



OFFICE OF THE MAYOR
HAMILTON

1 October 2021

Hon. Nanaia Mahuta
Minister of Local Government
Parliament

Via email:
n.mahuta@ministers.govt.nz

Dear Minister Mahuta

Three Waters Reform Formal Feedback to Government

Hamilton City Council has provided the attached feedback on elements of the Three Waters Reform process but wishes to express its disappointment with the process set out by Government to date.

Hamilton City Council does not support in its entirety the 3 -waters model currently proposed by Government. In addition, the many unanswered questions submitted by this council and others in the sector along with the lack of important detail in most areas continues to be of concern.

Hamilton City Council encourages Government to continue its reform programme by collaborating with us and the Local Government Sector to agree on an ownership and governance model that will be acceptable to us, and meet the expectation of our communities.

We specifically seek a commitment to addressing the issues of Governance, Community Consultation, Finance and Local Voice identified in the attached, as well as assurance that formal, effective and transparent consultation with our community will be undertaken before any structural changes to Council's management of Three Waters services.

We further note the compressed timeline and lack of detail on critical elements of the Government's Three Waters Reform process has impacted Council's ability to provide fully comprehensive feedback. We have had no opportunity to formally consult with our community, and there are significant gaps in the information available from Government. Council emphasises our feedback reflects an initial view from elected members, on still-developing information, and must not be perceived as reflecting the views of our wider community.

We have identified shortcomings and concerns in the proposals but have had insufficient time to develop solutions or preferred options. We reinforce our feedback messaging that aspects such as governance, community involvement and financial structures require further expert work and a commitment to partnership with local government to address. It is disappointing, and a missed opportunity, that the proposals do not include alternative options on the key issues of ownership and governance.

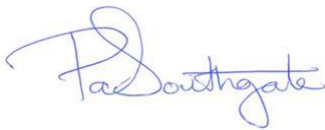
The process for future formal engagement and genuine consultation with our community prior to any final decision has not been made available by Government. The provision of robust and detailed information to enable informed engagement is a critical issue and one which is not addressed within the proposal information to date. Financial modelling on a 30-year window provides insufficient data to understand shorter timelines or localised financial impacts for our residents.

The lack of detail in the proposals has meant Council has been forced to provide feedback based, in some cases, on assumptions or perceptions of likely impacts of the proposals. This would inevitably impact the direction of our feedback if these assumptions are wrong.

Council remains supportive of the goals envisaged by Government. Hamilton City Council is continually seeking better environmental and public health outcomes, and greater efficiencies within Three Waters delivery, in its day-to-day operations.

We look forward to Government's response to the national feedback in this phase and the development of refined and amended proposals. We look forward to the opportunity to provide more detailed feedback in coming stages of this process, should the government proceed, and as more certainty and clarity emerges.

Yours sincerely

A handwritten signature in blue ink that reads "Paula Southgate". The signature is fluid and cursive, with the first name "Paula" and last name "Southgate" clearly legible.

Paula Southgate
Mayor of Hamilton

Three Waters Reform Formal Feedback to Government

This feedback is provided to give focussed feedback to the Government on Council's areas of concern on critical success factors the Council has previously identified. The Feedback does not focus on the positive aspects of the Government's proposal.

There has been no opportunity for detailed formal consultation with the community on a complete reform proposal. As this is the Government's reform Council expects clear information which would include a formal proposal and opportunities for councils to formally consult with their communities.

Overview

1. Hamilton City Council supports the Government's goals of ensuring safe, sustainable, and economically efficient delivery of three waters services but notes effective transition to any new structure must be in full and equitable partnership with local government.
2. Hamilton City Council has sought to work with its neighbours on waters activities for many years. In 2015-16 we undertook a significant investigation for a Waikato Water CCO proposal where the benefits of working together with our neighbours were clear and there was a strong case for change. Despite support from two of three councils, this didn't proceed. Council also works well with its neighbours in the very successful Waikato Regional Airport Ltd community owned CCO. Our learnings from that waters and airport CCO journey and have been applied to this reform proposal.
3. The Government's current reform proposal has been developed following nationwide systemic failings identified through inquiries into a water contamination issue in Havelock North in 2016. A wide-ranging reform programme to address compliance, regulatory frameworks and investment in infrastructure was developed. In August 2020 Council committed to engaging with the Government on Three Waters Reform and has responded with feedback to Local Government New Zealand in June and August 2021. On 10 June 2021 we identified 11 key areas that are critical to the reform's success. This feedback on the government's three waters reform proposal focusses on those crucial success areas that need more work.
4. The Government has foreshadowed a [new future for local government](#). A future with flexibility and incentives to adapt to the future needs of local communities and to provide better social, environmental and cultural and economic wellbeing to these communities.
5. In this Feedback document we have looked at the Government proposal in detail and have given feedback on those critical success factors that need work. There will be detail more appropriate to feedback to the Select Committee process when the legislation is drafted.
6. In the spirit of partnership, we have provided feedback on improving the proposed governance structure as proposed. However, getting the governance structures right is a big critical success factor. The current proposal needs work to be a successful model for central and local government and our communities. We have separately addressed this below.

