Hamilton City Council
Te kaunihera o Kirikiriroa

Notice of Meeting:

I hereby give notice that an ordinary Meeting of the Council will be held on:

Date:	**Thursday 11 November 2021**
Time:	**9.30am**
Meeting Room:	**Council Chamber and Audio Visual Link**
Venue:	**Municipal Building, Garden Place, Hamilton**

Lance Vervoort
Chief Executive

Council
Kaunihera
Attachments Under Seperate Cover

Item 9 (Hamilton City Council's Draft submission to the Resource Management (Enabling Housing Supply and Other Matter) Amendment bill) Draft Submission

1. *Updated staff recommendation*
2. *Draft Submission (Part A) on the Resource Management Amendment Bill*
3. *Part B - Submission to Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (16 November 2021)*
4. *Panning Bill Amendment Submission*
5. *Hamilton Design interface examples*

Item 10 Reform Response Programme – Update

Attachment 2: *Discussion Paper- Economic Regulation and Consumer Protection for Three Waters Services in New Zealand*

Revised Staff Recommendation - Tuutohu-aa-kaimahi

That the Council:

a) receives the report; and
b) approves Council's **Draft 1** submission to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill.
c) notes that the submission comprises **two parts** i.e.:
   - **General Introduction/Part A** - this contains the same content for all of the Future Proof councils (Waikato District Council, Waipa District Council, Hamilton City Council and the Waikato Regional Council) and Waikato Tainui. It is acknowledged that differences in this section may arise from the various governance approval processes.
   - **Part B** - contains Hamilton City Council's specific points on the Bill.
d) notes that the submission will also be in alignment with the Waikato River Authority's submission to the Bill regarding the Vision and Strategy for the Waikato River; and
e) provides delegated authority to the Chair of the District Plan Committee and the General Manager Growth (in consultation with the Chief Executives of the other Future Proof partners) to refine the joint submission (following discussion at the 11 November Council meeting) to reflect any partner feedback and to ensure final alignment of the submission's key messages; and
f) notes that the final approved submission will be sent to Parliament's Environment Select Committee to meet the 16 November 2021 submission closing date; and
g) notes in **Draft 1** that Hamilton City Council and its Future Proof partners will request to speak in support of the approved submission at the Environment Select Committee hearings; and
h) notes that in regard to recommendation g) above, that Hamilton City Council's representatives at the hearings be the Chair of the District Plan Committee; the General Manager Growth; the Acting City Planning Unit Manager; and the Team Leader City Planning.

Hamilton City Council
Te kaunihera o Kirikiriroa

Private Bag 3010
Hamilton 3240
New Zealand

TEL 07 838 6699
FAX 07 838 6599
EMAIL info@hcc.govt.nz
hamilton.govt.nz

DRAFT 1

Submission by

Hamilton City Council and the Future Proof Partners

RESOURCE MANAGEMENT (ENABLING HOUSING SUPPLY AND OTHER MATTERS) AMENDMENT BILL

16 November 2021

EXECUTIVE SUMMARY AND KEY MESSAGES

This submission is made on behalf of Hamilton City Council and the Future Proof Waikato Councils (i.e., Hamilton City Council; Waikato District Council; Waipā District Council; Waikato Regional Council) and Waikato Tainui. Whilst Future Proof is an Urban Growth Partnership, this submission does not reflect the views of other Future Proof partners, including central government and Auckland council.

Part A of the submission also aligns with the Waikato River Authority's submission to the Bill, particularly in regard to the Vision and Strategy for the Waikato River.

Hamilton City Council and the Future Proof Partners are aligned in their strong opposition to the Bill.

The Bill seeks to introduce amendments to the Resource Management Act 1991 (**RMA**) which are in direct conflict with the RMA's single purpose of 'sustainable management'.

The Bill is in direct conflict with The Waikato Tainui Raupatu (Waikato River) Settlement Act 2010 and Te Ture Whaimana o te awa o Waikato (The Vision and Strategy for the Waikato River).

The Bill is in direct conflict with the National Policy Statement on Urban Development 2020 in that it will fail to enable well-functioning urban environments and will create a fundamental disconnect between land use planning and infrastructure planning.

The Bill is in direct conflict with the strategic growth initiatives currently being implemented by Future Proof and by each of the local authority Future Proof Partners.

HAMILTON CITY COUNCIL AND THE FUTURE PROOF PARTNERS OPPOSE THE PASSING OF THE BILL IN ITS CURRENT FORM. THEY CONSIDER THAT THE BILL IS SO FUNDAMENTALLY FLAWED THAT IT SHOULD BE WITHDRAWN. IF IT IS NOT WITHDRAWN, SUBSTANTIAL AMENDMENTS TO THE BILL ARE REQUIRED.

No Meaningful Engagement with Local Government or Iwi on the Bill

The clear lack of engagement with local government, iwi, and residents of Tier 1 high growth councils to date is incredibly disappointing. The Bill, as proposed, is sudden, will have significant impacts on place-

making, land use and infrastructure planning work, as well as undermining many current committed strategic spatial planning partnerships with Central Government, such as the Hamilton to Auckland Corridor Plan, the Metropolitan Spatial Plan and the Future Proof Strategy.

The Regulatory Impact Statement (RIS) for the Bill makes barely a mention of Hamilton, and no mention at all of Waikato and Waipā towns yet concludes that blanket Medium Density Residential Standards (MDRS) based on rules developed for an Auckland context, would be suitable for the Waikato. The RIS itself acknowledges that there has been no opportunity for consultation with external stakeholders and that this has limited the ability to test feasibility of implementation.

Clearly then there was no engagement with the local government sector or iwi when developing the RIS. Given the critical role of local government and iwi in the Bill, this is both surprising and indeed, in our view, a major flaw in the background material underpinning the Bill's development.

Hamilton City Council and the Future Proof Partners are strongly of the view that this Bill is being pushed/rushed through with no real detailed analysis or robust engagement, or any clear understanding of unintended consequences.

Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato River

Te Ture Whaimana represents the strongest direction that Parliament has given in relation to any RMA planning document, and it is the pre-eminent planning instrument within the Waikato Region. The Bill does not address the conflict arising from the mandate for further housing intensification and the primacy of Te Ture Whaimana, which requires the restoration and protection of the health and wellbeing of the Waikato River.

The content of the Bill is irreconcilable with Te Ture Whaimana unless there is a very substantial central government investment in wastewater and stormwater infrastructure within the Waikato Region. Without this commitment from central government, the outcomes sought in the Bill are unachievable.

The Bill needs to confirm the primary of Te Ture Whaimana and provide additional time to establish the evidential requirements necessary to ensure Te Ture Whaimana is given effect to. It is critical to the Future Proof Partners that Te Ture Whaimana is expressly recognised in the Bill as a "Qualifying Matter" which will enable areas within the Waikato to be exempt from the MDRS planning standards.

The timing should align with the requirements under the NPS-UD for Future Development Strategies to be completed by 2024, by which time Future Proof would have completed three-waters business case work currently underway.

Which Territorial Authorities and Which Urban Environments does the Bill Apply To?

The Bill contains some critical inconsistencies in the way that it uses terminology, which means that it is almost unworkable in its current form in the Waikato context. In the explanation to the Bill, and in the Regulatory Impact Statement, it is clear that the proposals are meant to relate to 'cities' and it is quite clear that the Bill was not intended to apply to Tier 3 urban environments. However, in the text of the Bill there are some critical inconsistencies in the way that terms are defined. As written, the MDRS could

apply to all urban environments in Waikato, Hamilton and Waipā, including smaller townships outside of Hamilton City.

It is entirely inappropriate to impose blanket medium density rules across rural townships and the whole of Hamilton City which have a very different character to the Auckland City environment on which the rules have been based.

Amendments are sought which would clarify that the Bill is not mandatory for our urban environments outside of Hamilton but that the MDRS provisions (with suitable amendments) could be used in appropriate locations by way of a plan change.

Concerns with the Blanket Nature of the Bill's Requirements

Hamilton City Council and the Future Proof Partners are concerned that the indiscriminate application of the proposed MDRS has the potential to undermine the intent of the NPS-UD to create well-functioning urban environments. The dispersed and unpredictable nature of how development can occur under this proposal is at odds with creating a compact urban form which supports public transport and makes it difficult to plan infrastructure upgrades required to support this level of additional growth.

A more focused, staged approach to intensification supports thriving and resilient communities which are accessible and connected to employment, education, social and cultural opportunities - a central crux of the NPS-UD in creating well-functioning urban environments and improved four wellbeings through the Government's Policy Statement on Housing and Urban Development 2021 (GPS-HUD).

The Bill should not apply the MDRS as a general residential standard. The MDRS should be able to be applied through council plan changes in bespoke areas where it can be shown that this will result in well-functioning urban environments.

Sufficient Plan-Enabled Development Capacity Has Already been Provided For

Contrary to the statement in the Regulatory Impact Statement that planning decisions are not informed by adequate evidence, in the Future Proof sub-region we have produced a Housing and Business Assessment (which has been reviewed by the Ministry for the Environment whose draft comments confirm to be in accordance with the requirements set out in the NPS-UD) which clearly illustrates that there is sufficient, feasible, capacity in the sub-region.

Hamilton City Council and the Future Proof councils district plans are not a constraint to meeting demand. There is no evidence that the interventions proposed by the Bill would have any impact on housing affordability in the sub-region.

Design Quality of the Built Environment

Hamilton City Council and the Future Proof partners want to build better urban areas, not just bigger urban areas. It's about building quality communities - not just houses. The Bill does not align with the Government's own focus on the four wellbeings and has the potential to compromise amenity and liveability for a short-term gain in housing numbers. In a sub-region such as ours, the blanket imposition of MDRS rules will be completely out of character and will create significant urban design issues.

Significant Increase in Pressure on Existing Infrastructure

Increased densities of the kind enabled by the Bill will grossly exceed the capacity of existing infrastructure. Even under the provisions of the NPS-UD councils face huge challenges in terms of their ability to plan for infrastructure to meet this requirement under current fiscal constraints. The Bill will introduce densities which make the capital expenditure costs impossible to manage at the local government level.

The timeframes in the Bill itself provides little to no opportunity for robust infrastructure planning to even occur, never mind dealing with actual implementation/construction within an existing urban environment with an existing community that will continue to need water, wastewater, stormwater and transportation services, including the lead-in times necessary for the scale of infrastructure works required.

The Bill does not address or acknowledge the infrastructure funding and financing shortfall to support a step change in intensification, which would need a step change in infrastructure to match.

Under the LGA 2002 councils have an obligation to adopt a prudent financial strategy. It will be difficult for councils to fund the scale of infrastructure required to meet these new density expectations whilst still complying with financial strategies and LGA requirements around prudent debt limits.

The blanket density approach set out in the Bill needs to be deleted in favour of a planned and strategic approach to determining locations for medium-density housing. Timeframes for implementation of the Bill need to be amended to allow sufficient time to plan properly. Urgent consideration of additional funding tools for councils is needed to allow councils to accelerate the delivery of infrastructure to support additional plan-enabled capacity.

Natural Hazard Risk and Residual Risk

The Bill needs to explicitly require a natural hazard risk assessment, including an assessment of residual risk, prior to the notification of intensification planning instruments to include the MDRS so that we do not face a situation where residential buildings are permitted in hazard areas or defended areas.

Existing Plan Changes

Councils have spent significant time, at ratepayers' expense, in good faith, developing plan changes to give effect to the NPS-UD. The Bill could require these to be withdrawn, resulting in wasted costs, compounding the issue of land availability and ironically delaying housing land supply further as a result. Plan changes already underway should be provided with a pathway to continue.

Timeframes

The timeframes do not allow adequately for the Future Proof Waikato councils to address the necessary requirements related to Te Ture Whaimana or to plan for the required infrastructure to support the proposed changes.

A longer timeframe is required for the implementation of the MDRS, to align with the dates for the completion of the FDS under the NPS-UD. Progress reporting could be a useful tool for government to keep abreast of progress being made on the changes.

Climate Change and the Environment

The blanket application of the MDRS will not meet the NPS-UD Objective 8 that urban environments support reductions in greenhouse gas emissions and are resilient to the current and future effects of climate change. Opportunities for passive and active solar gain will also be lost.

Plan Change Costs

The Future Proof Waikato councils have all been working hard to develop provisions to give effect to the NPS-UD, at significant cost to their ratepayers. This investment could effectively be wasted if existing plan change/plan review work needs to be set aside. The plan change to give effect to the MDRS will require money and resourcing, both of which have not have been provided in this year's LTP or Annual Plan. Local authorities are going to have to find money and resourcing from elsewhere to fulfil the requirements of the Bill. This action is likely to result in the removal of wellbeing focused projects and priorities.

ISPP Process

Allowing for a full consultation process excludes communities from having proper input into what will be a significant change for our urban areas. Recommend that consideration be given to allowing for joint ISPP hearing processes. This would allow councils to run their processes together or in parallel and make use of the same hearing panel.

Specific Changes Sought

Hamilton City Council and the Future Proof councils have identified specific drafting changes to the Bill which would assist in addressing some of the concerns outlined above. These are set out in Part A and Part B of this submission.

PART A: HAMILTON CITY COUNCIL AND THE FUTURE PROOF PARTNER'S SUBMISSION POINTS ON THE BILL

Introduction

This is a joint submission to Parliament's Environment Select Committee on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill 2021 (**Bill**), on behalf of Hamilton City Council and the Future Proof Waikato councils (i.e., Hamilton City Council; Waikato District Council; Waipā District Council; Waikato Regional Council) and Waikato Tainui.

Part A of the submission also aligns with the Waikato River Authority's submission to the Bill, particularly in regard to the Vision and Strategy for the Waikato River.

Hamilton City Council and the Future Proof Partners are aligned in their strong opposition to the Bill.

The Bill seeks to introduce amendments to the Resource Management Act 1991 (**RMA**) which are in direct conflict with the RMA's single purpose of 'sustainable management'.

The Bill is in direct conflict with The Waikato Tainui Raupatu (Waikato River) Settlement Act 2010 and Te Ture Whaimana o te awa o Waikato (The Vision and Strategy for the Waikato River).

The Bill is in direct conflict with the National Policy Statement on Urban Development 2020 in that it will fail to enable well-functioning urban environments and will create a fundamental disconnect between land use planning and infrastructure planning.

The Bill is in direct conflict with the strategic growth initiatives currently being implemented by Future Proof and by each of the local authority Future Proof Partners.

HAMILTON CITY COUNCIL AND THE FUTURE PROOF PARTNERS OPPOSE THE PASSING OF THE BILL IN ITS CURRENT FORM. THEY CONSIDER THAT THE BILL IS SO FUNDAMENTALLY FLAWED THAT IT SHOULD BE WITHDRAWN. IF IT IS NOT WITHDRAWN, SUBSTANTIAL AMENDMENTS TO THE BILL ARE REQUIRED.

This submission is divided into two key parts.

Part A addresses the concerns of Hamilton City Council and the Future Proof Partners at a high-level and sets out recommended amendments on key components of the Bill. Detailed drafting changes are included at the end of Part A.

Part B addresses specific provisions in the Bill by each of the Future Proof Partners and identifies a number of amendments, actions and improvements sought by each Future Proof Partner.

Overall Comments

The Future Proof Strategy is a 30-year growth management and implementation plan specific to the Hamilton, Waipā and Waikato sub-region within the context of the broader Hamilton-Auckland Corridor and Hamilton-Waikato Metropolitan areas. The strategy provides a framework to manage growth in a collaborative way for the benefit of the Future Proof sub-region both from a community and a physical perspective. The Future Proof partnership is the first Crown-Iwi-Local Government Urban Growth Partnership. This submission does not reflect the views of other Future Proof partners, including central government and Auckland council.

The Strategy has been successful in providing a strategic, integrated approach to long-term planning and growth management in the sub-region. The settlement pattern for the Future Proof sub-region takes a compact and concentrated approach.

Recently, the Future Proof Strategy has been updated to reflect the provisions in the National Policy Statement on Urban Development (NPS-UD), and consultation is currently taking place on the updated strategy. Significant partner resources have been put into the Future Proof update by all partners, including central government. The Future Proof partners are satisfied that the draft updated Future Proof strategy reflects the direction set in the NPS-UD to ensure sufficient development capacity and contributes towards well-functioning urban environments.

Hamilton City Council and the Future Proof Partners acknowledge the bipartisan support for the Bill and commend the Government and Opposition for their commitment to trying to address the country's housing crisis.

However, while the outcomes sought by the Bill fit within the Government's work programme, the provisions are incongruous with well-functioning urban environments and cut across the four wellbeings approach of Government initiatives, notably the Government Policy Statement on Housing and Urban Development (GPS-HUD).

In summary, Hamilton City Council and the Future Proof Partners are extremely concerned that the Bill is a "one size fits all' approach that will not work in practice.

We have therefore outlined a number of amendments that will ensure:

- **Better alignment between the Bill and the RMA.**
- **Ensure that the primacy of Te Ture Whaimana/The Vision and Strategy for the Waikato River is given effect to as required by Waikato Tainui Raupatu Claims (Waikato River) Settlement Act 2010.**
- **Provide greater safeguards and certainty for councils, iwi, developers and homeowners/residents in the country's main urban areas.**
- **Provide significantly better housing outcomes in these urban areas for all stakeholders.**

PLEASE NOTE: OUR RECOMMENDED AMENDMENTS ARE ONLY APPLICABLE IF GOVERNMENT DECIDES TO REJECT OUR REQUEST TO WITHDRAW THE BILL IN ITS ENTIRETY.

No Meaningful Engagement with Local Government or Iwi on the Bill

The Bill's intent is *"To rapidly accelerate the supply of housing where the demand for housing is high. This will help to address some of the issues with housing choice and affordability that Aotearoa New Zealand currently faces in its largest cities".*

The Future Proof Waikato councils and Waikato Tainui are supportive of this overall intent - the Bill (albeit in a highly revised form) could provide greater housing opportunities, which in turn could be part of the solution to address more affordable housing in the country's main urban areas. We recognise the critical housing issues being faced across the country and the need to look for solutions to address both affordability and supply. However, we have significant concerns with how the Bill was developed and communicated to local government and iwi.

This lack of consultation with local government and iwi has reduced our ability to meaningfully engage with our communities and further explain to them how these changes will impact on existing engagements already underway in planning for growth in the Future Proof areas. In essence, there has been no real opportunity provided by Government for any meaningful input.

In addition, the Future Proof Waikato councils have recently undertaken extensive Long Term Plan engagement for the likes of existing play, parks, and environmental strategies - implementation of the Bill in its current form has the potential to undermine this whole process and the projects that are already planned for.

Future Proof is a key partner of Government as part of the Hamilton-Auckland Urban Growth Partnership to deliver on the objectives of the Urban Growth Agenda. This relationship has been formalised through the Future Proof Partnership, and the development of the H2A Corridor Plan and Hamilton-Waikato Metro Spatial Plan. This is the first Crown-Iwi-Local Government Urban Growth Partnership in New

Zealand.

Given this ongoing and successful partnership, the Future Proof Waikato councils and Waikato Tainui are very disappointed in how the Bill was developed in isolation from local government and iwi, noting that an explicit pillar of the Urban Growth Agenda is to build stronger partnerships with local government to address the fundamentals of land supply, development capacity and infrastructure provision.

The clear lack of engagement with local government, iwi, and residents of Tier 1 high growth councils to date is incredibly disappointing. The Bill, as proposed, is sudden, will have significant impacts on place-making, land use and infrastructure planning work, as well as undermining many current committed strategic spatial planning partnerships with Central Government, such as the Hamilton to Auckland Corridor Plan, the Metropolitan Spatial Plan and the Future Proof Strategy.

The approach that has been taken to develop and communicate the Bill seriously compromises the spirit of the relationship that has been built up over several years. This is extremely disappointing.

Given the significant wider legislative reforms underway, it is critical that open and transparent dialogue is maintained between central and local government.

Detailed Comments on the Bill

Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato River

Te Ture Whaimana o Te Awa o Waikato/the Vision and Strategy for the Waikato River (Te Ture Whaimana) is the primary direction-setting document for the Waikato and Waipā Rivers and their catchments, which includes the Waikato River and the lower reaches of the Waipā River.

Te Ture Whaimana arose as a result of Raupatu in the 1860s and its consequences and the ensuing Waikato Tainui River Claim. The Vision and Strategy is detailed within the Waikato Tainui Raupatu Claims (Waikato River) Settlement Act 2010, which sets out the vision, objectives and strategy for the Waikato River. Subsequent Acts have extended Te Ture Whaimana so that it now covers the whole of the Waikato and Waipā river catchments.

Te Ture Whaimana requires that the health and wellbeing of the Waikato and Waipā Rivers is to be restored and protected for current and future generations. It adopts a precautionary approach towards decisions that may result in significant adverse effects on the awa. Section 12 of the River Settlement Act provides that Te Ture Whaimana prevails over RMA planning and policy instruments including National Policy Statements. Section 13 of the River Settlement Act requires that all regional and district plans must 'give effect' to Te Ture Whaimana.

A key aspect of Te Ture Whaimana is protection and restoration of the awa. Te Ture Whaimana represents the strongest direction that Parliament has given in relation to any RMA planning document, and it is the pre-eminent planning instrument within the Waikato Region. It is particularly noted that in the event of any inconsistency or conflict, Te Ture Whaimana o Te Awa o Waikato prevails over any National Policy

Statement or New Zealand Coastal Policy Statement.

The Kiingitanga Accord (2008)[1] is a deed between the Crown and Waikato-Tainui. Clause 3.4 of the Accord requires that:

- In the development and drafting of any new legislation, the Crown will consider whether, by analogy with the nature and subject matter of the statues in which the Vision and Strategy has been given statutory recognition under the Waikato River Settlement, such new legislation should also include express legislative recognition of the Vision and Strategy in the same or substantially similar form to that provided under the settlement; and
- Where appropriate, any such new legislation when it is introduced into Parliament shall include express legislative recognition of the Vision and Strategy in the same or substantially similar form to that provided under the Waikato River Settlement.

Whilst there is reference to 'iwi settlement legislation' in the Bill, there is no direct reference to Te Ture Whaimana and no clarity as to how the new Bill would interact with Te Ture Whaimana. The Bill falls squarely within the scope of the commitments in the Kiingitanga Accord and must therefore reasonably include express provisions relating to Te Ture Whaimana.

The content of the Bill is irreconcilable with Te Ture Whaimana unless there is a very substantial central government investment in wastewater and stormwater infrastructure within the Waikato Region. Without this commitment from central government, the outcomes sought in the Bill are unachievable. The Future Proof partners submit that the Bill as written is not in accordance with Te Ture Whaimana and does not give effect to the Kingitanga Accord.

The Bill does not address the conflict arising from the mandate for further housing intensification and the primacy of Te Ture Whaimana, which requires the restoration and protection of the health and wellbeing of the Waikato River. This objective, and others, call for an overall improvement in water quality. Increased densities of the kind enabled by the Bill will grossly exceed the capacity of existing wastewater and stormwater systems which discharge into the sensitive environment of the awa. These systems are already at capacity and cannot function in a manner which gives effect to Te Ture Whaimana without substantial ongoing investment. The Waikato councils are attempting to plan for this as best they can under their current fiscal constraints, however the Bill will introduce densities which make the capital expenditure costs impossible to manage at a local government level.

As a practical example, increased impervious areas will lead to increased flood events and poor-quality stormwater entering the river. With the immediate introduction of the Bill the Future Proof Waikato councils would not have time to upgrade existing wastewater and stormwater systems before the Medium Density Residential Standards (MDRS) provisions would be required to be notified. This would potentially result in serious effects on the awa, completely at odds with Te Ture Whaimana. It is certainly not in keeping with the precautionary approach promulgated by Te Ture Whaimana.

The Bill could also allow physical construction of buildings adjacent to the Waikato River with potential environmental and cultural effects.

[1] https://www.govt.nz/assets/Documents/OTS/Waikato-Tainui/Waikato-Tainui-Kiingitanga-Accord.pdf

The Future Proof partners are undertaking a Waikato sub-regional three waters study, which will determine an approach to three waters that is "best for river". This study will provide the approach and evidential basis for three-waters decision-making in the Future Proof sub-region and will be a key input into the Future Development Strategy (FDS) required under the NPS-UD. The Bill would bring forward the timeframe and require this work to be done within the next six months in order to inform the plan changes required by August 2022. This is not feasible.

The current Bill would skip over the requirement to develop a land use pattern that gives effect to Te Ture Whaimana, and the requirement for strategic spatial planning (which will also be required under the new RMA reforms). By doing so, the Bill would set up development rights that would be hard/impossible to unpick in future if evidence shows that the pattern of urban development is not able to meet the requirements of Te Ture Whaimana. In the Waikato context, the allocable flow of the Waikato River must address Te Ture Whaimana. For example, in Hamilton, the population is expected to reach 428,000 by 2065, and this means a water demand of 184 million litres per day (MLD) for Hamilton and 217 MLD for the wider metro area by 2065[2]. Water is a finite resource and there is no guarantee that water take consents will be renewed at current levels in the future.

Whilst Te Ture Whaimana would prevail over an inconsistent NPS, it is unclear what the status of Te Ture Whaimana is in terms of the Bill once enacted.

It is critical to Hamilton City Council and the Future Proof Partners that Te Ture Whaimana is expressly recognised in the Bill as a "Qualifying Matter" which will enable areas within the Waikato to be exempt from the MDRS planning standards.

Summary of our submission points:

- **Further time is needed in order to establish the evidential requirements necessary to ensure Te Ture Whaimana is given effect to whilst developing the intensification planning instrument/MDRS plan change for Future Proof councils. This cannot be completed by August 2022. The timing should align with the requirements under the NPS-UD for Future Development Strategies to be completed by 2024.**
- **In the Waikato context, allow the three-waters business case work currently underway to be completed and to inform the FDS, rather than embed development rights through the Bill which may not be able to be serviced with stormwater, wastewater and water infrastructure in a way that meets the requirements of Te Ture Whaimana.**
- **In the Waikato context the Bill needs to consider the allocation of scarce resources needed to support the development capacity (e.g., water takes) PRIOR to locking in development rights through the Bill.**
- **Confirm the primacy of Te Ture Whaimana in the Bill, including but not limited to expressly recognising it as a "Qualifying Matter".**

[2] https://www.epa.govt.nz/assets/FileAPI/proposal/NSP000046/Evidence-Submitters-evidence/Watercare_Sub_evidence_HCC_WDC_IMayhew.pdf

Which Territorial Authorities and Which Urban Environments Does the Bill Apply to?

The Bill contains some critical inconsistencies in the way that it uses terminology, which means that it is almost unworkable in its current form in the Waikato context. In the explanation to the Bill, and in the regulatory impact statement, it is clear that the proposals are meant to relate to 'cities' and it is quite clear that the Bill was not intended to apply to Tier 3 urban environments (emphasis added):

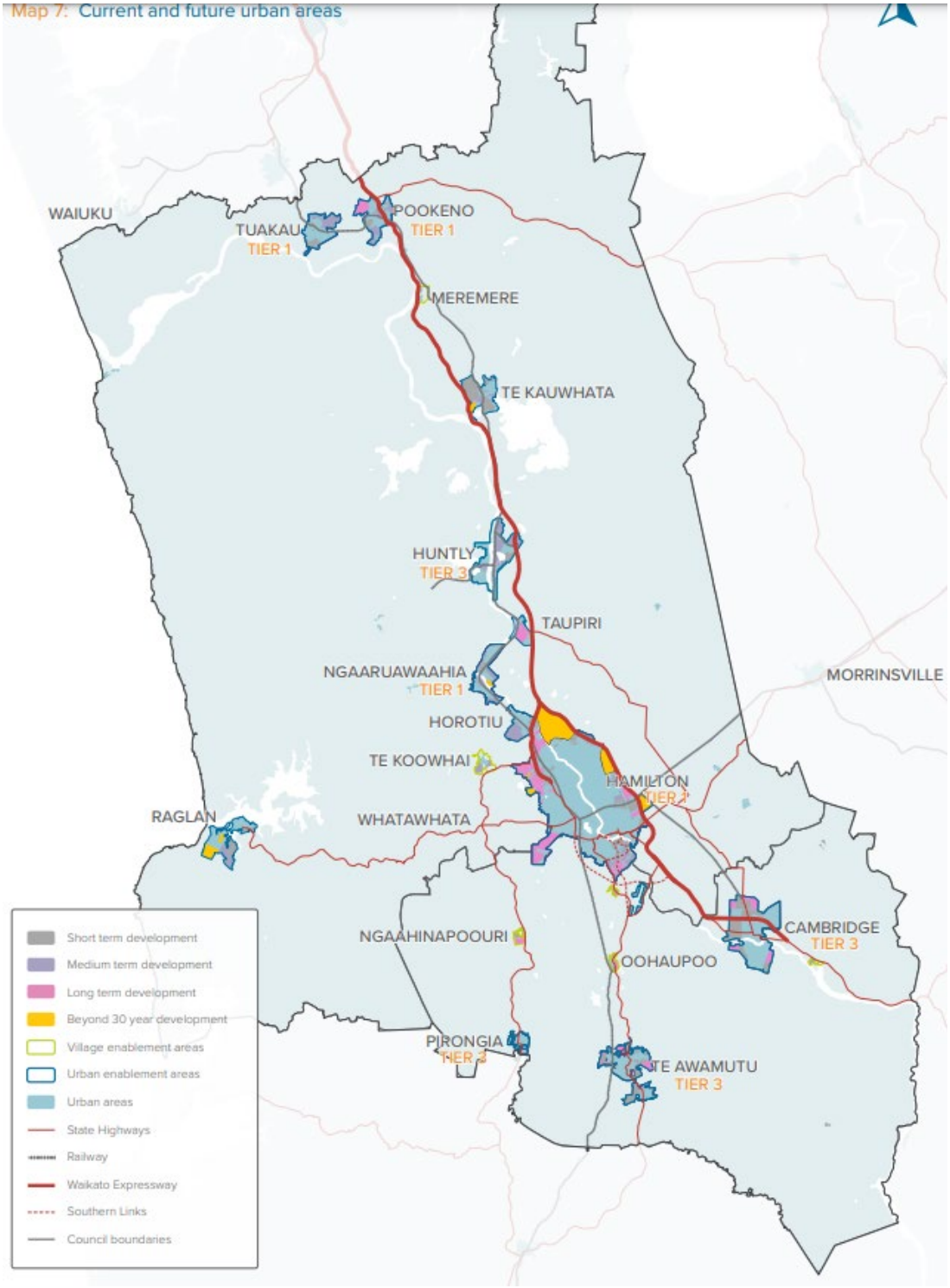
> *This Bill requires territorial authorities in Aotearoa New Zealand's **major cities** to set more permissive land use regulations that will enable greater intensification in urban areas by bringing forward and strengthening the National Policy Statement on Urban Development (the **NPS-UD**).*

The Bill uses the terms 'Tier 1 territorial authorities', 'relevant territorial authorities', and 'urban environments' to determine where intensification planning instruments, and the MDRS, will apply.

There are some critical inconsistencies in the language used in the Bill. For example:

- The requirement to use the Intensification Streamlined Planning Process (ISPP) to notify plan changes that address the NPS-UD and incorporate the MDRS (intensification planning instruments) by August 2022. This requirement applies to all urban environments (by implication, Tiers 1 and 3 urban environments) within 'Tier 1 local authorities', however the NPS-UD provisions referred to (policies 3 and 4) only relate to 'Tier 1 urban environments'.
- In the explanation to the Bill, it mentions that the MDRS will apply in all Tier 1 urban environments and that it applies to areas of Tier 1 urban environments that are zoned or being zoned residential.
- However, in the Bill itself, the MDRS requirements are not limited to Tier 1 urban environments but would apply to the **urban environment of a relevant territorial authority** (the definition of 'relevant territorial authority' is every Tier 1 territorial authority). For example, in s77F it states that every relevant residential zone in an urban environment of a relevant territorial authority must have the MDRS incorporated.

As written, the MDRS could apply to all urban environments in Waikato, Hamilton and Waipā. This would include all urban areas that meet the definition of Tier 1 and Tier 3 urban environments.
Future Proof has done significant work, using Statistics New Zealand data, to determine which townships meet the definition of Tier 1 or Tier 3 urban environments. This is shown on the draft Map 7 from the Future Proof strategy (see below). Note that the strategy is open for consultation until 12 November 2021. This map shows that Hamilton, Tuakau, Pookeno and Ngaaruawaahia meet the definition of 'Tier 1 urban environments' under the NPS-UD. Huntly, Cambridge, Te Awamutu and Pirongia meet the definition of 'Tier 3 urban environments'. All other townships in the three territorial authorities do not meet the definition of 'urban environment' under the NPS-UD. The proposed amendment to the definition of 'urban environment' in the Bill would not affect this interpretation.



In our view the Bill as drafted is inconsistent with the purpose outlined in the explanatory notes. The application to our towns undermines the work we are doing at a local level to enhance placemaking with our local communities. Whilst Hamilton is almost entirely urban in nature, Waikato and Waipā councils

have a number of settlements of varying size, set in large expanses of rural land. For example, Ngaaruawaahia is a settlement of less than 8,000 people which is located in the Waikato District but by virtue of its close vicinity to Hamilton's north boundary, is considered to be part of Hamilton's urban environment. Pookeno and Tuakau, in Waikato District, could be considered to be part of Auckland's urban environment. Waikato District Council also contains smaller settlements such as Raglan which do not currently qualify as an 'urban environment'. Waipā District Council contains the settlements of Cambridge, Te Awamutu, Pirongia and other smaller villages. It needs to be clear where the medium density residential standard (MDRS) are to apply.

It is entirely inappropriate to impose blanket medium density rules across small townships which have a very different character to the Auckland city environment on which the rules have been based.

These towns, as do all towns set in a rural context in New Zealand, currently offer residents a distinctively different living environment to that found in city urban environments. There are also commensurately lower levels of community services (e.g., public transport) and less sophisticated supporting infrastructure. Imposing the MDRS and a blanket provision for medium density housing will be totally out of character with that distinction and undermine the very identity and community outcomes of each town. This distinction needs to be recognised and provided for in planning standards.

Summary of our submission points:

- **Amend all references to 'urban environments' in the Bill, and replace with 'Tier 1 urban environments';**
- **Amend all elements of the Bill to clarify that the Bill is only mandatory in Tier 1 urban environments and does not apply to Tier 3 urban environments or to Tier 1 territorial authorities where they do not have a Tier 1 urban environment within them;**
- **Amend all elements of the Bill to clarify that the requirements relating to MDRS for the Future Proof councils only apply to Tier 1 urban environments within Hamilton city and not to neighbouring townships;**
- **Allow the application of the MDRS in Tier 1 urban environments outside of Hamilton and in Tier 3 urban environments in specific areas should the territorial authority, through a plan change process, seek to promulgate these.**

Concerns with the Blanket Nature of the Bill's Requirements

Hamilton City Council and the Future Proof partners are concerned that the indiscriminate application of the proposed MDRS to Tier 1 urban environments (and potentially to Tier 3 urban environments as discussed above) has the potential to undermine the intent of the NPS-UD to create well-functioning urban environments. The dispersed and unpredictable nature of how development can occur under this proposal is at odds with creating a compact urban form which supports public transport and makes it difficult to plan infrastructure upgrades required to support this level of additional growth. Of particular concern is the ability to provide the required level of service for three waters.

The blanket approach to the application of the MDRS will make it harder to invest in a targeted way for future infrastructure needs, and risks spreading growth over a larger area compromising the ability to

reach the critical mass needed for transport interventions. This has significant cost implications – not just for councils but also for Central Government, particularly Waka Kotahi.

The Future Proof partnership has expended a considerable amount of time and resources to determine a settlement pattern that supports efficient and effective public transport and supports a shift from private cars to other forms of transport. The NPS-UD Objective 8 states "New Zealand's urban environments: (a) support reductions in greenhouse gas emissions"; the Future Proof Strategy looks to achieve this in part by providing for a compact urban form that supports less carbon intensive transport modes such as active and public transport.

The Future Proof Waikato councils have undertaken significant work already to give effect to the NPS-UD. This work has been methodical and strategically aligned, based on the original criteria within the NPS-UD and underpinned by existing Housing and Business Capacity Assessment work.

The current targeted approach to planning for intensification is considered better placemaking for the existing and future communities of the sub-region than the poorly integrated land-use approach the proposed Bill appears to promote.

The Bill adds additional work and will require elements of the work already undertaken to give effect to the NPS-UD to be reworked. This is frustrating at a time when there are already resourcing issues in the sector, and while other significant reforms are taking place. As a consequence of this Bill, some significant plan changes and district plan reviews across Tier 1 councils will be delayed and some may need to be withdrawn, compounding the issue of land availability and ironically delaying housing land supply further as a result.

Where relevant to each of the Future Proof councils, the consequences of the Bill's proposed transitional provisions and implications for existing plan changes underway are further elaborated upon in Part B of this submission.

