands; to share efficiency gains with consumers, including through lower prices; and to limit their ability to extract excessive profits.

A programme of this scale, presented to consumers as part of the basis for steep price increases but without published options analysis and without published evidence of independent re-evaluation of an inherited preferred solution, raises a question about whether the information available is sufficient for interested persons to assess whether the Part 4 purpose is being met. The strategy qualifies the figure as indicative; the qualification acknowledges that the analysis is not yet complete, but it also doesn't provide it.

### **4.6 Implications for Commission's proposals**

Three implications for the Commission's draft determinations.

First, the proposed asset management maturity and capability assessment should explicitly cover how Tiaki Wai has approached business cases inherited from Wellington Water for material programmes. A maturity assessment that examines systems, processes, and capability without examining whether those systems have actually been applied to the largest inherited decisions will understate the residual risk.

Second, the proposed independent verification of forecast operating and capital expenditure should not rest at the level of headline forecasts. For programmes meeting the materiality threshold proposed in section 9, independent verification should reach the business case as published, including the options analysis and the basis for selecting the preferred option. This is a verification of what is disclosed, not a regulatory gate before financial commitment.

Third, the proposed quarterly delivery reporting should disclose, for material programmes, whether the underlying analysis was inherited, what re-evaluation has been performed, and what options were considered. Without this, delivery reporting will track delivery against a plan whose underlying analysis has not been tested.

## **Section 5 — Other indicators of the same pattern**

The pattern is not confined to metering. Each indicator below follows the same form: what the strategy says, what is not presented, and why it is relevant for the Commission's assessment.

### **5.1 Rates on water assets**

The strategy indicates that rates on water assets paid by Tiaki Wai to shareholding councils are forecast at over \$50 million in 2026/27, more than double the level in 2024/25, and that these rates must be recovered through water service charges. The accounting policy notes related-party transactions including rates paid by Tiaki Wai to councils, alongside billing and customer services provided by councils to Tiaki Wai.

The strategy does not present an independent test of:

- the basis on which the level of payment reflects services received by Tiaki Wai;
- why the level has risen so sharply between 2024/25 and 2026/27;
- whether the level is consistent with the basis on which equivalent costs are recovered from consumers in comparable jurisdictions;
- the controls applied to ensure that the level is set on an arm's-length or appropriately benchmarked basis.

First, financial sustainability is one of the four risk areas identified by the Commission, and the prudence of cost recovery from consumers turns on whether the underlying costs are justified. Second, transactions between Tiaki Wai and its shareholding councils have a structural feature that should be taken into account in the Commission's framework: the councils that own Tiaki Wai are also recipients of these payments. This is not an allegation of misconduct. It is a structural feature that increases the importance of independent disclosure and benchmarked justification.

### **5.2 Establishment and transition costs**

The strategy and supporting financial statements describe higher operating costs in the early years of Tiaki Wai's operation, attributed to establishment of new corporate functions, treasury and regulatory capability, customer functions, and new technology systems. The documents refer to temporary council support for billing, customer contact, payroll, finance and other processing. Forecast financial statements show separate establishment costs.

The strategy does not present:

- a consolidated view of one-off establishment and transition costs, separated from ongoing service delivery costs;

- a defined end date for each category of transition cost;
- the basis on which transition costs will be wound down as new arrangements come into effect;
- the controls in place to prevent transition costs becoming a permanent layer of overhead.

The draft amendment determination requires Tiaki Wai's network operating expenditure to be disclosed by shareholding council. It does not require disaggregation of one-off and transitional costs from ongoing service costs. Without that further disaggregation, the Commission's proposed quarterly delivery reporting will compare actual operating and capital expenditure against budget in a way that obscures rather than reveals the underlying cost trajectory. It will not be possible for interested persons to assess whether transition costs are converging toward zero or whether they are being absorbed into the steady-state cost base.

### **5.3 Wastewater-network contamination contribution**

The strategy states that storm-water quality is a relevant operational issue, that responsibility for storm-water quality is currently unclear, and that required investment linked to the proposed framework could be in the billions, though the amount is not yet confirmed. It also states that Tiaki Wai needs to clarify the extent to which contamination comes from its waste-water networks, so it does not over-invest in improvements that do not materially improve waterway quality.