The Big Critical Success Factors

7. **Council has identified that effective communication, governance and aligned delivery with other reforms are the big critical success factors that need work.** Council is concerned the Government's governance proposals provide no guarantee that local governance would be preserved in any meaningful way. For the reforms to be successful to following matters are required:
 - a. **Consultation:** We require absolute assurance that formal, effective and transparent consultation with our community will be undertaken before any structural changes to Council's management of Three Waters services.
 - b. **Local Voice:** Councils and communities must have meaningful input and influence over strategic directions, investment plans and service delivery standards of 3 Waters entities, especially as these relate to specific communities.
 - c. **Ownership:** There must be proper rights of ownership for councils as the owner. Nominal ownership by councils, without any of the benefit of ownership is meaningless without the rights of ownership and accountability of the entity to the owners, and thereby to the owner's community.
 - d. **Placemaking:** There must be a strong connection to councils' roles in placemaking and supporting thriving communities and the future of local government reform.
 - e. **Other Reforms:** There must be a strong connection to the existing resource management framework (e.g. the National Policy Statement on Urban Development), future of local government and resource management reform.
8. Crucial to success is community support for the reform. Council has not been able to consult formally and has found informing our community problematic due to poor quality information, information gaps and insufficient central rebuttal to national and regional misinformation.
9. The future of local government review states the following areas of focus. *"The Review's initial focus will be on how local government will be a key contributor to the wellbeing and prosperity of New Zealand and an essential connection to communities in the governance of New Zealand in the future."* The Minister of Local Government said, "Local government plays an important role in our democratic system, giving people a voice in the leadership of their communities and in the governance of services and publicly owned assets." The proposed governance structure does not support the Government's own recognition of the role of local government.
10. It appears the governance model is compromising ownership rights and accountabilities in order to fund the \$185B forecast spend from debt. This places too much emphasis on the finances and not enough on the social and cultural needs of communities in the design of the governance model.
11. Is the proposed structure the best governance model for success? We cannot assess this. The Regulatory Impact Statement includes five alternative governance structure models. The comparison and information sharing of these models has been insufficient for councils to conclude which is the best model. Our Waikato Water CCO study showed significant financial savings and greater investment could be achieved with a CCO structure. Waikato Regional Airport Ltd demonstrates councils can be shareholders of a community owned company that thrives.
12. Resource management reform and its links to three waters investment is critical to placemaking and building thriving communities. A strong voice for the local community would support greater alignment with other community planning mechanisms (e.g. RMA and its successors, responding to growth, Council investment planning in 10 and 30-year plans) and community driven solutions to water conservation, climate change, price allocation and other social and cultural matters connected with waters.
13. Council is proposing that part of the potential governance solution sits in having strong links to the outcomes of the resource management reform in the entities' objectives and operating principles. These provide the foundation for what must be embedded in all aspects of the waters business, not just the waters entities but the waters regulators as well.

14. POTENTIAL SOLUTION:

There must be an opportunity for formal consultation with our community before any proposal is implemented.

Hamilton City Council is not satisfied with the Government's proposed governance structure. Council is looking for an improved structure that meets financial and community objectives better, provides for localism and placemaking and strongly integrates with other reforms.

Council would like to explore alongside government an opportunity to understand, review and evaluate alternative ownership models including the Tasmanian, Welsh and other company models (like a CCO, joint ventures or other off-balance sheet funding models) that use well established governance and business structures. Council would like to explore regional and sub-regional options with the Government.

Central and local government must come together to share knowledge and experience and wholly redesign the governance structure.

