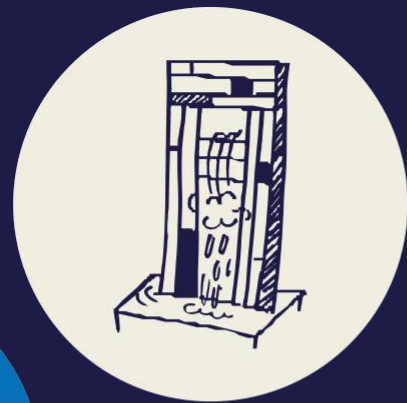


HAMILTON CITY COUNCIL SUBMISSION ON:

Economic Regulation and Consumer Protection for Three Waters Services in New Zealand

Ministry of Business, Innovation and Employment



16 December 2021



**Hamilton
City Council**
Te kaunihera o Kirikiriroa

Improving the Wellbeing of Hamiltonians

Hamilton City Council is focused on improving the wellbeing of Hamiltonians through delivering to our five priorities of shaping:

- A city that's easy to live in
- A city where our people thrive
- A central city where our people love to be
- A fun city with lots to do
- A green city

Water is essential to the improving all Hamiltonian's wellbeing. Water brings life to our people for food, for housing, for jobs, for recreation. It is essential to our wellbeing.

Council Approval and Reference

This submission was approved by Hamilton City Council at its Council Meeting on 16 December 2021.
Hamilton City Council Reference D-4006964 - submission # 673

Key Messages

Overview

1. Whichever governance structure the government chooses Economic Regulation is beneficial to the community.
2. Price/Quality and Information Disclosure regulation is essential to validate the outcomes as presented in the Water Industry Commission of Scotland (WICS) analysis.

Regulation

3. Regulation must take a holistic view of the cultural, social, economic and financial wellbeing of the community.
4. Waters is not a commodity, it brings life to our people for food, for housing, for businesses for recreation.
5. Regulation must find a balance across the wellbeings, not seen before in consumer and community regulation and protection.
6. With multiple regulators responsible for the wellbeing of water there must be a high level of integration across all of these organisations.

Community and Consumer Protection

7. The wellbeing of the water and the quality and reliability of waters infrastructure is paramount to community wellbeing and the regulators.
8. The regulator must:
 - a. Firstly, drive good outcomes, and
 - b. Then ensure efficiency of spending, and
 - c. Then ensure appropriateness of pricing across the entity rohe and across different classes of community and consumers, and
 - d. Finally ensure transparency, accountability and rights of justice to the community and consumers.

Introduction

9. Whichever governance structure the Government chooses an Economic Regulation is beneficial to the community.
10. The Ministry of Business, Innovation and Employment (MBIE) is seeking submissions on a discussion document to consider an economic regulator for Three Waters services. The regulator would ensure consumers and communities receive efficient and affordable three waters services that meet their needs both now and into the future.
11. An economic regulator, with the ability to require water service providers to disclose information, directly regulate the price and quality of services, and set a strong efficiency challenge for regulated businesses, would be beneficial to Hamiltonians.
12. The regulator would enhance the wellbeing of Hamiltonians through new and additional protections for consumers, potentially including specific protections for vulnerable consumers and the establishment of a dispute's resolution scheme.

- 13.** Delivering these benefits does not, in itself, require aggregation of councils as laid out in the Government's Three Waters reform programme. An economic regulator is independent of the delivery system and could address price/quality concerns regardless of delivery structures, similar to the benefits derived by the establishment of Taumata Arowai as a dedicated water services regulator (taking over from the Ministry of Health).
- 14.** However, the economic regulator would provide a layer of surety to the proposed entity model. It will address the natural monopoly characteristics of waters management and delivery and protect the beneficial reform outcomes identified in analysis by the Water Industry Commission of Scotland (WICS).
- 15.** Hamilton City Council endorses the creation of an economic regulator for Three Waters Services, noting a regulator would provide consumer protection, security of investment, and a service guarantee for the residents of Hamilton.
- 16.** Hamilton City Council notes economic regulatory systems are traditionally focussed on commercial and financial imperatives. Water is different. It should not be viewed as an asset but as an entity within itself and any regulatory framework must prioritise the health and wellbeing of the water first. The regulator must include statutory provision for Te Mana o Te Wai, recognising the hierarchy of protecting the water to then enable the health needs of our people and subsequently our cultural, social, economic, and financial wellbeing.
- 17.** To deliver these benefits, regulation must find a balance not seen before in consumer and community regulation and protection. The regulator must also provide transparency and accountability to the public and align with new and existing water services legislation and regulatory or oversight organisations.
- 18.** Hamilton City Council makes the following submission in support of enhancing the wellbeing of our community through a bespoke regulatory system.

Response to the Consultation Document Questions

1

What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?