Storm-water sits outside the Commission's current scope of regulated water services: water supply and waste-water. The relevant point for this consultation is: Tiaki Wai's waste-water network is a regulated service. The strategy acknowledges uncertainty about the proportion of contamination originating from the waste-water network. Waste-water investment programmes based on that proportion sit within the Commission's scope, and the conditions attached to them are therefore relevant to the prudence and efficiency of regulated-service expenditure.

The strategy does not present:

- the proportion of forecast waste-water investment that is conditional on resolving the contamination-source question;
- the basis on which any commitments made before that resolution are justified;
- the decision points at which that conditionality will be resolved.

The implication is not that no commitment should be made. The implication is that waste-water investment built on the contested contamination-source proportion should disclose the conditions on which it depends, so interested persons can assess whether regulated-service expenditure is prudent and efficient.

### **5.4 Inherited council charging mechanisms**

The pricing policy indicates that for 2026/27 Tiaki Wai will generally use existing council pricing mechanisms while beginning the transition away from property-value charging. It notes that material differences across council boundaries will remain in the first year because of inherited council funding and rating approaches.

The strategy does not present:

- a published evaluation of whether the inherited charging mechanisms are appropriate for the new entity, or only convenient;
- the criteria against which alternative charging approaches have been or will be assessed;
- the time-line and decision points for moving away from inherited mechanisms;
- the basis on which the differences across council boundaries are acceptable in the first year and the conditions under which they will be removed.

This is the weakest of the four indicators; using inherited mechanisms in the first year is a reasonable transitional choice. It is included because, across all four areas, an inherited position is carried forward without published evidence of independent evaluation.

## **5.5 Summary**

The four indicators in this section, together with the smart metering case study in section 4, indicate that the pattern of adoption without visible re-evaluation is not confined to a single programme. It appears across asset investment decisions, related-party cost recovery, transition cost structure, conditional waste-water commitments, and pricing mechanisms. The strategy itself supports this: it states that the evidence base is limited, that substantial further work is required, and that this is the reason for adopting a one-year strategy. The pattern is acknowledged in the strategy's framing. What is not acknowledged is the implication: committing to investment envelopes and cost recovery levels at this stage, on this evidence base, places the burden of underdeveloped analysis on consumers.

## **Section 6 — Governance and operation of risk controls**

### **6.1 Commission's reliance on external risk controls**

The Commission's proportionality assessment rests in part on the assumption that external risk controls: the independent skills-based board, the Partners Committee, the five owner councils, and the LGFA; are functioning alongside ID regulation.

### **6.2 What the sections 3 to 5 pattern implies for controls**

The pattern set out in sections 3 to 5 has implications for each of the controls the Commission relies on.

The independent skills-based board is the control closest to the decisions. The board's role includes testing major investment proposals for consumers and the long-term interests of the entity. Where a programme of the scale of the metering programme is presented as the preferred solution with an indicative cost in the range of 500 to 590 million, without published options analysis and without published evidence of independent re-evaluation of the inherited preferred solution, a question arises about the form of challenge the board has applied. The published material does not show what challenge has been applied or what alternatives have been considered. This may reflect a disclosure choice rather than absence of challenge; that is why the Commission's framework needs to surface the question.

The Partners Committee brings together the five owner councils and mana whenua partners to set expectations for Tiaki Wai. Where the costs of inherited decisions are being passed through to consumers, and where related-party transactions with the owner councils are a material cost line, the Partners Committee sits in a structural position in which it is both the body setting expectations and a beneficiary of one of the cost lines under discussion. This is not an allegation of misconduct. It is a structural feature of the arrangement that the Commission's framework should take into account when assessing how much weight to place on Partners Committee oversight as a risk control.

The owner councils have an interest in the financial sustainability of Tiaki Wai and in the level of charges passed through to their residents. They are also recipients of rates on water assets and providers of transitional services. The same structural observation applies.

The Local Government Funding Agency lends to Tiaki Wai and applies its own financial and non-financial reporting requirements. LGFA oversight provides financial discipline, including on debt headroom, reporting quality, and sustainability of borrowing. That discipline is necessary but not sufficient for the consumer interest. A programme that is fully funded and within debt limits can still represent poor value for money for consumers if the underlying analysis has not been tested. LGFA oversight is part of a layered system, not a substitute for ID and economic regulation.