Introduction

15. Council supports the Government's goals of ensuring safe, sustainable, and economically efficient delivery of three waters services but notes effective transition to any new structure must be in full and equitable partnership with local government.
16. On 10 June 2021 Council provided feedback to Local Government New Zealand (LGNZ) on the three waters reform. In that feedback we identified 11 key areas that are critical to the reform's success. On 15 July 2021 LGNZ and the Government signed a Memorandum of Understanding on the three waters reform. Further feedback was provided to LGNZ as an addendum in August 2021.
17. To assist LGNZ's discussions with the Government on the three waters reform programme, we have considered the current status of our 11 key areas. We have found that the status of these key areas can change positively or negatively as the reform continues depending on both new information and community perceptions. The 11 keys areas and their status are shown in the table below.

Key Area for success	Overview	Status
Governance	see The Big Critical Success Factors para. 7-14 Governance para. 19-60	NEEDS WORK
Community ownership	see The Big Critical Success Factors para. 7-14 Governance para. 19-60	NEEDS WORK
Enabling Legislation and other reforms	see The Big Critical Success Factors para. 7-14 Governance para. 19-60	NEEDS WORK
Financial	see para. 61-98	NEEDS WORK
Community engagement and information	see para. 98-101	NEEDS WORK

Geography	Any entity in our region should include the Waikato and Bay of Plenty regions in their entirety, even if the entity included Taranaki. 'Our region' includes Thames-Coromandel and Hauraki and ensures areas of common interest and lifestyle make a cohesive whole.	Neutral
Iwi participation	<p>Hamilton City Council has built enduring and mutually-supportive relationships with iwi/Maori in our region. Any waters decision-making in our region must be directed by the vision and principles of Te Mana O Te Wai, recognise treaty settlements and give effect to Te Ture Whaimana/the Vision and Strategy for the Waikato River.</p> <p>Council acknowledges and supports the need for greater efforts in sustainability of healthy water and increased awareness of the precious and finite nature of this resource.</p> <p>We will be working with our iwi partners throughout the reform but need clear guidance from Government on what aspects of the reform are for councils to respond to, and what aspects will be managed by centrally. Establishing mechanisms for iwi co-management is best framed consistently at a national level rather than entities attempting to create potentially disparate bespoke arrangements.</p> <p>We support, as has been made clear by the Government, the Entities are not owned by mana whenua, although they have representation on the proposed Regional Representation Group.</p>	Neutral
Early transition	<p>A long transition process will increase costs and create uncertainty.</p> <p>Incentives for early adopters of the transition process would allow development of transition plans even ahead of legislation for those entity areas willing and able to do the work. The early creation of a transition entity and transition Board would enable regional decision-making in the same way as the Auckland Transition Agency enabled the creation of what is now Auckland Council.</p> <p>Council supports a trial transition governance arrangement. This would enable testing of governance models and representation to identify and resolve issues of localism, control and accountability.</p>	Proposal largely acceptable
Model	<p>We understand the Government favours a model with deemed participation by councils who could choose to opt out.</p> <p>A fragmented approach to establishing regional entities would undermine the benefits to community health, the environment and efficiencies. Therefore, a collaborative approach to a model would be more efficient.</p> <p>If a council(s) can demonstrate individually or collectively that they can demonstrate a cost effective, safe, and sustainable service which achieves all of the reform outcomes then they should retain the ability to opt out.</p>	Next steps unresolved.
Staff Welfare	<p>Staff are our greatest asset and reform places impacts our waters specialists as well as on staff in the remaining Council activities.</p> <p>We strongly support the Government on their announcements regarding the transfer of waters staff.</p> <p>Waters roles will remain with councils until transition to a new entity in June 2024, should reform proceed on the planned timeline. Council</p>	Proposal largely acceptable

	<p>staff will be impacted in ways that will have both positive and negative wellbeing implications for them.</p> <p>It is essential there is clear direction and communication from the Government and its agencies, as well as government and funding support for councils to transition, retain and develop all affected staff (waters and outside the waters business) over the next three years.</p>	
Data-led decision-making	<p>Councils must have access to clear, timely and accurate data to make informed decisions within the Governments timeframes.</p> <p>One example is the methodology to calculate and transfer financial assets, debt and cash reserves in a way which is understandable and acceptable to councils and communities. Council wishes to avoid a situation where Government timelines are impacted because a lack of data means Council is unable to make an informed decision.</p>	<p>Information supplied largely acceptable however there are many gaps in the data. See Financial.</p>