A more focused, staged approach to intensification supports thriving and resilient communities which are accessible and connected to employment, education, social and cultural opportunities - a central crux of the NPS-UD in creating well-functioning urban environments and improved four wellbeings through the Government's Policy Statement on Housing and Urban Development 2021 (GPS-HUD).

Focusing growth in more targeted areas also provides councils with a manageable framework to plan for the funding and coordinated delivery of infrastructure needed to service it. The Future Proof Strategy concentrates higher densities into targeted areas, usually around city/town centres, with proximity to current and future public transport and with good amenity. This is aligned with infrastructure roll out as identified through the Long Term Plan process under the Local Government Act 2002. Any introduction of blanket medium-density needs the infrastructure (hard and social) picture to be aligned to support healthy communities as per the NPS-UD.

Summary of our submission points:

- **The Bill should not apply the MDRS as a general residential standard. The MDRS should be able to be applied through council plan changes in bespoke areas where it can be shown that this will result in well-functioning urban environments.**

Sufficient Plan-Enabled Development Capacity Has Already been Provided For

Hamilton City Council and the Future Proof partners question the timing of this Bill and the proposed blanket introduction of medium density housing enablement. The proposed amendment to the RMA seems to be a belated response to a problem that most councils are now well advanced in addressing.

The Future Proof partners have not been reticent in planning for growth. Together we have spearheaded spatial planning for growth at a regional scale, and further with our Auckland neighbours, through the Hamilton to Auckland Corridor and Metro Spatial Plan work. This Bill effectively shifts the bar again for councils by effectively enabling the tripling (or more) of planned densities throughout the existing city and townships. These changes are also being imposed despite the Housing and Building Development Capacity Assessment (HBA) demonstrating the additional NPS-UD and Bill measures are not required to meet growth.

It is disappointing the Ministry for the Environment's Regulatory Impact Statement (RIS) does not take into consideration the recently submitted HBA's of Tier 1 councils in its assessment of its MDRA and capacity options as they apply to individual councils.

It is not evident where the demand is to meet the supply of this medium density housing option. The Future Proof partners have just completed their second HBA. Contrary to the statement in the Regulatory Impact Statement that planning decisions are not informed by adequate evidence – the Future Proof HBA was developed in accordance with the evidential requirements of the NPS-UD. Development capacity supply through infill in specified locations and identified greenfield development was found to be more than sufficient to meet anticipated short-, medium- and long-term demand – in fact overall in terms of plan-enabled capacity there is well in excess of what is required. The Future Proof councils' district plans are not a constraint to meeting demand. Infrastructure provision is potentially more of a barrier to the development of housing than the level of supply available under current and proposed district plans in the Future Proof subregion.

Statistics New Zealand building consent figures for September 2021 indicate that a record 47,331 new homes were consented in the year ended September 2021, up 25 percent from the year to September 2020. Multi-unit homes accounted for 46 percent of all new homes consented nationally in the year ended September 2021, up 40 percent from the year to September 2020. In Auckland, multi-unit homes accounted for two-thirds of all new homes consented in the latest year, and nearly one-third of those in the Waikato region.

The driver for demand has been population growth but over the last year as evident in the latest Statistics New Zealand figures there has been no international migration, not a lot of New Zealanders returning and little internal growth. Auckland's population fell by a 1,000 people for the first time ever. A key driver of demand has significantly reduced and it is unclear when growth will return to pre-pandemic levels.

Design Quality of the Built Environment

Hamilton City Council and the Future Proof partners want to build better urban areas, not just bigger urban areas. It's about building quality communities - not just houses. The Bill does not align with the Government's own focus on the four wellbeings and has the potential to compromise amenity and liveability for a short-term gain in housing numbers.

Hamilton City Council and the Future Proof partners have concerns about the design quality of the built environment resulting from blanket implementation of the Medium Density Residential Standards (MDRS) rules.

Once passed into law, the Bill will require Hamilton City Council, and potentially Waikato and Waipā (depending on the response to our submission point above), to adopt the MDRS rules set out in the Bill. The MDRS sets seven building requirements to enable development and must be incorporated into RMA plans for current and future residential zones in Tier 1 urban environments. The requirements will enable landowners to build up to three houses of up to three storeys on their site as of right on most sites. This includes alterations to existing buildings.

Hamilton City Council and the Future Proof partners are of the view that the MDRS rules are very blunt, and many do not provide good urban design outcomes, particularly given the range of urban areas that we have in the Waikato, ranging from small villages and townships, through to larger townships, and the city of Hamilton. The density and heights being required have been modelled on the Auckland Unitary Plan provisions. Whilst this might work in Auckland, where there are a range of city amenities, including rapid and frequent public transport provision, it will not translate well into the Hamilton context, or into smaller townships outside of the city.

In terms of urban design, there are two issues – macro urban design (for example ensuring good placemaking across the board with good PT, walking, cycling, local facilities and amenity) and micro urban design (for example the design of the buildings). Whilst the Bill focuses on the micro urban design, it does nothing in terms of the consideration of macro urban design issues.

We recognise that Government is prioritising the provision of housing but that should not be at the expense of good urban design outcomes. We have concerns that the proposed permitted baseline for medium density housing is in conflict with the central ethos of the NPS-UD and the recently released Government Policy Statement on Housing and Urban Development (GPS-HUD), which is to create liveable communities and well-functioning urban environments.

Consideration does need to be given to adjoining properties and potential loss of sunlight and passive home heating. Avoiding these unintended consequences from the introduction of medium density is a crucial concern for the Future Proof partners and relates to maintaining healthy communities over time.

Summary of our submission points:

- **Amend the Bill to allow consideration of place-based macro urban design issues so that MDRS provisions are only embedded in locations where good place making and well-functioning urban environments can be achieved;**

- **Make changes to the medium-density rules to ensure that the provisions address urban design concerns;**
- **Introduce standards or guidance which provide opportunities for new buildings that support climate change objectives, including opportunities for active solar collection in the future, green buildings, and on-site retention of water and re-use of greywater.**

Significant Increase in Pressure on Existing Infrastructure

Increased densities of the kind enabled by the Bill will grossly exceed the capacity of existing infrastructure. Even under the provisions of the NPS-UD councils face huge challenges in terms of their ability to plan for infrastructure to meet these requirements under current fiscal constraints. The Bill will introduce densities which will result in capital expenditure on infrastructure which exceeds the ability for councils to fund at a local government level.

The Bill does not address or acknowledge the infrastructure funding and financing shortfall to support an integrated solution for a step change in intensification, which would now be required across the entire city and potentially across all townships in the sub-region which meet the Tier 1 and 3 urban environment definition. The councils' infrastructure was not designed to support the full realisation of the current infill plan enabled capacity, never mind the increased densities being anticipated under the NPS-UD and now this Bill.

Under the LGA 2002 councils have an obligation to adopt a prudent financial strategy. It will be impossible for councils to fund the scale of infrastructure required to meet these new density expectations whilst still complying with financial strategies and LGA requirements around prudent debt limits. Even before the Government began imposing further obligations on councils to enable more housing (through the NPS-UDC and now the NPS-UD) councils have advocated for additional funding tools from Government to enable councils to deliver on these new requirements. The current opportunities for government funding are effectively ad-hoc, random and outcome-uncertain invitations to compete with other councils for funding. These initiatives are not a substitute for a proper funding toolbox. Better funding options are needed to enable high-growth councils to appropriately and sustainably plan and deliver the infrastructure needed to support growth and to avoid unacceptable adverse effects on the environment.

There is no mention in the regulatory impact statement, the explanation to the Bill, or in the Bill itself of any associated Government funding for addressing the potential impacts of increased housing density on existing urban infrastructure.

Infrastructure for consideration needs to be more than traditional roading, three waters and parks. As an example, roading needs to be expanded to transport - it is not about moving only cars and freight between towns and cities, but public transport (PT) and active mode opportunities for all. The need for social infrastructure, usually TA-led, not by developers, is generally left out of these conversations around increasing density. Higher density will necessitate more open space and park uses (active and passive) to maintain a quality of life. High density puts pressure on community facilities (halls, pools and libraries) and how people use them. Education facilities (primary and secondary), an integral part of communities, can be overwhelmed by significant increases in population if they are not planned for in advance with land and buildings.

Given the blanket nature of the proposed zone and high impervious surface allowance [50-60%] there will be corresponding loss of urban trees and vegetation and an increase in stormwater run-off. This has both a social and environmental effect. Where medium density is proposed there needs to be access to parks and reserves and consideration of plantings within new greenfield sites along access ways and new open spaces, to offset absence of trees within lots. Low impact design around stormwater can also add vegetation to these developments and offset impervious runoff.

There are already significant unfunded infrastructure investments needed in the life of the Future Proof Waikato councils' 30 Year infrastructure strategies to enable further infill/intensification to support the current plan enabled capacity.

Failure to ensure the nature, location and timing of intensification of the scale promoted by the NPS-UD and this Bill is aligned with necessary new and/or upgraded strategic and local infrastructure will lead to adverse environment, cultural and public health effects from, for example, increasing wastewater overflows and increasing volumes of untreated stormwater, and water pressure issues compromising fire-fighting supply. This fails to ensure councils are giving effect to Te Ture Whaimana o Te Awa o Waikato, Te Mana o te Wai, and is not an indication of a liveable community and well-functioning urban environment.

Ad-hoc, reactionary 'patching' of existing infrastructure to deal with incremental growth demands is not a sustainable approach. Proper infrastructure planning involves understanding and setting a strategic approach for supporting the maximum probable development based on what district plans enable and other spatial planning, then working back in intervals to match infrastructure delivery to growth. In this way the overall infrastructure programme is aligned with growth, integrated with landuse planning, and works towards a properly planned, fit-for-purpose city-full network. Reactionary development-by-development approaches to patch infrastructure creates a failure-before-fix situation risking adverse environmental effects. It also has the real potential to result in wasted infrastructure investment, for example with pipework being replaced multiple times, before coming close to its end-of-life, to incrementally increase capacity.

The timeframes in the Bill itself provides little to no opportunity for robust infrastructure planning to even occur, never mind dealing with actual implementation/construction within an existing urban environment with an existing community that will continue to need water, wastewater, stormwater and transportation services, including the lead-in times necessary for the scale of infrastructure works required. This in itself represents poor integration between land use and infrastructure decisions, with the environment and existing community facing the repercussions.

Additionally, the Bill does not align with the direction in the Draft New Zealand Infrastructure Strategy Rautaki Hanganga o Aotearoa 2021. This strategy recognises that to achieve a thriving New Zealand, we need a world class infrastructure system. Objective 3 of the strategy is building attractive and inclusive cities that respond to population growth, unaffordable housing and traffic congestion through better long term planning, pricing and good public transport. In addition, Objective 4 (Strengthening resilience to shocks and stresses by taking a coordinated and planned approach to risks based on good quality information) is clearly at odds with the Regulatory Impact Statement for the Bill. As noted previously, the RIS lacks any meaningful or credible information (including nil consultation with local government) to

underpin the Bill.

We submit that the current Bill does not assist in enabling coordinated long-term infrastructure planning that will support the intentions of the draft Infrastructure Strategy.

In summary, the Bill in the current form inadequately recognises the role that infrastructure plays in supporting growth and will create an irreconcilable conflict with the intent of other national directives, including the higher order Te Ture Whaimana o Te Awa o Waikato.

Summary of our submission points:

- **Provide certainty that there will be guaranteed funding options made available for councils to fund the infrastructure required to support the level of intensification required by the Bill;**
- **Amend the Bill to allow areas to be excluded from the MDRS where there is insufficient existing or planned infrastructure capacity to support the level of intensification;**
- **Explicitly allow for councils to plan, stage and sequence land use changes to align with the delivery of infrastructure necessary to avoid adverse effects on the environment including recognising the need for that infrastructure to align with a strategic, city-full infrastructure network;**
- **Ensure councils can control and/or limit development where it would otherwise lead to non-compliance with its regional abstraction and discharge consents;**
- **Allow for councils to apply additional on-lot controls necessary to assist with managing the environmental impacts of growth, for example requiring water sensitive devices;**
- **Re-think the timeframes for when this Bill would come into force given the NPS-UD HBA demonstrates sufficient short-and medium-term supply for growth in order to allow proper infrastructure planning, staging, and funding work to be completed;**
- **Urgently provide additional funding tools to allow councils to accelerate the delivery of infrastructure to support additional plan-enabled capacity;**
- **Retain clause 8 (b) – "A reference to relevant engineering standards applying in the relevant residential areas to which the MDRS applies". This may result in activities requiring resource consent where engineering standards cannot be met, which would provide an appropriate mechanism for ensuring infrastructure requirements were met.**

NPS-UD Definition of 'Urban Environment'

Hamilton City Council and the Future Proof partners support the proposed amendment to the NPS-UD to change the definition of urban environments to include reference to 'intended to be' in relation to territorial authorities. This is consistent with how Future Proof have defined "urban environment" in Future Proof Strategy.

Summary of our submission points:

- **Retain the proposed definition of urban environments as set out in the Bill.**

Natural Hazard Risk and Residual Risk

The Bill does not mention what the impact of increasing intensification has on natural hazard risk and residual risk. The Waikato Region has a several settlements such as Huntly that are protected by Waikato Regional Council stopbanks. Intensification in these locations would increase the residual risk.

Natural hazard risk assessments are required for any new development, however there is no guidance on risk thresholds, especially when intensifying residential development. This is particularly important for future climate exacerbated hazards.The NPS-UD Objective 8 states "New Zealand's urban environments: (b) are resilient to the current and future effects of climate change".

For example, Hamilton City Council is accelerating its programme to produce 100 year flood hazard mapping and overland flowpath info to cover the entire city - currently most of the urban environment does not have detailed flood hazard modelling information. Individual developers will generally not be sufficiently experienced or resourced to undertake the catchment-scale work needed to produce this type of information. In the absence of this information the Bill would, by default, allow significant development on land potentially affected by flood hazards. This will put people and property at risk during a flood event.

Summary of our submission points:

- **Amend the Bill to explicitly require a natural hazard risk assessment, including an assessment of residual risk, prior to the notification of intensification planning instruments to include the MDRS. As above, this will mean that additional time will be required in order to undertake a natural hazard risk assessment.**

Schedule 3 - New Part 4 Inserted into Schedule 12

We suggest considering an extension to the date given in Schedule 3 for plan changes to have incorporated the MDRS as the proposed date may inadvertently capture plan changes that have had substantial work undertaken to get them to the point of notification and then have to be withdrawn in part or whole because they were notified without the inclusion of the MDRS. For example, Hamilton City Council has just notified a plan change to their district plan to update the structure plan for a long planned for greenfield area at Peacocke to the south of Hamilton. The plan change is to update the existing structure plan to reflect policy direction to create a more compact urban form well supported by multi-modal transport. Submissions on the plan change closed on 5 November 2021, after which submissions will need to be summarised, further submissions called for, and s42 reports prepared ahead of hearings. Given the time of year, it is very unlikely that this will be completed ahead of the February 2022 deadline.

Summary of our submission points:

- **Extend timeframes to allow plan changes that have already been notified to complete their process. Alternatively, allow for plan changes that have been notified but hearings not held to be able to proceed if they incorporate the MDRS.**

Timeframes

Hamilton City Council and the Future Proof partners have serious concerns and reservations around the Bill's projected timeframes for delivery of intensification of housing in urban areas, which is due to commence in August 2022.

Given the climate facing the building industry, particularly regarding the current and predicted foreseeable worldwide supply chain disruption and its impact on the likes of building supplies/material,

these timeframes appear to be overly ambitious in terms of the projection of delivering up to 105,500 homes over the next eight years.

The timeframes do not allow adequately for the Future Proof Waikato councils to address the necessary requirements related to Te Ture Whaimana or to plan for the required infrastructure to support the proposed changes.

We therefore recommend that a longer timeframe is required for the implementation of the MDRS, to align with the dates for the completion of the FDS under the NPS-UD. Progress reporting could be a useful tool for government to keep abreast of progress being made on the changes.

Summary of our submission points:

- **Delete the August 2022 requirement for notification;**
- **Add a requirement to report to government on the progress being made on changes;**
- **Align the implementation timeframe of the MDRS with the requirements for completion of an FDS under the NPS-UD.**

Climate Change and the Environment

It is unclear how the blanket introduction of MDRS aligns with the central government's commitment to address climate change and its greenhouse gas emissions targets. Objective 8 of the NPS-UD seeks to achieve urban environments that support reductions in greenhouse gas emissions and are resilient to the current and future effects of climate change. The blanket application of the MDRS will not integrate with levels of accessibility by public and active transport and could work against achieving the critical mass required to support public transport interventions. This outcome is not in accordance with the NPS-UD objective of creating well-functioning urban environments which have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport.

Higher residential densities with reduced open space allowances will result in there being less green space and less trees in our urban environments. The reduction in green open space and trees together with the increase in hard heat absorbing surfaces, risks increasing urban heat, especially when average temperatures are rising and the number of hot days per year increases. This poses a long-term risk to health and wellbeing.

Summary of our submission points:

- **Ensure opportunities are provided for passive energy opportunities for each dwelling and its occupants;**
- **Provide standards or guidance which provide opportunities for new buildings that support climate change objectives, including opportunities for active solar collection in the future, green buildings, and water retention and re-use, and low impact urban design features for stormwater.**
- **Amend the Bill to ensure locations of MDRS areas are consistent with achieving good public transport and active transport accessibility between housing, jobs, community services, natural spaces and open spaces.**

Regulatory Impact Statement for the Bill

Hamilton City Council and the Future Proof partners note that the Regulatory Impact Statement (RIS) for the Bill was finalised on 21 May 2021. The Bill appears to be a solution for Auckland and Wellington, but Hamilton is barely mentioned in the RIS – for example Auckland is mentioned 24 times in the RIS but Hamilton is only mentioned 4 times. The smaller towns around Hamilton are not mentioned at all. Despite this lack of analysis, the Future Proof partner councils are expected to work with the same provisions in the Bill.

The RIS itself makes a number of observations about its limitations. For example, in the 'Executive Summary', under the section entitled 'Limitations and Constraints on Analysis' (page 2), it states that *"The analysis in this paper was produced in a short period with limited ability to undertake bespoke formal analysis. As a result, analysis is based on existing sources and largely qualitative".*

Similarly, the section entitled 'Stakeholder Engagement' (page 2) notes that *"Due to time constraints, there has been no opportunity for consultation with external stakeholders. This limits the ability to test the feasibility of processes and other aspects of implementation".*

Clearly then there was no engagement with the local government sector or iwi when developing the RIS. Given the critical role of local government and iwi in the Bill, this is both surprising and indeed, in our view, a major flaw in the background material underpinning the Bill's development.

Under the section 'Empirical Data' (page 3), the RIS notes that *"Bespoke modelling of the pattern and magnitude of development that would result if default MDRZ is implemented has not been undertaken. Instead, qualitative insights are drawn from other recent modelling exercises".*

Given the above examples of patent shortcomings in the RIS, the Future Proof partners are strongly of the view that this Bill is being pushed/rushed through with no real detailed analysis or robust engagement, or any clear understanding of unintended consequences.

This is further emphasised in the Joint Regulatory Impact Analysis Review Panel's assessment and comments on page 4 of the RIS i.e:

- *"There has been no public consultation on the proposals which means that the potential consequences identified in the RIS are not fully understood.*
- *"The Panel wishes to particularly highlight the lack of consultation with local councils, which may pose implementation risks for the policy proposals in this paper, and a broader risk to the relationship between central and local government".*
- *"The RIS could also better support decision making through improvements to clarity of message, presentation of information, and greater use of quantitative evidence to support options assessment".*

In terms of infrastructure, the RIS makes incorrect broad assumptions on what has been funded in council 10-year plans and demonstrates a poor understanding of how infrastructure planning and implementation works in conjunction with land use planning and 10-year plan funding. This would appear to be a key source of failure in how the Bill fails to appropriately address infrastructure.

Plan Change Costs

The Future Proof Waikato councils have all been working hard to develop provisions to give effect to the NPS-UD, at significant cost to their ratepayers. This investment could effectively be wasted if existing plan change/plan review work needs to be set aside.

The plan change to give effect to the MDRS will require money and resourcing, both of which have not have been provided in this year's LTP or Annual Plan. Local authorities are going to have to find money and resourcing from elsewhere to fulfil the requirements of the Bill. This action is likely to result in the removal of wellbeing focused projects and priorities.

ISPP Process

The Future Proof Waikato councils acknowledge the intention of the Intensification Streamlined Planning Process (ISPP) to provide a faster, easier and less costly plan change avenue. However, we are concerned that now allowing for a full consultation process excludes communities from having proper input into what will be a significant change for our urban areas.

If the existing ISPP proposals are intended to remain, the Future Proof Waikato councils suggest consideration could be given to allowing for joint ISPP hearing processes. This would allow councils to run their processes together or in parallel and make use of the same hearing panel.

Specific Changes to the Resource Management (Enabling Housing Supply & Other Matters) Amendment Bill

Suggested amendments are shown in underline and italics, and strikethrough.

RM Amendment Bill Reference	Scope of Amendment	Reasons
Whole Bill	Amend all references to 'urban environments' in the Bill, and replace with 'Tier 1 urban environments' Amend all elements of the Bill to clarify that the Bill is only mandatory in Tier 1 urban environments and does not apply to Tier 3 urban environments or to Tier 1 territorial authorities where they do not have a Tier 1 urban environment within them Amend all elements of the Bill to clarify that the requirements relating to MDRS for the Future Proof councils only apply to Tier 1 urban environments within Hamilton city and not to neighbouring townships. Allow the application of the MDRS in Tier 1 urban environments outside of Hamilton and in Tier 3 urban environments in specific areas should the territorial authority, through a plan change process, seek to promulgate these.	The suggested amendments would make the Bill consistent with the purpose outlined in the explanatory notes. Otherwise it would appear that Bill applies to Future Proof towns which would undermine the work being undertaken at a local level to enhance placemaking within our local communities. Whilst Hamilton is almost entirely urban in nature, Waikato and Waipā councils have a number of settlements of varying size, set in large expanses of rural land. It needs to be clear where the medium density residential standard (MDRS) are to apply.
Clause 77F	**77F Medium density residential standards must be incorporated into plans** (1) Every relevant residential zone in an urban environment of a relevant territorial authority must have the MDRS incorporated into that zone, *provided there is accessibility by existing or planned active or public transport to a range of commercial activities and community services and there is a clear demand for housing in that location.*	The Bill should not apply the MDRS as a general residential standard in a blanket manner across a city or district. The MDRS should be able to be applied in areas where it can be shown that this will result in well-functioning urban environments and there is a clear need. This would also go some way towards addressing macro urban design outcomes.

Clause 77G	**77G Qualifying matters in applying medium density residential standards to relevant residential zones** A relevant territorial authority may make the MDRS less permissive in relation to an area within a relevant residential zone if that change is required to accommodate 1 or more of the following qualifying matters that are present: (a) a matter of national importance that decision makers are required to recognise and provide for under section 6: (b) a matter required in order to give effect to a national policy statement (other than the NPS-UD), *including Te Ture Whaimana – the Vision and Strategy for the Waikato River*: (c) a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure: (d) open space provided for public use, but only in relation to land that is open space: (e) the need to give effect to a designation or heritage order, but only in relation to land that is subject to the designation or heritage order: (f) a matter necessary to implement, or to ensure consistency with, iwi participation legislation: (g) the requirement in the NPS-UD to provide sufficient business land suitable for low density uses to meet expected demand: *(h) the need to give effect to regional abstraction and discharge consents:* *(i) no ability to connect to the urban infrastructure network or insufficient capacity within the network:* ~~(h)~~ *(j)* any other matter that makes higher density as provided for by the MDRS inappropriate in an area, but only if section 77I is satisfied.	To acknowledge and confirm Te Ture Whaimana as a qualifying matter given that it is the primary direction-setting document for the Waikato and Waipā Rivers and was established under Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. Te Ture Whaimana represents the strongest direction that Parliament has given in relation to any RMA planning document and it is the pre-eminent planning instrument within the Waikato region. It is particularly noted that in the event of any inconsistency or conflict, Te Ture Whaimana o Te Awa o Waikato prevails over any national policy statement or New Zealand Coastal Policy Statement. To allow for limits to be applied where this could lead to non-compliance with regional abstraction and discharge consents. To acknowledge the need for development to be able to connect to urban infrastructure networks
Clause 77H	**77H Requirements in relation to evaluation report** (1) This section applies if a territorial authority is amending its district plan (as required by section 77F). (2) The evaluation report from the relevant territorial authority referred to in section 32 must, in relation to the proposed change,—	The suggested amendments make it explicit that where there are natural hazards (a matter of national importance under section 6 of the RMA

	(a) in relation to an area for which the territorial authority is proposing to make an allowance for a qualifying matter, demonstrate why— (i) the territorial authority considers that the area is subject to a qualifying matter; and (ii) the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A) for that area; and *(b) in the case of natural hazards, undertake a risk assessment, including an assessment of residual risk; and* ~~(b)~~ *(c)* assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and	1991) a risk assessment is required, including an assessment of residual risk.
Clause 80F	**80F Relevant territorial authority must notify intensification planning instrument** (1) The following territorial authorities must notify an intensification planning instrument on or before 20 August 2022: (a) every tier 1 territorial authority*, except for Waikato Regional Council, Hamilton City Council, Waikato District Council and Waipā District Council, who have until 20 August 2023*: (b) a tier 2 territorial authority that is required by regulations made under section 80E(1) to prepare a change to its district plan or a variation to its proposed district plan. (2) A tier 2 territorial authority that is required by regulations made under section 80E(2) to prepare a change to its district plan or a variation to its proposed district plan must notify an intensification planning instrument on or before the date specified in those regulations. (3) A territorial authority must prepare the intensification planning instrument— (a) using the ISPP; and (b) in accordance with— (i) clause 95 of Schedule 1; and (ii) any requirements specified by the Minister in a direction made under section 80I.	This amendment allows sufficient time for the Future Proof Waikato Councils to analyse the impact of the intensification planning instrument on Te Ture Whaimana
Schedule 1 - New Schedule 3A inserted, Clause 8 (Other Matters)	**Schedule 3A MDRS to be incorporated by relevant territorial authorities** *Other matters* **8 Other matters to be included in district plan in relation to MDRS** The relevant territorial authority must include the following information in	The Future Proof partners have concerns about the design quality of the built environment resulting from blanket implementation of the Medium

	relation to the MDRS within the district plan: (a) the enabling objectives and policies for the MDRS; ~~and~~ (b) a reference to relevant engineering standards applying in the relevant residential areas to which the MDRS apply~~.~~*; and* *(c) a reference to any urban design guidelines.*	Density Residential Standards (MDRS) rules. Incorporating urban design guidelines would go some way to ameliorating the micro urban design issues.
Schedule 1 - New Schedule 3A inserted, Part 2 – Building Standards	Incorporate the following matters into the building standards: - Passive energy opportunities for each dwelling and its occupants. - Supporting climate change objectives, including opportunities for active solar collection in the future, green buildings, and water retention and re-use, and low impact urban design features for stormwater.	These amendments would align with the central government's commitment to address climate change and its greenhouse gas emissions targets.
Part 4, Clause 31	**Part 4 Provision relating to Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021** **31 Status of partly completed proposed plans and private plan change requests in tier 1 urban environments** (1) This clause applies to the following in relation to the district plan of a tier 1 territorial authority: (a) a proposed district plan: (b) a private plan change accepted under clause 25(2)(b) of Schedule 1. (2) Subclause (3) applies if the instrument containing the proposed district plan or private plan change referred to in subclause (1)— (a) does, in whole or in part, 1 or more of the following things: (i) gives effect to policy 3 or 4: (ii) proposes changes to a relevant residential zone and those changes do not incorporate the MDRS: (iii) creates a new residential zone that does not incorporate the MDRS; and (b) has been notified on or before the commencement of this clause but a hearing under clause 8B of Schedule 1 is not completed on or before 20 ~~February~~ May 2022. (3) If this subclause applies, — *(a) the territorial authority may continue with the proposed plan, but only if the MDRS is incorporated;*	Like many growth area councils, the Future Proof Waikato councils have all been working hard to develop provisions to give effect to the NPS-UD, at significant cost to their ratepayers. This investment could effectively be wasted if existing plan change/plan review work needs to be set aside.

	~~(a)~~ *(b) otherwise,* the territorial authority must withdraw the part or whole of the proposed plan as relevant under clause 8D of Schedule 1; or (b) in a case where a private plan change has been accepted, the applicant must withdraw the request under clause 28 of Schedule 1.	

PART B - HAMILTON CITY COUNCIL'S KEY SUBMISSION POINTS ON THE BILL

PREVIOUS SUBMISSIONS MADE ON RESOURCE MANAGEMENT REFORM

Hamilton City Council takes a considerable interest in matters regarding Resource Management reform and has made a number of submissions in this space in recent years - for example:

- Hamilton City Council's 4 August 2021 submission to the **Inquiry on the Parliamentary Paper on the Exposure Draft - Natural and Built Environments Bill** - refer **here**
- Hamilton City Council's 3 August 2021 submission to the **Government Policy Statement on Housing and Urban Development (GPS-HUD)** - June 2021 Discussion Document - refer **here** and **here**
- Hamilton City Council's 2 July 2021 submission to the New Zealand Infrastructure Commission's May 2021 Discussion Document **Infrastructure for a Better Future Aotearoa New Zealand Infrastructure Strategy** - refer **here**
- Hamilton City Council staff feedback made on 21 May 2021 to the Ministry for the Environment's **Early Engagement on Resource Management Reform - Opportunities to Improve System Efficiency** - refer **here**
- Hamilton City Council's 13 February 2020 submission to the **Urban Development Bill** - refer **here**
- Hamilton City Council's 17 October 2019 submission to the June 2021 Discussion Document **Proposed National Policy Statement for Urban Development (NPS-UD)** - refer **here**

All submissions made by Hamilton City Council can be accessed **here**

PART B - TECHNICAL SUBMISSION

This second part of our submission Part B is Hamilton City Council's Specific Information in addition to Part A and comprises an Executive Summary followed by detailed commentary on those technical matters that Council seeks further clarification and development, primarily around the implications and applications of the MRDS, ISPP, infrastructure implications, financial contributions etc resulting from the Bill.

- For ease of summary, Council have highlighted those recommendations and requests for changes in **BOLD.** These are to be read **in addition** to those covered in Part A.

Council has also enclosed design typology images that depict the scale of potential development enabled by the Bill, illustrating some of the potential impacts of the MDRS referenced against what is enabled already in the Councils District Plan residential zones.

Executive Summary

1. The submissions below are underpinned by the central message that Hamilton has been managing brownfield intensification for 10+ years through its existing growth strategies which balance both greenfield growth and infill. This has been successfully achieved through an approximate balance of directing 50% brownfield 50% greenfield in alignment with the Regional Policy Statement.

2. This strategic spatially planned growth is informed by an established Future Proof Partnership which has been underpinned by partner Housing and Business Assessments since 2017, extensive Metro Spatial Planning (MSP) work with central government partners, our monitoring, and updates to the existing Hamilton Urban Growth Strategy (HUGS), the MSP Transport Programme Business Case and the Metro Wastewater (North and South) Business Cases.

3. The point being at the regional and local level, the spatial planning, growth demand and integrated infrastructure response is more nuanced and better understood than a one size fits all blanket approach to enabling housing envisaged through the proposed Bill and its MDRS citywide application.

4. Furthermore, the timing, planning, and modelling evidence base needed to ensure robust planning/transport/three waters infrastructure/community integration is not considered in any way in the rushed timing of the Bill which confers a significant change to its land use response somewhat arbitrarily on Council.

5. Of further note unlike Auckland, Hamilton also provides for a range of housing typologies in close proximity to the central city through its existing removal of height controls, minimum parking requirements and relaxed building standards. Hamilton also has existing residential intensification zones within a walkable catchment of the central city and has done so in excess of 10 years.

6. Council will also highlight in its submission that the Draft New Zealand Infrastructure Strategy – is at odds with the Bill's Provisions with its objectives on Building attractive and inclusive cities that respond to population growth aswell taking a coordinated and planned approach to risks based on good quality information.

7. Work is already well underway to reflect the nuances of key centres in more detail though existing Area Planning to ensure consistency with the well-functioning urban environment approach of the NPDS-UD. This targeted more bespoke approach to intensification in key nodes is informed by P/T, accessibility analysis community drivers and infrastructure assessments for these catchments.

8. The Future Proof Waikato councils have undertaken significant work already to give effect to the NPS-UD. This work has been methodical and strategically aligned, based on the original criteria within the NPS-UD and underpinned by existing Housing and Business Capacity Assessment work.

9. Increased densities of the kind enabled by the Bill and MDRS provisions not to mention 'Other Intensification Provisions' will grossly exceed the capacity of existing infrastructure.

10. The Ministry for Environments Regulatory Impact Statement (RIS) significantly underplays the fact that the existing NPS-UD results in significant infrastructure challenges on its own given the requirement for 10 and 15% buffers for plan enabled capacity.

11. Councils already face huge challenges in terms of their ability to plan for infrastructure to meet this requirement (plus buffer) under current fiscal constraints. The Bill will introduce densities which make the capital expenditure costs impossible to manage at the local government level.

12. The Intensification infrastructure costs as a result of the Bill will be significant and if one of the primary mechanisms to pay for these is to pass these costs on to developers, there is no option analysis in RIS in terms of what the local level (Hamilton specific) infrastructure costs would have on development viability or uptake.

13. The timeframes in the Bill itself provides little to no opportunity for robust infrastructure planning to even occur, never mind dealing with actual implementation/construction within an existing urban environment with an existing community that will continue to need water, wastewater, stormwater, and transportation services, including the lead-in times necessary for the scale of infrastructure works required.

14. The Planning submissions focus on the concerns on the erosion of community wellbeing and urban design outcomes that may result from a carte blanche one size fits all approach under the new MDRS permitted baseline.

15. Council are concerned that a citywide MDRS is extensive and will dilute and undermine the centres focus the existing NPS-UD is seeking to achieve in terms of encouraging greater densities around centres with the most efficient accessibility, walkable catchments with access to community and commercial amenities.

16. Councils submission will show the design implications of the new MDRS provisions compared to what could occur under its existing residential zones and make alternative recommendations for what should be included as Building Standards as part of any new MDRS without hindering supply.

17. The Intensification Streamlined Planning Process (ISSP)is not clear in its application to existing Significant Natural Area assessment and scheduled Heritage assessment now required to reflect the imposition of the new MDRS citywide. Furthermore, there is no mention of the integration impacts with the rest of Schedule 1 Plan changes that will not meet the ISPP.

18. The proposed transitional provisions and timing of this Bill has also presented challenges for any Council that have their notified plan changes or are constructively working with live private plan changes, with the likelihood of, if passed having to delay/withdraw plan changes that are likely to be affected.

19. This will have the unintended consequence of stalling supply of land for residential development in specific cases – an outcome at odds with the intent of the Bill. Not to mention the significant investment in time, financial and community engagement that has gone into the existing plan change process.

Medium Density Residential Standards (MDRS) and consenting implications

20. The proposed building standards for permitted medium density development proposed under Section 77F of the Bill represent a significant shift to the built form settings in residential zones which will apply citywide for Hamilton.

21. As a result, Tier 1 councils will be required to respond and provide additional infrastructure capacity everywhere at once to meet potential demand that may not eventuate. This would create undue pressure on rates for our communities, and/or will result in increased costs of new developments which will be passed on to purchasers.

22. It is also likely to hinder council's ability to prioritise infrastructure development in the spatial planning that is being proposed as part of the Resource Management reforms, under the Strategic Planning Act. This is elaborated on in more detail in the infrastructure section below.

23. The Council agrees that the proposed MRDS settings with an increased potential building envelope will accordingly increase housing choice and options for homeowners and builders.

24. The Council supports the exclusion of the large lot residential zone from the application of the MDRS, as these zones are typically used in semi-rural locations.

25. The Council recognises that the Government desires developments of three units to proceed as a permitted activity. However, council disagrees with the assumption in the Ministry for the Environment's Regulatory Impact Statement that increased development under the MDRS will occur close to city centres within inner city zones.

26. Given the extent of the proposed MDRS that would apply citywide in Hamilton. Suburban residential areas are more predicated to infill redevelopment for duplexes in the current Hamilton market where this development is more likely to take place where the cost of land is lower, and where lots are typically larger without the need for costly site amalgamation or the perceived adverse effects of locating close to existing commercial zoned land in the city centre.

27. It is therefore considered there will be adverse consequences of diluting infill away from centres and precisely those integrated central P/T accessible locations the NPS-UD seeks to target growth in Policy 3.

28. Furthermore, given the current market driven typology for infill is likely to remain suburban residential duplexes for the short-medium term, the new permitted baseline will remove all opportunities to influence important placemaking and design interface discussions with this prevalent type of built form which would otherwise be part of the consent process.