19. **There is a case for economic regulation irrespective of the Government's final choice of governance structure of water service entities, but it must be tailored to the water sector to achieve good outcomes for water consumers and the communities impacted by water service delivery.**
20. The existing economic regulation frameworks in New Zealand are not considered suitable for regulation of water service.
21. There is an opportunity to create a new bespoke regime which will have a better prospect on delivering on the objectives of the reforms. For example:
 - a. Water entities will not have a profit motive.
 - b. The objectives of the reform are to ensure there is sufficient investment in water services to meet customer/community needs.
 - c. This includes future demand and adequate service levels.
 - d. Water service costs to customers/community must be affordable.
 - e. There will need to be substantive innovation and efficiency gains to ensure this affordability objective is achieved.
22. Economic regulation must focus on these community outcomes and aspirations.

2

What are your views on whether the stormwater networks that are currently operated by local authorities should be economically regulated, alongside drinking water and wastewater?

23. **Yes, it must regulated. To be effective in improving the waters wellbeing oversight of stormwater management is essential and must extend to those stormwater services which are owned or operated by water supply entities, including those operated under service level agreements.**
24. Hamilton City Council's 30-year infrastructure Strategy shows that almost 50% of our \$5 billion waters investments is stormwater investment. This is essential to enable the development and growth of the city and mitigate future flooding risks as weather events become more prevalent.
25. Information disclosure of stormwater investment, performance and costs will be an important step initially. There may be a longer transition to more formal economic regulation for stormwater.
26. Funding options will be an important component of economic regulation for stormwater, along with sustainability of the three waters ecosystem. These tools may be similar to the current rating tools available to local government.
27. The paper suggests that there may be cost allocation issues if water entities supply both regulated (water/wastewater) and unregulated (stormwater) services. We disagree because existing regulatory regimes already address this issue effectively (e.g.: airports, energy and telco networks). It is also likely that common costs will need to be allocated between the three waters in order to derive fair appropriate pricing for water services. Regulatory guidance can assist with this to ensure consistent approaches are adopted across the sector.
28. As noted above, this will require a different style of economic regulation than currently observed in New Zealand and elsewhere because these services provide community benefit that are not directly aligned to consumers (end users/customers).

3

What are your views on whether the four statutory Water Services Entities should be economically regulated?

29. **Hamilton City Council is opposed to the Government's proposed four entity model, however economic regulation would be beneficial to the community whichever final model is chosen.**
30. **The regulation should be designed to deliver on the objectives of the 3 waters reform and must be independent of the final business/governance structure adopted by the Government.**
31. The reforms are built on the WICS analysis, and the regulatory regime is essential to deliver the financial outcomes identified by the Government.
32. Economic regulation must be developed in partnership with the reform project, DIA and the Waters National Transition Unit, and establishment of the new entities. These tasks may not be effective if occurring in isolation of each other.
33. Given the timetable for the regulation legislation is significantly after the transition to new waters entities starts, it would be beneficial for MBIE to get involved earlier so that efficiency opportunities (e.g., smart technology) can be identified for the benefit of efficient regulation.

4

What are your views on whether economic regulation should apply to community schemes, private schemes, or self-suppliers? Please explain the reasons for your views.

34. **Hamilton City Council has not taken a view on these matters due to no such schemes within the city.**

5

What are your views on whether the Water Services Entities should be subject to information disclosure regulation?

35. **We support information disclosure regulation for waters service entities.**
36. There is a significant opportunity to tailor this regime to the objectives of the reform, and the unique features of the sector, including:
 - a. Three waters.
 - b. The roles of local representatives and the significance of waters to whole communities not just consumers.
 - c. Diverse scale of water suppliers.
 - d. The importance of Te mana o te Wai and Te Ture Whaimana o Te o Awa Waikato.
 - e. The roles of other waters regulators Taumata Arowai and Regional Councils.
 - f. Increasingly critical sustainability of the three waters ecosystem including the impacts of climate change.
 - g. The planned introduction of consumer protection regulation.
37. As the new water entities will be newly established, using common processes and policies, there is an opportunity to leverage the starting positions (financial/non-financial metrics and reporting) for information disclosure regulation. This will require coordination between DIA, the NTU, other regulators and the economic regulator.
38. We do not support a 'lift and shift' of the current disclosure regimes applying to other regulated utilities in New Zealand to three waters.
 - a. The building blocks 'return on investment' financial model currently adopted by the Commerce Commission should not be a key driver of economic regulation for three waters.

What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?