### **6.3 Implication for Commission's assessment**

The Commission's proportionality reasoning, set out in Attachment C of the additional ID requirements consultation, is that more comprehensive disclosure requirements would impose unnecessary compliance costs and could divert resources from establishment and service delivery work. That holds only if the other controls in the system are operating effectively.

The pattern set out in sections 3 to 5 suggests the controls outside ID regulation may not yet be operating in a way the Commission's framework can rely on. The board has not, on the published record, demonstrated independent challenge to inherited decisions of the scale of the metering programme. The Partners Committee and owner councils sit in structural positions that limit their effectiveness as independent controls on cost recovery from consumers. LGFA's mandate provides financial discipline but does not extend to testing value for money in the consumer interest.

If the external controls are not yet operating as the framework assumes, the Commission's ID regulation carries more of the load than the original reasoning allows for. This does not imply the Commission has erred in its current proposals; it suggests the Commission should treat the operation of those controls as an empirical question rather than an assumption, and set its disclosure threshold accordingly.

## **Section 7 — Response to additional ID requirements consultation**

This section follows the order of proposals in Chapter 4 of the consultation paper. Strengthening proposals are summarised here and set out in full in section 9.

### **7.1 Earlier disclosure of core planning documents (SAMP, IDP, ADR)**

Proposal supported. Earlier disclosure will allow interested persons to make an earlier assessment of investment prioritisation, delivery, and performance expectations. Earlier disclosure is the minimum condition for testing whether the underlying analysis has been independently evaluated.

The proposed timing in the draft amendment determination is accepted as proportionate to Tiaki Wai's transition. Under that timing, the SAMP and IDP are to be disclosed within 30 days of the date a Water Services Strategy is adopted, and the first ADR is to be disclosed by 30 November 2028. No change is proposed to the timing.

### **7.2 Asset management maturity and capability assessment and improvement plans**

Proposal supported. The maturity and capability assessment as proposed appears to focus on the state of asset management systems, processes, and capability. This is necessary but not sufficient. A maturity assessment that examines whether the systems exist, without examining whether those systems have been applied to the largest inherited investment decisions, will understate the residual risk. The assessment should also be required to cover, in addition to systems and processes, the extent to which inherited business cases and

major decisions from Wellington Water have been independently re-evaluated by Tiaki Wai before adoption, where re-evaluation is likely to change the answer. This applies to material decisions only; routine inherited operational arrangements are out of scope.

### **7.3 Can forecast expenditure be delivered**

Proposal supported. No change proposed to scope as drafted, although the value of this assessment depends on the underlying expenditure forecasts themselves being credible. The strengthening proposed in 7.4 and in section 9 addresses that point.

### **7.4 Independent verification of forecast capex/opex, can it be delivered**

Proposal supported. Two strengthening points proposed.

First, independent verification at the level of forecast totals is necessary but not sufficient. For programmes of material scale, verification at the headline forecast level will not test whether the underlying business case for the programme has been independently developed or independently re-evaluated. Verification should extend to the business cases for material programmes as published, including the options analysis and the basis for selecting the preferred option. This is verification of what is disclosed, not a pre-commitment regulatory gate.

Second, the materiality threshold for that extended verification should be set at a level that captures programmes of the scale of metering (500 to 590 million indicative) while excluding routine operational decisions. A threshold definition is proposed in section 9.

### **7.5 Quarterly delivery reporting**

Proposal supported. One strengthening proposed.

The draft amendment determination already requires operating expenditure to be disclosed by shareholding council. This is helpful but doesn't address the difference between one-off and ongoing costs. Quarterly delivery reporting that compares actual against budget without disaggregating one-off establishment and transition costs from ongoing service delivery costs will not allow interested persons to assess whether transition costs are converging toward zero or being absorbed into the steady-state cost base. The pattern of inherited transitional arrangements described in section 5.2 makes this disaggregation more important than it would otherwise be. Quarterly delivery reporting should be required to present, alongside the breakdown by shareholding council, a further disaggregation of one-off establishment and transition costs from ongoing service delivery costs, with a defined end date or wind-down schedule for each category of transition cost.