29. **Council request that the geographic scope of the MRDS is not applicable to all default residential zones but rather enables Council to better reflect Policy 3a)-c) criteria of city centre, walkable catchment and priority centres as determined by walkability analysis, P/T accessibility and infrastructure servicing.**

Amendment to Policy 3(d)

30. The Council supports the proposed amendments to Policy 3(d) in the NPS-UD although it **seeks clarity on terminology outlined in Section 770; *within and adjacent* to neighbourhood centre zones, local centre zones, and town centre zones..**

31. Whilst the intent of simplification of Policy 3d) is supported, it is considered using terminology such as *adjacen*t to centres is not necessarily helpful and open to interpretation for consistent intensification zoning response.

32. Furthermore, the amendment to Policy 3d) now inserts national planning standards for business zoning which was previously not required. The unintended consequence of this may require councils to prematurely align its existing Operative Plan Business Zone Standards which may require consequential changes to the Plan that sit outside that enabled by the ISPP. It is therefore recommended that wording is changed to include 'or equivalent centres in current Operative Plans'.

33. Council has invested significant time in GIS/walkable catchment modelling to assess its existing centres in the city.

34. **Councils requests a proportionate approach under amended Policy 3d) in which to weight an appropriate intensification response to centres through other intensification policies 'OIPs' that support targeted intensification in accessible locations – where there are 'density enablers' that support well-functioning urban environments.**

35. These 'density enablers' include proximity to public transport, connections to local schools and other social and community infrastructure, and proximity to parks and open space.

Other intensification policies

36. **The Council requests that the Ministry reviews the wording of the definition of 'other intensification policies' in clause 77E which refers to policies 3(c) and (d) as it applies to 'urban non-residential zones'.** Also there appears to be an error in the amended Policy 3(d) of the NPS-UD,[1] in that the final words should presumably be "community services" rather than "community centres," which includes a much smaller range of activities than community services.[2]

37. In light of the proposed citywide reach of the intensification proposed to be enabled in the MDRA provision council do not consider that the 'neighbourhood centres' described in the Bill are considered to be of a proportionate scale of employment, commercial and social activities that warrants additional other intensification above 4 stories. We therefore request that the reference to neighbourhood centres is removed from the new Policy 3(d).

Building Standards

38. The Council is concerned with the proposed Schedule 3A clause 2(3) which states: *(3) There must be no other building standards included in a district plan additional to those set out in Part 2 relating to a permitted activity.*[3]

39. Additionally, the Council is concerned with ambiguity of terminology in the Schedule. The Bill is not clear on what constitutes a building standard, design standard, built form standard, engineering standard or subdivision standard, or if these standards are intended to be specific to a particular type of development.

40. Many District Plans include standards (such as regarding earthworks, transport matters (such as design of safe access ways (including pedestrian), cycle parking, accessible parking etc.), noise insulation, lighting, landscaping, setbacks from railway lines, transmission lines, water supply for firefighting etc.).

41. These standards are important to ensure houses are well-designed, safe, accessible, and resilient and contribute to a well-functioning urban environment. The Council submits that the Bill must be more specific regarding what the bar in Schedule 3A clause 2(3) does and does not cover

42. **Council would support additional standards be included as part of the proposed permitted baseline to better ensure development responds to the natural environment, contributes to an effective public private interface and shapes a well-functioning urban environment.**

43. **The Council also requests that the generous building standards described in the Bill (including the 11m height and recession planes) are limited to when a minimum of three units are developed on a site at each subdivision stage.**

[1] New schedule 3B
[2] This amendement would also be consistent with the terminology used in section 77 O (1).
[3] RM (EHS) Bill, p.28 (new Schedule 3A), clause 2 (3)

44. As currently written, enabling single residential units to be built to these standards will potentially result in super-sized homes, with no resultant increase for housing supply.

45. The councils recent Housing and Business assessment does still show in the short-medium term that demand for detached single dwellings remains strong irrespective of what Government directions seeks to enable.

46. A set of fixed building standards are proposed in the Bill to which councils cannot include anything additional. They include:

    a. building height;
    b. height in relation to boundary;
    c. setbacks;
    d. building coverage;
    e. impervious area;
    f. outdoor living spaces (per unit); and
    g. outlook space (per unit).

47. These standards in the Bill will significantly alter the permitted baseline for development in Tier One urban environments. That is, these standards will become the new permitted baseline for which arguments for developments that breach these standards will now be considered. This will have the effect of an easier consenting process for buildings in excess of the scale set out in the MDRS.

48. Council also questions the level of consultation and engagement the practicable implications of the new rigid MDRS standards have had. There will be implications for developments seeking strict adherence to those standards proposed.

49. For example, the proposed MDRS specify minimum building setbacks of 1m for side and rear (except on corner sites) boundaries. St John Ambulance have advised Council that a 1m setback is too narrow to accommodate St John Ambulance stretchers. One metre setbacks would make it more difficult to extract someone from the residential development and prolong the time it takes to get patients to hospital.

50. **Councils suggested approach to the Bill and the MDRS is to allow for further provisions and standards to be included as long as such provisions and standards do not reduce the developable area of the site.**

51. Additional standards as a permitted activity would create more certainty around design and managing the transition of amenity as it changes to adapt with higher levels of intensification presenting opportunities to consider:

    a. **the accessibility of units** (eg, for people with mobility issues and emergency services access);
    b. **Sustainable construction** methods and energy-efficiency (e.g. above-Building Code specifications; inclusion of eco elements like solar panels or hot water systems; greywater recycling; permeable swales etc.) to support long term affordability and environmental quality.
    c. **the public private interface** (eg, does the front door face the street or have a clear focal entrance, low front yard fences, minimal blank front facades);

d. how a safe environment is created (eg, through using **crime prevention through environmental design principles**, ensuring there is adequate lighting);
e. **landscaping and vegetation** (eg, planting to soften increased density and encourage the retention of mature vegetation to assist with achieving urban tree coverage and climate mitigation outcomes);
f. how **waste management and recycling facilities** are accommodated (ie, where are bins going to be stored, where they can be positioned to as not to block footpaths and access).

52. **The Council therefore recommends that the Government consider how it can include elements of the design principles above into the permitted activity framework**. It is not considered that these principles would stymie growth but rather contribute to the creation of communities under the four wellbeing's approach in the GPS-UD.

Urban Design standards proposed for MDRS

53. Council considers there are important urban design aspects where the Bill does not offer a strong and sound basis contributing to the 'well-functioning urban environment', as described in Policy 1 of the NPS-UD. In particular, the proposed MDRS does not automatically encourage house type variety given the new permitted standards,

54. The Bill and the proposed MDRS enable people to build up to three residential units and three storey on a site without the need of resource consent, provided that it can comply with standards outlined in Part 2 of the Bill. This will likely lead people to simply duplicate the same or similar development layout on the same or similar size sites, for the purpose of avoiding the need of resource consent. It will potentially discourage the provision of 'enable a variety of homes' in different scales and types as rules and standards can significantly drive repetitive outcomes.

55. The Bill and the MDRS are silent on the minimum sizes and dimensions of residential units and/or habitable rooms, which is an important aspect contributing to onsite amenity and mental health being for the occupants.

56. This is a critical component of the Bill that it would allow subdivision of residential sections to any size, as long as it could be shown that a house would fit on the site and comply with the permitted standards in the MDRA. Using a small house of 50m^2 for example, would mean only a minimum section size of 100m^2 is potentially required.

57. Taking this to conclusion, this would translate into (assuming a typical 800m^2 section) there could be at one extreme making allowance for access ways, seven subdivided parcels enabling 3X 50m^2 dwellings up to three levels on each 100m^2 section so 21 units in total or a more realistic 3x 100m^2 size dwellings up to three levels on each 200m^2 section so 11-12 units in total. Both of these scenarios would be a permitted activity, with no design standards.

58. In addition, the MDRS proposes to reduce the size of OLA, being 15m^2 per residential unit instead of determining OLA based on the size of the residential unit. Council consider it is important to provide sufficient areas and spaces for higher density living under challenging circumstance such as the Covid pandemic where working from home with sufficient on-site amenity has become more important especially when public gatherings are limited or could be under future alert/ traffic light settings.

59. Quality urban design is important to achieve the NPS-UD objective to create well-functioning

environments and the City Vision for Hamilton. It affects the balance between natural ecosystems and built environments, and their sustainability; it affects the social and cultural nature of a locality and it can influence how people interact with each other, how they move around, and how they use a place.

60. **We submit at a minimum that robust design standards should be introduced that consider factors such as the following:**

- **The New Zealand Urban Design Protocol as used for the previous Special Housing Area legislation.[4]**
- **Crime Prevention through Environmental Design principles that help to create safer environments.**
- **the urban design standards developed by Kāinga Ora or similar could be used to modify the MDRS in the Bill.[5]**

61. The Council also suggests that the Government consider:

a. **Enabling the per unit outdoor living space standard to be grouped together into communal space.** We suggest a lower space requirement is enabled where this is the case. The benefit of enabling outdoor living space to be grouped together is that it produces more usable space (eg; in the form of roof top gardens) and is more economical to construct than individual balconies. It therefore has the potential to result in units with a lower cost.

b. **Fencing heights and style:**
   i. Design of front wall/fence – max 1.5m high with a min of 40% permeability

c. **Paving and Planting within the front yard:**
   i. Provision of a pedestrian footpath to the front door
   ii. A minimum of 50% of the front yard to be landscape

d. **Façade interface to the street and public realm**
   i. Orientate habitable rooms, balconies and the primary entrance (front door) towards the street
   ii. The front elevation should include a mix (minimum of three) of different material claddings, include appropriate articulation, fenestration and include other architectural features (such as verandas and balconies);
   iii. If a garage faces the street, the door should be setback by at least 0.5m and its length should be less than 50% of the front façade

e. **Size and functionality of the proposed outdoor living area:**
   i. Up to 2 bedrooms- 35m^2; plus 10m^2 for each additional bedroom over 2 bedrooms
   ii. The OLA should not be included for the storage of rubbish/recycling storage and clothes drying

f. **introducing a minimum net floor area standard to help ensure than residential units create quality living environments and support individual wellbeing. We suggest 35m2 for studio units, 45m2 for 1-bedroom units and 55m2 for units 2 bedrooms and over.**

[4] https://environment.govt.nz/assets/Publications/Files/urban-design-protocol-colour.pdf
[5] Kainga Ora Design guidelines are available online at: https://kaingaora.govt.nz/publications/design-guidelines/

62. To better illustrate the implications of the new MRDS provisions in terms of a) interface design controls and b) built envelope and c) yield against the existing Residential provisions of the Councils operative Plan, Council has included two attachments in **Appendix A;**

63. Attachment 1 includes visual schematic of suggested MDRS housing typology modelling comparisons with existing residential zone provisions. Attachment 2 includes a photographic example of interface outcomes sought through design provisions.

64. Illustrations in Appendix A, Attachment 1 show the permitted MRDS built envelope of typical three storey developments that could occur on a 400m^2, 600m^2 and 2000m^2 lot size.

65. The schematics illustrate the very real risk of repetition and similarity in built form that could occur under a permitted bassline, reducing variety in house type and with the relaxed height to boundary standards the openness about a site. These schematics raise concerns about the quality of the built environment in which future occupants might live as opposed to quantity,

66. The second imagery focuses on specific front interface issues highlighted above that under a permitted MDRA would only be achieved voluntarily by the developer. In order to achieve better outcomes in how new buildings face the street and interact within the wider surrounds in which they are located, council require some ability to negotiate or at a minimum prescribe interface controls that will improve street orientation and visual appearance and front yard landscaping.

67. The final images or photographs included in Attachment 2 show very clearly real examples of poor streetscape outcomes, when there is little or no ability to influence the design of the front unit, the design of the front yard, the landscaping, and the location of vehicle parking. This is compared to pictures which show successful outcomes often the result of successful negotiation by council design staff having a degree of ability to negotiate improved outcomes given the not excessive design standards in the councils existing plan.

68. All of these things are not new and are well established key design considerations of the NZ urban design protocol developed by MfE of which Council is a signatory and has invested significant time and education with the development community to accept.

69. Additional to the suggested standards identified above, implementing the NPS UD will require that new standards which apply to permitted activities are developed. These will be needed to manage qualifying matters, such as natural hazards, or where financial contributions are required.

Consenting

70. **The Council requests that the Government provide guidance on how local authorities are to consider the MDRS from gazettal of the Bill in late 2021, until their inclusion in district plans.** While the Bill states the MDRS have no effect until incorporated into the relevant proposed plan (clause 77J(5)), this does not address the fact that developers will approach local authorities to undertake development to this scale as permitted, knowing that the standards will apply in the near future and will have legal effect from the notification of the plan change.

71. No objectives and policies are provided to create a framework for breaches of the rules standards to be considered in the resource consent process. Schedule 3A, Clause 8 states that territorial authorities are required to draft these objectives and policies. To date territorial authorities are not

privy to the intent of each standard which makes it difficult and ineffective to develop policy for. For example, is the intention of the impervious area standard to achieve hydraulic neutrality or not? **The Council considers the Ministry needs to draft these provisions to ensure clarity.**

Recession Planes

72. The proposed Recession Planes in the MDRS are significantly higher than any of the Recession Planes in the existing Tier 1 territorial authorities' district plans - in most cases they are double what is allowed in the existing district plans. This will have a significant negative impact on the shading of neighbouring properties.

73. Hamilton already has a permissive framework for its Central City where a different level of amenity in terms of a 'central city' environment is to be expected but the proposed MRDS approach to height to boundary rules and recession planes adopts a one size fits all approach across the city which does not reflect the nuances of different urban environments, their natural environments and spaciousness.

Common wall

74. Design testing shows allowance for common walls on adjacent development sites would allow for a continuous building to be established from the depth of the site (sausage blocks). Removing this clause would create breaks in the row of units to allow some access to sunlight, view shafts and opportunities for service access. **Council suggest an alternative would be a limit on built form continuous length or a requirement for a building to be stepped over a particular length.**

Growth approach and infrastructure constraints

75. Hamilton city has significant three waters infrastructure issues. Many parts of the city are at or nearing capacity and we need to make efficient use of the network. The Council is likely to need to stage investment in the network to address both present challenges and future demand from growth in a way that ensures affordability while also increasing resilience to natural hazards and climate change.

76. The planning rules outlined in the Bill will undoubtedly result in a significant increase in plan enabled capacity to support housing intensification. To date Hamilton has managed to maintain a 50/50 split between greenfield and infill growth. The City's infrastructure however was not designed to support the full realization of the current infill plan enabled capacity, never mind the increased densities being anticipated under the NPS-UD and now the citywide ramifications of the MRDS contained within the proposed Bill.

77. There are already significant un-funded infrastructure investments needed in the life of the Council's 30 Year infrastructure strategy to enable further infill / intensification to support the current plan enabled capacity.

78. The Strategy summarises the increasing challenge arising from:

    I. Increasing compliance, capacity and resilience costs to deliver infrastructure
    II. Legislative requirements to enable growth
    III. Increasing requirements and expectations relating to climate change
    IV. Increasing requirements and expectations for mode shift

79. Hamilton and its Futureproof partners have not been reticent in planning for growth. Together we have spearheaded spatial planning for growth at a regional scale, and further with our Auckland neighbour's through the extensive Metro Spatial Plan work of which central government has been a partner.

80. To date Hamilton has taken a well-planned and rationale approach to growth and strategic infrastructure planning with its partners to ensure we provide for the wellbeing of our Hamilton community whilst seeking to protect the Awa and managing financial constraints.

81. This Bill shifts the bar again for Councils effectively enabling the tripling (or more) of planned densities throughout the existing city. These changes are also being imposed despite Hamilton's Housing and Building Capacity Assessment (HBA) demonstrating the additional NPS-UD and Bill measures are not required to meet current planned growth.

82. Council has significant concerns that the proposed permitted baseline established by this Bill, creating plan enabled capacity with minimalist planning controls, will create a conflict with:

    I. The central ethos of the NPS-UD and the recently released Government Position Statement on Housing and Urban Development (GPS-HUD), which is to create liveable communities and well-functioning urban environments.

    II. Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato River established through the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 which is the the primary direction-setting document for the Waikato River and its catchments and requires that the health and wellbeing of the Waikato and Waipā Rivers is to be restored and protected for current and future generations. It is particularly noted that in the event of any inconsistency or conflict, Te Ture Whaimana o Te Awa o Waikato prevails over any national policy statement or New Zealand Coastal Policy Statement

    III. Te Mana o te Wai as per the NPS -FW to ensure that when managing freshwater, the health and well-being of the water is protected and human health needs are provided for before enabling other uses of water.

83. Conflicts arise because the Bill does not explicitly provide for, or even acknowledge, the need to ensure adequate three waters and transport infrastructure is planned or provided for before enabling ad-hoc city-wide development at a density that is orders of magnitude above anything previously planned for.

84. The Ministry for the Environment's Regulatory Impact Statement (RIS), Section1, paragraph 4 correctly identifies inadequate infrastructure capacity as a key contributor why the country is not seeing development at a scale or pace needed to address our collective housing issues. Paragraph 5 identifies that removing planning constraints alone will not increase supply. The Council agrees with this identified tension and disconnect but highlights that the proposal does not contribute to resolving it but makes it worse.

85. Council notes acknowledgement in the RIS, paragraph 11;

    'To realise development, these measures will require significant council investment in infrastructure in some places. As noted, these measures will not address the infrastructure funding and financing

constraints which councils face and could bring forward pressures on councils to address these constraints, either through reprioritising spending or investigating alternative funding and financing mechanisms'.

86. The RIS (on pages 29 and 33) has significantly understated the prevalence and capacity of existing infrastructure, and real and practical challenges of managing the programming and sequencing of the required upgrading of infrastructure within existing areas in response to the additional capacity likely enabled by the proposed MDRZ standards. The RIS also erroneously assumes that all infill/inner city suburbs are "often well serviced" by infrastructure, the inverse is often the case for older parts of cities.

87. Council disagrees with the overly simplistic and underplayed statement on infrastructure in Para 120;

'Impacts from the MDRZ are expected to be manageable in the short to medium term, as poorer housing stock, predominantly in inner city suburbs, is replaced gradually. These areas are as often well serviced by infrastructure and councils have the ability to signal when infrastructure capacity will be increased. Developers can be required to contribute to the costs of infrastructure upgrades required to enable the development'.

88. Council is still understanding the implications of the NPS-UD, and for mid-sized cities like Hamilton, application of the NPS-UD largely rests on the more discretionary aspects of the statement contained with the now amended – Policy 3d. That work has only just started.

89. Inner city areas are not necessarily well served with existing infrastructure. In fact, in most cases infrastructure is built for historical patterns of development, with limited capacity for growth. Inner city development where older single housing is replaced by 3 units may not occur gradually, or necessarily in a scattered pattern. Redevelopment could be fast in some areas, and in substantial amounts. Monitoring of this risk and responding to failures in a reactionary manner is not a sustainable or responsible management response.

90. Upgraded capacity for an area the size of just the central city essentially means replacement of infrastructure, not small-scale local network upgrades. Council can only recoup a small portion of these costs from new development. The bulk of costs will likely fall on current ratepayers.

91. Failure to ensure the nature, location and timing of intensification of the scale promoted by the NPS-UD and this Bill is aligned with necessary new and/or upgraded strategic and local infrastructure will lead to adverse environment, cultural and public health effects from, for example, increasing wastewater overflows and increasing volumes of untreated stormwater, and water pressure issues compromising fire-fighting supply. This fails to ensure Council is giving effect to Te Ture Whaimana o Te Awa o Waikato, Te Mana o te Wai, and is not an indication of a liveable community and well-functioning urban environment.

92. For Hamilton all municipal potable water abstraction, wastewater discharge and stormwater discharges are to or from the Waikato River. While Council currently holds consents for these activities from the Waikato Regional Council any increase in use of the river or increase in discharge characteristics from the wastewater plant would be challenging particularly in the future given the finite nature of the resource.

93. The Bill fails to recognize the need for Council itself to ensure it is compliant with its own consents which are linked to ensuring adequate infrastructure but also finite capacity of the Waikato's natural resources. Council is already feeling the compliance repercussions arising from the increasing stress on its networks and the very real threat of prosecution for wastewater overflows

94. Council (and likely other Tier 1 Councils) is unable to fund the scale of infrastructure required to meet these new density expectations whilst still complying with its financial strategy set out in its 10 Year-plan. A prudent financial strategy being an obligation placed upon them under the LGA. Even before the Government began imposing further obligations on Tier 1 Councils to enable more housing (through the NPS-UDC and now NPS-UD) Councils have advocated for additional funding tools from Government to enable Council's to deliver on these new requirements.

95. Significant work will be required to effectively redesign the entire city's infrastructure network. Initial cost estimates using broad land use, engineering and construction assumptions were prepared to inform Council's applications for the first phase of the Housing Acceleration Fund / Infrastructure Acceleration Fund process.

96. Before the Bill's MDRS proposals, for the Area Plan and Central City work currently underway by Council which was looking to stage intensification in response to the NPS-UD, covering only about 15% of the City, the scale of unfunded costs exceeds $3.5b. These costs also do not include new or upgraded water or wastewater treatment plants, ongoing operational costs, or the further investment needed to secure additional water allocation/system resilience or to support increased discharge of treated wastewater.

97. Whilst HCC undoubtedly benefited from Government funding opportunities such as the Housing Infrastructure Fund, and potentially the Infrastructure Acceleration Fund, these are effectively ad-hoc, random and outcome uncertain invitations to compete with other Councils for funding. These initiatives are not a substitute for a proper funding toolbox.

98. Better funding options are needed to enable high growth Council's to appropriately and sustainably plan and deliver the infrastructure needed to support growth and to avoid unacceptable adverse effects on the environment.

99. It is noted that the Bill includes financial contributions as funding mechanism, but this simply codifies an existing tool which has significant deficiencies and indeed has been the subject of proposals to be removed from the Act. The current financial contribution approach is ad-hoc and reactionary. It is an ineffective method to rely upon for funding significant lead infrastructure investment programmes needed to support the scale of growth experienced by Tier 1 Councils and these new density expectations.

100. Ad-hoc, reactionary 'patching' of existing infrastructure to deal with incremental growth demands is not a sustainable approach. Proper infrastructure planning involves understanding and setting a strategic approach for supporting the maximum probable development (city-full) based on what the District Plan enables and other spatial planning, then working back in intervals to match infrastructure delivery to growth. In this way the overall infrastructure programme is aligned with growth, integrated with landuse planning, and works towards a properly planned, fit-for-purpose city-full network.

101. The proposed Bill and blanket MDRS approach will encourage reactionary development-by-development approaches to patch infrastructure creates a failure-before-fix situation risking

adverse environmental effects. It also has the real potential to result in wasted infrastructure investment, for example with pipework ends up being replaced multiple times, before coming close to its end-of-life, to incrementally increase capacity.

102. The timeframes in the Bill itself provides little to no opportunity for robust infrastructure planning to even occur, never mind dealing with actual implementation / construction within an existing urban environment with an existing community that will continue to need water, wastewater, stormwater and transportation services, including the lead-in times necessary for the scale of infrastructure works required. This in itself represents poor integration between land use and infrastructure decisions, with the environment and existing community facing the repercussions.

103. **Council also highlight that the Draft New Zealand Infrastructure Strategy is at odds with the Bill's Provisions**. Page 12 of the Draft New Zealand Infrastructure Strategy (Rautaki Hanganga o Aotearoa) [6]states that *"The Strategy is focused on five objectives to achieve a thriving New Zealand. Based on the infrastructure challenge, we have developed five strategic objectives. These are the things we need to do as a nation to achieve the vision of a thriving New Zealand".*

The Draft Strategy's five objectives are:

I. Enabling a net-zero carbon Aotearoa through greater development of clean energy and reducing the carbon emissions from infrastructure.
II. Supporting towns and regions to flourish through better physical and digital connectivity and freight and supply chains.
III. Building attractive and inclusive cities that respond to population growth, unaffordable housing and traffic congestion through better long-term planning, pricing and good public transport.
IV. Strengthening resilience to shocks and stresses by taking a coordinated and planned approach to risks based on good quality information.
V. Moving to a circular economy by setting a national direction for waste, managing pressure on landfills and waste recovery infrastructure and developing waste-to-energy options.

104. Council suggest that the Bill's provisions around increased housing density, and the likely negative impact and challenges this will have on the role of councils in ensuring positive urban design and amenity outcomes for our largest urban areas, are clearly at odds with;

- Objective 3 of the Draft Strategy i.e., Building attractive and inclusive cities that respond to population growth, unaffordable housing and traffic congestion through better long term planning, pricing and good public transport.

- Objective 4 (Strengthening resilience to shocks and stresses by taking a *coordinated and planned approach* to risks based on good quality information)

105. Objective 4 in particular is clearly in conflict with the RIS for the Bill. As noted previously, the RIS lacks any meaningful consultation with local government, iwi and the wider community to underpin the Bill.

[6] Overview, P.12. Rautaki Hanganga o Aotearoa 23rd September 2021

106. In summary, the Bill in the current form inadequately recognises the role that infrastructure plays in supporting growth (three waters, transport and community infrastructure), and will create an irreconcilable conflict with the intent of other national directives, including the higher order Te Ture Whaimana o Te Awa o Waikato.

107. **Council strongly recommend if the intent of the Bill to enable more housing is to proceed then the following will be required:**

i. Government support that enables councils to take a coordinated approach to infrastructure planning and delivery, within identified areas.

ii. Explicitly allow for Councils to plan, stage and sequence land use changes to align with the delivery of infrastructure necessary to avoid adverse effects on the environment including recognising the need for that infrastructure to align with a strategic, city-full infrastructure network

iii. This focussed approach provides Council with a framework that:

a. promotes more efficient use of existing infrastructure and identifies and guides the priority, location and funding of future physical and social infrastructure services (e.g. open space, water and wastewater services, transport, recreation and community facilities);
b. promotes a compact urban form by encouraging optimal use and development of land (eg, supports comprehensive and intensive redevelopment of sites, rather than small scale patchwork development); and
c. supports reducing carbon emissions and avoiding car dependent communities.

iv. Ensure Council can control and/or limit development where it would otherwise lead to non-compliance with its Regional abstraction and discharge consents

v. Allow for Councils to apply additional on-lot controls necessary to assist with managing the environmental impacts of growth, for example requiring water sensitive devices.

vi. Rethink the timeframes for when this Bill would come into force when Council's NPS-UD HBA demonstrates sufficient short and medium term supply for growth in order to allow proper infrastructure planning, staging, and funding work to be completed through existing currently underway (Future Proof) and planned growth strategies (Hamilton Urban Growth Strategy)

vii. Urgently consider and provide additional funding tools to allow Councils to accelerate the delivery of infrastructure to support additional plan enabled capacity.

Intensification Streamlined Planning Process (ISPP)

108. The Council strongly supports the proposal to expedite the implementation of the intensification policies of the NPS-UD through the new ISPP. The Council had already planned to notify a proposed district plan that implements the NPS-UD by August 2022.

109. The Council agrees that the absence of an appeals process in the ISPP will help to expedite the realisation of development under the intensification policies of the NPS-UD, as well as having legal effect from the notification of the instrument.

110. Clause 80G(a) limits territorial authorities to notifying only one intensification planning instrument (and therefore to use the ISPP).

111. The Council however are very concerned that the MfE regulatory impact statement significantly underplays the complexities of introducing the ISPP and subsequent implications for the *status of* qualifying matters that are not already scheduled within an Operative District Plan, for example new Significant Natural Areas (SNAs) or heritage buildings. This will be elaborated further in the Qualifying Mater section below.

112. **The Council requests this be amended to allow the ISPP to be used on an ongoing basis for the implementation of Policy 3 of the NPS-UD which will enable more time for application of Policy 3d) assessment citywide with existing growth strategy work.**

113. It would frustrate the intent of the Bill and the Government's desire to realise the implementation of the NPS-UD sooner if plan changes that implement Policy 3 of the NPS-UD after 20 August 2022 are not able to utilise the ISPP process. Needing to follow an RMA Schedule 1 process would delay implementation and is highly likely to result in appeals on similar aspects of the Plan.

114. **The Council requests that the Ministry examine the drafting of the definition of 'other intensification policies' in clause 77E which refers to policies 3(c) and (d) as it applies to 'urban non-residential zones'.**

115. This drafting creates uncertainty whether rezoning of all residential areas within the walkable catchments of the areas specified in policy 3(c) and subject to policy 3(d) of the NPS-UD are to be progressed through the ISPP. The Council understands the Government's intention is that densification of these residential areas is to be progressed in the intensification planning instrument. This needs to be more clearly articulated in the drafting of the Bill.

116. **Similarly, the Council requests implementation guidance is produced as soon as possible to clarify the scope of provisions in a district plan that are to be progressed through the intensification planning instrument and accordingly the ISPP.** The integrated manner in which district plans are drafted do not lend to provisions being clearly 'carved out' in a straightforward manner. For example:

    a. are earthworks and subdivision provisions developed to enable development under the intensification policies of the NPS-UD part of the instrument?
    b. are significant natural area or new historic heritage area provisions included as they are a qualifying matter under the NPS-UD?

117. It is critical this guidance is provided as soon as possible given the significant task that councils have ahead of them to identifying the relevant provisions and consider the best way to proceed with a review of their plans. Furthermore, as provisions will have different legal weighing due to the ISPP, guidance will need to be available for plan users and the community.

118. While supportive of the ISPP, the Council is concerned that the Ministry is not resourced to make directions on all Tier 1 Plans within a timely manner should the Minister choose to exercise the

powers under clause 80I. Furthermore, this Council question whether Environment Court is the better avenue for decision-making on the Intensification Plan Change material that is disputed by councils.

119. The Council identifies a drafting error that refers to 'community centres' in the amended Policy 3(d) of the NPS-UD (see Schedule 3B), instead of 'community services'. **The Council suggests that this clause also refer to commensurate to access to public transport services.**

Schedule 3, New Part 4 Transitional provisions

120. The timing of this Bill has also presented challenges for any Council that have their notified plan changes or are constructively working with live private plan changes, with the likelihood of, if passed having to delay/withdraw plan changes that are likely to be affected.

121. This will have the unintended consequence of stalling supply of land for residential development in specific cases – an outcome at odds with the intent of the Bill. Not to mention the significant investment in time, financial and community engagement that has gone into the existing plan change process.

122. The imposed timeframes in Schedule 3, New Part 4, Sec 31 of the Bill directly impact upon the timely delivery of Hamilton's most significant strategic growth cell for the city, Peacocke.

123. Peacocke came into the Hamilton City Boundaries in 1989 however development of the area was only recently enabled through the Housing Infrastructure Fund (HIF) where Council received $180.3m from Central Government for strategic waters and transport infrastructure, alongside $110.1m funding from Waka Kotahi NZTA. The delivery of the HIF infrastructure programme commenced in 2018 and is currently on track for completion in 2024.

124. Development interest is high in the Peacocke area with current consent applications and pre-application discussions indicating development intentions for 3000 homes in the short-medium term. Many developers are intending on having their first homes consented and construction commencing from mid-2023.

125. Key enabling HIF infrastructure projects such as the bridge and wastewater pumpstation and connections will be completed in mid-2023 which is when further housing development activity is expected to commence. Much therefore depends on the timely progress of the current plan change Schedule 1 process.

126. Council has publicly notified a comprehensive plan change for the Peacocke Growth area on 24 September 2021 (**Plan Change 5**). The submission period closed on 5 November 2021. 57 submissions have been received. Following a further submission period which will conclude in early 2022, it is expected that the hearing into submissions on Plan Change 5 will be held between 1 May and 30 July 2022.

127. Based on these timeframes, under Schedule 3 of the Bill, New Part 4 section 31(2) and (3) , Council will be required to withdraw Plan Change 5. This outcome will delay the provision of housing in Peacocke and seriously undermine Councils work programme. It will lead to inefficiencies, delay and unnecessary duplication of planning processes.

128. To accommodate the Bill, Council has lodged a submission to Plan Change 5 seeking to amend it as necessary to give effect to the final form of the Bill once enacted.

129. However, it is essential that the timeframe of 20 February 2022 set out in section 31(2)(b), which is time the hearing of any plan change must be completed, **must not** apply to Plan Change 5. **Council requests that there be a specific 'carve out for Plan change 5, or alternatively, that the 20 February date be extended to 31 July 2022.**

130. More broadly, it is likely that other Councils are in a similar position. In addition to the specific relief in terms of Plan Change 5, to address this wider issue - **Council proposes that the Bill provides an avenue for current notified plan changes to continue on their current First Schedule trajectory and be amended so that the withdrawal of plan changes is not required, but rather a process should be enabled that plan changes can be automatically updated to incorporate the MDRS.** This will avoid any perverse outcome of slowing down the supply of housing that would result from the withdrawal plan changes delivering significant strategic growth cells for the city.

Qualifying matters – Significant Natural Areas and Historic Heritage

131. The implications for Vision and Strategy, Te Ture Whaimana te tui as a qualifying matter has already been addressed in **Part A** of this submission on behalf of the Future Proof Partnership and will not be relitigated in this section of the submission.

132. It is however noted that within the timeframes proposed by the Bill, it will be difficult to assess through section 77H Evaluation Requirements whether any intensification plan change is consistent with Te Ture Whaimana, and to undertake an assessment as to whether there should be areas excluded from the MDRS on the basis of Te Ture Whaimana as a qualifying matter.

133. The intensification streamlined planning process, scope of this process, and status of qualifying matters that are not already scheduled within an Operative District Plan, for example new Significant Natural Areas (SNA) and future scheduled Heritage items, is unclear.

134. It is expected that work well underway by Council to identify new SNA, that are yet to be scheduled in the district plan through a First Schedule plan change process, will justify limited application of intensification requirements under Section 77H of the Bill for implantation of MDRS or Policy 3 NPS-UD criteria on certain residential properties, as a qualifying matter.

135. However, it is unclear in the Bill the degree to which the ISPP process has scope to consider the newly identified qualifying matters and whether the ISPP process would involve an examination of expert technical assessments undertaken, and / or confirmation of new scheduled items.

136. Council assumes that for newly identified s6(c) matters, such as SNA or scheduled heritage building, a concurrent First Schedule plan change will be required for these to be scheduled in the ODP. The concern is that having two processes considering the same technical inputs may result in misalignment, duplication or undermining of process, particularly where appeals may be received on the First Schedule plan change on matters that have informed decisions through the ISPP.

137. When applying the medium density residential standards (MDRS) to the existing ODP residential zones Council must now modify all existing relevant residential zones in an urban environment (new Section 77F).

138. Council to date, has not been focused on considering that the existing scheduled heritage items or Heritage Areas in the ODP that either need to be included into the plan change or modified. That approach may now, due to the Bill, be problematic. AND if fact all citywide features that affect the application of the MDRS must now be reviewed and either removed or assessed as being a qualifying matter.

139. Key points Council wish to raise in interpretation of the Bill in so far as they relate to Heritage are as follows;

i. the existing structure of the ODP's residential zones and applicable citywide rules need a full reassessment or through the ISPP will be able to be challenged.

ii. The subtle language changes between those from the 2020 NPS-UD qualifying matters (clause 3.32) and the proposed Bill (new sections 77G, H & I and 77N) seem to have eroded that clarity of how applicable qualifying matters actually are.

iii. Proposed Section 77H(2)(a) in the Bill now requires councils to apply a higher test to demonstrate why there is the need to "make an allowance" for a qualifying matter –meaning existing/scheduled items/sites and those proposed to be implemented via a plan change process could be challenged.

iv. As Historic Heritage under Section 6(f) RMA is for the protection of historic heritage from inappropriate subdivision, use, and development. The wording in the Bill seems to guild that as a 'S6 matter' this does not trigger the need for a 'site specific' assessment (whereas under 'Other Matters' it will require a site-specific assessment). Nevertheless, it is unclear if the intent that Historic Heritage is considered an item on a site or if it also covers Historic Heritage Areas?

140. **Given the uncertainty above, council seeks that further and greater consideration be given to scope of the ISPP and alignment with other plan changes where required to recognise and provide for the matters of national importance outlined in s6(c).**

Housing and Business Assessment

141. It is disappointing the Ministry for the Environment's Regulatory Impact Statement (RIS) does not take into consideration the recently submitted HBA'S of Tier 1 councils in its assessment of its MDRA and capacity options as they apply to individual councils.

142. Hamilton's HBA[7] has recently received draft feedback and assessment from MfE in which it shows that it is already currently meeting its short- and medium-term sufficiency in housing land capacity which includes the Demand + margin' of demand based on the University of Waikato April 2021 projection (high-series) and an additional margin of feasible capacity, over and above the projected demand, of at least 20% in the short and medium term.

143. MfE's own commentary on Council's HBA advises that it provides detailed tables outlining sufficiency by area, over short, medium and long terms. This is further disaggregated where this capacity will be released from existing estates, existing urban area, greenfield and additional future developments.

[7] Table 8.1-2, Future Proof Housing and Business Assessment, 2021

144. Given the above surplus capacity already enabled under the existing HBA plan enabled requirements it is considered premature to bring forward the MDRS citywide. **Council request that evaluative recognition be given to the additional existing Tier 1 HBA capacity that will be brought forward quicker through the proposed ISPP.**

Financial Contributions

145. Hamilton City Council supports the introduction of new and efficient mechanisms to fund infrastructure to service growth, particularly in brownfield areas. This supports Hamilton City Council's strategic direction and NPS-UD.