Detailed Feedback

18. The following are the concerns and potential solutions of Hamilton City Council to the proposed Government three waters reform. We have focussed on four critical success factors that need work:
- Governance
 - Financial
 - Timetable
 - Communication

Governance – Key Success Factor

19. Council requires that the principle of localism (working with local people to solve local issues) is not lost and the community has a voice, particularly in regard to:
- service level,
 - waters investment
 - rates, fees and charges.
20. Resource management (RM) reform and its links to three waters investment is critical to placemaking and having thriving communities. Hamilton City is a big growth council and Three Waters services are essential to growth. The community having a strong voice in the waters entity is essential to aligning council and waters community planning mechanisms (e.g. RMA and its successors, national policy statement e.g. NPS-UD, and Council investment in 10 and 30-year plans) and community driven solutions to water conservation, climate change, price allocation and other social and cultural matters connected with waters.

Overall governance concerns

21. **CONCERNS:** Council acknowledges that the entity structure is highly influenced by the benefits of balance sheet separation (to achieve significant financial opportunities for the entity and council) and protection from privatisation.
22. Governance structures are complex, needing to address a mix of financial, cultural and social matters. The impact of focusing on the financial matters has virtually remove all community influence in governance, based on the role of the Regional Reference Group as represented in Clause 17 of Cabinet Minute (CAB-21-MIN-0227).

23. The multi-tiered governance structure, which requires an additional structure for 22 councils and another for mana whenua so that they each can select their six representatives is cumbersome, opaque and distant from the owners (the councils on behalf of the community).
24. Furthermore, Council does not accept the proposed concept of statutory ownership of the asset, where we have no rights of ownership. We are not aware of another example of this type of ownership structure in use anywhere else in New Zealand. Company models using well established governance and business structures are successful in Australia.
25. The Regulatory Impact Statement refers to 5 other governance models. The comparison and information sharing of these models has been insufficient for councils to conclude which is the best model. Our Waikato Water CCO study showed significant financial savings and greater investment could be achieved with a CCO structure and Waikato Regional Airport Ltd demonstrates councils can be shareholders of a community owned company that thrives.
26. Council expects that the three water assets will always remain in public ownership. New Zealand is a country where the legal framework for Parliament prevents a government from binding future government. Given this reality, achieving community governance objectives (including influence, localism and wellbeing) and the financial objectives (associated with the governance structure) should come first.

27. POTENTIAL SOLUTION:

Council has provided solutions below to improve the current proposal, however Council continues to look for a better overall structure that can meet the financial and community objectives better. See the *Big Critical Success Factors* para. 7-14

As part of the solution, Council proposes the following matters are considered:

- a. A shareholders' forum, where every asset-owning council is represented, and where strategic directions are discussed and recommended back to councils before going to the Board/company for approval. This could include iwi in an advisory capacity.
- b. Councils and iwi develop a skills matrix and approve Board members.
- c. A requirement for direct negotiation with individual local councils or groups of councils should they choose (such as the 3 currently working on the Future Proof wastewater plans) over service delivery levels and infrastructure investment plans in their respective areas. (Also see para. 29-38)
- d. Accountability through annual reporting to each council and iwi within the entity. (Also see para. 50-60)
- e. Local council decision-making over the method/split of charges, once the water is delivered, or the wastewater 'uplifted' at the city/district boundary. (Also see para. 50-60)
- f. Plans that correspond to the timing of each Council's 10 and 30 year plans. (Also see para. 50-60)
- g. Required involvement of the entity in spatial planning groupings (e.g. Future Proof, Smart Growth), where alignment with environmental/conservation measures, transport and stormwater issues, community wellbeings, etc. can be better assured. (Also see para. 50-60)
- h. Protection against privatisation is required (also see para. 26).

Purpose and objectives of the Entity

28. **CONCERNS:** We have two main concerns with the purpose and objectives of the entity:
 - a. Weak integration with the Government's Resource Management (RM) reform.
 - b. Weak integration with the Government's Climate Change response.