39. **Yes, as stated earlier, the lack of a profit motive, along with the specific objectives of three waters reform programme mean it is imperative that there is price-quality regulation tailored to the sector.**
40. The key objectives should focus on:
- a. Prudent and efficient expenditure.
 - b. Meeting appropriate service levels and demand for water services, including sustainability of water resources for communities.
 - c. Affordability.
 - d. Financeability.
41. This requires a different emphasis from the current economic regulation models employed in New Zealand.
42. For this reason, it may be appropriate to transition to more heavy-handed regulation over time. In the interim the proposed Government Policy Statement and entity governance arrangements, combined with information disclosure and consumer protection regulation, can guide water entities towards meeting the regulatory objectives.
43. Active and timely monitoring of information disclosures by the regulator will be critical to encouraging water entities to achieve these outcomes. We note that this has often been a lower priority for the Commerce Commission, given their multiple regulatory mandates, and that sufficient resourcing and focus is critical for successful disclosure regulation.

What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?

44. **We support targeted regulation for the large regulated water entities. Each entity has unique differences, as do communities within the entity rohe of those entities. For example, Hamilton and Tauranga have growth pressures far exceeding any other area of the rohe.**
45. This will enable specific targets and plans to be accommodated in regulatory decisions and deliver outcomes consistent with the needs of each community/consumer group.
46. We don't support a one size fits all regulatory model, because there are likely to be unique service or demand challenges within each supply region. For example, some of the legacy infrastructure may require more focus, and other regions may have significant growth challenges to be met.
47. As stated above, we consider that the initial priority should be a comprehensive information disclosure regime, with active monitoring by the regulator, including targeted summary, analysis and engagement with each of the larger water entities.

- A) Do you consider that the economic regulation regime should be implemented gradually from 2024 to 2027, or do you consider that a transitional price-quality path is also required?
- B) If you consider a transitional price-quality path is required, do you consider that this should be developed and implemented by an independent economic regulator, or by Government and implemented through a Government Policy Statement?

48. **We support a transition for implementing economic regulation.**

- 49. Once the water entities are established, we believe that information disclosure regulation could be implemented quite quickly, leveraging the information which will be reported by each water supply entity - for example financial reporting information and the proposed statutory Asset Management, Pricing and Funding Plans, and service performance indicators.
- 50. Information disclosure can also assist new water entities to establish reporting systems from the outset to provide critical performance information.
- 51. We encourage decision-makers to consider the specific needs of the water sector and avoid replicating the existing information disclosure and price-quality regulation applying to other utility sectors. For example, focus on expenditure plans, efficient service delivery, affordability, cost recovery, borrowing, pricing and quality service outcomes and shift away from current building block regulation.
- 52. The question of a transitional price-quality path should only be made at the time there is a decision to implement price-quality regulation.
- 53. The timing for this is likely to be influenced by any Government Policy Statement or governance arrangements, and the implementation and operation of information and consumer protection regulation.
- 54. Funding water services is a critical challenge, especially for councils in high growth areas, facing significant policy changes in resource management and urban planning. The economic regulator should have oversight of how water entities resolve this challenge, including where infrastructure must be constructed in advance of future demand.

9

- A) What are your views on whether the Minister of Commerce and Consumer Affairs should be able to reduce or extend the application of regulation on advice from the economic regulator?
- B) What factors do you consider the economic regulator should include in their advice to the Minister?

- 55. **The regulator should be able to recommend changes to the regulatory model, to be approved by the relevant Minister, subject to consultation with the industry.**

10

- A) What are your views on whether the purpose statement for any economic regulation regime for the water sector should reflect existing purpose statements in the Telecommunications Act and Part 4 of the Commerce Act given their established jurisprudence and stakeholder understanding?
- B) What are your views on whether the sub-purpose of limiting suppliers' ability to extract excessive profits should be modified or removed given that Water Services Entities will not have a profit motive or have the ability to pay dividends?
- C) Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?
- D) What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of an economic regulatory regime for the three waters sector?

- 56. **There should be a sector specific purpose statement, as there should be sector specific regulation, for the reasons outlined in response to Q6 above (prudent and efficient expenditure, meeting appropriate service levels and demand for water services, affordability and cost recovery, financeability).**
- 57. The excessive profit objective should be removed.

- 58. We support reflecting Treaty of Waitangi principles, and the rights of iwi/Maori in regulatory design.
- 59. Importantly, regulation should acknowledge Te Mana o te Wai and Te Ture Whaimana o Te Awa o Waikato, which recognises the vital importance of water to people and communities:
 - a. The health and well-being of water.
 - b. The health needs of people.
 - c. The ability of people and communities to provide for their social, economic and cultural well-being.
 - d. The rights and interests of iwi/ Maori.

11

What are your views on whether a sector specific economic regulation regime is more appropriate for the New Zealand three waters sector than the generic economic regulation regime provided in Part 4 of the Commerce Act?