146. **Council request clarification as to the method for determining Financial Contributions (FCs) and the purpose for which they can be required.**

147. To be useful, these FCs need to not offset or reduce Council's current ability to recover Development Contributions (DCs).

148. We note that DCs are typically insufficient to cover the cost of required growth infrastructure in brownfield areas.

149. **Council request that FC rule(s) should have legal effect from the same time as when the Medium Density Residential Standards have legal effect.**

150. Hamilton City Council will be investigating and pursuing the option of expanding its use of FCs as proposed in the Bill.

Other matters

151. The housing system in complex and it is simplistic to assume it just resolved through a regulatory consenting fix proposed in the Bill. The building and construction sector faces serious resourcing and supply issues that pose risks to realisation of the outcomes of the NPS-UD and the Bill.

152. **The Council requests the Government take a whole of housing systems approach and continue to take steps to address labour shortages and issues with the supply and costs of building materials.**

FURTHER INFORMATION AND HEARINGS

Should Parliament's Environment Select Committee require clarification of this submission from Hamilton City Council and the Future Proof Partners, or additional information, please contact **Paul Bowman** (Team Leader, City Planning), phone 07 838 6520 or 027 808 2806, email paul.bowman@hcc.govt.nz in the first instance.

Hamilton City Council and the Future Proof Partners **do wish to speak** at the Environment Committee hearings in support of this submission.

Yours faithfully

Lance Vervoort
CHIEF EXECUTIVE

Visual Schematic for Development Scenario under Medium Density Residential Standards

Prepared as part of Hamilton City Council Submission to the Resource Management (Enabling Housing Supply And Other Matters) Amendment Bill

MDRS – 400m² lot

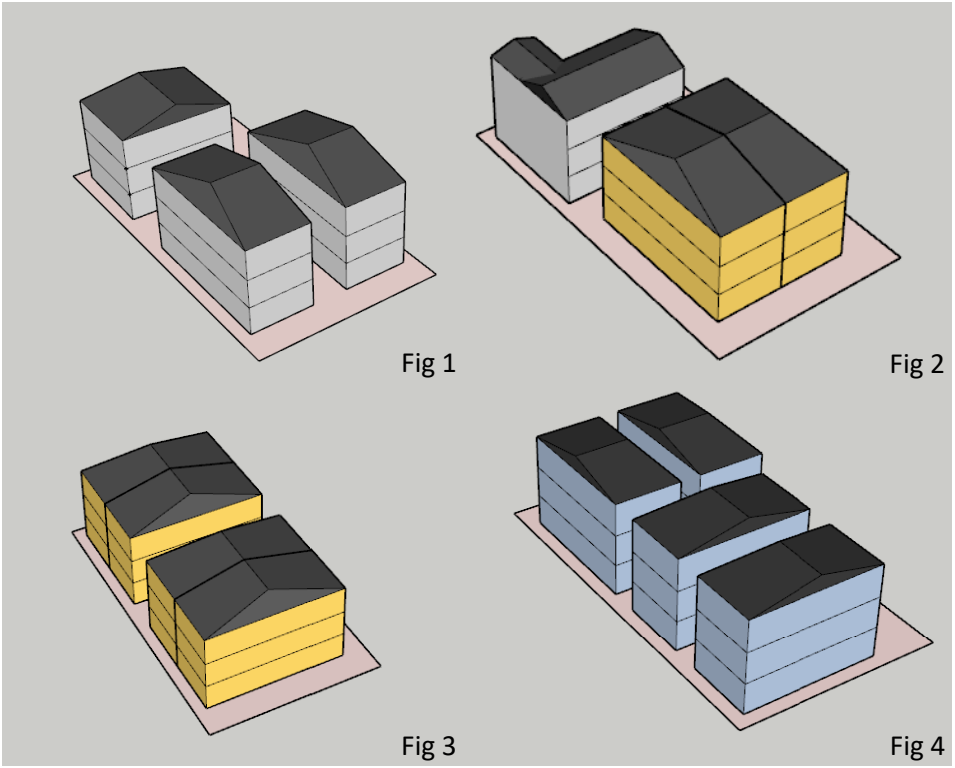
- Without pre-subdivision or concurrent subdivision, as a permitted activity, the site can potentially be developed:
  - Three detached dwellings (Fig 1);
  - One detached dwelling and one duplex dwelling (2x residential units) (Fig 2);

- If choose to subdivide the subject site into 2 lots (2x200m²), then develop one duplex dwelling on each lot as permitted activity then overall will result in four residential units (Fig 3).

- If choose to develop three storey walk-up apartment, it is possible to firstly subdivide the site into 4 lots (4x100m²), then construct one apartment building with three residential units on each lot. This will give a total of 12 units (Fig 4)

- There is no control or standard encouraging development variety.

- There is no control or standard in relation to residential unit sizes or habitable room sizes. These units can be as small as 50m² (see Table below)



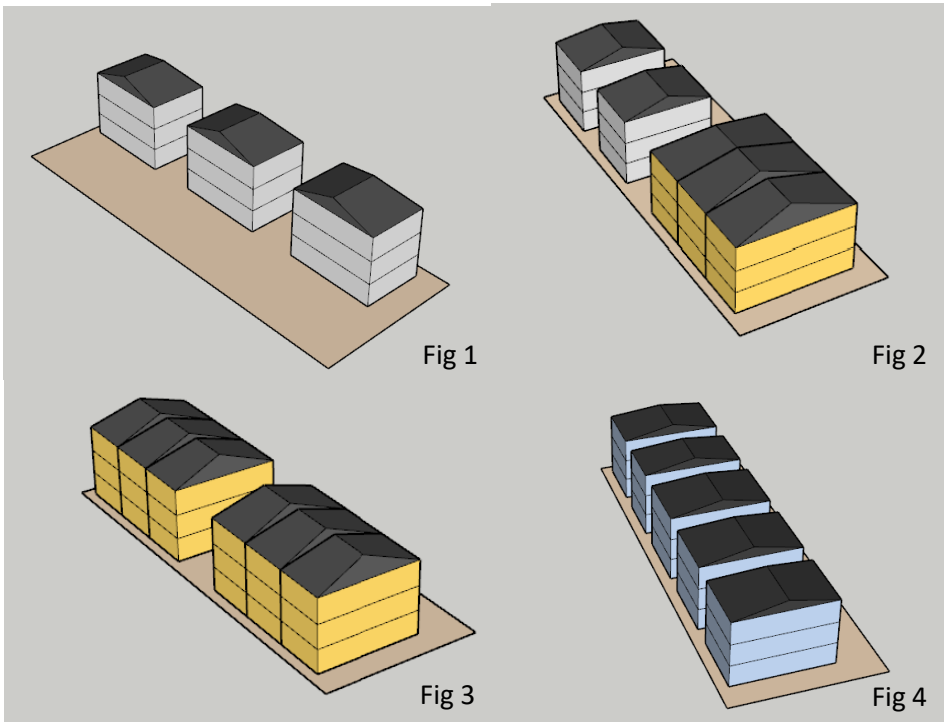
MDRS
Min allotment size: n/a
Max site coverage: 50%
Max building height: 11m or 3 storey
HIRB: 6m+5deg;
Min setback (front): 2.5m
Min setback (others): 1m

Typology	Dimension (L x W x H)	GFA (each residential unit)
Detached Dwelling	9m x 7m x 8.5m	63m² x 3 = 189m²
Duplexes	12m x 5m x 8.5m 12m x 10m x 8.5m	60m² x 3 = 180m²
Apartment	10m x 5m x 8.5m	10m x 5m = 50m²

Notes and Assumptions:
- Grey building represents single detached dwelling
- Yellow building represents duplex dwellings and/or townhouses
- Blue building represents 3 storey walk-up apartment buildings
- Average storey height assumes as 2.3m
- Residential unit width assumes no less than 5m as general design practice
- Noting that without the requirement of providing car park onsite, access way can be reduced which then to maximise the developable areas.

MDRS – 600m^2 lot

- Without pre-subdivision or concurrent subdivision, as a permitted activity, the site can potentially be developed with three detached dwellings (Fig 1).
- If choose to subdivide the subject site into 2 lots (2 x 300m2), then develop one townhouse (3x residential units) on one lot and develop two detached dwellings on another, both as permitted activity then overall will result in five residential units (Fig 2).
- If choose to subdivide the subject site into 2 lots (2 x 300m2), then develop one townhouse (3x residential units) on each lot as permitted activity then overall will result in six residential units (Fig 3).
- If choose to develop three storey walk-up apartment, it is possible to firstly subdivide the site into 5- 6 lots (5x120m2 or 6x100m2), then construct one apartment building with three residential units on each lot. This will give a total of 15 - 18 units (Fig 4).
- There is no control or standard encouraging development variety.
- There is no control or standard in relation to residential unit sizes or habitable room sizes. These units can be as small as 50m^2 (see Table below)



MDRS
Min allotment size: n/a
Max site coverage: 50%
Max building height: 11m or 3 storey
HIRB: 6m+5deg;
Min setback (front): 2.5m
Min setback (others): 1m

Typology	Dimension (L x W x H)	GFA (each residential unit)
Detached Dwelling	9m x 6m x 8.5m	54m^2 x 3 = 162m^2
Duplexes	10m x 5m x 8.5m 10m x 10m x 8.5m	50m^2 x 3 = 150m^2
Apartment	10m x 6m x 8.5m	10m x 6m = 60m^2

Notes and Assumptions:
- Grey building represents single detached dwelling
- Yellow building represents duplex dwellings and/or townhouses
- Blue building represents 3 storey walk-up apartment buildings
- Average storey height assumes as 2.3m
- Residential unit width assumes no less than 5m as general design practice
- Noting that without the requirement of providing car park onsite, access way can be reduced which then to maximise the developable areas.

MDRS – 2000m^2 lot

- Given the lot size, to maximise the potential of the site, it is unlikely the developers would choose to build three residential units without pre-subdivision, as a permitted activity.
- Instead of undertaking an integrated development approach, to avoid the need of resource consent process, it is likely people will subdivide the site into smaller lots then construct up to three dwellings as a permitted activity.
- If choose to develop detached dwellings and townhouses, it is possible to firstly subdivide the site into 6 lots (6x330m^2), then construct a mixture of typologies with two – three residential units on each lot. This will give a total of 16+ units (Fig 1)
- If choose to develop only three storey walk-up apartment, it is possible to firstly subdivide the site into 15 lots (15x130m^2), then construct one apartment building with three residential units on each lot. This will give a total of 45 units (Fig 2).
- There is no standard or control on encouraging the mixture of typologies and an integrated development approach on larger sites.

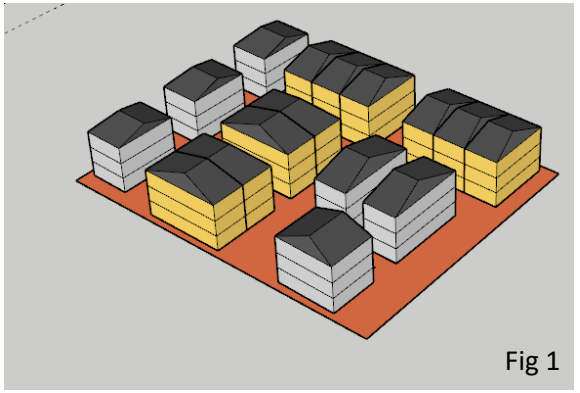


Fig 1

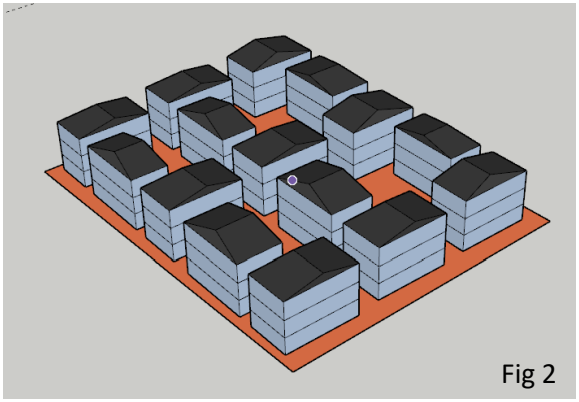


Fig 2

Notes and Assumptions:

- Grey building represents single detached dwelling
- Yellow building represents duplex dwellings and/or townhouses
- Blue building represents 3 storey walk-up apartment buildings
- Average storey height assumes as 2.3m
- Residential unit width assumes no less than 5m as general design practice
- Noting that without the requirement of providing car park onsite, access way can be reduced which then to maximise the developable areas

Potential Residential Block Development under MDRS

- Not limit to either General Residential Zone or Special Character Zone, but applicable to all residential zones (Fig 1).
- No standard or control on having a variety of housing types or having variety of housing designs. There is high possible of having repetitive outcomes. There is a possibility of having more smaller apartment units, instead of having a variety of housing choices.
- There is no control or standard in relation to residential unit sizes or habitable room sizes. The building footprints of these units can be as small as 50m^2.
- Smaller building footprint also leads to greater building heights, which potentially result in the majority of the building heights as 3 storey. This will lead to the lack of variety on building scales.
- MDRS greatly reduce the spatial openness between sites. Privacy and overshadowing will be two obvious concerns:
  - Fig 2 – 21 June 10.30am
  - Fig 3 – 21 December 4pm

Fig 1

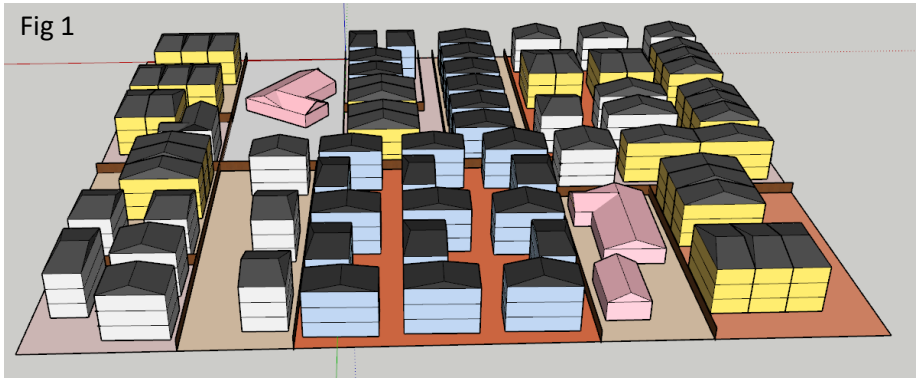


Fig 2

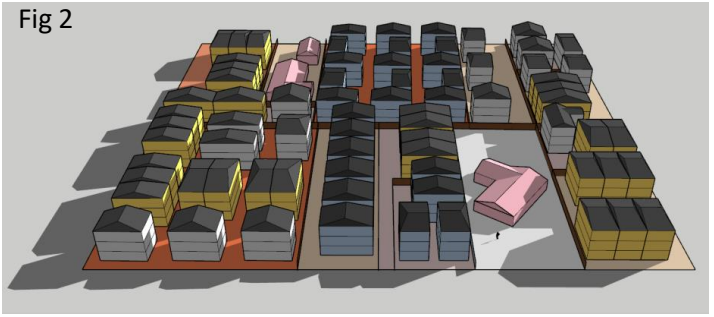
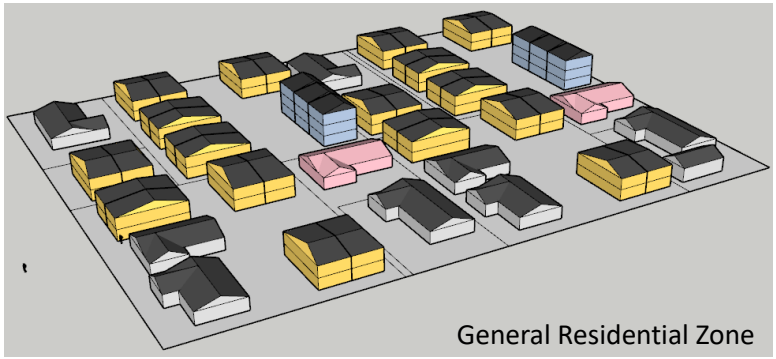


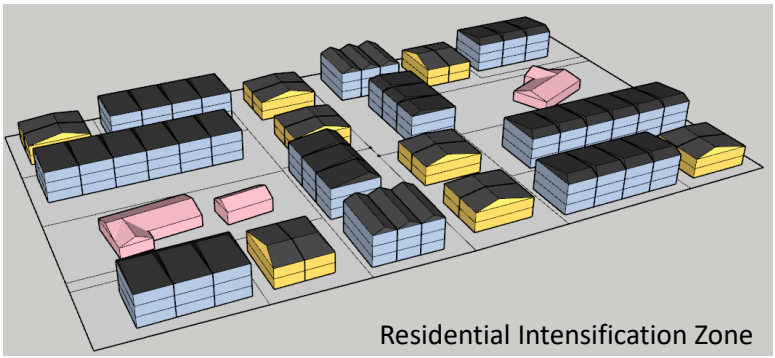
Fig 3

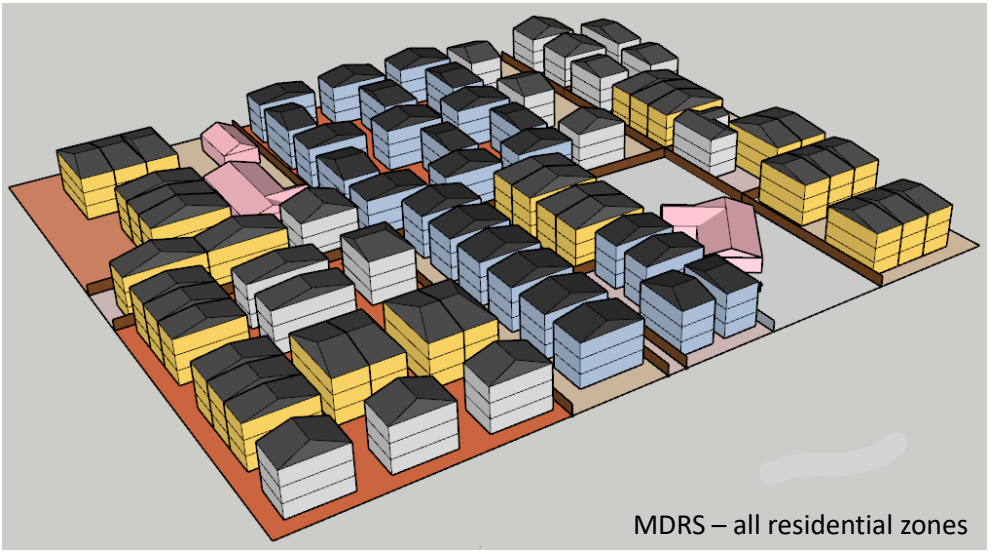
Notes and Assumptions:

- Pink dwelling represents typical existing dwelling
- Grey building represents single detached dwelling and/or ancillary residential unit
- Yellow building represents duplex dwellings and/or townhouse
- Blue building represents walk-up apartment buildings
- Average storey height assumes as 2.3m
- All buildings have been designed to be 3 storey for the purpose of this study
- Residential unit width assumes no less than 5m as general design practice
- Noting that without the requirement of providing car park onsite, access way can be reduced which then to maximise the developable areas

Comparison between General Residential, Residential Intensification and MDRS





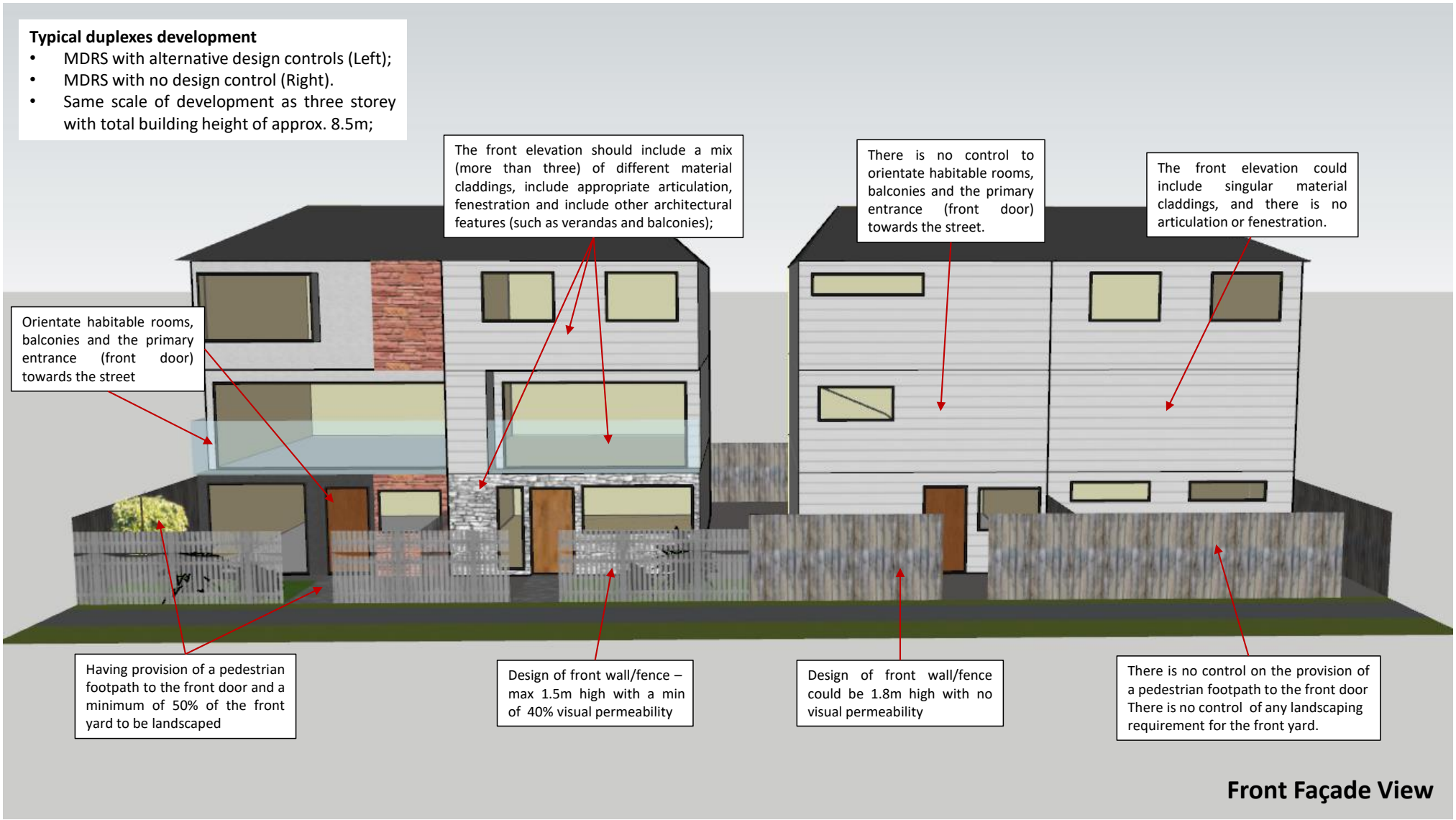


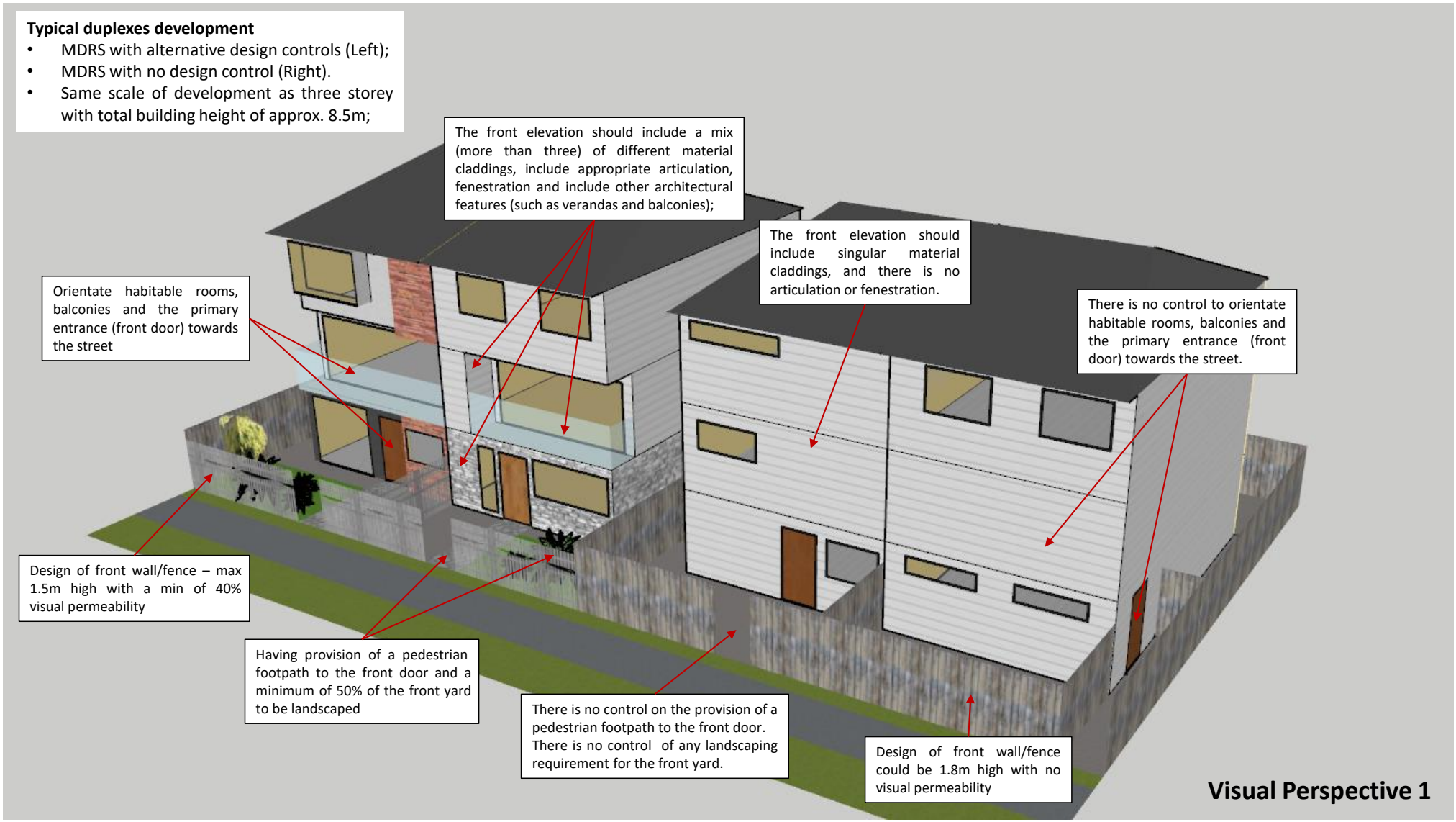
Notes and Assumptions:

- Pink dwelling represents typical existing dwelling
- Grey building represents single detached dwelling and/or ancillary residential unit
- Yellow building represents duplex dwellings and/or townhouse
- Blue building represents walk-up apartment buildings
- Average storey height assumes as 2.3m
- All buildings have been designed to be 3 storey for the purpose of this study
- Residential unit width assumes no less than 5m as general design practice
- Noting that without the requirement of providing car park onsite, access way can be reduced which then to maximise the developable areas

Visual Schematic Comparison between MDRS with design control and MDRS

Prepared as part of Hamilton City Council Submission to the Resource Management (Enabling Housing Supply And Other Matters) Amendment Bill


Typical duplexes development
• MDRS with alternative design controls (Left);
• MDRS with no design control (Right).
• Same scale of development as three storey with total building height of approx. 8.5m;
The front elevation should include a mix (more than three) of different material claddings, include appropriate articulation, fenestration and include other architectural features (such as verandas and balconies);
There is no control to orientate habitable rooms, balconies and the primary entrance (front door) towards the street.
The front elevation could include singular material claddings, and there is no articulation or fenestration.
Orientate habitable rooms, balconies and the primary entrance (front door) towards the street
Having provision of a pedestrian footpath to the front door and a minimum of 50% of the front yard to be landscaped
Design of front wall/fence – max 1.5m high with a min of 40% visual permeability
Design of front wall/fence could be 1.8m high with no visual permeability
There is no control on the provision of a pedestrian footpath to the front door There is no control of any landscaping requirement for the front yard.
Front Façade View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Orientate habitable rooms, balconies and the primary entrance (front door) towards the street
Design of front wall/fence – max 1.5m high with a min of 40% visual permeability
Having provision of a pedestrian footpath to the front door and a minimum of 50% of the front yard to be landscaped
There is no control on the provision of a pedestrian footpath to the front door. There is no control of any landscaping requirement for the front yard.
Design of front wall/fence could be 1.8m high with no visual permeability
Visual Perspective 1


Typical duplexes development
• MDRS with alternative design controls (Left);
• MDRS with no design control (Right).
• Same scale of development as three storey with total building height of approx. 8.5m;
Street Level Perspective

Poor Outcomes

The examples below illustrate poor streetscape outcomes, when there is little or no ability to regulate or influence the design of the front unit, the design of the front yard, the landscaping and the location of vehicles.

Improved Outcomes

The examples below illustrate improved streetscape outcomes that can be achieved by having a relatively simple set of standards relating to the design of the front unit, the design of the front yard and the landscaping.

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Discussion paper

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

27 October 2021

newzealand.govt.nz

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How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on 20 December.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: ***https://www.mbie.govt.nz/have-your-say/economic-regulation-and-consumer-protection-for-three-waters***. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- sending your submission as a Microsoft Word document to ***economicregulation@mbie.govt.nz***.
- mailing your submission to:

  Competition and Consumer Policy
  Building, Resources and Markets
  Ministry of Business, Innovation & Employment
  PO Box 1473
  Wellington 6140
  New Zealand

Please direct any questions that you have in relation to the submissions process to ***economicregulation@mbie.govt.nz***.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on the economic regulation of three waters infrastructure. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

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- provide a separate version excluding the relevant information for publication on our website.

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Contents

List of Acronyms

CGA	Consumer Guarantees Act 1993
DIA	Department of Internal Affairs
ERA	Economic Regulation Authority
ESC	Essential Services Commission
FTA	Fair Trading Act 1986
GPS	Government Policy Statement
LTP	Long Term Plan
MAR	Maximum Allowable Revenue
MBIE	Ministry of Business, Innovation and Employment
RAB	Regulatory Asset Base
WACC	Weighted Average Cost of Capital
WICS	Water Industry Commission for Scotland

Part A - Introduction

1 Purpose and Background

What is the purpose and context for this discussion paper?

1. In July 2020, the Government launched the Three Waters Reform Programme – a three-year programme to reform local government service delivery arrangements for drinking water, wastewater, and stormwater services. Through this reform process, it has become clear that the three waters sector is facing significant challenges and will continue to suffer from a series of challenges without necessary action[1]. In many parts of the country, communities cannot be confident that their drinking water is safe, that the three waters sector is achieving good environmental outcomes, that population and housing growth can be accommodated, and that climate change and natural hazard risks are being successfully managed.

2. The Government considers that the reform programme is necessary to overcome these challenges, and because the strategic environment in which water service providers is changing significantly. Specifically:

    - there is a significant body of evidence that New Zealand's three waters infrastructure is old and increasingly prone to failure, with some estimates putting the national infrastructure deficit between $120 billion and $185 billion over the next 30 years[2]
    - a new drinking water regulatory regime is being introduced to address the failures highlighted in the Government Inquiry into the Havelock North drinking water[3]
    - a large number of wastewater treatment plants are operating on expired consents which need to be renewed in a resource management system that is less likely to compromise on environmental impacts, such as freshwater contamination
    - there is an increasing need to respond to the impacts of climate change and ensure the resilience of water services
    - community demands for water infrastructure to support economic growth, community housing needs, and broader social development are increasing

[1] Department of Internal Affairs. (2021). Transforming the system for delivering three waters services. ***www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/transforming-the-system-for-delivering-three-waters-services-the-case-for-change-and-summary-of-proposals-30-june-2021.pdf***

[2] Water Industry Commission for Scotland. (2021). Economic Analysis of Water Services Aggregation. ***www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/wics-final-report-economic-analysis-of-water-services-aggregation.pdf***

[3] The Hawkes Bay District Health Board was notified of 45 hospitalisations linked to the outbreak. Three people who had confirmed campylobacteriosis died. See: Government Inquiry into Havelock North Drinking Water. (2017) Report of the Havelock North Drinking Water Inquiry: Stage 2.

- a number of councils will struggle to meet the emerging costs outlined above while maintaining affordable three waters services.

3. These developments will bring new challenges and significant costs to a sector that has seen relatively little change over the last 30 years.

What are the Government's objectives from the Three Waters Reform process?

4. The Government's objectives from Three Waters Reform are:

   - significantly improving safety and quality of drinking water services, and the environmental performance of wastewater and stormwater systems
   - ensuring all New Zealanders have equitable access to affordable three waters services
   - improving the coordination of resources and unlocking strategic opportunities to consider New Zealand's infrastructure needs at a larger scale
   - the need to address the impacts of climate change and ensure the resilience of water services
   - moving the supply of three waters services to a more financially sustainable footing, and addressing the affordability and capability challenges faced across the sector and particularly by some small suppliers and councils
   - improving transparency and accountability for the delivery and costs of three waters services, including the ability to benchmark the performance of service suppliers.

What is the Government proposing?

5. The Government's starting intention is to reform local government's three waters services into four multi-regional entities that have the scale and capability to both meet the challenges the three waters sector is facing, and deliver on the Government's reform objectives. Other key features of the reforms include:

   - Purpose – entities will have a statutory purpose statement to provide safe, reliable and efficient water services.[4]

[4] Flowing from this would be high-level objectives relating to: (i) delivering water services, and related infrastructure, in an efficient and financially sustainable manner; (ii) protecting and promoting public health and the environment; (iii) supporting and enabling housing and urban development; (iv) operating in accordance with best commercial and business practices; (v) acting in the best interests of consumers and communities, in the present and for the future; (vi) giving effect to Te Mana o te Wai (to the extent Te Mana o te Wai applies to the duties and functions of the entities); (vii) delivering and managing water services in a sustainable and resilient manner, which seeks to address climate risks and mitigate the negative effects of natural hazards.

- Public ownership – entities must be publicly owned, with mechanisms to recognise Treaty rights and interests and to put in place barriers to future privatisation.
- Statutory asset-owning entities – three waters entities designed and established by legislation that have responsibility for all water infrastructure assets currently owned by local authorities.
- No profit motive – Water Services Entities will not have a profit motive or an ability to pay dividends to shareholders.
- Competency-based boards – entities will have independent professional governance boards.
- Balance sheet separation – entities will be structurally separated from local authorities. This is important to allow the entities to borrow funds in order to make good the required investment deficit without the constraint of local authority balance sheets.

6. As part of the Reform proposals, Cabinet has agreed to recognise and provide for iwi/Māori rights and interests in the Reform with a specific focus on service delivery. It is proposed that iwi/Māori will have a greater role in the new Three Waters system, including pathways for enhanced participation by whānau and hapū as these services relate to their Treaty rights and interests.[5]More information on the wider Three Waters Reform programme can be found at: ***https://www.dia.govt.nz/Three-Waters-Reform-Programme*** and ***https://threewaters.govt.nz/***

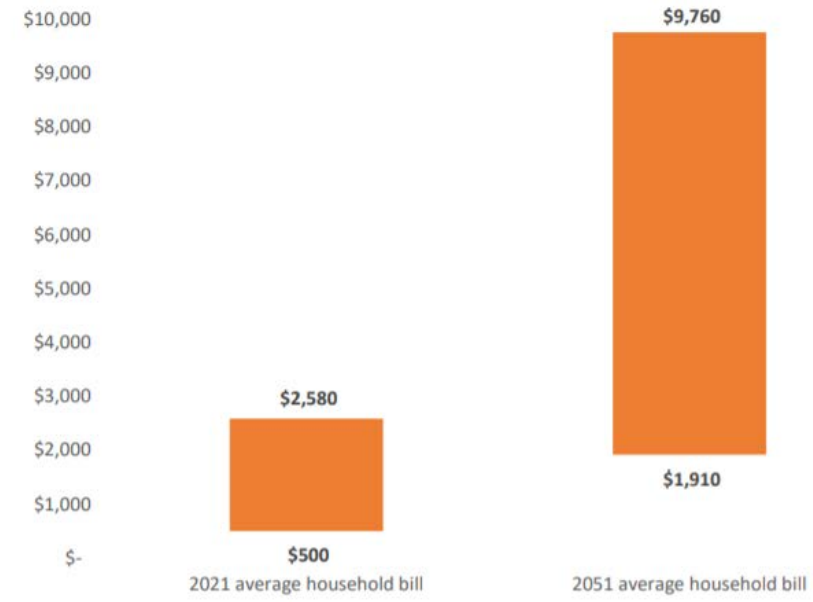
7. Modelling by the Water Industry Commission for Scotland (WICS) suggests that New Zealand faces a significant affordability challenge if we try to address these challenges through the existing service delivery arrangements.