The proposed definition of "material project or programme" in the draft amendment determination (having regard to expenditure value, strategic importance, risk, other relevant considerations, and Commission views) is supported as drafted. The materiality threshold proposed in section 9 for extended verification of business cases would operate alongside this definition rather than replacing it.

### **7.6 Network length disclosure**

Proposal supported. The Commission proposes to require Tiaki Wai to disclose its waste-water network length and water supply network length annually by 30 November each year, beginning in 2026.

### **7.7 Fault metrics, data confidence grading, and operations and maintenance dashboards**

Proposal supported.

Continuing data confidence grading is important. Where data is acknowledged by Tiaki Wai and the Commission as incomplete, transparent confidence grading is needed to interpret performance reporting built on it.

## **7.8 Reporting by council area**

Proposal supported. The Commission's Chair's letter accompanying the consultation refers to ongoing reporting of key performance information by council area, including operating expenditure, number of faults, and time to resolution. The draft amendment determination already requires opex to be broken down by shareholding council, and the draft economic regulation determination already requires quarterly fault disclosure for each shareholding council.

To the extent that operations and maintenance dashboards and other performance reporting are not already required by council area, that extension should be made explicit. The five owner councils have different network conditions, different historical investment patterns, and different rates on water assets. Reporting consistently by council area across the disclosure regime would allow residents to assess whether investment is being prioritised in proportion to need and whether outcomes are improving in their area.

## **7.9 Alternative options considered by the Commission (Attachment C)**

Attachment C of the consultation paper sets out the Commission's reasoning for not introducing more comprehensive ID requirements at this stage. The reasoning is that Tiaki Wai is undergoing a significant organisational transition; broader disclosure requirements could divert resources from establishment and service delivery; Tiaki Wai's information systems and reporting processes are still developing; more extensive requirements could impose unnecessary compliance costs; and Wellington Water's submission on the enduring ID regime noted it would struggle to meet some of the disclosure requirements.

This reasoning is addressed on its own terms, as it is the Commission's stated basis for the scope of its current proposals. The reasoning rests on a balance between the compliance and capacity cost of additional disclosure and, the benefit of additional disclosure to interested persons. Four observations:

First, the financial compliance cost of additional disclosure is small relative to the scale of investment decisions being made. The cost of preparing and publishing options analysis for a 500 to 590 million programme is a small fraction of one per cent of that programme.

Second, proportionality includes opportunity cost. Senior management and board attention during establishment is a real constraint, and additional disclosure draws on that attention. The proposed marginal disclosures in section 9 are designed to attach to work that should be happening in any event (options analysis for material programmes, assurance of inherited decisions, related-party justification) and to require disclosure of that work rather than additional work. Where any of the proposed disclosures would require new analysis rather than disclosure of existing work, that is itself an indicator that the work should have been happening, not an argument against the disclosure.

Third, the argument that more disclosure would divert resources from establishment work has weight only if the decisions being made during establishment are sound. Where the pattern identified in sections 3 to 5 suggests that significant decisions are being made on inherited analysis without visible re-evaluation, additional disclosure during establishment is more important, not less. The establishment period is when the decisions are being locked in.

Fourth, the reliance on the existence of other controls (board, Partners Committee, owner councils, LGFA) as part of the proportionality reasoning is addressed in section 6. Where those controls are not yet observed to be operating effectively in respect of major inherited decisions, the Commission's ID and performance requirement regulation carries more of the load than the proportionality reasoning assumes.

## **Section 8 — Response to performance requirement regulation consultation**

This section responds to the Commission's consultation on its proposed recommendation to the Minister of Commerce and Consumer Affairs under section 57G of the Commerce Act 1986 to impose performance requirement regulation on Tiaki Wai.

### **8.1 Proposed recommendation**

This submission addresses the proposed recommendation only, not the content of any future performance requirements.

### **8.2 Support for recommendation**

Proposed recommendation supported.

### **8.3 ID regulation is not sufficient**

Information disclosure regulation works through transparency. It assumes that disclosure to interested persons, including the Commission, the board, the owner councils, the Partners Committee, and consumers, creates accountability and incentives for behaviour change.