- 60. **As stated previously, sector specific regulation of three waters is essential.**
- 61. We are concerned that the consultation paper draws so heavily from Part 4 of the Commerce Act.
- 62. There is a real risk that the opportunity for tailored and effective regulation of three waters is missed because of undue reliance on existing regulatory regimes.

12

What are your views on whether the length of the regulatory period should be 5 years, unless the regulator considers that a different period would better meet the purposes of the legislation?

- 63. **The length of the regulatory period is a second order decision which can only be made once the form of regulation is determined.**
- 64. Information disclosure regulation should provide a long-term view of performance, including long term planning.

13

- A) What are your views on whether the economic regulator should be required to develop and publish input methodologies that set out the key rules underpinning the application of economic regulation in advance of making determinations that implement economic regulation?
- B) What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?
- C) What are your views on whether the economic regulator should be required to set a strong efficiency challenge for each regulated supplier? Would a strong 'active' styled efficiency challenge potentially require changes to the proposed statutory purpose statement?

- 65. **We do not support input methodologies as described in the discussion paper because these assume a regulatory building block approach, which is primarily focused on determining allowed return of and on investment. We do not think the cost and complexity of regulatory input methodologies is required.**
- 66. **The regulatory regime should use Generally Accepted Accounting Practice (GAAP) based financial information because it is cost effective and well understood by stakeholders:**
 - a. **Given the new entities will be established on a consistent basis, it will provide comparable information, suitable for benchmarking.**
 - b. **It is also consistent with promoting regulatory certainty.**

c. Actual balance sheets and costs of financing are relevant for financeability assessments.

- 67. We support regulatory oversight of pricing, assuming this is not addressed elsewhere in the governance or regulatory arrangements.**
- 68.** Additional guidance, such as the allocation of common costs between regulated services can be addressed in information disclosure regulation. Allocation of common costs to unregulated services is not the same issue for three waters as it is for energy, airports and telecommunication sectors.
- 69.** The Government has identified significant price increases without reform and with reform these increases are forecast to be significantly less. This outcome is achieved through scale, innovation, efficiency and significant use of borrowing. We expect significant transition and establishment costs to be placed on the water services entities (\$1B plus). The Government is also expecting price harmonisation, particularly for households. This would likely need the entities to have an unbalanced operating result in the initial years to avoid excessive price increases before innovation and efficiency kicks in. Information disclosure regulation can assist with pricing guidance - for example common pricing principles can be developed and included as part of the disclosure regime, including principles for pricing transitions. These could also be captured in a Government Policy Statement.
- 70.** Financeability principles can also be included in information disclosure regulation, requiring disclosure of pricing and funding plans, policies and forecasts of key financing metrics. Note, the Government has proposed to create some plans by statute. These statutory requirements must align with economic regulation to avoid inefficiencies.
- 71.** We acknowledge that the efficiency objective is important to the success of the reform and regulatory regime and delivering good outcomes for consumers/communities.
- 72.** We suggest that the expenditure objective currently used in Part 4 regulation could be adapted for water regulation, with a strengthened efficiency improvement obligation, and recognition of water sustainability objectives.
- 73.** Part 4 expenditure objective: capital expenditure and operating expenditure reflect the efficient costs that a prudent Electricity Distribution Business would require to:
- a.** Meet or manage the expected demand for electricity distribution services, at appropriate service standards, during the regulatory period and over the longer term; and
 - b.** Comply with applicable regulatory obligations associated with those services.

14

- A) What do you consider are the relevant policy objectives for the structure of three waters prices? Do you consider there is a case for parliament to directly control or regulate particular aspects in the structure of three waters prices?
- B) Who do you consider should have primary responsibility for determining the structure of three waters prices:
 - a. The Water Services Entity, following engagement with their governance group, communities, and consumers?
 - b. The economic regulator?
 - c. The Government or Ministers?
- C) If you consider the economic regulator should have a role, what do you think the role of the economic regulator should be? Should they be empowered to develop pricing structure methodologies, or should they be obliged to develop pricing structure methodologies?

- 74. We consider that the economic regulator should have a role in the regulation of water services prices, but the extent of this role will be dependent on the governance model and the potential for a Government Policy Statement for water service entities.**

- 75. In the absence of alternative requirements, the economic regulator can develop pricing principles, recommended pricing options and funding guidance.
- 76. The regulator can require regulated entities to disclose pricing approaches, including cost recovery policies, pricing structures, contributions to infrastructure development costs and tariffs/fees and charges.
- 77. In other sectors (for example electricity distribution), voluntary guidance is provided, and regulated businesses report consistency or otherwise with the guidance, which is monitored. This allows each entity to tailor pricing solutions to particular communities and consumer groups.
- 78. We don't support regulated pricing structures, as these can have unintended consequences (for example: experience with the low fixed charge regulations for residential electricity consumers have created unplanned outcomes and are now proving difficult to fix).