8. In rural local authorities, average annual household costs in 2019 ranged from less than $500 to approximately $2600 with a median of $1300. For some small, rural local authorities, average household costs in 2050 could reach as high as $9,000 in today's dollars and would be unaffordable for many households.

9. For larger provincial and metropolitan local authorities, average annual household bills range from $600 to $2550 with a median of $1120.[6] By 2050, average annual bills would need to increase by between two and eight times to meet the required investment. Similarly, average household bills across metropolitan local authorities would need to increase by between 1.5 and seven times. In some metropolitan areas, bills could reach between $1,700 and $3,500 per annum in today's dollars.

[5] For more information see ***www.dia.govt.nz/three-waters-reform-programme-iwi-maori-interests***.
[6] Current costs are not necessarily a good reflection of the true economic costs of service delivery, as evidence suggests many councils do not fully cover economic depreciation through current charges.

Figure 1 – Average NZ annual household bills in 2021 compared with 2051 without reform



Source: Water Industry Commission for Scotland, 2021

10. In other countries that have faced similar issues, economic and consumer protection regulation has played a critical role in delivering better outcomes. In a New Zealand context, economic regulation will have a crucial role to play in driving the level of efficiency that will be required to keep water services affordable for New Zealanders in the face of a significant infrastructure deficit. Recognising this point, on 14 December 2020, Cabinet[7]:

    - noted that economic regulation plays a critical role in protecting consumer interests providing high-quality performance information that supports other important players in the three waters system
    - agreed in principle, subject to further reports to Cabinet, that an economic regulation regime will be employed in a reformed New Zealand three waters sector
    - noted that, all else being equal, economic regulation will be able to provide greater and more effective oversight, the smaller the number of regulated water services entities
    - agreed in principle, subject to further reports to Cabinet, that an information disclosure regime that allows the performance of entities to be compared will apply, at a minimum, to a substantively reformed three waters sector

[7] Office of the Minister of Local Government. (14 December 2020). CAB-20-MIN-0521.01 Minute: Progressing the Three Waters Service Delivery Reforms. ***www.mpdc.govt.nz/component/fileman/file/CouncilDocuments/MinutesAndAgendas/AuditRiskCommittee/2021/Progressing-the-Three-Waters-Service-Delivery-Reforms-Dec-2020-Cabinet-paper-and-minute.pdf***

- noted that whether or not stronger forms of economic regulation, such as price-quality regulation, should also be employed will depend on the number of reformed water services entities and their governance arrangements.

What does this discussion paper do?

11. This discussion paper outlines the Government's preliminary policy positions on the key policy decisions for the economic regulation and consumer protection regulatory regimes in the three waters sector, and seeks public feedback.

12. Within the overarching objectives of the Three Waters Reform, we consider that the economic and consumer protection regulation regimes should:

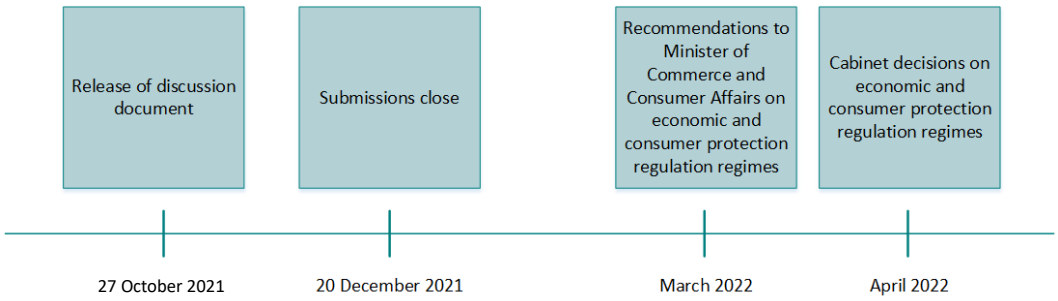
    - have the promotion of consumer interests as the paramount objective
    - promote the delivery of efficient, effective, and innovative three waters infrastructure consistent with the paramount consumer interests objective
    - deliver approaches to regulation that are consumer centric, transparent, predictable, timely, and sufficiently flexible to promote durability over time
    - provide appropriate levels of regulatory accountability and independence while ensuring that the broader three waters regulator system, that includes agencies like Taumata Arowai, is strategically and operationally coherent and delivers the Government objectives.

13. Inevitably, trade-offs will be required over time between some of the objectives above, but the interests of consumers should be paramount.

Process and timeline

14. Submissions close on 20 December 2021 with advice due to be provided to the Minister of Commerce and Consumer Affairs and Cabinet in the first half of 2022 as per the timeline set out in Figure 2 below.

Figure 2 – consultation and policy timeline



Part B –Economic Regulation

2 What is economic regulation?

What is economic regulation and what does it try to achieve?

15. Economic regulation refers to the use of regulation to protect consumers from the problems that can occur in markets with little or no competition, including where businesses have a large amount of market power. Competition law and policy are based on the idea that the most effective way to achieve long-term consumer welfare is through market forces that incentivise businesses to supply goods and services of a price and quality that consumers demand. However, there are some industries where there is not enough competition to achieve these outcomes, so economic regulation is required.[8]

16. Consumer interests are protected through economic regulation that changes the incentives faced by businesses, so that businesses behave in a manner similar to what might be seen in a more competitive market. Economic regulation often does this by:

    - requiring businesses to disclose certain information about their performance and operations, with the idea being that transparency makes businesses more accountable for their stakeholders
    - directly regulating the price and quality of services to ensure consumers are receiving efficient, innovative, and high quality services.

What is a natural monopoly?

17. Natural monopolies can be present in markets with high fixed costs that act as a barrier to entry such as electricity, gas, airports, telecommunications, and water. For example in the water sector, it would be very expensive for a new supplier to enter the market and build a new water network that operates in competition with a local authority owned network, so it is more efficient for there to be only one supplier.

18. In the absence of economic regulation, sectors with strong natural monopoly characteristics tend to have:

    - higher prices and/or lower outputs and/or a quality of output that does not reflect consumer demands (i.e. low allocative efficiency)[9]

[8] Examples include the electricity, gas and telecommunications sectors.
[9] Allocative efficiency occurs when consumers pay a market price that reflects the private marginal cost of production to the business supplying the good or service, ie where the demand and supply curves for a good or service intersect.

- low elasticity of demand (i.e. significant price increases have relatively little impact on overall demand), because consumers face no choice but to pay for utility services such as electricity and water, regardless of the price
- lower levels of productive efficiency (where a supplier produces the maximum possible outputs from a given level of inputs) and dynamic efficiency (the levels of innovation and technological progress of a producer)
- higher levels of X-inefficiency (the inability or unwillingness of a supplier to minimise the costs of production) compared to markets with workable levels of competition.[10]

Does consumer involvement in the governance of entities alleviate the need for economic regulation?

19. As a general rule, consumer involvement in the governance of natural monopoly suppliers reduces the potential for the supplier to deliver poor outcomes for consumers. However, there is a wide range of research that suggests that organisations often face political, cultural, financial and other motivations that mean they do not always perform in ways that are aligned with the stated objectives of their governing bodies. Some research suggests that these issues tend to get more problematic as organisations get larger. So while consumer involvement in the governance of natural monopolies is generally seen as having benefits, it is best seen as a complement rather than a substitute for economic regulation.

What benefits does economic regulation provide, and how do these contribute to the Government's objectives?

20. At their heart, almost all of the Government's reform objectives are about delivering better outcomes for New Zealand consumers. Economic regulation shares the same objective – its purpose is to advance the long-term interests of consumers by:

- ensuring suppliers deliver innovative and high quality services that reflect consumer demands
- restricting the ability of suppliers to earn profits in excess of what might be expected in a workably competitive market
- incentivising suppliers to improve efficiency and share efficiency gains with consumers, including through transparent and cost efficient prices
- providing consumers with information on the relative performance of their supplier so they are well informed and able hold suppliers to account through their consumer engagement activities.

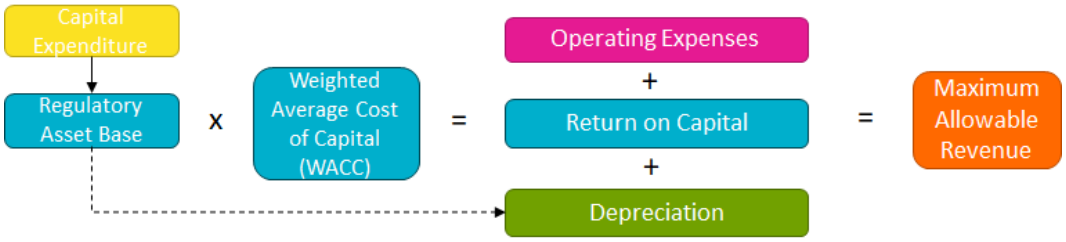
[10] Workable competition is a notion which arises from the observation that since perfect competition does not exist, theories based on it do not provide reliable guides for competition policy.

21. These objectives are usually achieved by a combination of regulatory tools that control the price and quality of services delivered by natural monopoly businesses, and/or benchmark the relative performance of different monopoly suppliers. These regulatory tools are typically administered by an economic regulator whose role is to protect and promote the long-term interests of consumers.

What is price-quality regulation?

22. Price-quality regulation refers to regulatory tools that cap the maximum allowable revenue of a monopoly supplier, subject to a set of minimum quality standards (e.g. the frequency and duration of interruptions, water leakage, customer service expectations etc.). Capping maximum allowable revenue is often achieved by summing costs, represented as 'building blocks' together to give a regulated maximum allowable revenue in a given year. Figure 3 below provides a simplified version of this building blocks model to illustrate the concept.

Figure 3 – Building Blocks Model for Calculating Regulated Maximum Allowable Revenue[11]



23. Internationally, price-quality regulation is usually employed in regulatory cycles spanning four to six years. For each year of the regulatory cycle, the economic regulator will set the maximum allowable revenue and minimum quality levels to form what is known as the 'price-quality path'. Economic regulators around the world take a broad range of approaches to setting price-quality paths depending on things like industry structure, legislative objectives and requirements, and the desire for consumer participation in setting price-quality paths.

24. In setting price-quality paths, economic regulators put consumer interests at the heart of their decision making. For example, if a price-quality path involves investment requirements that could result in a significant price shock for consumers, the regulator may employ glide paths or other tools that seek to smooth any potential adverse consumer welfare impacts over a longer period of time. In New Zealand, we have tended to employ what is termed individual (or customised) price-quality regulation for sectors with few firms (e.g. electricity transmission, fixed line telecommunications) and low-cost default price-quality regulation in sectors with a larger number of firms where individual price-quality regulation is likely to involve unreasonable administrative and/or compliance costs (e.g. electricity distribution).

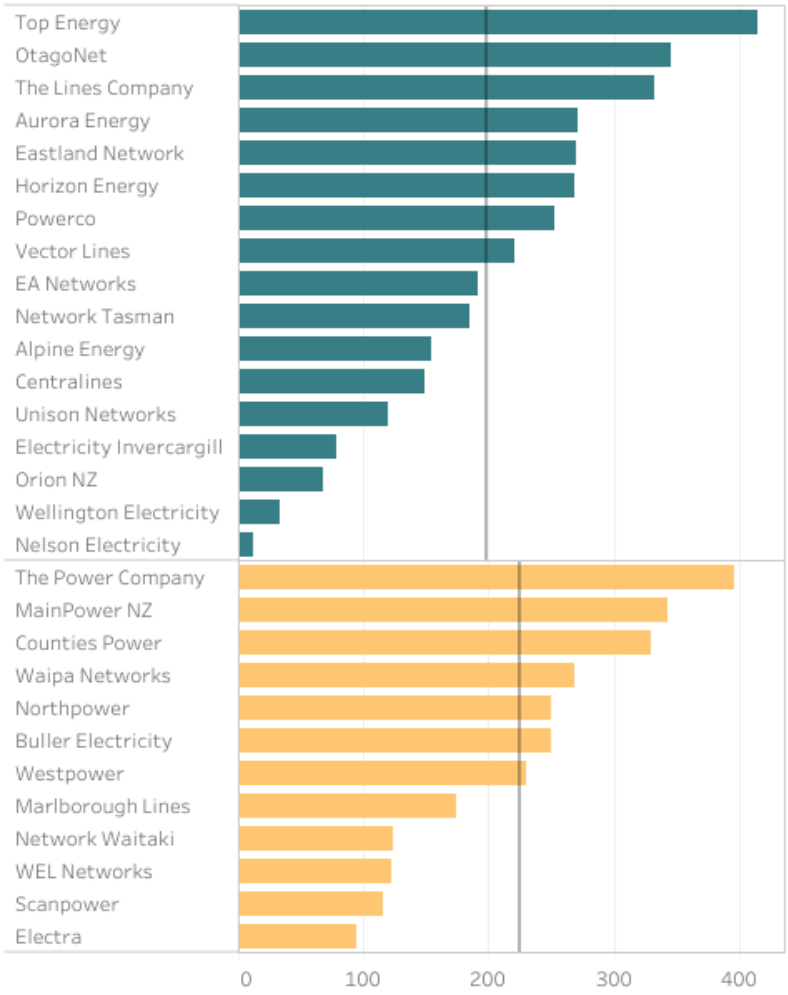
[11] The regulatory asset base (RAB) is the value of assets required and used to provide regulated services. The weighted average cost of capital (WACC) is an estimate of the cost an efficient business in the sector would be expected to pay for the capital (debt and equity) used to finance its assets, weighted by the proportion of each component.

What is information disclosure regulation?

25. Information disclosure regulation is commonly used alongside price-quality regulation to collect the information necessary to set efficient price-quality paths in addition to providing consumers and other interested parties with the ability to compare the relative performance of monopoly suppliers over time. However, information disclosure can also be used by itself to shine a light on the performance of regulated suppliers, and to incentivise better performance over time by benchmarking regulated suppliers against each other. An example of the kinds of benchmarking that an information disclosure regime can provide is shown in figure 4.

26. Specifically, figure 4 shows the total duration of electricity network interruptions in minutes for the year to 31 March 2020 across all 29 of New Zealand's electricity distribution businesses. Price-quality regulated distributors are shown in the ■ coloured bars while distributors subject solely to information disclosure regulation (generally smaller businesses with fewer than 100,000 consumers that are community owned) are shown in the ■ coloured bars.

Figure 4 – Comparative performance of electricity distribution businesses' duration of interruption for the year to 31 March 2020



Are there other forms of economic regulation that could be employed for New Zealand's Three Waters Sector?

27. While price-quality regulation and information disclosure regulation are the most commonly used economic regulation approaches applied to monopoly suppliers around the world, it is also possible to put in place 'quality only' regulation.

28. This form of economic regulation involves applying minimum quality standards (e.g. frequency and duration of network interruptions, leakage customer service expectations) without an accompanying price path. This form of economic regulation is arguably most appropriate when: (i) regulated suppliers have limited ability or incentive to charge excessive prices; and (ii) there are strong internal drivers to improve efficiency over time (e.g. a strong ability for consumers to directly influence and drive efficiency improvements).

What does economic regulation cost, and who ultimately pays?

29. Economic regulation involves two broad types of costs:

    - costs incurred by the economic regulator in administering the regime for the long-term benefit of consumers
    - compliance costs incurred by regulated suppliers in meeting the requirements set down by the economic regulator.

30. Administrative costs incurred by the regulator are generally recovered by Government from regulated suppliers via a levy. However, these administrative costs are usually incorporated into the price-quality path as an expense that is able to be 'passed through' to consumers. Approximate administrative costs for a water economic regime are discussed in detail Chapter 7 of this document, but are likely to be approximately $10m per year. For comparison, economic regulation regimes in New Zealand's electricity and telecommunications sectors range from approximately $8m to $10m per year. In general, economic regulation costs increase as the scope of the regime and the number of firms being regulated increases.

31. Compliance costs incurred by regulated suppliers are more difficult to quantify as they tend to spread across suppliers' cost bases as a general cost of delivering services to consumers. As such, it is likely that they are met by some combination of the supplier's shareholders and consumers. The fact that consumers end up bearing a significant portion of the costs of any economic regulation regime means that care is required to ensure that any economic regulation regime is designed in a way that provides net benefits to consumers.

Why hasn't the three waters sector been economically regulated to date?

32. While the New Zealand three waters sector has strong natural monopoly characteristics, it has not been subject to economic regulation to date. This is likely because attempting to regulate a three waters sector involving 67 councils would be more likely to delivery net costs rather than net benefits to consumers, and society more generally.

3 Is there a case for economic regulation, and if so, which services or entities should be regulated?

Is there a strong case for the economic regulation of water services?

33. The Government's Three Waters Reform process has revealed a range of problems that can be substantially or partially attributed to issues with natural monopolies that economic regulation regimes are often used to address:

- quality of service that does not reflect consumer demands, particularly in areas related to environmental outcomes, public health,[12] and the impacts of climate change
- long-term underinvestment in three waters infrastructure, including issues associated with depreciation flows from three waters infrastructure being used for other purposes
- inefficient pricing practices and a lack of transparency around the costs of delivering three waters services
- concerns about the capability and capacity of the three waters sector to be able to deal with increasing Government and community expectations associated three waters infrastructure.

34. All of these issues raise significant questions about whether three waters infrastructure is being operated in line with the best long-term interests of consumers. These issues and questions are not unique to New Zealand. Almost all developed countries have experienced similar issues and have implemented service delivery and economic regulation reforms to achieve similar objectives to those that the Government's Three Waters Reform is seeking.[13]

35. While the scale of the four Water Services Entities should significantly increase their likelihood of delivering these objectives, there is a flip-side risk that the entities become less responsive to consumer and community needs as a result of their increased scale and expanding range of stakeholders. The Government is alert to this risk and has proposed a range of governance and consumer voice protections to mitigate the risk. However, economic regulation provides a strong and complementary regulatory backstop.

36. Pulling all these different threads together, the Government's view is that there is a strong case for economic regulation of the three waters infrastructure currently operated by local authorities. The remainder of this chapter explores the appropriate boundaries of the economic regulation regime.

[12] For example, see ***www.dia.govt.nz/Government-Inquiry-into-Havelock-North-Drinking-Water***
[13] For a survey of international approaches, see: OECD. (2015). The Governance of Water Regulators. ***www.oecd.org/gov/regulatory-policy/the-governance-of-water-regulators-9789264231092-en.htm***

37. In coming to this position, we acknowledge that some stakeholders may consider that the absence of a profit motive, their inability to pay a dividend, and a proposed legislative objective of acting in the best interests of consumers and communities reduce some of the traditional arguments for economic regulation. However, the findings of the Government's Three Waters Reform suggest that the absence of a profit motive for councils and their obligations to promote the social, economic environmental and cultural well-being of communities have not been sufficient to ensure the delivery of efficient and effective three water services to New Zealanders.

38. The Government's strong focus on improving the affordability and quality of waters, the potential for significant free cash flows due to the inability to pay a dividend, and the absence of normal capital market disciplines are also relevant considerations in coming to this judgement.

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

Should economic regulation be applied to all three waters, or just drinking water and wastewater?

39. Once the case for economic regulation has been established, one of the first follow-on questions is to determine what services should be regulated. The key question in this area is whether the stormwater networks operated by local authorities should also be economically regulated, and if so, to what extent.[14]

40. While stormwater networks play a critical role in delivering high quality environmental, economic and social outcomes, they have very different physical and economic characteristics to drinking water and wastewater networks. From a physical perspective, stormwater systems are often integrated into roading networks and the overall topography of an area in a way that can make them difficult to identify or separate out, e.g. a natural gully or valley can actually form part of a stormwater network. From an economic perspective, stormwater networks have substantive public good elements that would make it difficult to identify and charge the 'consumers' who benefit from the network if it were operating in a competitive market.

41. These issues are well known to local and other authorities who have a role in operating stormwater networks. For example, local authorities already have registers of their respective stormwater assets that they are responsible for operating and maintaining. Local authorities generally recover the costs of operating stormwater networks via a fixed charge that is recovered through property rates. These fixed charges can be separated out on a ratepayers bill or included as part of other rateable charges (e.g. as part of an urban amenity or roading charge).

[14] Not including stormwater services and infrastructure related to local authorities role as road-controlling authorities. Public (eg schools and hospitals) and private stormwater networks that connect to stormwater networks operated by local authorities would also fall outside the scope of any economic regulation regime.

42. For their part, economic regulators typically use the same kind of building blocks model outlined in Chapter 2 to calculate the total amount of revenue that is required for the regulated supplier to earn a fair return over the life of the stormwater asset. Water service suppliers are then able to calculate annual service charges that are within the overall price-quality path set by the economic regulator.

43. Because regulatory and pricing models generally focus on regulating assets that are owned by a regulated supplier, issues can arise where stormwater flows over land or through assets owned by other parties. Examples of this occur where stormwater flows into channelling that is owned by Waka Kotahi or councils as part of their roles as roading control authorities, or through a natural valley that is part of a council reserve. A degree of pragmatism is required to come up with workable approaches to economically regulating stormwater networks that span multiple owners.

44. Our starting point is that:

- Stormwater assets that are owned and operated by councils or NZTA as part of their role as roading control authorities would sit outside the economic regulation regime and be funded from traditional roading funding sources (e.g. the National Land Transport Fund or council roading charges).
- Stormwater assets that are operated or maintained by Water Services Entities but owned by other parties (e.g. mowing/maintaining swales that run through council reserves/parks) will not be economically regulated, but the operating costs of maintaining these assets may be expensed as if they were owned by the Water Services Entity.
- Where stormwater network specific assets are attached to assets owned by another party (e.g. treatment devices attached to roading assets), these assets will be economically regulated.

45. These kind of arrangements may be the subject of some form of service level agreement between the water services entity and relevant roading control authority or other land/asset owners.

46. Internationally, whether or not stormwater networks are economically regulated appears to hinge on the structure of the water sector, the desire for comprehensive performance improvement across the water sector, and overall regulatory coherence. Where stormwater networks are operated alongside drinking water and wastewater networks, they tend to be economically regulated because this is in the best interests of consumers and provides a more cohesive regulatory regime.

47. Including stormwater in the economic regulation regime also avoids the complexity and compliance costs that arise from having regulated and unregulated services operated by the same supplier. In particular, it avoids the cost allocation issues that can arise from needing to allocate common costs between the regulated and unregulated business operations.

48. Our preliminary view is that stormwater networks should be economically regulated, but recognise that the benefits and costs of doing so are likely to be more finely balanced than they are for drinking water and wastewater networks.

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?

Which suppliers should economic regulation apply to?

49. Once the services to be regulated have been determined, the next question is to determine who should be economically regulated. Most economic regulatory regimes achieve this by specifying either the services that are to be regulated and then regulating all entities who supply those service, or specifying the entities that are to be regulated in primary legislation or another regulatory instrument.

50. The Government's Three Waters Reform will result in four new statutory Water Services Entities serving approximately 4.3 million New Zealanders (approximately 85% of the population).[15] These entities will provide drinking water, waste water, and storm water services.

51. While the Government's Three Waters Reform Programme is focussed on three waters infrastructure operated by local authorities, aspects of the reforms will apply to small community or privately owned water infrastructure, such as provisions of the Water Services Bill and regulation by Taumata Arowai. It is estimated that around 15% of the population will continue to be served by small community or private schemes, or through self-supply.

52. Exact numbers of these community, private and self-supply schemes at a particular point in time are difficult to identify. For drinking water, the best estimates are based on the information available from Ministry of Health's 2019 Drinking Water Register and are shown below in Table 1. However, a recent study for Taumata Arowai suggested that there could be between 75,000 and 130,000 unregistered drinking water suppliers.[16]

[15] Local Authorities advised that 4,344,966 people were connected to their networks as part of the Request for Information process run by the Department of Internal Affairs in early 2021. Statistics NZ estimated the total population at 30 December 2020 as 5,112,300. For comparison, the Water New Zealand 2019-20 National Performance Review estimated that 17.7% of residential properties were not serviced by a local authority operated drinking water scheme (see Table 3 below).
[16] BECA. (2021). Small Drinking Water Supplier Analysis – Report.

53. Information about the number of waste water schemes is more difficult to come by. Data from the Water New Zealand National Performance Review suggests that there are around 220 local authority operated schemes if the number of waste water treatment plants is used as a proxy for the number of waste water schemes (see Table 2 below). Water New Zealand estimates that there are approximately 326,000 (or 20.1% of) residential properties that are not connected to a wastewater scheme (see Table 3). Almost all of these are likely to be self-suppliers who utilise septic tanks or other similar localised arrangements.

54. The number of storm water schemes are even more difficult to specify because these networks are often integrated with roading infrastructure, and can use natural topography to direct storm water away from sensitive areas, i.e. stormwater schemes may not have easily identifiable infrastructure than can be easily surveyed. A large proportion of the population are likely to use sumps or 'run of the land' solutions to stormwater flows.

Table 1 – Drinking water supply schemes

	NETWORK SCHEME SUPPLYING MORE THAN 500 PEOPLE	NETWORK SCHEME SUPPLYING BETWEEN 25 AND 500 PEOPLE	NETWORK SCHEME SUPPLYING FEWER THAN 25 PEOPLE	COMMERCIAL OR PUBLIC PROPERTY OWNERS WHO SUPPLY THEIR OWN DRINKING WATER	PRIVATE SELF-SUPPLIERS
TO BE OPERATED BY NEW WATER SERVICES ENTITY	357	212	1,130 to 5,650	~ 920	Precise number unknown, but in the hundreds of thousands
COMMUNITY/PRIVATELY OPERATED	14	211			

Table 2 – Three Waters Assets Under Local Authority Management

	WATER	WASTEWATER	STORMWATER	TOTAL
LENGTH OF NETWORK (KM)	43,062	27,057	17,989	88,108
NUMBER OF PUMP STATIONS	749	3,014	260	4,023
NUMBER OF TREATMENT PLANTS	349	222	-	573
TREATMENT PLANT VALUE	$2,599,175,885	$3,335,819,563	-	$5,934,995,448
OTHER NETWORK VALUE	$10,732,824,380	$14,360,797,968	$11,993,223,393	$37,086,845,750
TOTAL ASSET VALUE	$13,332,000,273	$17,696,617,531	$11,993,223,393	$43,021,841,198

Source: Water New Zealand 2019-2020 National Performance Review[17]

[17] Excludes Buller District Council, Carterton District Council, Central Hawkes Bay District Council, Far North District Council, Gisborne District Council, Grey District Council, Hurunui District Council, Kaikoura District Council, Kaipara District Council, Kawerau District Council, Matamata-Piako District Council, Nelson City

Table 3 – Connections to Drinking and Wastewater Networks

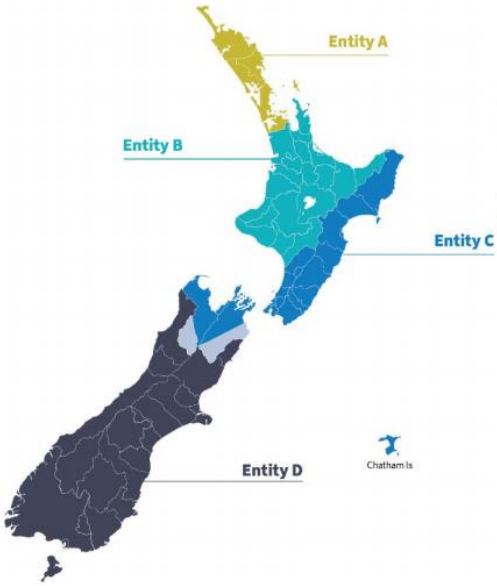
	DRINKING WATER	WASTEWATER	STORMWATER
SERVICED POPULATION	3,978,320	3,962,340	3,829,040
RESIDENTIAL PROPERTIES SERVICED	1,337,602 (82.3%)	1,299,439 (79.9%)	1,377,301
NON-RESIDENTIAL PROPERTIES SERVICED	122,798	108,338	129,049

Source: Water New Zealand 2019-2020 National Performance Review

Should Water Services Entities be economically regulated?

55. The Government's three water reforms have been designed to result in new Water Services Entities that have sufficient scale to be able to affordably address the infrastructure deficit, and generally deliver better outcomes for consumers. Each of the four Water Services Entities will serve populations of between 800,000 to 1,700,000 consumers and maintain the strong natural monopoly characteristics that are present in the current service delivery arrangements.

Figure 5 – Proposed Water Services Entities



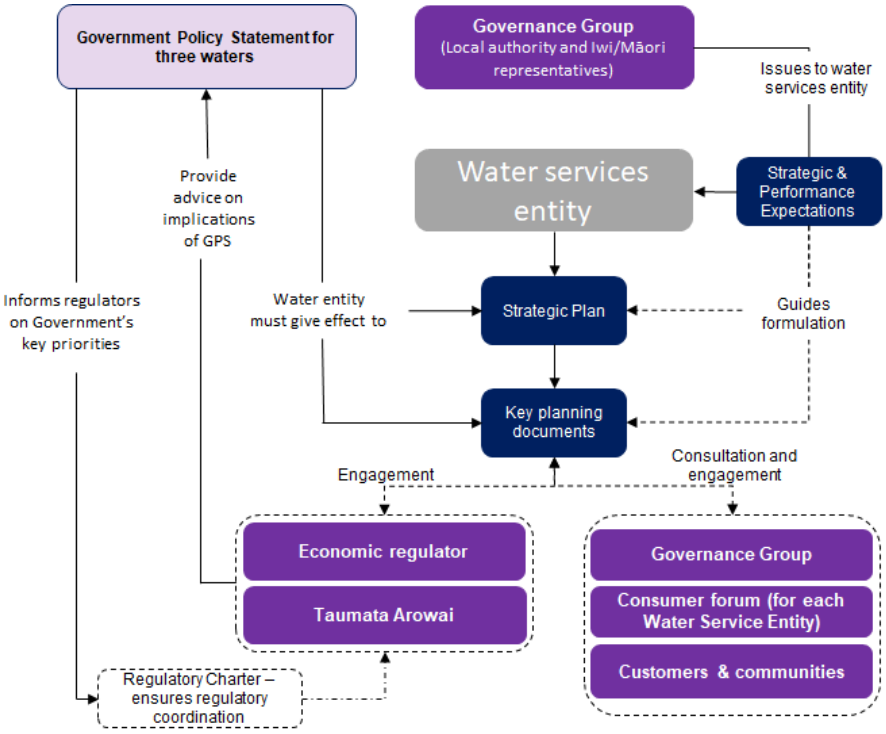
	Entity A	Entity B	Entity C	Entity D
Connected population (2020)	1.7m	0.8m	1.0m	0.9m
Average household cost (2051, real)[1]				
With reform	$800	$1,220	$1,260	$1,640
Without reform	$2,170	$4,300	$3,730	$4,970

Council, Ōpōtiki District Council, Ōtorohanga District Council, Ruapehu District Council, South Taranaki District Council, Waikato District Council, Waimate District Council, Wairoa District Council, Waitaki District Council, Waitomo District Council, and Westland District Council.

56. The Government has established governance arrangements to reduce the risks of entities becoming less responsive to community needs. The proposed governance arrangements for the Water Services Entities are set out in Figure 6 below, and obligations on each of the Water Services Entities to:[18]

- establish consumer fora to act as a key vehicle for consumer views to be heard on issues such as price-quality trade-offs
- engage with the wider community in the development of key strategic documents such as the Statement of Intent, Asset Management Plan, and Funding and Pricing Plan.

Figure 6 – Proposed governance arrangements for Water Services Entities



57. While the governance arrangements and consumer engagement requirements will ensure that consumer voices are heard by the entities, the scale of the entities and the absence of competition means there are still significant risks that the entities do not act in the long-term interests of consumers.

[18] For more information on the proposed governance arrangements see Office of the Minister of Local Government. (14 June 2021). Cabinet Paper: Designing the New Water Service Delivery Entities: Paper Two. ***www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/cabinet-paper-two-and-minute-designing-the-new-three-waters-service-delivery-entities-30-june-2021.002.pdf***

58. One area that is pivotal to the Government achieving its Three Waters Reform objectives is the delivery of significant efficiency gains over time. Overseas experience suggests that economic regulation has played a critical role in driving efficiency gains that are able to be shared with consumers via lower prices and improved quality of service, compared to the prices and quality consumers experience in the absence of regulation.

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

Should other water service providers be economically regulated?

59. Given that the purpose of economic regulation is to promote the interests of consumers, other water service providers such as private schemes, community schemes, and self-suppliers should only be economically regulated if the benefits of economic regulation exceed the costs.

60. Coming to a view on whether economic regulation is likely to result in net benefits or net costs requires consideration of the:

- administrative and compliance costs involved in economic regulation. International and New Zealand experience suggests that it is unlikely to be economically viable to regulate small entities, particularly entities that service fewer than 10,000 water consumers
- ability of consumers to influence the strategic direction, investment intentions, prices, and quality of service of a supplier
- the overall efficacy of the economic regulation regime. In general, economic regulation regimes are more effective the smaller the number of firms that are regulated. Most economic regulation regimes apply to fewer than 15 suppliers.[19]

61. Of particular relevance to the above assessment is that there are:

- no private or community drinking water schemes that serve more than 10,000 consumers that would fall outside the coverage of the new Water Services Entities
- only two private/community drinking water schemes that service between 5,001 and 10,000 consumers. These two schemes belong to Massey University and Christchurch International Airport Limited and are perhaps better described as self-suppliers given that they are highly unlikely to provide drinking water to downstream consumers,[20]

[19] New Zealand's regulation of electricity distribution businesses is an outlier in this regard as it subjects 17 suppliers to price-quality regulation and information disclosure regulation, and a further 12 suppliers to information disclosure regulation only.
[20] Register of Drinking Water Suppliers for New Zealand, 2019 edition. Retrieved on 12 May 2021: ***www.esr.cri.nz/assets/Uploads/RegisterOfSuppliers-PartOne-NetSupplies-2019a.pdf***

- only eight private/community drinking water schemes that service between 501 and 5000 consumers. Of these eight, five are New Zealand Defence Force bases with the other three being in Opaki in the Wairarapa, Doubtless Bay in Northland, and Milford Sound in Fiordland.

62. It would be difficult to justify the heavy compliance burden if of applying economic regulation to small private suppliers like marae or small community suppliers servicing fewer than, say, 100 people on a regular basis. These suppliers are unlikely to be capable of complying with economic regulatory obligations, and any benefits from applying economic regulation would likely be small given the owners and consumers are likely to be the same people.

63. Putting all of these factors together, our view is that the application of economic regulation should be restricted to the new Water Services Entities and not apply to community schemes, private schemes, or self-suppliers.

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.

4 What form of economic regulation should apply?

What form of economic regulation should apply to Water Services Entities?

64. One of the most critical regulatory design questions for the new economic regulation regime will be what form of economic regulation should be applied to regulated suppliers.

Should information disclosure regulation be applied to Water Services Entities?

65. Information disclosure is generally seen as a minimum requirement for suppliers with strong natural monopoly characteristics because it provides a relatively low cost way of shining a light on the relative performance of regulated suppliers. Information disclosure regulation generally requires:

- regulated suppliers to publicly disclose information in accordance with the information disclosure requirements set by the economic regulator
- the economic regulator to publish a summary and analysis of the disclosed information to promote greater understanding of the performance of individual regulated suppliers, their relative performance, and the changes in performance over time.

66. Consumers and other interested stakeholders are then able to use this information in their engagements with the supplier and relevant regulatory agencies to influence the strategic direction and performance of suppliers over time.

67. Additionally, information disclosure also provides valuable information to:

- owners/governors of the business (including local government and Iwi) to allow them to assess the performance of the business and its board
- regulatory and policy agencies to support them in assessing whether suppliers and the overarching regulatory systems are achieving key objectives
- the economic regulator to use in setting any price-quality paths that are required.

68. Given the strong natural monopoly characteristics in the three waters sector and the Government's reform objectives, the Government's view is therefore that information disclosure should apply to Water Services Entities at a minimum.[21]

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

[21] ***www.mpdc.govt.nz/component/fileman/file/CouncilDocuments/MinutesAndAgendas/AuditRiskCommittee/2021/Progressing-the-Three-Waters-Service-Delivery-Reforms-Dec-2020-Cabinet-paper-and-minute.pdf***

Should price-quality regulation be applied to Water Services Entities?

69. If information disclosure provides a base level of regulation to promote the long-term interest of consumers, the next logical question to ask is whether stronger forms of economic regulation are desirable or required alongside information disclosure. Price-quality regulation is often employed where suppliers have strong natural monopoly characteristics and one or more of the following apply:

- suppliers have the ability and incentive to higher prices, or provide lower quality services, than would be possible in a workably competitive market
- the governance arrangements of the supplier are complex, do not involve a significant overlap between owners and consumers, or there are questions about the incentives of the supplier to be responsive to consumer demands
- suppliers are not subject to normal governance and capital market disciplines that promote efficiency
- suppliers are of sufficient scale to be able to bear the administrative and compliance costs that come with an economic regulation regime
- the consequences of poor supplier performance are likely to be large for consumers
- there is a strong emphasis on improving the efficiency and effectiveness/quality of services delivered by regulated suppliers over time.