That mechanism depends on recipients acting on the information. The pattern in sections 3 to 5 suggests that those best placed to act on disclosed information about Tiaki Wai, including the board, the Partners Committee, and the owner councils, sit in structural positions that, as set out in section 6, may limit their independent challenge of inherited decisions and cost recovery from consumers.

Performance requirement regulation does not by itself address that problem. It doesn't improve the quality of upstream analysis, and it doesn't give the Commission independent verification of disclosures from constrained intermediary parties. Those are information-quality problems addressed by the verification proposals in section 9: independent verification of material business cases, disclosure of inherited-analysis re-evaluation, related-party benchmarking. Performance requirement regulation addresses a different problem. It gives the Commission a tool that operates on observable delivery and outcome failures, which are externally verifiable without relying on upstream analysis. A missed delivery milestone, a fault rate above a set standard, or a service-quality breach can be observed and acted on directly, regardless of whether the underlying business case was independently tested.

The two are complementary because they target different failure points. The section 9 verification proposals address whether the right decisions are being made and disclosed. Performance requirement regulation addresses whether the entity is delivering observable outcomes, and provides an enforcement lever that does not depend on intermediary parties acting on disclosed information. ID regulation alone provides neither upstream verification nor downstream enforcement.

## **8.4 Performance requirement regulation is proportionate**

The Commission's framework requires regulatory intervention to be proportionate to identified risks. Two features of Tiaki Wai's starting position make performance requirement regulation proportionate now, rather than at some later point.

First, the decisions that will shape Tiaki Wai's investment trajectory over the next decade are being made now, during establishment. These include the metering programme, conditional waste-water investments, the cost recovery basis for related-party transactions with shareholding councils, and the structure of transition costs. A regulatory tool that can be activated only after these decisions are made will not influence them. The window in which performance requirement regulation can affect the trajectory is narrow.

Second, the scale of investment being committed is large and the scale of price increases being passed through to consumers is significant. The Commission's papers acknowledge that prices will rise as Tiaki Wai returns services to the level of quality that consumers demand. Where the scale of cost being recovered from consumers is at the level signalled in the draft Water Services Strategy, the proportionality threshold for activating additional regulatory tools is lower, not higher, because the consumer impact of unjustified or imprudent investment is correspondingly larger.

This submission proposes two timing tracks, not one, and they should be read together. The annual ID disclosures proposed in section 9 are designed for the next generation of decisions: they will produce usable information over the first and subsequent reporting cycles and will discipline the investment decisions that follow. For the current generation of decisions being made now, during the narrow window, two mechanisms apply: the pre-decision disclosure provision in section 9.1 for programmes already identified in the draft 2026 Water Services Strategy (including metering), and the activation of performance requirement regulation, which provides a Commission-enforced lever over delivery and outcomes from the date of activation. The apparent tension between the urgency argument and the annual structure of the ID proposals is resolved by recognising they address different decision cohorts.

## **8.5 Activation, not specification**

The Commission's proposed recommendation is to activate the tool, not to specify its content. Activation now preserves the Commission's ability to impose specific performance requirements at a time and in a form that responds to what is actually disclosed under the strengthened ID regime. Activation later, after the disclosures have revealed problems, may be too late to influence the decisions that drive those problems.

Even where specifications will be developed later, activation now provides the Commission with a credible commitment device during the establishment decision window. Tiaki Wai will be making decisions in the knowledge that the Commission has the activated tool available, which shapes the discipline brought to those decisions. This is separate from the eventual content of any specifications and operates from the date of activation rather than the date of any subsequent specification.

The incremental cost of activation, relative to the cost of the ID regime already proposed, is limited. Activation does not impose any specific obligation; it makes the tool available. The cost of not activating the tool now, if activation later proves necessary, is the period between recognition of the need and the completion of the section 57H consultation and ministerial process. That period is likely to exceed twelve months. Tiaki Wai's investment decisions will not pause for that period.

## 8.6 Matters in Commerce Act section 57H(1)

The Commission is required to have regard to each of the matters in section 57H(1) before making a recommendation under section 57G. The consultation paper addresses each. This submission does not re-argue each matter individually. The Commission's assessment of those matters is accepted, and the analysis in sections 3 to 6 of this submission, particularly on the operation of risk controls outside the regulatory framework, supports rather than undermines the Commission's reasoning.