15

What are your views on whether merits appeals should be available on the regulators decisions that determine input methodologies and the application of individual price-quality regulation?

- 79. **Merits appeals should be available on all significant regulatory decisions, consistent with good regulatory practice.**

16

Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?

- 80. **We support a range of compliance and enforcement tools for the proposed economic regulation, including soft tools such as education and warning letters, and hard tools such as enforcement action.**
- 81. However, there should be clear understanding of the consequences of non-compliance for regulated entities, for example Enforcement Guidelines, so regulated entities are able to apply reasonable, risk-based judgements to operating and investment decisions which may impact compliance outcomes.
- 82. Compliance and enforcement action must be timely, transparent and predictable to be effective in influencing behaviour and delivering good long-term outcomes for consumers and communities.
- 83. Alternative actions should be considered in place of imprisonment or fines because these do not benefit consumers. Options include:
 - a. Regulatory directives to undertake specified work programmes.
 - b. Appointment of statutory managers or commissioners.

17

Who do you think is the most suitable body to be the economic regulator for the three waters sector? Please provide reasons for your view.

- 84. **New Zealand waters regulatory system will be complex with 13 regulators (11 regional councils, Taumata Arowai and a new economic and consumer protection regulator). It is therefore essential that there is careful management to ensure:**
 - a. **Legislation supports each regulator to be clear in its role and responsibilities.**
 - b. **All regulators have a common understanding of Te Mana o Te Wai, the wellbeing of water and the outcomes New Zealand needs from water.**
 - c. **All regulators are well connected with each other to achieve the outcomes.**

85. We propose that a formal independent Inquiry be provided for in the legislation to assess whether the multi-regulator model is working effectively in the best interest of the wellbeing of the water and communities. The New Zealand Productivity Commission could be tasked with this independent review.
86. The regulation of water is complex with multiple organisations already involved (See Figure 1). Before the addition of an economic regulator there are 4 ministries, 11 Regional Councils and Taumata Arowai. Economic regulation potentially adds the Commerce Commission and Ministry of Business, Innovation and Employment further complicates the regulatory regime.
87. The nature of the economic regulation we are proposing requires the regulator to be considering waters at a holistic level. New Zealand cannot afford the crisis we have in our electricity infrastructure that has been enhanced by simplistic regulation of that sector for decades.
88. The regulator must:
- Firstly, drive good outcomes, and
 - Then ensure efficiency in the spending, and
 - Then ensure appropriateness of pricing across the entity rohe and across different classes of community and consumers, and
 - Finally ensure transparency, accountability and rights of justice to the community and consumers.
89. In this submission we have identified key areas where the economic regulation of three waters should differ to the Commission’s current approach to economic regulation for other sectors.



Figure 1: Current regulatory structure before economic regulator

18

What are your views on whether the costs of implementing an economic regulation regime for the three waters sector should be funded via levies on regulated suppliers?

90. The costs of establishing and implementing an economic regulatory regime should be funded by central government, as an integral part of the three waters reform process.

91. **Operation of economic regulation can be funded via levy on the regulated entities, proportionately.**

19

Do you think that the levy regime should:

- A) Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR
- B) Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?

92. **Similar to consumer protection question, that the regulator should consult on and collect levies within the total amount determined by the Minister and that the methodology for determining and collecting the levy is transparent and well communicated.**

20

Are there any other levy design features that should be considered?

93. **It is important that regulator be transparent and predictable in its administration and setting of the levy.**
94. **Initially it is proposed the regulation is only on large waters entities. Should this change the regulator needs the powers to set levies that are progressive rather than flat, in the same way income taxes and general rates are progressive compared with fixed charges.**

21

- A) What are your views on whether additional consumer protections are warranted for the three waters sector?
- B) What are your views on whether the consumer protection regime should contain a bespoke purpose statement that reflects the key elements of the regime, rather than relying on the purpose statements in the Consumer Guarantees Act and Fair Trading Act? If so, do you agree with the proposed limbs of the purpose statement?

95. **The discussion paper refers to consumer protection, however water services have impacts beyond direct consumers to the wider community - for example stormwater services, and significant interface with local and regional councils.**
96. Consumer protection should be expanded to include community impacts and acknowledging the roles of other regulators Taumata Arowai and regional councils in regulating drinking water and environmental protections.
97. Consumer/community protection regulation should complement other forms of regulation and community oversight - such as through elected representatives - to achieve good outcomes for consumers and the community.
98. **The discussion paper suggests (at paragraph 166) that the key objective will be to improve service quality to reflect the needs of water consumers. We consider a better objective could be "for consistent and appropriate quality and service (for example, best practice rather than improving) to reflect the needs of communities and consumers".**
99. As there will be regulation of quality in the proposed economic regulatory regime, these two forms of regulation must be balanced against each other.
100. The paper also suggests that consumer protection regulation can provide transparency about water charges - however this may be role undertaken by the economic regulator - for example, through information disclosure regulation.
101. Accordingly, we suggest that the design of any consumer protection regulation must be undertaken in conjunction with the goals and aspirations of the wider reform programme.