70. Based on the Government objectives outlined in Chapter 2 and the proposed governance arrangements in Chapter 3, all but one of the above criteria appear to apply to the New Zealand three waters sector. On this basis, our preliminary view is that Water Services Entities should be subject to price-quality regulation.

71. Some of the arguments against applying economic regulation to the three waters sector (outlined in paragraphs 37 and 38 above) are also relevant in considering whether price-quality regulation should apply. For example, some stakeholders may consider that the absence of a profit motive and usual capital markets disciplines, and the potential for significant free cash flows due to the inability to pay a dividend, weaken the argument in favour of price-quality regulation in the water sector.

72. The lack of profit motive for councils does not appear to have been sufficient to ensure New Zealanders receive high-quality, affordable water services, or that water infrastructure is managed efficiently. Overseas experience regulating water services, as well as domestic experience regulating other utilities, suggest that price-quality regulation is a highly effective tool in attaining the sorts of outcomes the Three Waters Reform aims to achieve, i.e. incentivising suppliers to provide affordable, high-quality water services. In particular, price-quality regulation often plays a crucial role in driving economic efficiency within regulated suppliers to ensure that water services are as affordable as possible for consumers.

73. However, if price-quality regulation was seen as being unnecessary and/or too heavy handed, alternative approaches could include:

- using the proposed Government Policy Statement power and entity governance arrangements to provide a strong focus on efficiency and affordability within Water Services Entities
- subjecting Water Services Entities to information disclosure (or information disclosure combined with quality only regulation) for a period of 3 to 5 years. After this period, the economic regulator would be required to provide a statutory report back on whether this form of regulation had been delivering outcomes in the best interests of consumers, as well as whether other, stronger forms of regulation such as price-quality regulation may be desirable.

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

If price-quality regulation is to be employed, should it take a low-cost generic form or be tailored to individual suppliers?

74. As outlined in Chapter 2, price-quality regulation in New Zealand has tended to employ one of two forms:

- individual price-quality regulation for sectors with a few large suppliers (e.g. electricity transmission, fixed line telecommunications)
- lower-cost generic or 'default' price-quality regulation in sectors with a larger number of suppliers where individual price-quality regulation is likely to involve unreasonable administrative and/or compliance costs (e.g. electricity distribution where there are 17 suppliers subject to price-quality regulation).

75. Individual price-quality regulation is more commonly used in other jurisdictions around the world. This is largely because it is generally unusual to have large numbers of geographic natural monopoly suppliers. Another key reason for this preference is because individual price-quality regulation allows the economic regulator to apply more tailored scrutiny to individual businesses. Depending on the legislative framework, individual price-quality regulation can allow the economic regulator to set detailed efficiency targets or challenges that reflect both the underlying and relative productivity levels of individual suppliers.

76. Combining the strong objectives that the government has around service quality and affordability, and the reformed three waters sector comprising four large Water Services Entities, our view is that individual price-quality regulation is the most appropriate form of price-quality regulation.

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

If price-quality regulation is to be employed, how should it be implemented?

77. To be effective, price-quality regulation requires high quality information on the assets, costs and quality of service provided by regulated suppliers. While the majority of the sector has demonstrated a commitment to the compilation of performance information over time,[22] the Three Waters Reform Programme has found that the scope and quality of the available information is not currently at the level that would be required to implement an effective economic regulation regime. In particular, not all local authorities have participated in the information surveys that have been done to date, and the way that information has been reported is not consistent across authorities as there are limited independent audit and verification processes.

78. The absence of complete, consistent, and accurate information on three waters assets operated by local authorities is likely to be a significant impediment to the successful implementation of an economic regulation regime from 1 July 2024 when the new Water Services Entities are scheduled to begin operating. Implementing new price quality paths from this date will be particularly difficult.

79. While there may be work that can be undertaken to improve the quality of information through the transition to the new entities, this would need to be undertaken at a time when local authority and transition agency staff will be extremely busy managing a range of competing demands to establish the new entities.

80. There are also significant challenges, and fair process issues, in developing the economic regulation regime without the ability to consult with regulated suppliers who would be subject to the economic regulation instruments, i.e. the supplier voice would be missing from the debate. Even if the supplier voice is present, it will take a significant period of time for regulated suppliers to develop a working understanding of economic regulation and how it impacts their operations.

81. However, there are also risks to waiting until the Water Services Entities are in place before putting in place the economic regulation regime. Most prominent among these risks is that not implementing price-quality regulation until 2026 or 2027 could result in two to three years of potential efficiency gains for consumers being forgone. However, we acknowledge that substantive efficiency gains are likely to take 5 to 10 years to achieve and be passed on to consumers.

82. Our preliminary view is that there should be a graduated approach to implementing a conventional cost based price-quality path. Key phases would likely involve:

[22] Examples of the current information include Water New Zealand's National Performance Review and the request for information process run in late 2020 and early 2021 by the Department of Internal Affairs. See ***www.waternz.org.nz/NationalPerformanceReview***

- prior to 1 July 2024: the economic regulator would build its understanding of the sector and data gaps, and undertake a significant programme of engagement to lift stakeholder understanding of how economic regulation works
- 1 July 2024 to 1 July 2026: developing input methodologies necessary to implement information disclosure and price-quality regulation
- By 1 July 2026: determine information disclosure requirements
- 1 July 2026 to 1 July 2027: first year of information disclosure regulation
- by 1 July 2027: determine price-quality path
- 1 July 2027: commencement of the first regulatory pricing period.

83. This approach would allow the economic regulator to engage extensively with Water Services Entities and other stakeholders as the economic regulation regime is developed, and would significantly reduce the risk of the first price-quality path setting a maximum allowable revenue that is too tight or too generous. However, commencing the first regulatory pricing period from 2027 is likely to delay the achievement of the significant cost and quality efficiencies that would be a key focus of the regime. It is likely that this approach would require transitional funding for the economic regulator of around $4m in the 2022/23 and 2023/24 financial years before the levy regime discussed in Chapter 7 would commence.

84. One potential issue with a graduated approach is that it would effectively leave price and quality of services delivered by Water Services Entities uncontrolled until 2027. There are two potential options that could address this issue if it was considered a significant risk:

- **Option 1: Implementation of a transitional price-quality path by the economic regulator** – this approach would involve the development of a three or four year transitional price path that would apply from 1 July 2024, until such time as a conventional cost based price quality path could be implemented. It is difficult to be specific about how such a path would be developed based on the current information available, but it could be:
  - a cash based price-quality path that aims to maintain the financeability of Water Services Entities (i.e. covering their cost of debt, operating expenses, and essential capital expenditure)
  - an approximated cost based price-quality path using a building blocks approach based on the currently available information, or
  - an approximated price-quality path based on rolling over existing prices.
- In our view, the only way that this kind of transitional price-quality path could be developed within the short time available would be for some of the normal accountability and transparency protections that apply to economic regulators, such as merits review and being required to develop ex-ante input methodologies, not to apply.

- The major upside is that a transitional price-quality path would allow some level of efficiency to be achieved more quickly (although the magnitude of these short-term benefits should not be overstated). It is likely that this approach would require transitional funding for the economic regulator of up to $15m in the 2022/23 and 2023/24 financial years depending on which approach is taken.

- **Option 2: Implementation of a transitional price-quality path by Government** – this option would involve the Government using the proposed power to issue a Government Policy Statement (GPS) to impose a transitional price path that would apply from 1 July 2024, until such time as a conventional cost based price quality path could be implemented. A transitional price-quality path implemented via a GPS could:

  – seek to place direct controls on the price and quality of water services until a conventional price-quality path is set by the economic regulator, or

  – set clear expectations on how prices would be set until a conventional price-quality path is set by the economic regulator.

85. While these transitional options would ensure that the prices of Water Services Entities would be controlled from 1 July 2024, developing transitional price-quality paths without involvement of the regulated supplier carries process risks and could result in a price-quality path that is either too generous or too meagre. These options would also require a somewhat makeshift approach that uses the limited information currently available on the assets, costs and quality of service provided by water suppliers.

86. Option 1 would have the benefit of the transitional price-quality path being set independent of Government to avoid any perception of political interference, but would impose a significant burden on the economic regulator which could undermine its ability to effectively develop a full cost-based price quality path.

87. Given there are significant pros and cons to all of these approaches, we welcome stakeholder views on which approach is preferable.

8	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?

Should the regulator be able to make recommendations to the Minister on whether suppliers should be economically regulated?

88. While we do not currently believe there is not a strong case to economically regulate three waters suppliers other than the four new Water Services Entities, the strategic challenges facing the three waters sector may prompt amalgamation or different service delivery models to emerge in the provision of water services outside of the Water Services Entities. For this reason, and because high performing regulatory systems tend to have the ability to change their perimeter where required to meet their stated policy objectives, we consider that the economic regulator should have the ability to recommend other suppliers be subject to economic regulation over time. We also propose that the economic regulator have the ability to recommend that:

- a regulated supplier be subjected to a different form of regulation provided for in the legislation where that supplier has been subjected to regulation via order in council rather than in an Act of Parliament, or
- a regulated supplier be exempted from regulation altogether, where that supplier has been subjected to regulation via Order in Council rather than in an Act of Parliament.

89. To ensure appropriate accountability for the extension of the regulatory perimeter, it is proposed that decisions of this nature should sit with the Minister of Commerce and Consumer Affairs, consistent with the decision making frameworks in other economic regulation regimes.

90. To ensure that decisions of this significance are taken on the basis of high quality information, the Minister would only be able to extend or reduce the application of economic regulation following advice from the regulator on:

- whether a supplier has the ability and incentive to exercise substantial market power in, taking into account the effectiveness of existing regulation and governance arrangements (including ownership arrangements and consumer voice arrangements)
- whether the benefits of extending or reducing economic regulation materially exceed the costs, and the form(s) of economic regulation that should be extended or reduced
- any material long-term efficiency and distributional considerations associated with recommendations to extend or reduce the application of economic regulation.

91. This advice could be provided by the economic regulator on its own initiative, or following a request from the Minister.

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?

5 What should the key features of any economic regulation regime be?

What should the statutory objectives of any economic regulation regime be?

92. Having a clear statement of the objectives of an economic regulation regime is generally seen as essential to guide the interpretation and implementation of legislation. In recent times, New Zealand's economic regulation regimes have tended to coalesce around purpose statements that emphasise the long-term interest of consumers that are given effect through four outcomes as follows:

> *The purpose of this [regime] is to promote the long-term benefit of consumers in market [X] by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services—*
>
> *(a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and*
>
> *(b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and*
>
> *(c) share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and*
>
> *(d) are limited in their ability to extract excessive profits.*[23]

93. While the precise wording of economic regimes in other jurisdictions will vary, overseas jurisdictions invariably employ the same focus on the interests of consumers, and a focus on very similar secondary outcomes.

94. Our preliminary position is that the purpose statement for any economic regulation regime that applies to the water sector should be as close as possible to the purpose statements contained in the Telecommunications Act 2001 and Part 4 of the Commerce Act given their interpretation has been thoroughly tested through numerous judicial and merits review processes. These regulatory regimes are also well understood by capital markets, ratings agencies and other interested stakeholders.

95. The ability of water services entities to raise a financially sustainable level of revenue is of particular importance, given the water services entities will likely rely heavily on the capital markets to finance their investment in infrastructure.

[23] For examples, see s 52A of the Commerce Act 1986 and s 162 of the Telecommunications Act 2001.

96. One modification that may be desirable is to amend or remove limb (d) of the above example because the Water Services Entities that will most likely be the focus of the economic regulation regime will be publically owned statutory entities that will not have a profit motive, access to equity capital,[24] or the ability to pay dividends. However, this modification could potentially limit the regime's ability to regulate private, community or other hybrid schemes in the future if they were to reach a scale that would make economic regulation desirable.

97. Our view is that the likelihood of private schemes reaching sufficient scale and/or undertaking conduct that might warrant economic regulation is very low. We welcome views on this issue.

Should other legislative objectives be considered?

98. Given the breadth of the Government objectives with regard to the Three Waters Reform, there is an open question as to whether the economic regulator should have regard to a broader range of objectives, including things such as Te Mana o te Wai (the vital importance of water)[25] and climate change.

99. Providing economic regulator with a mandate to have regard to concepts or issues that have a variety of interpretations carries with it both opportunities and risks due to the significant regulatory powers they hold and their independence from Government. For this reason, it will be important to consider:

- Who is best placed to advance the objective – as a general principle of regulatory design, requirements to advance particular statutory objectives should generally be placed with actors or bodies that are best placed to advance it. More particularly there may be arguments that:
  - Water Services Entities, regional councils and Taumata Arowai are better placed to advance Te Mana o te Wai given their roles in delivering and regulating high quality water services, and their respective legislative mandates
  - climate change mitigation and adaptation activities are better advanced by Water Services Entities, the Climate Change Commission, councils, and other central government agencies
  - an economic regulator that is focussed on commercial and consumer aspects of infrastructure regulation, and has strong legal and economic expertise to carry out these functions, may not be best placed to deal with these other issues.

[24] It is proposed that Water Services Entities will be debt funded. See: Office of the Minister of Local Government. (14 June 2021). Cabinet Paper: A New System for Three Waters Service Delivery: Paper One. ***www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/cabinet-paper-one-and-minute-a-new-system-for-three-waters-service-delivery.pdf***

[25] Te Mana o te Wai is a universal concept for all Aotearoa New Zealanders. It refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and wellbeing of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the wai, the wider environment and the community. See ***www.taumataarowai.govt.nz***

- There is also a potential risk that providing the economic regulator with an explicit mandate to consider wider objectives could result in the economic regulator overruling or making different decisions to bodies like Water Services Entities or Taumata Arowai who have extensively engaged with iwi, consumers, or the wider community. On the other hand, there is an argument that providing all players in a regulatory system with a common set of objectives promotes regulatory coherence.
- Whether the objectives potentially fall within the overarching objective of promoting the long-term interests of consumers. There may also be an argument that issues such as Te Mana o te Wai and climate change are already effectively included in the economic regulator's mandate because these are issues of significant interest to consumers and would therefore fall within the purpose statement above.

What is the role of Te Tiriti o Waitangi in the design of economic regulation for three waters?

100. There is also a question as to how Te Tiriti o Waitangi considerations factor into the design of any economic regulatory regime for the three waters sector. For example, the regime could be designed in a way that contributes to equitable outcomes and mitigates unintended impacts on Māori. Other issues may include:

- how the economic regulator could be expected to consider Treaty obligations, such as existing Treaty settlements that may warrant higher levels of investment activity
- the cultural competency of the economic regulator to recognise the significance of water as a taonga for Māori
- Māori historic experience of both price and service quality inequity, and Māori being over-represented in groups with fixed income being more vulnerable to price shocks.

101. We are interested in stakeholder views on these issues.

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?

Should economic regulation be applied under Part 4 of the Commerce Act or via a sector specific economic regulation regime?

102. An issue that is closely related to the statutory objectives of the economic regulation regime is whether Water Services Entities should be regulated under the generic economic regulation regime provided in Part 4 of the Commerce Act, or via a sector-specific economic regulation regime. Our preliminary view is that Part 4 of the Commerce Act is not the preferred regulatory vehicle because of:

- the status of the Water Services Entities as unique statutory entities
- the absence of a profit motive for Water Services Entities
- the prohibition on dividend payments by Water Services Entities
- the Government's strong focus on affordability, likely to be given effect through a robust efficiency challenge on regulated suppliers.

103. Instead, we think a sector-specific regime would be a more appropriate vehicle for the Government to achieve its Three Waters Reform objectives given the unique characteristics of the proposed Water Services Entities.

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?

How long should regulatory periods be?

104. Internationally, price-quality paths are usually for periods of between 4 and 6 years. This duration has been arrived at in order to balance the desire for regulatory certainty with the need to periodically refresh price-quality paths to reflect the changing nature of consumer demands, supplier circumstances, and changes in the external environment.

105. Our preliminary position is to specify that the regulatory period shall be five years unless the economic regulator considers that a different period would better meet the purposes of the legislation.

106. There may, however, be a case for having a shorter regulator period for the first regulatory period given the underlying questions about the quality of data in the sector and the significant transition that the sector will go through from 1 July 2024. Our preliminary view is that regulator should be able to set a shorter regulatory period of two or three years for the first regulatory period.

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?

Should the regulator be required to specify key rules, requirements and processes up-front?

107. To provide greater certainty to regulated suppliers and consumers, New Zealand's economic regulation regimes typically require the economic regulator to develop and publish the rules, requirements and processes underpinning the application of economic regulation. Specifically, these 'input methodologies' must be applied by the regulator in making its determinations on how information disclosure and price-quality will apply.

108. Input methodologies typically cover issues such as the:

- valuation of assets, including how they are depreciated, and how revaluations are treated
- cost of capital
- allocation of common costs where a regulated supplier undertakes activities that are economically regulated alongside those that are not (e.g. if a supplier undertakes commercial activities in a market where there is workable competition)
- treatment of taxation.

109. Any economic regulator that is making determinations on information disclosure requirements or price-quality paths cannot avoid having to make decisions on these issues – the question is really whether these decisions are taken ahead of their determinations that implement economic regulation, or at the same time.

110. There are pros and cons to requiring the economic regulator to develop and publish input methodologies in advance of the regulator making determinations on the application of price-quality or information disclosure regulation:

- On the positive side, input methodologies provide regulated suppliers, consumers, and other interested stakeholders clarity over the 'rules of the game'. This clarity and certainty is particularly valued by debt providers and rating agencies as it allows them to accurately assess the scope of any regulatory risk that applies to regulated suppliers.
- On the negative side, the formal development of input methodologies imposes a significant resource cost on the economic regulator that will ultimately be borne by consumers. Also, the certainty input methodologies aim to provide come at a cost to regulatory flexibility, since the regime may be less able to respond to market changes, such as changes in consumer needs or technology. The upfront development of input methodologies is also likely to extend the period of time necessary to fully implement the economic regulation regime, all else equal.

111. Our preliminary position is that the economic regulator should be obligated 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 the economic regulation regime. However, this is a 'on balance' judgement.

Should the regulator have an obligation to minimise price shocks to consumers and suppliers?

112. In setting price-quality regulation, economic regulators typically seek to minimise any potential for price shocks to consumers or suppliers. There is a potential for the transition to the new regime to cause price shocks, given:

- the wide range of pricing approaches currently utilised in the sector
- the three waters sector not previously being subject to economic regulation
- the significant transition involved in forming four Water Services Entities.

113. Our preliminary view is that the economic regulator for the three waters sector should be able to calculate a maximum allowable revenue path that is equivalent in present value terms over multiple regulatory periods (for example, by altering depreciation). This could not only minimise price shocks to water consumers, but also minimise undue financial hardship to Water Services Entities. This latter outcome is particularly important given the Government's Three Waters Reform objective of moving the supply of three waters services to a more financially sustainable footing, and addressing the affordability and capability challenges faced across the sector.

Should the regulator have the obligation or ability to set a strong efficiency challenge for regulated suppliers?

114. Most economic regulators have the pursuit of economic efficiency as key objective because of the significant role that efficiency plays in the long-term welfare of consumers. The Government sees the achievement of significant efficiencies as fundamental to the Three Waters reform. While the precise approach to the pursuit of efficiency varies around the world, approaches tend to fall into two broad groups:

115. Passive approaches that seek to provide suppliers with the incentive to realise efficiencies. This usually occurs through the supplier being allowed to keep a portion of any efficiencies achieved in a given regulatory period, with the prices/revenue set by the economic regulator in the next period being set at the revealed new efficient level.[26]

116. Active approaches that set out robust efficiency challenges or targets that are accompanied by rewards (e.g. fast track investment approvals) if they are achieved, or penalties (e.g. consumer rebates or compensation) if they are not achieved.

[26] Issues with the incentives to realise efficiency diminishing in the later years of the regulatory period are often dealt with rolling incentive schemes that allow realised efficiencies to be carried forward into the next regulatory period.

117. Economic regulation regimes in New Zealand have tended to take a passive approach to the achievement of efficiency gains. However, the Government's strong focus on affordability and the potential for significant amounts of free cash-flow to be available - because of the absence of active owners demanding a return on equity though dividend payments - suggests that a more active approach to efficiency is highly desirable. This focus on cash efficiency is likely to require some modifications to the 'building blocks' approach outlined in Chapter 2, potentially to provide a stronger focus on ensuring that Water Services Entities having the minimum efficient level of cash required to finance their operations.

118. Our preliminary view is therefore that the economic regulator should be required to set a strong 'active' efficiency challenge for each regulated supplier. We note that setting these kinds of efficiency challenges might involve the use of econometric techniques that set comparative efficiency benchmarks for individual suppliers, and would need to be done in a way that ensures suppliers remain financially viable.

119. Providing the economic regulator with an obligation to set a strong 'active' efficiency challenge for regulated suppliers raises a secondary question about whether the proposed statutory purpose statement outlined earlier in this chapter may require modification as it provides for suppliers to have 'incentives to improve efficiency'. It could be argued that this wording is more in line with a 'passive' approach outlined above. However, our preliminary view is that the use of the word 'incentives' in the purpose statement permits a broader interpretation that also includes the kinds of rewards or penalties that are likely to form part of a more 'active' approach to realising efficiency gains. We welcome views on this issue.

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?

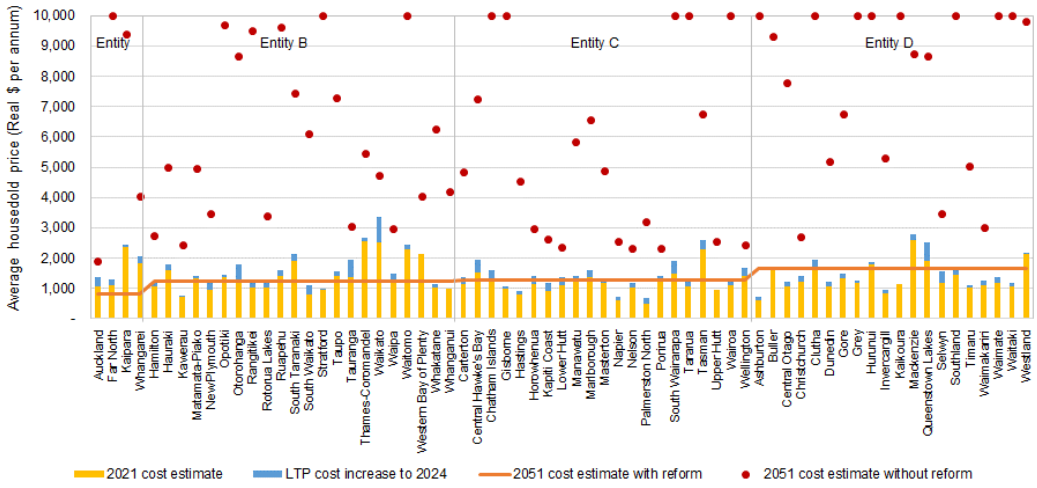
Should the regulator have the obligation or ability to set pricing methodologies that specify the structure of prices faced by consumers?

120. In addition to requiring the disclosure of information that reveals the relative performance, and setting the overall level of revenue that regulated suppliers are able to earn, economic regulators also often have the ability to regulate the structure of prices that are paid by consumers. These pricing structure methodologies can cover things such as:

- the prices of individual services, or groups/classes of services, including the separation of prices by fixed and variable components[27]
- the prices for different groups of consumers e.g. residential, commercial, industrial consumers, and/or consumers in a given geographic area[28]
- whether prices should vary according to the level of demand or supply, or should remain fixed across time
- whether prices should vary according to the quality of service provided by the regulated supplier
- how factors such as efficiency and equity should be reflected in pricing structures.

121. Figure 7 provides a comparison of currently local authority pricing based on their most recent long term plans (LTP) compared to the prices to address the infrastructure deficit both with and without reform. All costs are in current dollars.

Figure 7 – comparison of local authority pricing with and without reform



Source: Local Authority response to DIA request for information, Water Industry Commission for Scotland (WICS) analysis, DIA analysis. Assumes households contribute 70% of revenue and an average household size of 2.7. WICS FY51 price estimate is in current dollars.

122. While economic regulators around the world commonly set methodologies covering the factors outlined above, there are some situations where the economic regulators may not be the best placed to determine pricing structures. This may occur where pricing structures are set to achieve:

[27] A price that is separated between fixed and variable components is often termed a 'two part tariff'. A bundled price that does not differentiate between fixed and variable components is often termed a 'single part tariff'.

[28] Prices that are the same across consumers in a geographic area are often termed 'geographically averaged prices'.

- policy objectives other than the long-term interest of consumers
- equity or fairness objectives that involve value judgements about the merits of transferring costs between one or more groups of consumers.

123. Recognising that governments can have a range of efficiency and equity policy objectives, there are a variety of approaches that can be taken to determining pricing structures in the three waters sector:

- allowing Water Services Entities to determine the appropriate pricing structure following appropriate engagement with their governance group, communities, and consumers
- regulating certain aspects of pricing, for example, requiring prices to be geographically consistent or averaged across consumers in a given water services entity
- a hybrid approach of regulating certain aspects of pricing, but leaving other aspects to the economic regulator or the water services entity (within the maximum allowable revenue set by the economic regulator)
- using a Government Policy Statement to provide direction to Water Services Entities on pricing structures (within the maximum allowable revenue set by the economic regulator)
- using the social welfare system to address any significant equity or fairness issues.

124. Internationally, three waters regulatory regimes tend to put greater emphasis on efficiency objectives with equity and fairness objectives being addressed through targeted tools such as the social welfare benefits, or through progressive pricing structures based on the capital value of the property being supplied with water services.[29] Other countries appear to feel this approach allows specific fairness issues to be addressed more effectively, and in a way that avoids opaque regulatory wealth transfers between different types of consumers.

[29] OECD. (2015).OECD Studies on Water – the Governance of Water Regulators. Paris: OECD Publishing. ***www.oecd-ilibrary.org/governance/the-governance-of-water-regulators_9789264231092-en***

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?

What accountabilities/appeal rights should apply to the decisions of the economic regulator?

125. Alongside the discipline of publishing input methodologies, the other key accountability mechanism that is common in economic regulation regimes are rights to appeal the determinations of the regulator. There are two broad types of appeal rights that apply to the decisions of economic regulators:

126. **Judicial reviews** that allow the processes of the economic regulator to be challenged to ensure that the regulator has correctly applied the applicable legislative and common law. These are generally seen as an inalienable part of any decision making process by a public body like an economic regulator.

127. **Merits appeals** that allow the substance and reasoning of the economic regulator's decisions to be challenged. These usually involve the appellate body (the High Court assisted by expert 'lay' members) stepping into the shoes of the regulator to:

- confirm the original decision
- amend or vary the original decision
- refer the decision back to the regulator with a requirement to reconsider the original decision, or particular parts of it.

128. Merits appeals should be available for regulatory decisions that have significant impacts on regulated suppliers collectively, or individually, and there is no other relevant appeal right.[30]

[30] The Legislative Design and Advisory Committee Guidelines (2018) provide that a person affected by a statutory decision should have an adequate pathway to challenge that decision. ***www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/appeal-and-review/chapter-28/***

129. Merits appeals can be allowed on a regulator's determinations of input methodologies, determinations that implement economic regulation (e.g. price-quality paths), or both.

130. Where a regulator's implementation determinations set regulatory controls that have significant impacts that are specific to individual firms (e.g. individual price-quality regulatory determinations and determinations that set the input methodologies), we consider these should be subject to merits review. However, decisions on issues that apply to all regulated parties and/or do not have significant impacts on individual suppliers should generally not be subject to merits review (e.g. determinations that implement information disclosure).

131. To avoid the potential for frivolous appeals or appeals that lead to undesirable regulatory uncertainty, appeals on input methodologies in New Zealand and some Australian jurisdictions are only permitted where the court considers that an amended determination would be 'materially better' in achieving the purpose of the regime. A further discipline that is applied in New Zealand is that any appeal on input methodologies must be conducted on the basis of the information and submissions that were before the regulator when it made its determination. This significantly reduces the incentive for parties to game appeal rights by withholding information that would be relevant for the regulator's determination process for a subsequent appeal process.

132. Like many other components of the economic regulation regimes, appeal rights have significant pros and cons. On the positive side, they provide an appropriate avenue for natural justice for regulated suppliers or consumers who may feel that regulator's decision is incorrect. Appeal rights also promote high quality decision making by the regulator, something that is particularly important for three waters infrastructure that tends to be expensive and can have an economic life 75 years or greater. There may also be a reduction in the incentive for parties that disagree with the regulator's determination to resort to political lobbying.

133. On the negative side, appeal rights can create regulatory uncertainty and delays by providing an avenue for the regulators decisions to be overturned, i.e. they give rise to a cost-quality trade-off in how key components of the regulatory regime are developed. They can also be a significant resource and financial cost to the regulator, potentially shifting resources away from areas that are important to the long-term interests of consumers.

134. These issues have been thoroughly canvassed in the development of the economic regulation regimes in Part 4 of the Commerce Act and Part 6 of the Telecommunications Act. While the new regime for the regulation of fixed line fibre assets is still in the process of being implemented, the appeal rights under Part 4 of the Commerce Act have been tested through the courts and evaluated.[31]

[31] For example, see: MBIE. (2016) Part 4 of the Commerce Act 1986: Merits Review Regime Evaluation Summary Findings from Interviews with Stakeholders. ***https://www.mbie.govt.nz/assets/293e375edf/merits-review-evaluation-report-on-summary-findings-from-interviews-with-stakeholders.pdf***

135. Our preliminary view is therefore that merits review should be available on the input methodologies developed by the economic regulator, and determinations that implement individual price-quality regulation. However, we do not consider merits reviews should be available on the regulator's determinations that implement procedural processes, such as information disclosure regulation.

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?

What should the compliance and enforcement regime look like?

136. Effective compliance and enforcement is essential for any regulatory regime to achieve its purpose and objectives.

137. As a general principle, arms of government should not become involved in enforcing regulation where those who are subject to regulation can reliably enforce it themselves. However, as with other markets with strong natural monopoly characteristics:

- there is a strong power and resource imbalance between suppliers and consumers that means that the economic regulation regime will not be reliably enforced if left to private parties
- the economic regulator typically plays a critical role in determining complex terms and conditions of supply that makes them the party that is best able to assess and enforce compliance.
- The combination of both these factors mean that an appropriately empowered and resourced regulator is necessary to undertake compliance and enforcement activities.
- Regulatory compliance and enforcement regimes can include a mix of criminal offences,32 civil remedies (e.g. infringement offences33 and pecuniary penalties34) and education or information activities that encourage compliance.

[32] Criminal offences are usually reserved for conduct that society considers to be particularly blameworthy and harmful given significant impact that criminal offences can have on individuals and the wider justice system. Accordingly, it is not proposed that criminal offences be part of the compliance and enforcement toolkit for the economic regulation regime applying to three waters services.
[33] Infringement offences are a subset of criminal offences that do not have the potential to result in criminal convictions, ie infringement offences are usually designed to deter conduct that is of concern to the society, but is at a relatively low-level that does not justify a criminal conviction, significant fine or imprisonment.
[34] Pecuniary penalties are non-criminal monetary penalties imposed by a court in civil proceedings that apply the civil standard of proof ("the balance of probabilities"). They are used for more serious conduct than infringement offences, so carry with them a higher level of penalty along with potentially serious reputational and financial effects on a person or entity. Pecuniary penalties are often employed in regulatory regimes that cover issues relating to commercial behaviour, and are generally payable to the Crown.

138. Reflecting the overarching focus on consumer welfare, an economic regulator's compliance and enforcement toolkit typically includes education initiatives, warning letters, infringement offences, pecuniary penalties, enforceable undertakings, and other civil remedies such as out of court settlements. This range of tools allows regulators to focus their resources according to the severity of non-compliance. The precise contents of the economic regulator's toolkit will usually depend on the nature of the regulatory regime, entities being regulated, and the potential range of conduct by regulated suppliers. In particular, we note that conventional civil penalties are likely to be less useful in addressing conduct by public entities without a profit motive. It is likely that the economic regulator will therefore rely more on consumer compensation mechanisms and tools that impact the reputation of the entity.

139. Table 4 summarises the range of conduct and potential compliance and enforcement approaches based on the preliminary preferred regulatory tool proposals outlined in Chapters 3, 4 and 5. In general, the particular compliance and enforcement tool chosen will depend on the nature of the harm arising from non-compliance, the nature of the conduct (e.g. inadvertent vs deliberate) and the degree of public interest.

Table 4 – Potential compliance and enforcement tools for different types of conduct

REGULATOR TOOL	CONDUCT	POTENTIAL COMPLIANCE AND ENFORCENMENT TOOL
Education activities	Ignorance or misunderstanding of regulatory obligations	Regulator undertakes appropriate education activities to lift supplier understanding
Comparative Benchmarking	Poor comparative performance	Regulator publishes a summary and analysis of the disclosed information to promote greater understanding of the performance of individual regulated suppliers, their relative performance, and the changes in performance over time
Warning letter	Minor or inadvertent breach or regulatory obligation	Regulator writes to supplier notifying them of a breach or potential breach along with actions required to address breach and avoid any subsequent enforcement action
Information disclosure regulation	Breach of information disclosure obligations	• Court order requiring compliance • Pecuniary penalty of up to $500,000 for an individual or $5,000,000 in any other case • Ability to accept an enforceable undertaking • Out-of-court settlements
Price-quality regulation	Breach of price-quality path	• Pecuniary penalty of up to $500,000 for an individual or $5,000,000 in any other case • In addition to pecuniary penalties, the Court may also order the party breaching the price-quality path to compensate any person who has, or is likely to suffer, from the breach • Injunctive power against suppliers that breach contravention of any price-quality requirement where the court is able to: (i) issue an injunctive order restraining any supplier from supplying services in contravention of the price-quality requirement; or (ii) make an order requiring the supplier to supply services in accordance with the price-quality requirement. • Ability to accept an enforceable undertaking • Out-of-court settlements

General power to gather information	Generally used by regulators to: • ascertain supplier compliance • get a better understanding of emerging issues • assess the achievement of regulatory/statutory objectives	• Court order requiring compliance • Offence carrying a fine of up to $100,000 for individuals, or $300,000 in any other case

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

6 Who should the economic regulator be?

What characteristics do high performing economic regulators have?

140. Economic regulators around the world tend to have a strong and unrelenting focus on long-term consumer welfare. When this focus is coupled with a toolkit that includes the ability to control the revenue/prices of commercial or government entities, and strongly influence the quality of services delivered to consumers, the potential for conflict with commercial or political imperatives is significant. This potential is further amplified by the long-term nature of most three waters infrastructure that can create incentives for 'time inconsistency' where there are temptations to forgo prudent long-term decisions for short-term politically attractive decisions, or decisions that use less cash in the short-term.

141. For these reasons, international experience and experience from other sectors in New Zealand suggests that high performing economic regulators:[35]

- are independent and operate at arms-length from Government and regulated suppliers in achieving their statutory objectives[36]
- operate with a high degree of transparency through their consultation, determination and performance review processes
- have the necessary expertise and credibility to efficiently and effectively implement economic regulation that achieves high quality outcomes for consumers
- are subject to appropriate accountability and decision review mechanisms (e.g. merits review) to promote high quality decision making
- share relevant information and act in a coordinated way with other regulators and policy agencies (while maintaining their independence in making regulatory determinations).

142. In terms of institutional arrangements, small developed countries (e.g. New Zealand, Australia, Ireland, and the Netherlands) tend to have multi-sector economic regulators whereas larger developed countries (e.g. UK, France, Italy, and Germany) tend to have either dedicated water sector economic regulators, or leave economic regulation to local municipalities. A number of smaller developed countries also combine their economic regulators with their competition authorities.

[35] OECD. (2015). The Governance of Water Regulators. ***www.oecd.org/gov/regulatory-policy/the-governance-of-water-regulators-9789264231092-en.htm***

[36] There are different dimensions to independence, but key dimensions often include: (i) the ability to take decisions without reference or review by Government; (ii) the inability of board members or senior executive to be removed by the Government of the day; and (iii) the agency having a permanent budget that is not subject to short-term political decision making.

143. In addition to the above characteristics, the choice of the economic regulator needs to consider:

- the ability to implement the economic regulation regime by the proposed 'go live' date of the Water Services Entities, i.e. 1 July 2024
- the ability to enhance, and realise synergies from, New Zealand's broader economic regulation eco-system
- overall value for money given consumers will ultimately fund the economic regulator's activities.

144. Pulling together the considerations in the previous two paragraphs, we suggest an appropriate assessment criteria for evaluating options for the economic regulator is:

- operate at arms-length from Government in making economic regulation determinations
- relevant expertise and credibility implementing economic regulation regimes;
- appropriate knowledge of the three waters sector
- improvements to three waters regulatory system can be delivered in a timely fashion
- enhances, and realises synergies from New Zealand's broader economic regulation eco-system
- overall value for money.

What entities could fulfil the economic regulator role in New Zealand, and how do these entities match up against the assessment criteria?