## Section 9 — Additional disclosures Commission should require

Each proposal links to one of the four risk areas identified by the Commission: asset management, delivery, financial sustainability, and non-financial performance. The proposals are derived from those risk areas. Any gaps in current published material are noted only to show where the existing disclosure framework does not yet reach the risk. In summary: 9.1 (options analysis and verification) and 9.4 (board assurance framework) address asset management and delivery risk in respect of major inherited decisions; 9.2 (cost disaggregation) and 9.3 (related-party transactions) address financial sustainability risk; 9.5 (conditional waste-water investment) addresses asset management and financial sustainability risk in respect of contested-scope investment; and 9.6 (reporting by council area) supports non-financial performance assessment. Each item below states the risk it addresses, the proposed disclosure, the gap in current requirements, and the cross-reference to the supporting analysis.

Definitions used in this section:

- **Material decision or programme:** a single project, programme, or decision that meets the materiality threshold defined in 9.1, including aggregated related sub-programmes or phases.
- **Steady state:** the operating cost base of Tiaki Wai once one-off establishment costs and time-limited transition arrangements have been wound down.
- **Conditional investment:** forecast investment whose scope, scale, or justification depends on the resolution of an identified question of responsibility, standard, cost, or measurable benefit.

### 9.1 Published options analysis and independent verification for material programmes

*Risk addressed: asset management and delivery, for major inherited investment decisions.*

**Materiality threshold.** This submission does not propose a specific dollar figure. The Commission is better placed to set this. The threshold should capture programmes of the scale of the metering programme (500 to 590 million indicative) while not imposing the obligation on routine operational decisions. The threshold should be set as the lesser of a dollar figure (suggested range 50 to 100 million for a single programme) or a percentage of forecast annual capital expenditure (suggested range 10 to 20 per cent). Setting the threshold as the lesser of the two means a programme triggers the obligation if either test is met. An example: at 400 million forecast annual capital expenditure, a 10 per cent test gives 40 million, which is the binding lower floor; at 1 billion forecast annual capital expenditure, the 50 million figure is the binding lower floor. In both cases the lower figure governs, so scaling capex up does not raise the threshold or exclude programmes the requirement is intended to capture. This threshold applies to the extended verification in this section and operates alongside, not in place of, the "material project or programme" definition in the draft amendment determination supported in section 7.5.

Where a programme is structured as related sub-programmes or phases that together meet the threshold, the threshold applies to the aggregate, not individual sub-programmes. This prevents splitting below the threshold to avoid disclosure. Relatedness includes shared business case, procurement process, funding decision, or technology platform. If this is unclear in a given case, the Commission’s existing “material project or programme” definition in the draft amendment determination applies.

**Proposal — options analysis.** For any project, programme, or decision above the materiality threshold, Tiaki Wai should publish, alongside the Water Services Strategy, the IDP, or the quarterly delivery reporting in which the programme is first identified as material:

- the problem the programme is intended to address, stated in measurable terms;
- the options considered, including do-nothing, demand-side alternatives, scope alternatives, technology alternatives, ownership and structural alternatives, timing and sequencing alternatives, and any others material to the decision;
- the costs, benefits, and risks of each option in quantified form, including the basis for quantification and the confidence in it;
- the basis on which the preferred option was selected over the alternatives;
- whether the underlying analysis is inherited from Wellington Water or developed before Tiaki Wai's establishment, and what re-evaluation Tiaki Wai has performed before adopting it.

**Programmes already identified in the draft 2026 Water Services Strategy.** For programmes already identified in the draft 2026 Water Services Strategy that meet the materiality threshold, including the smart metering programme described in section 4, the options analysis and the independent verification proposed below should be published before the relevant business case proceeds to financial commitment. This is the main mechanism for decisions made during the establishment window, where the annual disclosure cycle would otherwise arrive too late (see section 8.4). It ensures the disclosure rule is not applied only after the programmes that drove its design.

**Commercial sensitivity carve-out.** This proposal does not require disclosure of material that would prejudice live procurement, including specific supplier-level pricing, supplier identities before procurement award, or contracting structures under negotiation. Such material may be withheld from the published options analysis, with a brief explanation of what is withheld and why, and disclosed once the relevant procurement is complete. The options considered, the decision criteria, and the quantified comparison at the level needed to assess prudence should not normally be commercially sensitive.