22

What are your views on whether the consumer protection regulator should be able to issue minimum service level requirements via a mandated code that has been developed with significant input from consumers?

102. **There is an opportunity to establish the new water entities with similar customer service systems and processes, which supports an industry wide code of practice model.**
103. **We support developing a service code with input from the wider community, including iwi.**
104. However, it will be important to focus initially only on those service measures which are most valued by water users; which are able to be monitored and measured cost effectively and which are not captured or monitored elsewhere.
105. There is an opportunity to initially introduce a voluntary code and monitor its impact and the performance of the water services entities, before determining whether a mandatory code is required as a backstop. With a small number of entities proposed the opportunity to benchmark entities and demonstrates that all of New Zealand is receiving similar services at similar pricing should be implemented.
106. As there is significant change yet to occur across the water sector, a voluntary code may provide useful flexibility while the new structure and operating model is being embedded across the sector.
107. Any code should reflect good industry practice, and not impose unnecessary regulatory requirements which extend beyond business-as-usual operating practices.
108. There will also need to be a transition path, allowing the new entities to establish common service procedures across each organisation.
109. We would expect customer/community engagement processes to be embedded into economic regulation.
110. Water service entities may choose to use customer charters as part of their engagement with their water communities in support of their investment and service plans.
111. The paper does not explicitly address the role of consumer protection regulation for stormwater services. These services are forecast to have considerable new investment to protect communities and water sources from the impacts of climate change (in Hamilton's case nearly 50% of the forecast \$5B 30-years waters investment is stormwater investment), they have widespread community impacts, and there is an opportunity to include community engagement in this regime to provide insights into stormwater service delivery.

23

What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?

112. **Guidance is a useful tool for regulators and regulated entities.**
113. It should be provided for in this instance as it can help regulated entities meet regulatory expectations, and consumer/communities to understand those expectations.

24

What are your views on whether it is preferable to have provisions that regulate water service quality (not regulated by Taumata Arowai) in a single piece of economic regulation and consumer protection legislation?

114. **Given the potential overlap and duplication between the quality components of economic regulation, and the service quality components of consumer/community protection regulation, we support combining the empowering legislation.**
115. This will help to avoid unnecessary jurisdiction issues and may streamline the implementation and operation of both forms of regulation. (See Q17).

25

What are your views on whether minimum service level requirements should be able to vary across different types of consumers?

- 116. There may be good reasons for variances between different types of consumer and different communities, and this option should not be ruled out.** For example, design standards for flooding are currently different depending on land zone.
- 117.** Water service entities will require flexibility and innovation to develop targeted service quality solutions for different customer groups or communities, which cannot be addressed via an industry wide code.

26

What are your views on whether the regulatory regime should include a positive obligation to protect vulnerable consumers, and that minimum service level requirements are flexible enough to accommodate a wide range of approaches to protecting vulnerable consumers?

- 118. Voluntary industry guidelines for vulnerable customers have worked well in other sectors, for example, electricity. These have been developed with significant input from key stakeholders including community support organisations.**
- 119.** As stated above, flexibility is desirable to allow water service entities to target solutions to specific customer/community needs.

27

What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of a consumer protection regime for the three waters sector?

- 120. Te Mana o te Wai recognises the vital importance of water to people and communities:**
- **The health and well-being of water.**
 - **The health needs of people.**
 - **The ability of people and communities to provide for their social, economic and cultural well-being.**
- 121. Te Ture o Whaimana o Te Awa o Waikato sets the visions and strategy for the Waikato River for the next 80 years.**
- 122.** Iwi/Māori views should be reflected in the design of the consumer/community protection regime, and iwi representation within the regulator and on advisory groups is important.
- 123.** We support the objective of equitable outcomes and mitigation of unintended consequences on Māori of water reform and ongoing water service delivery.

28

- A) Do you consider that the consumer protection regime should apply to all water suppliers, water suppliers above a given number of customers, or just Water Services Entities? Could this question be left to the regulator?
- B) Do you support any other options to manage the regulatory impost on community and private schemes?

- 124. Initially regulation is proposed for the large entities, however the Government seeks that all New Zealanders have access to safe water supplies. This would require minimum standards to be required as accountability for safe water trickles down the smaller waters suppliers.**

29

Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?

- 125. **We support a range of compliance and enforcement tools for the proposed consumer/community protection regulation.**
- 126. As stated previously in response to Q16, there should be clear understanding of the consequences of non-compliance.
- 127. Compliance and enforcement action must be timely, transparent and predictable.