29. Resource Management Reform (RM reform)

30. Water services entity objective 15.7 and operating principle 20.5 (from Cabinet Minute CAB-21-MIN-0226) need work:
 - a. “15.7 Supporting and enabling housing and urban development.”
 - b. “20.5 Cooperating with, and supporting, other water services entities and infrastructure providers, local authorities, and the transport sector – including in relation to infrastructure planning, and development control and land-use planning processes.”
31. These important strategic references will guide the entities direction and priorities. The link to the suite of proposed RM reform documents needs work.
32. We note the Government recognises these important links, but with multiple reforms happening at once and an often-siloed public sector, we are uncertain that the links are being built in as the programme develops.
33. It is essential that there are strong connections between all planning, which by implication has strong linkages to growth, the current housing challenges and government policy such as the National Policy Statement for Urban Development.
34. RM reform is not providing any certainty of sub-regional or local growth and spatial plans (like the Hamilton Urban Growth Strategy (HUGs), Hamilton-Waikato Metropolitan Spatial Plan (MSP) and Future Proof | Te Tau Tiitoki) nor recognising Hamilton’s high growth demands (giving it tier 1 status under the National Policy Statement for Urban Design (NPS UD)).
35. This uncertainty creates significant risk that three waters investment needs will not be appropriately recognised in the new RM reform plans. With Entity B straddling 3.5 regions and potentially needing to work with 4 RM entities, the three waters investment risk for NPS UD tier 1 areas is further increased. If these links fail NZ Inc goes backwards, housing shortages exacerbate and GDP growth shrinks.
36. Managing these risks starts at the drafting of the legislation for both reforms and is essential. In the case of waters reform, building strong links with the entities purpose and its objectives is the start of accountability for getting this right.
37. The uncertainty of the future of these reforms makes determining the costs of future asset investment for councils and water entities difficult and challenging. As a result assumptions have been made about future costs and revenues that are rebuttable.
38. We are proposing that part of the potential solution sits in having strong links to the outcomes of the RM reform in the entities’ objectives and operating principles. These provide the foundation for what must be embedded in all aspects of the waters business, not just the waters entities but the three waters regulators as well.

39. Climate Response

40. Three waters reform presents an opportunity to embed a low-carbon approach in entity planning from the outset. It is critical that action in this area is consistent with, and supportive of, Government’s wider climate action goals. Building resilience to climate change is commendable but a failure to implement benchmarks to transition toward a net zero carbon future would be an opportunity missed.
41. Water services entity objective 15.5 and operating principles (from Cabinet Minute CAB-21-MIN-0226) need work:
 - a. “15.5 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.”
42. We are very concerned that the environment or climate change mitigations are not referenced in the operating principles. These could be added to “20.2 being innovative in the design and delivery of water

services and infrastructure” as it is likely that improving the environment and reducing carbon emissions will best be achieved by innovation.

43. The Ministry for the Environment promotes the Carbon Neutral Government Programme set up to accelerate the reduction of emissions within the public sector. Three waters entities should be ambitious in reducing their carbon footprint.
44. We support the Government’s objective to increase the resilience of three waters service provision to climate change risks. However, more emphasis needs to be put on rapidly reducing the significant carbon footprint of water services. This includes emissions from capital delivery, such as the embodied carbon in concrete and steel; operational emissions from electricity and fuel use; and waste gases (methane and nitrous oxide) from wastewater.
45. As highlighted by Waters NZ in its submission to the Climate Change Commission, the reforms open a “window of opportunity” for reassessing past practices and design philosophies to re-orientate the sector towards low carbon approaches. This includes contributing to the circular economy by capturing the energy contained in wastewater and bio-solids.
46. There needs to be a clear commitment to transitioning the sector to net zero carbon. Given both the public nature of the water entities and the serious risks that climate change poses to water services, targets for reducing emissions should be ambitious.
47. In 2018/2019, the treatment of Hamilton’s wastewater produced more than half of the organisation’s emissions. Council has already committed in its 2021-2031 10-year Plan to switch away from natural gas at its wastewater treatment plant.
48. We are proposing that part of the potential solution sits in having strong links to climate change outcomes in the entities’ objectives and operating principles. These provide the foundation for what must be embedded in all aspects of the waters business.

49. POTENTIAL SOLUTION:

The entity must ensure that Council’s aspiration for growth and spatial planning outcomes (including any Special Purpose Vehicle or Infrastructure Funding and Financing solutions) has surety that any waters entity will prioritise and give effect to our long term local, sub-regional and regional plans.

Objective 15.7 and operating principle 20.5 (from Cabinet Minute CAB-21-MIN-0226) must provide stronger support or Resource Management planning (spatial planning and natural and built environments planning) its development and implementation.