**Proposal — independent verification.** For any project, programme, or decision above the materiality threshold, independent verification should be required of the published business case, including the options analysis and the basis for selecting the preferred option.

Verification should cover whether: the problem definition is supported by evidence; the options analysis is genuinely comparative rather than confirmatory; the quantification of costs and benefits is reasonable; the basis for selecting the preferred option follows from the analysis; and any inherited analysis has been re-evaluated to a standard consistent with the scale of the decision.

The verifier should be independent of Tiaki Wai and not currently engaged by Tiaki Wai or Wellington Water on the same programme. Where the available pool of qualified verifiers is limited, prior involvement in predecessor work should be disclosed alongside the verification report. The Commission can then determine whether residual independence is sufficient or whether additional safeguards are required. This preserves independent verification while recognising the practical reality of the New Zealand water consulting market.

Verification is of what is disclosed, not a pre-commitment regulatory gate. Accountability for the underlying decision remains with the Tiaki Wai board.

**Gap addressed.** The Commission's proposed independent verification of forecast capex/opex sits at the level of forecast totals and reporting cycles. It does not require options analysis to be published for individual programmes or independent verification at programme level. The metering programme in section 4 illustrates this point: a 500 to 590 million indicative programme presented as preferred at the strategy stage, before procurement, sits between the forecast level and the operational reporting cycle.

**Supporting analysis.** Sections 4 (smart metering), 7.4 (proposed strengthening of independent verification).

## 9.2 Disaggregation of one-off establishment and transition costs

*Risk addressed: financial sustainability.*

**Proposal.** Building on the draft amendment determination's requirement that opex be broken down by shareholding council, quarterly delivery reporting and annual financial disclosures should present:

- one-off establishment costs, with a defined wind-down profile and end date for each category;
- transition costs (including temporary support arrangements with shareholding councils and other transitional services), with a defined wind-down profile and end date for each category;
- ongoing service delivery costs at steady state.

Variance reporting against budget should be presented for each of the three categories separately, not in aggregate. During the transition period before steady state is reached, Tiaki Wai should disclose its working forecast of steady-state costs, together with the assumptions and time-line underlying that forecast.

**Gap addressed.** Quarterly delivery reporting as proposed by the Commission will compare actual operating and capital expenditure against board-approved budgets, broken down by shareholding council. The proposal does not require disaggregation of one-off and transitional costs from ongoing service delivery costs.

Without that disaggregation, it will not be possible for interested persons to assess whether transition costs are converging toward zero or being absorbed into the steady-state cost base.

**Supporting analysis.** Sections 5.2 (establishment and transition costs), 7.5 (proposed strengthening of quarterly delivery reporting).

## 9.3 Disclosure of related-party transactions with shareholding councils

*Risk addressed: financial sustainability.*

**Proposal.** Tiaki Wai should disclose each annual reporting cycle, for each category of transaction with a shareholding council:

- the gross amount and the basis on which it is calculated;
- the year-on-year change and the reasons for it;
- the basis on which the level of payment reflects services received by Tiaki Wai and is recoverable from consumers, with reference to market rates for equivalent services from unrelated providers where such comparators are available; where they are not available, the basis on which the level is set, and what would be required to market-test it;
- the conflict-of-interest controls applied by Tiaki Wai's board to the approval of these arrangements.

This applies to rates on water assets, billing and customer services provided by councils, payroll, finance and other processing services, and any other category of related-party transaction.

**Gap addressed.** The Commission's proposed disclosures do not address related-party transactions with shareholding councils as a specific category, given the structural feature in section 6 and the scale of these transactions (rates on water assets alone forecast at over \$50 million in 2026/27, more than double 2024/25). The proposal does not impose a "genuine net cost" test or require the Commission to enter local-government

rating policy. It requires standard related-party disclosure, plus a market-referenced benchmark or a stated basis where no market comparator exists, so the Commission has a benchmark to assess the explanation rather than only an internally coherent methodology statement.