30

Do you agree with our preliminary view that the Commerce Commission is the most suitable body to be the consumer protection regulator for the three waters sector?

- 128. **We support aligning the economic and consumer protection regulation with a single regulator, which should provide synergies, and help to avoid unnecessary complexity and duplication.**
- 129. As the economic regulation capability lies with the Commerce Commission, it makes sense to extend their role to economic and consumer protection regulation for the water sector. This also aligns with the Commission's broader consumer protection roles.
- 130. However, there will need to be significant investment in water sector expertise and recognition of a price quality regime significantly more sophisticated than current commission practice. There must be significant consultation and engagement with iwi/Maori, water communities, local authority representatives, consumer advocates and water entities to establish meaningful, targeted consumer protection regulation for three waters.

31

What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?

- 131. **We agree that consumer and community input is essential in establishing target service levels, expenditure plans, pricing structures etc. The proposed Water Services Entities Bill is expected to require the water entities to engage with consumers and communities in making these decisions. The regulator must monitor this engagement to ensure that across the large rohe of the entities that the engagement is sincere, equal and meaningful for all.**
- 132. Consultation with councils will be important to ensure alignment with local and regional development plans, and community priorities.
- 133. Regulators can provide oversight of consumer and community engagement, for example through information disclosure regulation, and when assessing expenditure plans.
- 134. We anticipate that the quality of engagement will improve over time as the new regime is established, and industry best practice emerges.
- 135. The incentive mechanisms referred to in the paper are features of mature regulatory regimes in other jurisdictions. These are features which could be considered in the future, however, as there is considerable work to do to establish the regulatory frameworks, we consider that this is not a priority.
- 136. Current regulatory financial incentives assume regulated suppliers have a profit motive, which is not relevant in this sector.

32

What are your views on whether there is a need to create an expert advocacy body that can advocate technical issues on behalf of consumers?

- 137. **Given the large number of water users, the significant impact of water resources on the environment and the difficulty in engaging effectively with utility customers, we support an expert organisation to advocate on behalf of water consumers.**
- 138. **Due to the wide community benefits, there must also be recognition of advocacy for the community. While some limited provision has been made for advocacy to the waters entities through the regional representative group, councils should also have the opportunity to advocate meaningfully on behalf of communities to the regulator.**
- 139. These organisations require iwi/Maaori representation.
- 140. Consumers would likely not be focussed much beyond their front gate. We experience this in local government - for example, ratepayers advocating to stop growth to keep rates down. Hamilton City Council looks at the value of water across the whole City, without access to water and waters infrastructure we cannot respond to growth and get more homes built. Growth cities, like Hamilton and Tauranga, would likely wish to be involved in advocacy on these type of matters in addition to supporting local consumers in their advocacy.
- 141. This is consistent with achieving good outcomes for communities and water consumers.

33

What are your views on whether the expert body should be established via an extension to the scope of the Consumer Advisory Council's jurisdiction?

- 142. **As discussed above, the role of councils in advocacy for their community is essential but there is a place for other stakeholders whose views are also relevant.**
- 143. We acknowledge that there may be synergies in expanding the CAC to include water services, however there will also need to be targeted investment in water sector expertise for the CAC, expertise that is already available in councils.
- 144. There may also be similar consumer advisory functions established across the new water entity structures may be leveraged for the consumer protection regulation.

34

What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?

- 145. **As discussed above, currently water services users are able to interact with their elected representatives on water service enquiries.**
- 146. A water disputes resolution scheme could complement this process, and provide for specialist investigation capability, available to all users across the country.
- 147. The Utilities Disputes scheme is working well for other utility sectors and this model could be employed for three waters. Given the investment in capability for Utilities Disputes, we recommend investigating whether that scheme can be extended to three waters.

35

What are your views on whether these kinds of disputes should be subject to a dispute resolution schemes? Are there any other kinds of issues that a consumer dispute resolution provider should be able to adjudicate on?

- 148. **Disputes between users and suppliers of regulated services should be resolved between the two parties where possible.**
- 149. Regulators have their own processes for enforcing compliance with regulated standards.
- 150. A small subset of disputes may be escalated to an independent resolution scheme.
- 151. In order to protect water users, there should be limited exclusions from the scheme. These may include aspects of the service which are determined by regulation, for example the level of charges for water services or the quality of drinking water.

36

What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?

152. We support a mandatory scheme because it is consistent with good outcomes for water users.

37

Do you consider that a new mandatory statutory consumer disputes resolution scheme should be achieved via a new scheme or expanding the jurisdiction of an existing scheme or schemes?

153. We recommend considering expansion of the Utilities Disputes Scheme. The existing capability is relevant to water services, and there will be scale economies available to all sectors which are subject to the scheme if water is included.