145. In our view, the assessment criteria above suggest there are three potential options for the economic regulator:

- *Taumata Arowai* – Taumata Arowai is a new the new drinking water regulator that will also have functions regulating the environmental impacts of wastewater and stormwater networks. The entity is currently in establishment phase and is expected to commence its regulatory functions in the second half of 2021 when the Water Services Bill becomes law. As a Crown Agent under the Crown Entities Act 2004, Taumata Arowai is required to give effect to Government policy.[37]

[37] Except in areas where a specific statutory exemption applies.

- *Commerce Commission* – the Commerce Commission is New Zealand's competition, consumer and economic regulation agency. It was established in 1986 and is an Independent Crown Entity for the purposes of the Crown Entities Act. As such, it is not subject to direction from the Government in carrying out its compliance, enforcement and regulatory control activities under the Commerce Act, Fair Trading Act, Credit Contracts and Consumer Finance Act 2003, Dairy Industry Restructuring Act 2001, Fuel Industry Act 2020 and Telecommunications Act. While the Commission has substantial expertise in regulating infrastructure with natural monopoly characteristics, it does not currently have expertise in the three waters sector.

- *A new water economic regulation authority* – this option would involve the passage of legislation to establish a new water sector-specific economic regulator as an independent Crown entity under the Crown Entities Act. In creating a new economic regulator that has similar functions to the Commerce Commission, there is an unavoidable risk that a significant proportion of the Commission's expertise that is currently working on the regulation of the electricity, gas, dairy, and telecommunications sectors would exit to the new water economic regulator. This risk could also apply to Taumata Arowai.

- Establishing a new water economic regulator would also likely take an additional 18 months to two years depending on how quickly funding could be made available. On the other hand, an economic regulator dedicated to the water sector may develop deeper sector specific expertise over time. A dedicated water regulator may also make it easier for policy makers to consider best model for New Zealand water sector in future.

146. The following table evaluates the three options against the assessment criteria.

Table 5 – assessment of regulatory institutional arrangement options

	OPTION A – TAUMATA AROWAI	OPTION B – COMMERCE COMMISSION	OPTION C – NEW WATER ECONOMIC REGULATION AUTHORITY
ABLE TO OPERATE AT ARMS-LENGTH FROM GOVERNMENT IN MAKING ECONOMIC REGULATION DETERMINATIONS	✘ Taumata Arowai is a Crown Agent that must give effect to Government policy when directed by the responsible Minister.	✓✓✓ The Commerce Commission is an independent Crown entity.	✓✓✓ Any new water economic regulator would likely be established as an independent Crown entity.

RELEVANT EXPERTISE AND CREDIBILITY IMPLEMENTING ECONOMIC REGULATION REGIMES	✘ Does not have expertise in economic regulation, and the required skill sets are significantly different from current public health and environmental regulation roles.	✓✓✓ Deep expertise in implementing economic regulation for the electricity, gas, telecommunications, airports and dairy sectors. In the process of expanding its remit into the fuel and retail payments sectors.	✘ New entity that would need to develop expertise.
APPROPRIATE EXPERTISE IN THE THREE WATERS SECTOR	✓ Currently establishment phase, but has started to build its expertise.	✘ No water expertise currently, but entity has solid track record of expanding into new sectors.	✘ New entity that would need to develop expertise.
IMPROVEMENTS TO THREE WATERS REGULATORY SYSTEM CAN BE DELIVERED IN A TIMELY FASHION	✓ Entity has been established and is developing its expertise, but would likely take time to build significantly different economic regulation skill sets.	✓✓ Entity able to leverage existing expertise from day one, but would need to build water sector expertise over time.	✘ Substantial set-up work required to establish and fund new entity. Developing economic regulation and water sector expertise simultaneously is likely to take considerable time.
ENHANCES, AND REALISES SYNERGIES FROM, NEW ZEALAND'S BROADER ECONOMIC REGULATION ECO-SYSTEM	✘ Significant risk of spreading New Zealand's scarce economic regulation expertise across too many agencies in a way that undermines outcomes in other economically regulated sectors.	✓✓✓ Concentrates scarce economic regulation resource in a way that allows synergies to be realised and resource to be leveraged across sectors.	✘ Significant risk of spreading New Zealand's scarce economic regulation expertise across too many agencies in a way that undermines outcomes in other economically regulated sectors.
DELIVERS VALUE FOR MONEY	✓✓ Builds off an existing agency with a clear focus on the water sector, but entity would need to build economic regulation expertise.	✓✓ Builds off an existing agency with significant economic regulation expertise water sector, but entity would need to build its water sector expertise.	✘ Requires establishment of a new agency with accompanying overhead costs. Would need to build both water and economic regulation expertise.

Key: ✓✓✓ = High degree of alignment; ✓✓ = Moderate degree of alignment; ✓ = Low degree of alignment;
✘ = No alignment.

147. In line with the above analysis, it appears that the Commerce Commission is the most appropriate body to be the economic regulator for the three waters sector. However, it should be noted that there are options to provide a dedicated water sector focus within the overarching structure of the Commerce Commission. For example, a 'Water Commissioner' could be established within the overall governance structure of the Commerce Commission in a similar way to the current Telecommunications Commissioner. This option effectively blends aspects of options B and C.

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.

7 How should any economic regulation regime be funded?

How much will the economic regulation regime cost to administer?

148. Based on the preliminary policy positions outlined earlier in this document, there are likely to be four major cost components to implementing economic regulation on the proposed four new Water Services Entities:

- Transition costs – working with the sector to improve their understanding of economic regulation and preliminary work to improve the quality of data in the sector is likely to cost approximately $4m spread across the 2022/23 and 2023/24 financial years. This funding will be provided by the Crown.
- Development of input methodologies – developing the rules, requirements and processes underpinning the application of economic regulation is likely to cost in the order of $10m and take approximately two years. This equates to an average monthly household cost of 45 cents for the period over which input methodologies would be developed.[38]
- Implementation of information disclosure regulation – covers the costs of collecting, analysing, summarising the data disclosed by regulated suppliers, undertaking compliance and enforcement activities, and is likely to cost around $5m per annum on average. This equates to an average monthly household cost of 22 cents.[39]
- Implementation of price-quality regulation – covers the setting of price-quality paths, approval of major capital expenditure projects, undertaking compliance and enforcement activities, and is likely to cost around $3m per annum on average. This equates to an average monthly household cost of 13 cents.

Should these costs be Crown or levy funded?

149. In general, fees or levies are considered to be an appropriate funding tool where it is possible:

- to identify specific individuals or groups that directly benefit from a given Government activity or service,
- to efficiently charge or levy individuals or groups that benefit from a given Government activity or service.[40]

[38] Based on Statistics NZ March 2021 estimate of households. ***https://www.stats.govt.nz/information-releases/dwelling-and-household-estimates-march-2021-quarter***.
[39] Based on Statistics NZ March 2021 estimate of households. ***https://www.stats.govt.nz/information-releases/dwelling-and-household-estimates-march-2021-quarter***.
[40] The Treasury. (2017). Guidelines for Setting Charges in the Public Sector. ***www.treasury.govt.nz/sites/default/files/2017-04/settingcharges-apr17.pdf***.

150. The main difference between a fee and a levy is that it is generally compulsory to pay a levy, and it is usually charged to a specific group (rather than relating to specific services provided to an individual.[41]

151. Put another way, fees and levies are often suited to situations where there are significant private benefits to individuals or groups rather than society at large (i.e. public benefits). If there are identifiable public benefits, then funding from general taxation is likely to be a more appropriate funding tool. If there is a mix of public and private benefits, then a mix of fees/levies and funding from general taxation is likely to be appropriate, weighted according to the balance of private and public benefits.

152. Like other utilities, the economic regulation of three waters services is specifically designed to directly benefit the long-term interests of consumers. Because it is possible to identify parties that directly benefit from economic regulation, the costs of implementing economic regulation are typically levied on the supplier of regulated services. These costs are then passed through to consumers in the prices they pay for regulated services.

153. The ability to identify and cost effectively charge the ultimate beneficiaries of the economic regulation regime suggests that the costs of the regime should be met from charges on consumers. Because the costs of the regime will be levied on regulated suppliers as a proxy for the diverse range of consumers that ultimately benefit, a levy is more appropriate than a fee.

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?

If the economic regulator's costs are to be levy funded, how should this work?

154. A range of different approaches can be used to levy regulated suppliers. The key questions are:

- What is the process used to set the levy (including consultation requirements)?
- Who sets the final amount of the levy?
- Who collects the levy?

155. Our preliminary view is that there are two broad levy design options that should be considered: (i) a regulator led levy regime similar to that used by the Electricity Authority under the Electricity Industry Act;[42] and (ii) a minister levy regime similar to that administered by the Ministry of Business, Innovation and Employment under Part 4 of the Commerce Act.[43]

See also Office of the Auditor General. (2008). Charging fees for public sector goods and services. ***https://oag.parliament.nz/2008/charging-fees/docs/charging-fees.pdf***

[41] Legislation Design and Advisory Committee. (2018). Legislation Guidelines. ***www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/issues-particularly-relevant-to-empowering-secondary-legislation/chapter-17/***

[42] See, in particular, s 128 of the Electricity Industry Act 2010.

[43] See, in particular, s 53ZE of the Commerce Act 1986.

156. We note that if the Government were to pass legislation that enabled the economic regulation regime to be levy funded, it is likely that a separate consultation process would be required to determine the quantum of levy funding provided.

Table 6 – economic regulation levy regime options

	OPTION A – REGULATOR LED LEVY REGIME	OPTION B – MINISTER LED LEVY REGIME
WHAT IS THE PROCESS USED TO SET THE LEVY?	Regulator publicly consults on its work programme and required funding.	Ministry consults on funding required (on behalf of the Minister) in close consultation with the regulator.
WHO SETS THE FINAL AMOUNT OF THE LEVY?	The Minister sets the total amount of levy funding by determining the regulator's appropriation(s) in the Main Estimates of Appropriations for the levy year.[44] The levy rates applying to industry participants are calculated in accordance with the allocation mechanism specified in the levy regulations, and are published in the Gazette.	The Minister sets the total amount of levy funding by determining the regulator's appropriation(s) in the Main Estimates of Appropriations for the levy year.[45] The levy rates applying to industry participants are calculated in accordance with the allocation mechanism specified in the levy regulations. Levy payers are notified of their levy liability.
WHO COLLECTS THE LEVY?	Regulator.	Ministry, on behalf of the Minister.

157. There are pros and cons to both these types of levy regimes. Requiring the regulator to consult on its work programme and funding needs can promote efficiency in the regulator's activities and provides a useful accountability mechanism to consumers, regulated suppliers and other stakeholders. On the other hand, there can be a perception risk of the regulator consulting regulated parties on its funding requirements, even if the final decision rests with the Minister.

158. In contrast, a Ministerial led regime creates a degree of separation between the regulator and regulated parties. However, the inherent accountabilities of a regulator led regime are lost and there is potential for regulator funding requirements to be subject to a higher degree of political decision making.

[44] The Minister may elect to refer to the decision to Cabinet if the Minister considers the decision meets the thresholds set out in the Cabinet Manual.
[45] The Minister may elect to refer to the decision to Cabinet if the Minister considers the decision meets the thresholds set out in the Cabinet Manual.

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

Part C – Consumer Protection Regulation

8 Are additional consumer protections warranted for the three waters sector?

What do we mean by consumer protection?

159. Consumer protection refers to rules that aim to safeguard the interests of consumers and the general public against market practices that are misleading, deceptive, unfair or generally inconsistent with consumer welfare. Importantly, consumers can include both individuals and businesses that purchase goods and services.

160. New Zealand's generic consumer protection regime is provided by the Consumer Guarantees Act 1993 (CGA) and the Fair Trading Act 1986 (FTA). The CGA protects consumers by allowing them to seek repairs, replacements, or refunds when goods are faulty, and setting minimum guarantees for all products and services. The FTA exists to ensure the interests of consumers are protected, businesses compete effectively, and consumers and businesses participate in markets confidently by:

- prohibiting certain unfair conduct and practices in relation to trade
- promoting fair conduct and practices in relation to trade
- providing for the disclosure of consumer information
- promoting safety in respect of goods and services.
- Depending on the characteristics of a given market, there may be a need for additional consumer protections over and above the generic protections provided by the FTA and CGA.

Why might additional consumer protections be required in the three waters sector?

161. Consumers are likely to have a range of outcomes that they see as desirable from the outcome of the Three Waters Reform. For example, consumers might value the following outcomes:

a. Drinking water is safe to drink. Consumers may also have preferences around the taste, appearance or smell of drinking water.
b. Three waters services are delivered at a price and quality that reflects consumer preferences including:
    i) the frequency and duration of supply interruptions
    ii) the degree of leakage from reticulated networks
    iii) community expectations for the environmental quality of river, lake, and sea environments that receive discharges from wastewater and stormwater networks
    iv) the level of resilience that water infrastructure has to a range of natural and man-made hazards

v) services are delivered in efficient and innovative ways that improve consumer welfare over time.

c. Consumers are protected from misleading, deceptive or unfair conduct on the part of water suppliers, and receive services that are fit for purpose.

d. Consumers, including consumers that have personal or socio-economic attributes that make them more vulnerable, receive high quality customer service from their water supplier, and have access to appropriate redress when things go wrong.[46]

162. Outcomes a. and b.(iii) above are the primary focus of the drinking water and environmental protection regimes administered by Taumata Arowai[47] and regional councils while the remainder of outcome b. is likely to be the focus of the economic regulation regime discussed in Part B of this document. Outcome c. falls within the coverage of the generic consumer protection regime provided by the FTA and CGA.

163. There are consumer protection 'gaps' likely to be centred around the aspects of customer/quality of service that are not dealt with by public health, environmental, or economic regulators. These 'gaps' could include:

- what level of service consumers can expect when they contact a water supplier with a query or complaint
- expectations for the level of communication with consumers on planned and unplanned network outages
- requirements around billing practices, vulnerable consumers, and the process for managing non-payment
- how complaints that consumers do not feel have been adequately addressed by their supplier can be appropriately resolved (e.g. issues or disputes relating to billing, access to a consumer's property, financial hardship/non-payment).

164. There are three primary reasons that 'gaps' in these areas may require consumer protections that go over and above New Zealand's generic consumer protection regime:

- There are strong natural monopoly characteristics that prevent consumers switching to a different provider should they feel that their interests are not being met. One consequence of this inability for consumers to switch providers is that suppliers have limited incentives improve their overall quality of service over time, and be responsive to the needs of consumers.

[46] Where consumers are receiving water services from an upstream supplier rather than self-supplying.
[47] For example, the Water Services Bill sets out duties on drinking water suppliers to notify Taumata Arowai and other parties if its ability to maintain a sufficient quantity of drinking water is at imminent risk, and also requires suppliers to provide certain information to consumers and have complaints processes.

- The current democratic, consultation, and governance mechanisms that are provided for in the Local Government Act 2002 will not apply to the proposed new Water Services Entities. In addition, the Ombudsman's current role in dealing with complaints about Local government agencies will cease.
- Some consumers currently have little visibility over the price or quality of services they are receiving because the approach to billing differs significantly across the country. While the proposed economic regulation regime and the statutory obligations on Water Services Entities will address these issues for most New Zealanders, issues may remain for consumers that do not receive their water services from these entities.

165. When an essential service is delivered by monopoly suppliers, regulators around the world tend to play a strong role in ensuring interests of consumers are appropriately protected and provided for. The combination of domestic factors and international experience leads us to a preliminary view that additional consumer protections are warranted for the waters services.

What should the objectives of the consumer protection regime be?

166. As with the economic regulation regime, a clear legislative statement of the objectives of a consumer protection regime can help to guide the interpretation and implementation of that legislation. The paramount objective of the consumer protection regime will be improving service quality to reflect the demands of water consumers, including through:

- enhancing the quality of water services over time (focussing on aspects of quality not regulated by public health, environmental or economic regulators)
- providing consumers with a strong voice in how water services are delivered
- providing consumers with effective redress where the quality of service does not meet appropriate standards
- providing consumers with transparency regarding water 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?

What tools are required to protect the interests of consumers?

167. Chapters 9, 10, 11, and 12 explore the approaches or tools that could be used to achieve the objectives set out above. The range of potential tools includes minimum service level requirements, customer charters, consumer contracts, consumer voice arrangements, consumer advocacy arrangements, dispute resolution mechanisms, and billing transparency requirements.

9 Is there a case for minimum service level requirements/codes and what form should these take?

168. As outlined in Chapter 8, the structure and attributes of the water sector means that water suppliers may not have strong incentives to look after the interests of consumers. While many aspects of the price and quality of water services will be regulated by public health, environmental and economic regulators, there are likely to be areas that may not be covered by these regulators.[48] These gaps could include:

- the quality of customer service, including the time taken to respond to queries or complaints from consumers
- the time taken to respond to water outages or network faults, and the notice periods for planned interruptions to supply
- information about network status, including damage or disruption due to flooding or weather events, and the obligations of the supplier to communicate to consumers
- minimum flow or pressure rates[49]
- the framework for billing and payment for water services, including transparency requirements, account queries and payment arrangements
- the conditions for the provision of water services to customers experiencing a form of hardship
- requirements for consulting and engaging with consumers (covered in more detail in Chapter 10)
- the provision of information to customers and others about water services, including complaints procedures (covered in more detail in Chapter 11).

What are minimum service level requirements/codes?

169. One option to address these potential gaps is to provide a consumer protection regulator with the ability to specify minimum service level requirements (or service quality standards) that support the achievement of statutory objectives. Suppliers must meet these requirements and are held to account via a compliance and enforcement regime that is able to fine or otherwise penalise suppliers that do not meet the required service or quality levels.

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[48] This list is provided to illustrate the range of issues that may not be covered by other regulatory provisions. However, because the various regulatory regimes that will apply to the three waters sectors are yet to be developed, or still developing, it is possible that one or more of the issues raised may be covered by these regimes.

[49] These flow rates may be over and above those stipulated for urban areas in New Zealand Standard 4509:2008.

170. Minimum service level requirements are common in other domestic[50] and international[51] utilities markets that have strong natural monopoly characteristics, and can be specified at the wholesale or retail level depending on market structure.

What types of minimum service level requirements/codes are there?

171. Broadly, there are three types of code that could give effect to these standards: voluntary, backstop regulatory, and mandatory:

- **Voluntary codes** that are developed by industry. Such codes generally provide an industry with the opportunity to use their detailed sectoral knowledge to self-regulate to improve customer service and avoid potentially heavier handed government intervention. Voluntary codes are generally easier to update and adapt to reflect market and technological developments, and the costs fall on industry rather than government. Disadvantages of a voluntary code include:
    - that they may not provide a satisfactory level of protection to consumers over time (as has been the experience in other utilities markets in New Zealand) because of the perverse incentives on industry to degrade quality to cut their own costs
    - the potential for only suppliers that already meet the standards provided in the code to sign up to the code.[52]
- **Backstop regulatory approaches** are a sort-of halfway house that involve a voluntary code complemented by a regulatory tool, such as an ability for the regulator to impose minimum service level requirements via a regulatory code if industry self-regulation is inadequate, or if satisfactory voluntary codes do not emerge. The credible threat of government intervention under this approach tends to drive greater improvements in the quality of service for consumers, relative to a purely voluntary approach.
- **Mandatory codes** involve the regulator setting minimum service quality requirements that apply to some, or all, regulated water service providers. The main benefit is that the regulator is able to directly control the requisite quality service levels.

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[50] For example, recent amendments to the Telecommunications Act 2001 provide for retail service quality codes – see ss 233-237.

[51] For example, economic regulators in England, Wales, Scotland, Northern Ireland, and Australia are empowered to impose mandatory service level requirements on water suppliers that they must meet in delivering services to consumers.

[52] Recent electricity and telecommunications sector reviews revealed the inadequacy of voluntary minimum service level codes in those markets. In particular, voluntary codes had not provided vulnerable and medically-dependent electricity consumers with sufficient protection, and had not been as effective as expected in delivering high quality customer service to telecommunications consumers. ***www.ea.govt.nz/assets/dms-assets/28/Consumer-Care-Guidelines-Decisions-Paper.pdf***. ***www.mbie.govt.nz/assets/512ad8c91a/telco-review-ris-consumer-matters.pdf***.

- However, mandatory codes can be costly to develop, monitor and enforce, and may also impose significant compliance burdens on industry. Some of these costs may be able to be mitigated by allowing or requiring the code to be periodically reviewed,[53] so that it focusses on areas of service quality that have the biggest net impacts on consumer welfare.

172. Overseas, regulators appear to have a preference for mandated minimum service levels/mandatory codes.[54] Given New Zealand's previous experience with the deficiencies of voluntary codes, and the nature and importance of water services to consumers, our preliminary view is that mandatory minimum service levels would be best suited to the regulation of three waters services. Any mandated minimum service levels/mandatory codes should be developed with extensive input from consumers to ensure they effectively address the interests that consumers see as most critical to their welfare.

173. In addition to mandatory codes, sometimes regulators are also empowered to provide guidance on how aspects of service quality will be dealt with and measured by the regulator, as well as other matters relating to service quality that support the interests of consumers.

Are there other approaches that can get at the same or similar issues to minimum service level requirements/codes?

174. There are two main alternatives to minimum service level requirements/codes:

- **Consumer contracts** – while the FTA already prohibits unfair contract terms in standard form consumer contracts, there is also an option to go further and have the core terms and conditions on which a service is supplied to consumers be developed by, or approved, by the consumer protection regulator. This can get at many of the same issues as minimum service level requirements/codes, but are likely to be more resource-intensive for the regulator as they require the regulator to become involved in detailed contractual drafting issues.

- **Consumer charters** – some countries supplement or take an alternative approach to codes issued by the regulator with policies or 'customer charters' that set out how suppliers will meet key consumer protection obligations. Consumer charters generally put the onus on suppliers to assume responsibility for their relationship with customers, and to consult with those customers to determine their key needs and how services can be refined to meet those needs.

[53] In Western Australia, the Economic Regulation Authority is legally required to review the operation and effectiveness of their regulatory code which establishes a consumer protection framework at least once every five years. Section 27(7) of the Water Services Act 2021.
[54] This includes Victoria (the Essential Services Commission's (ESC) Customer Service Code), Western Australia (the Economic Regulation Authority (ERA) Water Services Code of Conduct), England and Wales (the Water Services Regulation Authority's (Ofwat) Guaranteed Standards Scheme).

- While this imposes development costs on suppliers, shifting compliance responsibility also gives suppliers freedom to design their charter in a way that best meets their customer's needs while also managing compliance costs. Some jurisdictions, such as Victoria (Australia) and Great Britain, require water suppliers to submit the customer charters to the regulator for approval, alongside details of the consumer consultation that has occurred on the charter.

175. While we are open to having consumer contracts or consumer charters sitting alongside minimum service levels/codes, these mechanisms do not appear to have any clear advantages as minimum service levels/codes are able to be drafted in a way that gets to the same issues, and at the same level of prescription.

Are minimum service level requirements/codes warranted in New Zealand?

176. International and New Zealand experience has been that minimum service level requirements can be highly effective at improving aspects of service quality that can be otherwise difficult for consumers or regulator to address. If appropriately drafted and targeted, they can also provide clarity to regulated suppliers on the level of service that is required, rather than receiving a range of views from consumers that can be diverse and difficult to reconcile.

177. Our preliminary view is therefore that a consumer protection regulator should be able to prescribe mandatory minimum service level requirements/codes. Providing such codes are developed with strong input from consumers, they are likely to lead to significant short and medium term improvements in consumer welfare. In the longer term, there may also be a reduction in the demand for dispute resolution services that has the potential to benefit both consumers and suppliers. Based on the information we currently have, we are not sure there would be significant consumer welfare gains from requiring the introduction of consumer contracts or consumer charters as supporting mechanisms over and above minimum service level requirements. We welcome views on this issue.

178. We also consider that it is desirable for the regulator to be able to issue guidance to support the prescribed minimum service level requirements and its broader statutory role.

179. Minimum service level requirements could be advanced through sector specific or economy wide legislation. For example, section 7A of the economy wide CGA sets out what acceptable quality means for the gas and electricity sectors, over and above the other aspects of quality set out in the sector-specific provisions of the Electricity Act 1992, Electricity Industry Act 2010, and the Gas Act 1992. Our preliminary view is that it would be preferable to have provisions relating to water services quality in the same piece of economic regulation and consumer protection legislation on the basis that this will make it easier for consumers to navigate and understand their rights and protection mechanisms.

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?

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

Should minimum service level requirements be able to distinguish between different types of consumers?

180. International and New Zealand experience suggests that consumers can experience barriers to accessing essential services depending on their characteristics, needs, and circumstances at a particular point in time. Consumer protection regimes often tailor the level of protection afforded to consumers to this. Minimum service level requirements can be an important tool through which different groups or types of consumers can be afforded varying (generally heightened) levels of protection.

181. Internationally, it is common for service level requirements to vary across different types of consumers, particularly to address the interests of vulnerable consumers.[55] However, there may be other situations where different service levels are appropriate for different types of consumers (e.g. services to other critical national infrastructure suppliers).

Should different levels of consumer protection apply to vulnerable consumers?

182. Vulnerability generally refers to the likelihood of a negative outcome or experience of harm, which is a product of the circumstances of a consumer that result in them experiencing barriers to participating in essential services.[56] Vulnerability can be a transient, sporadic, or permanent state. Many water consumers experience vulnerability at some point in their lives, and there are many factors that can give rise to it:[57]

- experiencing financial instability or low financial resilience (sudden, acute, or chronic) causing genuinely difficulty in paying their bills
- a risk of harm to health or wellbeing by reason of age, health, disability in the case of disconnection

[55] This includes Victoria (the Essential Services Commission's (ESC) Customer Service Code), Western Australia (the Economic Regulation Authority (ERA) Water Services Code of Conduct), England and Wales (the Water Services Regulation Authority's (Ofwat) Guaranteed Standards Scheme).
[56] Essential Services Commission. (2021). Getting to Fair – Draft decision paper. ***engage.vic.gov.au/building-strategy-regulate-consumer-vulnerability-mind***.
[57] See for example: BSI. (2010). Inclusive service provision: Requirements for identifying and responding to consumer vulnerability. ***https://shop.bsigroup.com/ProductDetail?pid=000000000030213909***; Department for Business, Innovation and Skills, Cabinet Office. (2011). Better Choices: Better Deals Consumers Powering Growth. ***assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/294798/bis-11-749-better-choices-better-deals-consumers-powering-growth.pdf***

- dependent on supply of a particular volume of water for critical medical treatment
- an inability to advocate for, or represent, their interests in interactions with water suppliers (including small businesses)
- difficulty in obtaining or assimilating information
- an inability to buy, choose, or access adequate water supply where this access to a reticulated network is not available.

183. Although any consumer can face detriment in a market, consumers experiencing vulnerability are more likely to face barriers to essential services. This can create unnecessary stress, and often worsens the difficulties consumers are already facing in other areas of their lives. Not effectively addressing these obstacles can also reduce consumer trust that essential service providers can meet community needs. These issues have been recognised by a wide range of regulatory, consumer and human rights groups around the world.[58]

184. A common instance of vulnerability can occur when financial instability or low financial resilience results in the accumulation of debt owed to water suppliers. One way that this kind of vulnerability can be mitigated is by providing a fair process that allows steps to be taken to reduce the likelihood of debt accumulation, and if debt has been accumulated, a fair debt reduction plan to be put in place that reduces the debt over time without compromising other areas of essential consumer expenditure.

185. A variety of regulatory and non-regulatory tools are used internationally in utilities markets to minimise the risk of harm to consumers experiencing vulnerability. One of those is minimum service level requirements (discussed above), which give regulators flexibility to direct suppliers to provide stronger protection to targeted groups of consumers with greater needs. Other commonly used tools include:

- **Regulator Strategy on Vulnerability (also called 'Best Practice Frameworks' or 'Vulnerable Consumer Guidelines')** – used in utilities sectors in the UK and Northern Ireland, these strategies produced by the regulator describe in general terms how the regulator defines and approaches the issue of vulnerability, in terms of ensuring equality of access to services, and any ongoing work programme to identify and tackle vulnerability.[59]

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[58] For example see Consumer Policy Research Centre. (2020). Exploring regulatory approaches to consumer vulnerability: Report for the Australian Energy Regulator. ***www.aer.gov.au/publications/corporate-documents/exploring-regulatory-approaches-to-consumer-vulnerability-a-report-for-the-aer***; United Nations. (2016. Guidelines for Consumer Protection. ***https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf***; Council of Financial Regulators. (2021). Consumer Vulnerability Framework. ***www.fma.govt.nz/assets/CoFR/CoFR-Consumer-Vulnerability-Framework-April-2021.pdf***

[59] See for example Utility Regulator (Northern Ireland). (2019). Consumer Protection Programme. ***https://www.uregni.gov.uk/news-centre/decision-paper-consumer-protection-programme-published***

- Regulators can use vulnerable consumer strategies to set their expectations of the obligations suppliers have in identifying and responding to vulnerability, in a relatively non-resource intensive manner (for both the regulator and regulated parties).[60] For example, it could prompt suppliers to think broadly about the areas of their own business to identify and mitigate risk factors that may cause or exacerbate vulnerability, such as the ways in which they communicate, or the knowledge and skills of their staff.

- **Supplier Hardship or Vulnerability Policy** – these kinds of policies generally shift the onus onto the water supplier, rather than the regulator, to identify consumers' needs and determine how to respond to, and protect, those interests. A rationale for this is the idea that Water Services Entities, rather than government, are likely to be best placed to understand their customers' needs and direct appropriate assistance to them.

- For example, service providers have information about customers' circumstances, they can collaborate with suppliers, community groups, local authorities and other organisations to help tackle barriers to accessing services, and because of their direct relationship with consumers, can direct consumers in difficulty to services or sources of help. In some jurisdictions, the regulator can prescribe the contents of a supplier's hardship policy in guidelines and direct suppliers to review their policy.[61]

186. Our preliminary view is that there is a strong case for minimum service level requirements to be able to vary across different types of consumers. We also consider that there should be a positive obligation on the regulator to consider interests of vulnerable consumers, and that minimum service level requirements are flexible enough able to accommodate a wide range of approaches to addressing consumer harm and vulnerability.

What is the role of Te Tiriti o Waitangi in the design of consumer protection regulation for three waters?

187. The consumer protection regime, along with the wider Three Waters Reform, will aim to protect communities and ensure water service quality meets consumer expectations, including the expectations of iwi and hapū. In addition, consumer protection regulation could reflect the fact that Māori communities are over-represented in vulnerable populations in New Zealand, as well as Māori historic experience of both price and service quality inequity.

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[60] Via its Consumer Care Guidelines, the Electricity Authority articulates its expectations of electricity retailers in respect of vulnerable consumers who may have difficulty paying their bills (a minimum standard).
[61] For example, New Zealand's Electricity Authority prescribes the contents of supplier hardship policies via the Consumer Care Guidelines. Suppliers may choose to design alternative methods to support vulnerable consumers, provided these meet or exceed the standards in the Guidelines. In Western Australia, the utilities regulator is empowered to direct suppliers to review their policies. See Economic Regulation Authority. Code of Conduct for the Supply of Electricity to Small Use Customers; Compendium of Gas Customer Licence Obligations; Financial Hardship Policy Guidelines – Electricity & Gas Licence. ***www.erawa.com.au/***

188. As noted in a Cabinet paper by the Minister of Local Government:[62]

> *…the rights and interests of Māori as consumers of water services need to be considered, predominantly under Article Three of the Treaty. There are good reasons for general mechanisms of consumer protection and advocacy to specifically address the interests of Māori, particularly as they relate to historic inequity and the specific interests of Māori who are not mana-whenua within the boundary of a specific entity, including urban Māori.*

189. I am interested in feedback on how the consumer protection regime could be designed in a way that contributes to equitable outcomes and mitigates unintended impacts on Māori. This includes impacts on different iwi/hapū, Māori landowners, urban Māori consumers, and rural Māori consumers. I am also interested in stakeholder views on how the consumer protection regulator could be expected to consider Treaty obligations, and the cultural competency of the economic regulator to recognise the significance of water as a taonga for Māori.

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

Should consumer protection regulation apply to Water Services Entities only, or also include community and private schemes?

190. A key regulatory design question is whether all water suppliers should be required to comply with all aspects of the consumer protection framework, or whether some suppliers should be fully or partially exempt to recognise the diversity in supplier characteristics and the regulatory design principle that the benefits of regulation should exceed the costs. There may also be questions about whether the consumer protection framework should apply to drinking water, wastewater, and stormwater equally, or differentially.

191. International approaches to the application of consumer protection frameworks in water (and other utilities) markets vary. In Australia, some states (e.g. Victoria) have limited the application of their minimum service standards to certain customers or water suppliers while other states (e.g. Western Australia) apply the same consumer protection standards across all water suppliers, irrespective of their size or location.

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[62] See: Office of the Minister of Local Government. (14 June 2021). Cabinet Paper: Protecting and Promoting Iwi/Māori Rights and Interests in the New Three Waters Service Delivery Model: Paper Three. ***www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/$file/cabinet-paper-three-and-minute-protecting-and-promoting-iwi-maori-rights-and-interests-30-june-2021.pdf***

192. We are aware of concerns about the compliance burden being especially heavy for small private suppliers like marae or small community suppliers servicing fewer than, say, 100 people on a regular basis. It could be the case that these suppliers are not capable of complying with their consumer protection regulatory obligations, for example they may be too small to employ the necessary expertise, or lack the financial resources to upgrade their systems. An argument may also be that there is often a significant degree of overlap between the owners and consumers of small suppliers that results in consumers having a stronger voice than would be the case for larger suppliers.

193. On the other hand, there are genuine equity and fairness concerns that could arise from consumer protections applying to some consumers and not others if the full suite of consumer protection mechanisms do not apply to all suppliers.

194. While we consider that the full consumer protection regime should apply to Water Services Entities, we do not feel that we currently have sufficient information to form a view on whether the regime should also apply to private and community schemes. One option to address this information deficit would be to leave the decision on which elements of the regime apply to which suppliers to the regulator, appropriately guided by the statutory purpose statement. Other options would be to:

- provide a significant transitional period for small private and community schemes to make the necessary changes to their policies and operations
- only impose the consumer protection regime on water suppliers above a given number of customers (e.g. 500 customers).

195. We welcome views on these issues.

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?

What should the consumer protection compliance and enforcement regime look like?

196. Effective compliance and enforcement is essential for any regulatory regime to achieve its purpose and objectives. As with other markets with strong natural monopoly characteristics, there is a strong power and resource imbalance between suppliers and consumers that means that the consumer protection regime will not be reliably enforced if left to private parties. It is therefore important that the consumer protection regulator is appropriately empowered and resourced to undertake compliance and enforcement activities.

197. Regulatory compliance and enforcement regimes can include a mix of criminal offences, civil remedies (e.g. infringement offences and pecuniary penalties) and education or information activities that encourage compliance.[63] Reflecting the overarching focus on consumer welfare, a consumer protection regulator's compliance and enforcement toolkit typically includes some combination of education initiatives, warning letters, infringement offences, pecuniary penalties, enforceable undertakings, and other civil remedies such as out of court settlements. The precise contents of the regulator's toolkit will usually depend on the nature of the regulatory regime and the potential range of conduct by regulated suppliers.

198. Table 7 below summarises the range of conduct and potential compliance and enforcement approaches of other regimes with a consumer protection component that have some similarities to the approach proposed in this chapter. In particular:

- The **Telecommunications Act** has a purpose of regulating the supply of telecommunications services, including through retail service quality codes that have some similarities to what has been proposed earlier in this chapter. The entities regulated under that Act are mostly large private commercial enterprises.
- The **Water Services Bill** has a protection of public health and safety objective, to ensure the safe and reliable supply of drinking water. It contains high penalty levels and fines, relative to the other consumer protection legislation canvassed here, to reflect the potential for harm to life or health to occur from the conduct that is regulated.
- The **Fair Trading Act** aims to protect the interests of consumers in markets and ensure businesses compete effectively. To that end, it prohibits misleading, deceptive and unfair conduct and practices. This Act applies to a much broader range of entities than the other legislation canvassed here, including all small and medium enterprises.
- The **Consumer Guarantees Act** shares the same objectives as the FTA, but achieves this by providing that consumers are entitled to expect products and services be of a certain quality.

199. For the reforms to achieve their desired objectives, the regulator must have the powers and resources needed to impose obligations on suppliers. It is equally important that the regulator is equipped with an appropriate enforcement toolkit to discharge these functions. Table 7 contains a comparison of the compliance and enforcement powers of other legislation that has consumer protection elements. These vary materially between regimes reflecting the nature of the regimes, the potential harm to consumers, and the nature of the entities they regulate.

[63] See footnotes 32 to 34 above.