**Supporting analysis.** Sections 5.1 (rates on water assets), 6 (governance and risk controls).

#### **9.4 Disclosure of board's assurance framework for material inherited decisions**

*Risk addressed: asset management and delivery, through the operation of the board as a risk control.*

**Proposal.** Tiaki Wai should be required to disclose, in each annual reporting cycle:

- the assurance framework the board applies to material decisions involving inherited analysis (the framework, not the content of individual deliberations);
- the scope of that framework, including the kinds of decision to which it applies and the kinds of inherited input it covers;
- where independent external advice has been commissioned to support board challenge of material inherited decisions, the existence of that advice, the matter on which it was sought, and the question the advice was asked to address (not the substance of the advice or its conclusions).

To avoid a bare policy statement satisfying the requirement, a qualifying framework disclosure must at minimum identify: the categories of decision to which the assurance process applies; the kinds of external input or independent advice the process uses to test inherited analysis; and the frequency of, or trigger for, applying the process. These minimum elements describe what the framework must cover, not what the board decided in any particular case, and so do not require disclosure of deliberation content.

This proposal does not require disclosure of board deliberation records, legal advice, deliberation content, or board self-assessment.

**Gap addressed.** The Commission's framework relies on the independent skills-based board as a risk control. The published material does not show whether the board's assurance framework over inherited decisions exists or what it covers. Without the minimum elements above, a disclosure could be satisfied by a bare statement that gives the Commission no basis to assess whether a meaningful process exists. The proposal attaches to inputs to the regulated information the Commission is already requiring (the SAMP, IDP, and business cases), not to board governance as such.

**Supporting analysis.** Section 6 (governance and risk controls).

#### **9.5 Disclosure of conditional waste-water investment**

*Risk addressed: asset management and financial sustainability, for contested-scope investment.*

**Proposal.** For any forecast waste-water investment conditional on unresolved questions of responsibility, standard, cost, or likely benefit (the wastewater-network contamination contribution described in section 5.3 as the clearest current example), Tiaki Wai should disclose the:

- proportion of forecast investment that is conditional, or a qualitative description of the conditional component where it cannot be reasonably estimated;
- specific unresolved questions on which the investment is conditional;
- basis for any commitments made before resolution;
- decision points at which conditionality will be resolved.

Where the boundary between waste-water-source and storm-water-source contamination is unresolved, disclosure should set out Tiaki Wai's working basis for allocating forecast investment between the two, and the conditions under which that allocation would be revised.

This proposal is confined to regulated waste-water services. It does not seek to bring storm-water into the Commission's regulatory scope.

**Gap addressed.** The Commission's proposed disclosures address forecast investment and whether that investment can be delivered, but do not require disclosure of the conditions attached to forecast regulated waste-water investment. Where Tiaki Wai's own strategy acknowledges that material questions affecting waste-water investment are unresolved, the conditionality of any forecast investment built on those questions should be disclosed.

**Supporting analysis.** Section 5.3 (wastewater-network contamination contribution).

## **9.6 Reporting by council area (extension where not already in draft determinations)**

*Risk addressed: non-financial performance.*

**Proposal.** The draft amendment determination requires opex by shareholding council, and the draft economic regulation determination requires quarterly fault disclosure for each shareholding council. The submission supports those provisions. Where not already required, the same council-area breakdown should be applied to operations and maintenance dashboards and other performance reporting.

**Supporting analysis.** Section 7.8 (reporting by council area).

## **9.7 Summary of additional disclosures**

The disclosures proposed in this section are aimed at three things: testing whether inherited decisions of material scale have been independently re-evaluated, and surfacing the governance and related-party arrangements that bear on them (9.1, 9.3, 9.4); making the cost structure transparent enough to assess prudence and convergence to steady state (9.2, 9.5); and aligning reporting with the geographic and governance structure of the service area (9.6).

The proposed disclosures are designed to attach to work that should be happening as part of prudent and efficient management of the assets and services Tiaki Wai is responsible for. Where the underlying work is already in hand, the compliance cost is limited to disclosure of existing work, plus the carve-out for genuinely procurement-sensitive material. Where the underlying work is not in hand, the proposals impose marginal additional analytical work and the cost of disclosure; in that case, the work itself is what was missing under the Commission's risk framework, and the disclosure simply makes its absence visible. The proportionality of the proposals follows from that two-case analysis: bounded compliance cost where the work exists, and a regulatory signal where it does not.

End of submission.