Objective 15.5 and operating principle 20.2 (from Cabinet Minute CAB-21-MIN-0226) must provide strong expectations to climate change mitigation including supporting the expectations of government to be carbon neutral.

Regional Governance Group

50. **CONCERNS:** Council considers that the Regional Governance Group does not support our critical success factor for good governance. It does not provide councils with the benefits of ownership, nor does it provide councils with the ability to influence the entity and provide a link to communities on waters matters. We have addressed these and other concerns about governance in the ***Big Critical Success Factors*** para. 7-14.
51. Council has considered ways to improve the proposed Regional Reference Group, should this feature be included in the reform. We note that these solutions do not meet all our concerns or expectation of an appropriate governance structure that will deliver good governance to Hamilton.

52. Entity B has 22 councils that need to appoint 6 representatives. We require that the legislation provides for appropriate processes for this diverse group to appoint these representatives. We recognise that a solution for Entity B may not work for other waters entities. Key items that could be included in a schedule to the Entities founding legislation include:
- a. A democratic process to ensure the members are representative of the populations. This could include the legislation creating a permanent joint committee, with a single representative of each council and voting based on population. For example, the *Joint Committee of Owners of Entity B*.
 - b. We acknowledge it is perverse to add another structure into an already overly complex structure, but perhaps this is representative of the flaws in the proposed structure.
 - c. There is no legislative confirmation the Entity will fund all activities including but not limited to: meetings costs, independent expert advice, communication, engagement and consultation with councils and mana whenua, and meetings costs of councils and mana whenua in the selection and replacement of RRG members.

53. POTENTIAL SOLUTION:

We would prefer the legislation includes a schedule that defines the process by which the 22 councils come together to make decisions with regard to their representatives and to hear from their representatives on the Regional Reference Group.

The entity should fund all three waters governance meetings and engagements for the councils, the group of councils, mana whenua and the regional representative group.

Strategic Documents to be delivered to Regional Governance Group

54. **CONCERNS:** We are concerned that:
- a. the legislation provides only for the *Board Appointment and Remuneration Policy* to be delivered to the Regional Representative Group.
 - b. Other strategic documents are not required to be delivered.

55. POTENTIAL SOLUTION

56. **We would prefer that the legislation should require the Entity Board to report the following to the Regional Representative Group:**
- a. **Their response to the Statement of Strategic and Performance Expectations.**
 - b. **The Statement of Intent**
 - c. **The Engagement Policy (currently not required for Entity)**

Consumer, Community and Council Engagement

57. **CONCERNS:** Council is concerned that we will be treated as a customer and not as a trusted partner in the development of the city. There is no evidence in the proposal that the principles of localism and working with communities to find solutions that fit with the values and aspirations of those communities are recognised. There must be alignment with council planning processes and planning documents.
58. Councils provide a unique perspective of local community wellbeing (economic, cultural, social and environmental). Councils have the benefit of having managed waters activities, own or manage a significant part of the stormwater network and are intimately involved in the planning for the shape of their communities, housing, business development and growth. This perspective across the multidisciplinary activities of councils cannot be provided by community and consumer engagement alone.

59. To improve the opportunity for local input and better alignment policies and plans we have developed the following process improvements.
- a. That the entity should be required develop an Engagement Policy and engage with councils, communities and consumers on the proposed policy within 12 months of 1 July 2024 and reviewing and re-consulting no less than every 6 years.
 - b. That the entity must adopt by 1 March 2025 the following documents which have been audited and reviewed in line with Council long-term planning cycles:
 - a. Prioritisation methodology that informs the asset management plan;
 - b. Asset Management Plan; and
 - c. Funding and Pricing Plan.
 - c. That the above plans provide sufficient information for councils to be clear on the service levels in their communities, the investment in assets, rates, fees and charges that the entity intends to levy within Council boundaries.
 - d. That the entity consults with each council on the above policies prior to consulting with consumers and the community.
 - e. That a council may prepare a written statement, expressing a view on the entities proposals, to be included by the entity in its community and consumer engagement information.
 - f. That having regard to its own long term planning and other strategic documents a council's statement would state whether each plan (see para 56):
 - a. Is supported by the council, and
 - b. If part of the plan is not supported by the council, the council's views on why it is not supported and a potential solution to the issues identified by the council.
 - g. That the entity will be required to include the statement in the community and consumer engagement.
 - h. That the entity may express its own views on the matters raised by the council and include those views in their engagement material.