Table 7 – Compliance and enforcement tools across legislation with consumer protection elements

REGULATOR TOOL	CONSUMER GUARANTEES ACT	FAIR TRADING ACT	TELECOMMUNCIATIONS ACT	WATER SERVICES BILL
Education activities	✓	✓	✓	✓
Warning letter	✗	✓	✓	✓
Infringement notice (offence)	✗	✓	✓	✓
Criminal offences (including fines)	✗	✓	✓	✓
Pecuniary penalties	✗	✗	✓	✗
Direct compensation order	✗	✗	✓	✗
Compliance order	✗	✗	✗	✓
Remedial action powers/orders	✓	✗	✗	✓
Order to disclose/correct information	✗	✗	✓	✗
Enforceable undertakings	✗	✓	✓	✓
Injunctions	✗	✓	✓	✗

Table 8 – Potential compliance and enforcement tools for different types of conduct

REGULATOR TOOL	CONDUCT	POTENTIAL COMPLIANCE AND ENFORCENMENT TOOL
Education activities	Ignorance or misunderstanding of regulatory obligations	Regulator undertakes appropriate education activities to lift supplier understanding.
Warning letter	Minor or inadvertent breach or regulatory obligation.	Regulator writes to supplier notifying them of a breach or potential breach along with actions required to address breach and avoid any subsequent enforcement action.
Breach of minimum required service level/code	Breach of information disclosure obligations	• Court order requiring compliance[64] • Court order requiring the disclosure of information or the publishing of a corrective statements[65] • Pecuniary penalty of up to $500,000 for an individual or $5,000,000 in any other case[66] • Injunctive power against suppliers that breach minimum required service levels[67] • Order requiring supplier to compensate any person or entity who has suffered, or is likely to suffer, from the breach[68] • Ability to accept an enforceable undertaking[69] • Out-of-court settlements • Management banning orders[70]

[64] See for example s 87C of the Commerce Act 1986.
[65] See for example s 156MA of the Telecommunications Act 2001
[66] See for example ss 87 – 87C, Commerce Act 1986. The maximum pecuniary penalty under the Fair Trading Act is $200,000 in the case of an individual or $600,000 for a body corporate (s 40). The maximum pecuniary penalty available under the Telecommunications Act is $10 million for most breaches (s 156L).
[67] See for example s 88 of the Commerce Act 1986.
[68] See for example s 87B of the Commerce Act 1986, and s 156MB Telecommunications Act 2001.
[69] See for example s 74A of the Commerce Act 1986.
[70] See for example s 46C of the Fair Trading Act 1986.

200. Based on the regulatory proposals set out in this chapter, Table 8 sets out our preliminary views on the toolkit required for the consumer protection compliance and enforcement regime. In general, the particular compliance and enforcement tool chosen will depend on the nature of the harm arising from non-compliance, the nature of the conduct (e.g. inadvertent versus deliberate) and the degree of public interest.

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

Who should regulate minimum service level requirements?

201. Like economic regulators, consumer protection regulators tend to have a strong and unrelenting focus on long-term consumer welfare. And while their functions and toolkits differ, both economic and consumer protection regulators have the ability to strongly influence the quality of services delivered to consumers, with accompanying potential for conflict with commercial or political imperatives.

202. For these reasons, international experience and experience from other sectors in New Zealand suggests that high performing consumer protection regulators:[71]

- are independent and operate at arms-length from Government and regulated suppliers in achieving their statutory objectives[72]
- operate with a high degree of transparency through their consultation, determination and performance review processes
- have the necessary expertise and credibility to efficiently and effectively implement consumer protection regulation that achieves high quality outcomes for consumers
- share relevant information and act in a coordinated way with other regulators and policy agencies (while maintaining their independence in making regulatory determinations).

203. In addition to the above characteristics, the choice of the consumer protection regulator needs to consider:

- the ability to implement the consumer protection regulation regime by the proposed 'go live' date of the Water Services Entities, i.e. 1 July 2024
- the ability to enhance, and realise synergies from, New Zealand's broader consumer regulation eco-system

[71] ***www.oecd.org/gov/regulatory-policy/the-governance-of-water-regulators-9789264231092-en.htm***

[72] There are different dimensions to independence, but key dimensions often include: (i) the ability to take decisions without reference or review by Government; (ii) the inability of board members or senior executive to be removed by the Government of the day; and (iii) the agency having a permanent budget that is not subject to short-term political decision making.

- overall value for money given consumers/taxpayers will ultimately fund the economic regulator's activities.

204. Pulling together the considerations in the previous two paragraphs, we suggest an appropriate assessment criteria for evaluating options for the economic regulator is:

- operate at arms-length from Government in implementing consumer protection regulation
- relevant expertise and credibility implementing consumer protection regulation
- appropriate knowledge of the three waters sector
- improvements to the three waters regulatory system can be delivered in a timely fashion
- overall value for money given consumers or taxpayers are likely to foot the bill.

What entities could fulfil the consumer protection regulator role in New Zealand, and how do these entities match up against the assessment criteria?

- In our view, the assessment criteria above suggest there are three potential options for the consumer protection regulator:
- *Taumata Arowai* – Taumata Arowai is a new the new drinking water regulator that will also have functions regulating the environmental impacts of wastewater and stormwater networks. The entity is currently in establishment phase and is expected to commence its regulatory functions in the second half of 2021 when the Water Services Bill becomes law, including the backstop consumer complaints provisions in sections 38 to 40 (discussed in more detail in the next chapter). As a Crown Agent under the Crown Entities Act, Taumata Arowai is required to give effect to Government policy.[73]
- *Commerce Commission* – the Commerce Commission is New Zealand's competition, consumer and economic regulation agency. It was established in 1986 and is an Independent Crown Entity for the purposes of the Crown Entities Act. As such, it is not subject to direction from the Government in carrying out its compliance, enforcement and regulatory control activities under the Commerce Act, Fair Trading Act, Credit Contracts and Consumer Finance Act, Dairy Industry Restructuring Act, Fuel Industry Act, and Telecommunications Act. While the Commission has substantial expertise in implementing regulation that protects consumers, it does not currently have significant expertise in the three waters sector.

[73] Except in areas where a specific statutory exemption applies.

- *A new water consumer protection authority* – this option would involve the passage of legislation to establish a new water sector specific economic regulator as an Independent Crown Entity under the Crown Entities Act. In creating a new consumer protection regulator that has similar functions to the Commerce Commission, there is an unavoidable risk that some of the Commission's expertise that is currently working on consumer issues across other sectors would exit to the new water consumer protection regulator. This risk could also apply to Taumata Arowai.

- Establishing a new water economic regulator would also likely take an additional 18 months to two years depending on how quickly funding could be made available. On the other hand, a consumer protection regulator dedicated to the water sector may develop deeper sector specific expertise over time.

205. Table 9 evaluates the three options against the assessment criteria.

Table 9 – assessment of regulatory institutional arrangement options

	OPTION A – TAUMATA AROWAI	OPTION B – COMMERCE COMMISSION	OPTION C – NEW WATER CONSUMER PROTECTION AUTHORITY
ABLE TO OPERATE AT ARMS-LENGTH FROM GOVERNMENT IN MAKING ECONOMIC REGULATION DETERMINATIONS	✘ Taumata Arowai is a Crown Agent that must give effect to Government policy when directed by the responsible Minister.	✓✓✓ In line with international best practice, the Commerce Commission is an independent Crown entity.	✓✓✓ In line with international best practice, any new water economic regulator would likely be established as an independent Crown entity.
RELEVANT EXPERTISE AND CREDIBILITY IMPLEMENTING CONSUMER PROTECTION REGULATION	✘ Does not currently have expertise in consumer protection regulation, and the required skill sets are significantly different from current public health and environmental regulation focus.	✓✓✓ Deep expertise in implementing both economy wide (e.g. FTA) and sector specific (e.g. Telecommunications Act) consumer protection regulation.	✘ New entity would be starting from scratch.
APPROPRIATE EXPERTISE IN THE THREE WATERS SECTOR	✓ Currently in establishment phase, but has started to build its expertise.	✘ Limited water expertise currently.	✘ New entity that would need to develop expertise.

IMPROVEMENTS TO THREE WATERS REGULATORY SYSTEM CAN BE DELIVERED IN A TIMELY FASHION	✓ Entity has been established and is developing its expertise, but would take time to build significantly different consumer protection skill sets.	✓✓ Entity able to leverage existing expertise from day one, but would need to build water sector expertise over time.	✗ Substantial set-up work required to establish and fund new entity. Developing consumer protection and water sector expertise simultaneously likely to take time.
DELIVERS VALUE FOR MONEY	✓✓ Builds off an existing agency with a clear focus on the water sector, but entity would need to build consumer protection expertise.	✓✓ Builds off an existing agency with significant economic regulation expertise water sector, but entity would need to build its water sector expertise.	✗ Requires establishment of a new agency with accompanying overhead costs. Would need to build both water and consumer protection expertise.

Key: ✓✓✓ = High degree of alignment; ✓✓ = Moderate degree of alignment; ✓ = Low degree of alignment;
✗ = No alignment.

206. In line with the above analysis, our preliminary view is that the Commerce Commission is the most appropriate body to be the consumer protection regulator for the three waters sector. We note that there are options to provide a dedicated water sector focus within the overarching structure provided by the Commerce Commission. For example, it would be possible to create a 'Water Commissioner' that could operate in a similar way to the Telecommunications Commissioner.

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?

10 How should consumers be given a strong voice?

How should consumers be given a strong consumer voice?

207. In New Zealand, there is a generally-accepted view that residential and small businesses tend to struggle to engage with, and influence decisions affecting them, in utilities sectors. Other sectors and jurisdictions face similar challenges with low levels of engagement and under-representation in regulatory processes because of barriers to participation.[74] Consumers often struggle to have their voices heard in certain markets largely because:[75]

- some of the issues that affect consumer welfare are highly technical and difficult for consumers to understand and express clear views on
- consumers tend to lack the considerable time and resources needed to get involved in decision-making processes
- cultural differences and language barriers stand in the way of some consumers engaging and exerting influence.

208. Recognising these barriers, the Government has agreed that mechanisms to give consumers and communities a voice should be incorporated throughout the design of the Water Services Entities and the broader system to ensure that the system is responsive and accountable to consumers and communities.

What are the obligations on Water Services Entities to provide consumers with a voice?

209. The Water Services Entities Bill will impose three statutory obligations on Water Services Entities to take into account the consumer and community voice:

- *Representation on the Governors Representative Group*: the Governors Representative Group, comprised of mana whenua and local authority representatives, will be responsible for issuing a statement of strategic and performance expectations to the water services entity. Through this tool, representatives will be able to convey local and regional priorities and interests, which must guide the entity's behaviour and direction.

[74] MBIE. (2020). Regulatory impact analysis for the Electricity Industry Amendment Bill. ***www.mbie.govt.nz/assets/annex-one-regulatory-impact-analysis-for-the-electricity-industry-amendment-bill-future.pdf***

[75] Electricity Price Review (2019). Final Report ***www.mbie.govt.nz/assets/electricity-price-review-final-report.pdf***.

- *Establishment of a consumer forum*: entities will be required to establish a consumer forum, to allow for "grassroots" community and consumer engagement on the strategic direction of entities and prioritisation of investments.[76]

- *Engagement, publishing and reporting requirements*: entities will be required to engage with consumers and the wider community, on the development of key strategic documents such as the Statement of Intent, Asset Management Plan, and Funding and Pricing Plan. To ensure transparency and accountability, this will be complemented by requirements to publish the final documents and report on how the entity has incorporated the consumer and community feedback.

Should the economic regulator be required to appropriately incentivise high quality consumer engagement?

210. An option to strengthen the consumer voice in the three waters system would be to provide the economic regulator with a positive legislative obligation to incentivise high quality consumer engagement. While the exact incentives are best left to the regulator, this could include a mix of financial incentives and non-financial incentives (e.g. fast track investment approvals). These incentives would only be able to be accessed if the economic regulator believes the supplier has undertaken high quality consumer engagement and adequately incorporated consumer feedback into the supplier's strategic priorities. Internationally, there is emerging evidence that these kinds of incentives result in improved supplier performance and increased levels of consumer satisfaction.

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

Is there a need for an expert body to advocate on behalf of consumers?

211. Another option to strengthen the consumer voice in the water sector is to establish an expert body to advocate on behalf of consumers. Such bodies are common in overseas jurisdictions and have demonstrated significant gains for consumers through their ability to engage with regulators and Water Services Entities on technical issues. This could include issues that tend to be beyond the ability of the average consumer to engage on, such as weighted average cost of capital, or the different technical solutions for treating wastewater.

212. Expert bodies that engage in in-depth research activities to inform their technical advocacy tend to: (i) enhance the strength and credibility of consumer voices, and (ii) expand the range of issues on which consumer voices are heard.

[76] This mechanism has been modelled on the Scotland Consumer Forum for Water, whose principal function is to play a formal role in the periodic reviews of water charges. It is funded by way of a cooperation agreement between Scottish Water, the Water Industry Commission of Scotland (WICS), and Consumer Focus Scotland. This recognises the trade-off between the role of WICS in establishing the 'lowest reasonable overall cost' and what might be considered appropriate from a customer perspective.

213. There are two broad options for the establishment of the expert advocacy body:

- **Bespoke water advocacy body**: Creating a bespoke advocacy group would allow the body to build up specialised expertise and develop a reputation as an expert advocate in the water sector. While this may foster greater confidence among consumers and small businesses in its ability to represent and promote their water related interests, the downside is that establishing a new body is likely to take a considerable period of time and require additional funding. Such a body may also struggle to attract staff as it would be fulfilling a very similar role to the Consumer Advocacy Council (CAC) established in 2020 for the energy sector.

- **Extend mandate of an existing advocacy body**: When the CAC was created, provision was made for it to broaden its remit over time to other sectors. Water was identified as one of the sectors that would have direct synergies with electricity given both sectors will involve economically regulated utilities. Advantages of extending the jurisdiction of the electricity CAC to cover water include:

  – it has greater potential to be recognised and supported by consumers and small businesses as protecting their interests

  – the ability to leverage and learn from changes in the regulation of other utilities markets over time

  – it is cost-effective, and it avoids two separate bodies competing for expert staff and advocates.

214. While the CAC is still in its establishment phase, our preliminary view is that expert advocacy in the water sector would best be achieved via an extension of the jurisdiction of the CAC.

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?
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?

11 How should consumer disputes be resolved?

Why is dispute resolution important?

215. Consumer dispute resolution schemes are seen as an essential component of consumer protection regimes as they provide consumers with an avenue for resolving complaints or disputes when they cannot resolve them directly with their service provider, and when instigating court action is not financially viable. Research commissioned by the Australia and New Zealand Energy and Water Ombudsman Network on the dispute resolution needs of energy and water markets consumers found that significant benefits can accrue to the consumers and suppliers in monopoly water markets who are able to access an independent and impartial source of redress through external dispute resolution in the event of a dispute.[77]

What existing dispute resolution avenues apply to the three waters sector?

216. At present, most water consumers in New Zealand have limited recourse to dispute resolution with water providers. This is because a majority of water consumers receive their three waters services on a statutory basis from local authorities, rather than on a contractual basis. While consumers have some ability to raise service provision concerns with democratically elected councillors, and also with the Ombudsman who is able to deal with complaints about Local government agencies, both these options have a limited time/resource to deal with consumer complaints about the delivery water services.

Taumata Arowai

217. The Water Services Bill creates a backstop consumer complaints framework designed to ensure that consumer concerns about drinking water are properly investigated by suppliers. Drinking water suppliers are obligated to establish and maintain a consumer complaints process, and report annually to Taumata Arowai on that process.

218. Under that framework, if a consumer is not satisfied with the way a supplier has handled their complaint, they can escalate the complaint to Taumata Arowai. Taumata Arowai is then able to review and investigate a complaint, and decide to take any action it considers necessary. It is also responsible for monitoring and enforcing compliance with the complaints process, and is equipped with powers where suppliers fail to comply.

[77] University of Sydney. (2019). What will energy consumers expect of an energy and water ombudsman scheme in 2020, 2025, 2030? ***www.ewon.com.au/content/Document/Publications%20and%20submissions/EWON%20reports/ANZEWON-report-Dec-2019.pdf***

219. This backstop complaints framework puts the onus on suppliers to establish a complaints process while allowing details of the complaints regime to be established through regulations. These regulations have yet to be developed so there is currently little detail on what the key elements of an effective process are, or what powers Taumata Arowai would look to use if a complaint is not resolved to a consumer's satisfaction. We note that Taumata Arowai has broad powers – for example the ability to issue directions, make compliance orders, require changes to a drinking water safety plan – although these powers are mostly focussed on public health rather than customer satisfaction or the resolution of consumer disputes. The complaints framework is also focussed on drinking water suppliers which raises obvious questions about what happens in relation to consumer disputes about wastewater or stormwater services.

Utilities Disputes Ltd

220. Utilities Disputes Ltd is a free, independent and impartial service that is empowered to resolve complaints about electricity, gas, water, and broadband installation on shared property. It is only able to investigate complaints about water service providers that are members of the Utilities Disputes Scheme. Membership of Utilities Disputes is currently voluntary, and at present, only two providers have signed up to its Water Complaints Scheme (Milford Sound Infrastructure and Wellington Water). There is also a monetary limit of $15,000 on the value of complaints.

221. The decisions of the Water Complaints Scheme are effectively binding on the water service provider, if accepted by the complainant. If a decision is not accepted by the complainant and supplier, the parties to the dispute are able to pursue remedies through other fora such as the Disputes Tribunal. The Water Complaints Scheme is able to award costs of up to $2000 to compensate a complainant for the expenses associated with making a complaint, or for inconvenience suffered because of a provider's failure to comply with a relevant code of conduct.

222. The Utilities Dispute Scheme's costs of operation and provision of services and related activities are met by the providers, who must pay membership fees and charges.

Commerce Commission

223. The Commerce Commission enforces consumer laws that protect consumers who purchase goods or services in New Zealand as outlined earlier in this document. Relevant to the water sector is its ability to hear complaints about fair trading issues. Consumers are able to make a complaint directly to the Commission. However, due to the volume of complaints it receives, it is not able to address all of them.

224. The Commission undertakes a prioritisation process to focus its resources on addressing the issues that cause the most harm or have the potential to cause the most harm to consumers. Furthermore, while the Commission can sometimes obtain remedies for consumers, the Commission's primary consumer protection focus is on addressing systemic conduct, rather than resolving individual disputes.

Disputes Tribunal and Courts

225. Depending on the value of the claim, consumers have recourse to the Disputes Tribunal or the Courts to settle disputes. These mechanisms can be a relatively costly and lengthy way to resolve disputes than the fora discussed above.

226. The Disputes Tribunal is a less formal, quicker and cheaper way to settle disputes than a court, but there is evidence that consumers find the process confusing and adversarial which means that only a small proportion of consumers use it. It has jurisdiction to settle small claims up to $30,000. Decisions of the Tribunal are legally binding. For claims that exceed $30,000, customers have recourse to the District or High Courts.

Our preliminary view is that a dedicated three waters consumer dispute resolution scheme is required

227. Based on the combined limitations of all the above mechanisms, our preliminary view is that a dedicated consumer dispute resolution scheme for the three waters sector is required. This could be operated by Utilities Disputes Ltd or another disputes resolution provider such as Fairway Resolution Ltd.

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

What kinds of disputes should be subject to a consumer dispute resolution scheme?

228. At a basic level, the disputes subject to a resolution scheme should be those between customers and water service providers. This could include:

- complaints as to the provision or supply of water services to a customer, as required under an industry code, consumer contract, or legislation[78]
- charging, payment, and billing disputes
- complaints about the administration of payment and/or services for particular customers
- complaints about restrictions placed on water supply due to non-payment
- complaints referred by the economic regulator, the consumer protection regulator or Taumata Arowai about the conduct of a water service provider
- access to and use of land on which there are water assets/equipment
- actions of staff or contractors.

[78] Noting that some aspects of legislation and regulation (eg a breach of minimum service level requirements) would be enforced by the consumer protection regulator.

229. Disputes that would fall outside the remit of a dispute resolution scheme could include those that are better dealt with through judicial processes – such as high value disputes – or disputes which are subject to other channels of resolution (e.g. price-quality paths administered by the economic regulator, or drinking water quality issues that are administered by Taumata Arowai).

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?

What types of consumer dispute resolution schemes are most suited to the three waters sector?

230. Consumer dispute resolution schemes can be voluntary/industry initiated, or mandated:

- **Voluntary/industry initiated**: Industry-initiated or voluntary schemes (for example, the Telecommunications Dispute Resolution scheme or the Water Complaints Scheme already operated by Utilities Disputes) can generally be established more quickly and involve lower set-up costs than statutory schemes. However, there is evidence that consumers who come under the jurisdiction of non-mandatory schemes can struggle to get suppliers to engage in dispute resolution processes, thereby leaving consumers without adequate dispute resolution mechanisms.[79,80] Arguably, voluntary schemes have lower incentives to improve consumer outcome over time, and can be perceived by some consumers as lacking independence.[81]

- **Mandatory**: Requiring suppliers to belong to a scheme removes the issue of some consumers not having access to appropriate dispute resolution mechanisms.[82] However, they tend to take longer and be more extensive to establish. They can be established as new statutory scheme (e.g. via a new 'water ombudsman'),[83] or expand the mandate of an existing schemes such as Utilities Disputes Ltd or Fairway Resolution Ltd by requiring regulated suppliers to be a member of a suitable dispute resolution scheme approved by the Minister. Internationally, there is some evidence of consumer benefits from having a single point of contact for similar types of disputes across utility sectors.[84]

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[79] University of Sydney (2019). What will energy consumers expect of an energy and water ombudsman scheme in 2020, 2025, 2030?

[80] The telecommunications market did not previously legally require service providers to become members of the industry dispute resolution scheme (the Telecommunications Disputes Resolution Scheme). This was found to result in some consumers lacking meaningful recourse, because many of the main service providers had opted not to join the industry scheme. See: MBIE. (2017). Regulatory Impact Statement, Telecommunications Act review: consumer matters. ***www.mbie.govt.nz/assets/512ad8c91a/telco-review-ris-consumer-matters.pdf***

[81] Regulatory Impact Statement, Telecommunications Act review: consumer matters.

[82] Assuming that scheme coverage includes all relevant water suppliers.

[83] We note that s 28A of the Ombudsman Act 1975 restricts the use of the term 'ombudsman', and is likely to prevent the use of the term for a new dispute resolution scheme.

[84] Philip Hampton. (2005) Reducing administrative burdens: effective inspection and enforcement. HM Treasury. ***www.regulation.org.uk/library/2005_hampton_report.pdf***

231. Our preliminary preferred option is for mandatory provision of consumer dispute resolution services, but we welcome views on whether this should be achieved through a new scheme or by expanding the mandate of an existing scheme.

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

Who should be required to have a consumer dispute resolution scheme?

232. As with minimum service level requirements, there is a key regulatory design question as to whether a consumer dispute resolution should be mandated for all suppliers that provide water services to downstream consumers, or just Water Services Entities. As per the previous discussion, a mandatory consumer dispute resolution service applying to all suppliers would promote consistent and equitable improvement in the welfare of all New Zealand water consumers.

233. However, there are legitimate questions about the potential administrative and compliance costs that membership would impose on small community and private schemes. One option to address this concern would be to put in place a statutory threshold. For example, the requirement for a consumer dispute resolution scheme could apply to private and community schemes that supply more than 500 customers.

Should there be periodic reviews of the consumer disputes resolution scheme?

234. An option is to bed-in a requirement for regular review of the current coverage and capability of a specialised dispute resolution scheme operating in the water sector. This would ensure it remains fit for purpose and able to meet changes in technology and consumer needs. For example, the Commerce Commission must periodically review telecommunications industry dispute resolution schemes every three years and provide a report to scheme providers on recommendations for improvement, and when its recommendations should be implemented.[85]

Should there be incentives for suppliers to improve complaints resolution over time?

235. There could be a role for the consumer dispute resolution scheme to incentivise suppliers to make improvements to their complaints resolution practices. For example, charging suppliers fixed or variable charges to investigate a consumer complaint could provide suppliers with a reasonably strong incentive to resolve disputes directly with a consumer where possible.

[85] Section 246 of the Telecommunications Act 2001.

236. Australia publishes the benchmarks for industry-based customer dispute resolution, which is seen as a critical practice to ensure water suppliers' relative accountability, efficiency, and effectiveness in complaints handling and resolution.[86]

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

Should there be special considerations for traditionally under-served or vulnerable communities?

237. Dispute resolution schemes for other utilities industries tend to be accessed by consumers who are more aware of their rights, and have the time and ability to represent their interests. Under-served or vulnerable communities are generally under-represented in statistics of those accessing dispute resolution schemes despite consumer issues often being skewed towards low income households, those with limited comprehension of English language, poor literacy or numeracy skills, disability or chronic illness, and the elderly.[87] Māori and Pasifika communities are also over-represented in these vulnerable populations in New Zealand.

238. Traditionally under-served communities often face special difficulties accessing dispute resolution schemes, as vulnerable consumers can be less able or likely to assert their rights and seek individual redress.[88] This suggests there is a need for special consideration to be given to ensuring accessibility of a scheme for these communities, such as:[89]

- targeted awareness raising
- the provision of information in multiple languages
- availability of translation and relay services
- user friendly publications
- the ability to contact the service and lodge a complaint by multiple means
- acceptance of support people to assist complainants
- special training of staff to identify and respond to vulnerabilities.

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[86] Electricity and Water Ombudsman of Victoria. (2019). Independent review – Final report. ***www.ewov.com.au/uploads/main/2019-Independent-review-final-report.pdf***
[87] Commerce Commission. (2015). Consumer Issues 2015. ***https://comcom.govt.nz/__data/assets/pdf_file/0032/89096/Consumer-issues-report-2015.pdf***
[88] Commerce Commission. Consumer Issues 2015.
[89] Sapere Research Group. (2015). Understanding the value of the Electricity and Gas Complaints Commissioner. ***https://srgexpert.com/publications/our-people-publicat-549/***

239. It will be important that both suppliers and the dispute resolution provider ensures that underserved and vulnerable communities are able to participate in processes that affect them including dispute resolution processes.

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?

12 How should the consumer protection regime be funded?

How much will the consumer protection regime cost to administer?

240. Based on the preliminary policy positions outlined in the preceding chapters, there are likely to be two major cost components to implementing consumer protection regulation:

241. Minimum service level requirements – this would cover development and maintenance of the code together with the work required to undertake compliance monitoring and enforcement work. This work is likely to cost around $2m in the first year and $1.5m to $2m in subsequent years – although this will depend on the final scope of the regime and the number of entities subject to the code. An ongoing cost of $2m equates to an average monthly household cost of 9 cents.[90]

242. Operation of consumer dispute resolution scheme(s) – the costs of developing a new scheme, or requiring regulated suppliers to be a member of an approved scheme are likely to be met by regulated suppliers. Comparable schemes in other sectors cost around $2m to $3m annually to operate. An ongoing cost of $3m equates to an average monthly household cost of 13 cents.[91]

Should these costs be Crown or levy funded?

243. In general, fees or levies are considered to be an appropriate funding tool where it is possible to:

- identify specific individuals or groups that directly benefit from a given Government activity or service
- efficiently charge or levy individuals or groups that benefit from a given Government activity or service.[92,93]

244. The main difference between a fee and a levy is that it is generally compulsory to pay a levy, and it is usually charged to a specific group (rather than relating to specific services provided to an individual).[94]

[90] Based on Statistics NZ March 2021 estimate of households. ***https://www.stats.govt.nz/information-releases/dwelling-and-household-estimates-march-2021-quarter***.
[91] Based on Statistics NZ March 2021 estimate of households.
[92] The Treasury. (2017). Guidelines for Setting Charges in the Public Sector. ***https://www.treasury.govt.nz/sites/default/files/2017-04/settingcharges-apr17.pdf***
[93] Office of the Auditor General. (2008). Charging fees for public sector goods and services. ***https://oag.parliament.nz/2008/charging-fees/docs/charging-fees.pdf***
[94] Legislation Design and Advisory Committee. (2018). Legislation Guidelines. ***http://www.ldac.org.nz/guidelines/legislation-guidelines-2018-edition/issues-particularly-relevant-to-empowering-secondary-legislation/chapter-17/***

245. Fees and levies are therefore often suited to situations where there are significant 'private' benefits to individuals or groups rather than society at large (i.e. 'public benefits'). If there are significant public benefits, then funding from general taxation is likely to be a more appropriate funding tool. If there is a mix of public and private benefits, then a mix of fees/levies and funding from general taxation is likely to be appropriate, weighted according to the balance of private and public benefits.

246. As their name suggests, consumer protection mechanisms are specifically designed to directly benefit the long-term interests of consumers. The costs of implementing consumer protection mechanisms are typically levied on the supplier of regulated services. These costs are then 'passed through' to consumers in the prices they pay for regulated services.

247. The ability to identify and cost effectively charge the ultimate beneficiaries of the consumer protection regime suggests that the costs of the regime should be met from charges on consumers. Because the costs of the regime will be levied on regulated suppliers as a proxy for the diverse range of consumers that ultimately benefit, a levy is likely to be more appropriate than a fee.

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?

If the consumer protection regulator's costs are to be levy funded, how should this work?

248. A range of different approaches can be used to levy regulated suppliers. The key questions are:

- What is the process used to set the levy (including consultation requirements)?
- Who sets the final amount of the levy?
- Who collects the levy?

249. Our preliminary view is that there are two broad levy design options that should be considered: (i) a regulator led levy regime similar to that used by the Electricity Authority under the Electricity Industry Act 2010;[95] and (ii) a minister levy regime similar to that administered by MBIE under Part 4 of the Commerce Act.[96]

250. We note that if the Government were to pass legislation that enabled the consumer protection regime to be levy funded, it is likely that a separate consultation process would be required to determine the quantum of levy funding provided.

[95] See, in particular, s 128 of the Electricity Industry Act 2010.
[96] See, in particular, s s53ZE of the Commerce Act 1986.

Table 10 – consumer protection levy regime options

	OPTION A – REGULATOR LED LEVY REGIME	OPTION B – MINISTER LED LEVY REGIME
WHAT IS THE PROCESS USED TO SET THE LEVY?	Regulator publicly consults on their work programme and required funding.	Ministry consults on funding required (on behalf of the Minister) in close consultation with the regulator.
WHO SETS THE FINAL AMOUNT OF THE LEVY?	The Minister sets the total amount of levy funding by determining the regulator's appropriation(s) in the Main Estimates of Appropriations for the levy year.[97] The levy rates applying to industry participants are calculated in accordance with the allocation mechanism specified in the levy regulations, and are gazetted.	The Minister sets the total amount levy funding by determining the regulator's appropriation(s) in the Main Estimates of Appropriations for the levy year.[98] The levy rates applying to industry participants are calculated in accordance with the allocation mechanism specified in the levy regulations. Levy payers are notified of their levy liability.
WHO COLLECTS THE LEVY?	Regulator.	Ministry, on behalf of the Minister.

251. There are pros and cons to both these types of levy regimes. Requiring the regulator to consult on their work programme and funding needs can promote efficiency in the regulator's activities and provides a useful accountability mechanism to consumers, regulated suppliers and other stakeholders. On the other hand, there can be a perception of a conflict of interest by the regulator consulting regulated parties on its funding requirements, even if the final decision rests with the Minister.

252. In contrast, a Ministerial led regime creates a degree of separation between the regulator and regulated parties. However, the inherent accountabilities of a regulator led regime are lost and there is potential for regulator funding requirements to be subject to a higher degree of political decision making.

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

[97] The Minister may elect to refer to the decision to Cabinet if the Minister considers the decision meets the thresholds set out in the Cabinet Manual.
[98] The Minister may elect to refer to the decision to Cabinet if the Minister considers the decision meets the thresholds set out in the Cabinet Manual.

Part D – Implementation and Regulatory Stewardship

13 How should economic and consumer protection regulation interface with other aspects of three waters regulation and governance?

253. In line with other countries, New Zealand's Three Waters Reform programme will result in a number of service delivery, regulatory, and policy agencies that each have an important part to play in delivery better outcomes for New Zealanders:

Table 11 – Agencies or entities with policy, regulatory, or implementation/service delivery responsibilities

AGENCIES WITH POLICY OR STEWARDSHIP RESPONSIBILITIES	AGENCIES WITH REGULATORY RESPONSIBILILITIES	ENTITIES WITH IMPLEMENTATION OR SERVICE DELIVERY RESPONSIBILITIES
• Ministry of Health (public health regulation) • Ministry for the Environment (environmental regulation) • Ministry of Business, Innovation and Employment (economic and consumer protection regulation) • Department of Internal Affairs (lead agency for Water Services Bill and Water Services Entities Bill)	• Taumata Arowai • Regional councils • Economic regulator • Consumer protection regulator • Consumer dispute resolution schemes	• National Transition Unit • Four Water Services Entities • Community/private schemes • Self-suppliers

254. Given the range of agencies and entities that have a role in the three water system, effective implementation and system stewardship arrangements will therefore be integral to the long-term success of the reforms.

255. The Government has already made decisions on a comprehensive package of governance and accountability arrangements that will apply to the four new Water Services Entities, including transitional arrangements. Officials will also report back to the Three Waters Ministers on the longer term stewardship arrangements in September 2024 once the core system components have been established. This chapter therefore focusses on how the economic and consumer protection regulator(s) will coordinate with other players in the three waters regulatory system.

How should the economic and consumer protection regulator(s) coordinate their work with Taumata Arowai and other regulatory bodies?

256. Coordination across drinking water, environmental, economic, and consumer protection regulation will be essential for the delivery of high quality outcomes. For example, both Taumata Arowai, the economic regulator, and the consumer protection regulator will have responsibility for different aspects of the quality of water services received by consumers.

257. In this context, effective system governance will require:

- *clear outcomes:* system outcomes need to be comprehensive and clear to system players
- *role clarity:* system players need to understand their respective roles
- *strategy and delivery:* the arrangements to deliver the system outcomes need to be clear and effective
- *performance and risk management:* system performance needs to be effectively monitored so any underperformance is able to be identified and addressed quickly.

258. There are a range of approaches that can be taken to ensure that system governance is effective. Often these include the development of a 'regulatory charter' that sets out the system objectives, roles of key players, and how the system objectives will be delivered and monitored. Strategy, delivery, and performance/risk management functions are often advanced by a 'council of regulators' or similar coordination arrangements that involve key policy and regulatory bodies meeting regularly to share information about system performance and discuss system issues that require coordination across agencies.

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?

What other aspects of three waters regulation and governance will economic and consumer protection regulation need to interface with?

How should the economic and consumer protection regulator(s) interface with and contribute to Government's expectations for the three waters sector?

259. The Government is proposing that the forthcoming Water Services Entities Bill will include provision for a Government Policy Statement (GPS). The proposed GPS would provide high-level strategic direction to the new Water Services Entities to inform and guide the entities' decisions and actions in fulfilling their statutory purpose and objectives , i.e. it would not be pitched at an operational level, or seek to provide direction on specific projects. Water Services Entities would be required to give effect to the GPS.

260. Development of the GPS would be undertaken by the Government in close consultation with regulators, iwi/Māori, local government, and Water Services Entities. In particular, it is expected that the Government would seek advice from:

- the economic regulator on the potential cost, quality and efficiency implications for consumers arising from the outcomes specified in the GPS
- the consumer protection regulator on any implications for service quality and longer term consumer welfare arising from the GPS.

261. While the statutory independence of the economic and consumer protection regulator(s) would mean that they would not have to 'give effect' to the GPS, there may be benefit in the Government having the ability to transmit the GPS to the economic and consumer protection regulator(s) so that they can have regard to it in fulfilling their statutory functions. For example, section 26 of the Commerce Act provides that the Commerce Commission shall have regard to the policies of the Government transmitted from time to time by the responsible Minister. However, any such transmission of Government policies is: (i) required to be Gazetted and tabled in the House of Representatives as soon as practicable after it is transmitted; and (ii) not a direction for the purposes of the Crown Entities Act.

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?

Should the economic and consumer protection regulator(s) be able to share information with other regulatory agencies?

262. Allowing agencies with regulatory responsibilities in the three waters system to efficiently and effectively share information is one of the simplest and most effective ways of promoting system cohesion and advancing system objectives. There are also significant benefits for regulated suppliers, as allowing regulators to share information can avoid multiple regulators collecting the same information from suppliers. For example, allowing the economic regulator to share the information collected from its information disclosure regime about suppliers' asset management practice with Taumata Arowai would remove, or significantly reduce, the need for Taumata Arowai to collect the same information for its statutory purposes.[99]

263. In our view, allowing the economic and consumer protection regulator(s) to share information with other regulatory agencies is a core part of a modern and cohesive regulatory system.

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?

[99] We note that s 194 of the Water Services Bill would allow Taumata Arowai to share information with other regulatory agencies.

14 Recap of questions

1	What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?
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?
3	What are your views on whether the four statutory Water Services Entities should be economically regulated?
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.
5	What are your views on whether the Water Services Entities should be subject to information disclosure regulation?
6	What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?
7	What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?
8	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?
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?

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?
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?
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?
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?
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?

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?
16	Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?
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.
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?
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?
20	Are there any other levy design features that should be considered?
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?
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?
23	What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?
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?
25	What are your views on whether minimum service level requirements should be able to vary across different types of consumers?
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?
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?

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?
29	Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?
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?
31	What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?
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?
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?
34	What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?
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?
36	What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?
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?
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?
39	Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?
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?
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?

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