154. There will need to be additional investment in water sector specific capability.

155. We envisage this option will be a relatively low-cost option, which can be established within a reasonable timeframe.

38

Do you consider that the consumer disputes resolution schemes should apply to all water suppliers, water suppliers with 500 or more customers, or just Water Services Entities?

156. Initially this should be compulsory for large suppliers but as clarity of responsibility for service quality trickles down to smaller suppliers then the scheme should be available to those consumers and communities.

39

Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?

157. Yes. We consider a disputes resolution scheme is a solution of last resort, and water suppliers should seek to provide good customer outcomes, including resolving disputes, as part of normal business operations.

158. Incentives could include financial incentives, such as fees for each complaint's investigation, and reputational incentives, such as publication of information on which suppliers had disputes referred to the scheme.

40

Do you consider that there should be special considerations for traditionally under-served or vulnerable communities? If so, how do you think these should be given effect?

159. Yes. Hamilton City Council has always advocated and implemented policies which support vulnerable communities. We also support that the under-served should pay a price commensurate with the service they receive.

160. Hamilton City Council has a capital value rate for the charging of waters services to residential properties. An important benefit is that lower value homes pay less for waters services. Additionally, low-income households get the benefit of the Government Rates Rebate Scheme onto which Hamilton City Council has added an additional rate rebate effectively doubling the benefit to those who can least afford to pay rates.

161. Hamilton City Council has and will be a strong advocate for vulnerable people.

41

What are your views on whether the costs of implementing a consumer protection regime for the three waters sector should be funded via levies on regulated suppliers?

162. The costs of establishing and implementing a consumer protection regime should be funded by central government, as an integral part of the three waters reform process. This will include:

- a. **Developing and implementing the proposed service code.**
- b. **Developing and implementing a disputes resolution scheme for three waters.**

163. Operation of the consumer protection regulation can be funded via levy on the Water Service Entities, proportionately. These costs can be included in operating budgets for the water suppliers once they are established and the new regulatory regimes are in place.

42

Do you think that the levy regime should:

- A) Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR
- B) Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?

164. Similar to consumer protection question, that the regulator should consult on and collect levies within the total amount determined by the Minister and that the methodology for determining and collecting the levy is transparent and well communicated.

43

Are there any other levy design features that should be considered?

165. It is important that regulator be transparent and predictable in its administration and setting of the levy.

166. Initially it is proposed the regulation is only on large waters entities. Should this change the regulator needs the powers to set levies that are progressive rather than flat, in the same way income taxes and general rates are progressive compared with fixed charges.

44

Do you consider that *regulatory charters* and a *council of water regulators* arrangements will provide effective system governance? Are there other initiatives or arrangements that you consider are required?

167. Yes, we support formal stewardship arrangements to assist with clarity of roles (that is, avoid overlap between regulatory agencies, and inconsistencies between regulatory mandates).

168. We refer also to our response to Q17.

169. Regulation must align with broader three waters stewardship and governance arrangements, and other relevant legislation/regulation, such as resource management and the national policy statement on urban development.

170. Coordination between regulatory agencies is supported with specific objectives to maximise regulatory certainty, minimise regulatory cost and complexity and enhance regulator performance.

171. It is premature to determine what form of regulatory coordination is optimal at this time, given the scope and form of economic and consumer protection regulation has not yet been determined, nor the roles and functions of the regulators.

45

Do you consider it is useful and appropriate for the Government to be able to transmit its policies to the economic and consumer protection regulator(s) for them to have regard to?

172. Statutory independence of the regulators from Government is critical to regulatory certainty and achieving good regulatory outcomes over time.

173. If the Government issues a Government Policy Statement to provide direction to the water service entities, regulators must be minded of any obligations on the entities of relevance to economic or consumer protection regulation.

174. However, we would anticipate that economic and consumer protection regulators would be subject to enabling legislation, which would be the primary means for mandating the regulator's role and responsibilities.

46

What are your views on whether the economic and consumer protection regulator should be able to share information with other regulatory agencies? Are there any restrictions that should apply to the type of information that could be shared, or the agencies that information could be shared with?

175. **With a multitude of regulators in the waters activities it is essential that the regulators share information.**
176. We have discussed this in Q17 and Q44. Coordination between regulators which reduces duplication and inconsistency between information requirements of Water Services Entities is essential.

Further Information and Opportunity to Discuss Our Submission

177. Should the Ministry of Business, Innovation and Employment require clarification of the submission from Hamilton City Council, or additional information, please contact **Andrew Parsons** (Executive Director - Strategic Infrastructure) on 07 838 6896 or 021 791 612, email andrew.parsons@hcc.govt.nz in the first instance.
178. Hamilton City Council would welcome the opportunity to discuss the content of our submission with Ministry of Business, Innovation and Employment in more detail.

Yours faithfully



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