60. POTENTIAL SOLUTION:

We strongly prefer that individual councils are treated individually and with priority by the entity.

We have developed a proposed process that gives each council the opportunity to participate in an engagement process and work with the entity on its strategic documents, as representatives of their community to ensure alignment with that council's plans. This pre-engagement is prior to the entity undertaking its own consumer consultation or engagement

Financial – Key Success Factor

61. Council requires an absolute guarantee that, from 2024, its community and consumers are financially better off with waters reform than they would be should Council continue to operate three waters activities.
62. Council requires that the transfer of assets and liabilities and revenues is designed so that Council and the community are no worse off.
63. Council requires that the cost of the Government's Three Waters Reform is fully funded by the government allowing council and the community to:
 - a. fully participate in the reform;
 - b. transition assets, liabilities, and revenues and staff to EB; and
 - c. transform (right size) council, including stranded costs and a new direction.

Financial Implications for our Community

64. **CONCERNS:** Council's have been provided with significant amounts of data. It is spread across many reports, dashboards and the occasional spreadsheet. Some of the data was sourced from council direct or

indirectly from audited annual reports and plans. Most of the data is based on significant assumptions, which in some cases have been peer reviewed and accepted as reasonable for the purpose of long term forecasting.

65. Council however has been unable to get answers to many questions as the data either does not exist, has not been shared or has not been found in the mass of data provided at short notice.
66. Council is particularly concerned in the immediate years after the transfer. These are questions the community will expect answers to when the time to consult occurs.
 - a. What will happen to pricing at day one of the Entity?
 - b. Has the cost of reform been added to the price of services in these early years?
 - c. When will harmonisation start and what cost does that Hamilton ratepayers?
 - d. Does harmonisation mean a loss of capital value rating for waters?
 - e. When will the community see the benefits of economies of scale on pricing?

67. POTENTIAL SOLUTION:

More information for the community on how it impacts the community them in the short term is required for all models considered.

Better Off Package

68. **CONCERNS:** Providing financial support to councils is a critical success factor for waters reform. Hamilton has been disadvantaged by the allocation formula of population, deprivation and area. The government formula has not taken account of growth and the placemaking role of future councils to invest in community infrastructure to build strong and resilient communities.
69. For more than a decade Council has been challenged by growth. Information supplied in the RFI in late 2020 and early 2021 indicated Council has a waters debt to revenue ratio of 522%, illustrating the large investment that has been made in waters infrastructure predominantly driven by growth. This has come at a considerable cost to the community infrastructure investment (as demonstrated by the high waters debt to revenue ratio).
70. The funding allocation has not recognised this investment of waters infrastructure to enable growth, at the expense of community infrastructure.
71. It is a key goal of waters reform to increase housing availability. Hamilton's investment has been large to achieve this. However, our investment in community infrastructure is less than desirable and delivered later than the community needs due to financial constraints and other waters investment needing to be prioritised. Also, Hamilton's investment in three waters infrastructure to support the government's growth and freshwater agenda must be financially recognised.

72. POTENTIAL SOLUTION:

We request that additional funding of \$15M is provided to contribute to the necessary community infrastructure for placemaking and build strong, resilient new communities.

Worse Off Package

73. **CONCERNS:** Providing financial support to councils is a critical success factor for waters reform. Councils have not budgeted for waters reform in their 10-year plans at the request of the government. Councils' ability to fund participation, transition and transforming (right sizing) council is a critical success factor for the reform. Without this funding, councils' ability to represent and/or invest in their communities would

be restricted as funds are diverted or are not available. The success of implementation of findings from the Future of Local Government review relies on an efficient transition and transformation.

74. DIA have advised they estimate \$8M would be paid to Hamilton in 2024 to fund stranded costs. This is a small fraction of the expected 2024 stranded costs that Council will carry for a number of years until it is able to right size the council.
75. In the Waikato Water CCO project (2016) it was proposed that the waters entity would pay the councils for stranded cost on a decreasing scale over five years. This provides time for councils to shed or absorb those costs.
76. A fair and appropriate funding of stranded costs would be:
 - a. 2024/5 75% of waters overheads
 - b. 2025/6 50% of waters overheads
 - c. 2026/7 25% of waters overheads
77. After 2027 Council would then fund all costs itself.
78. Based on the audited 10-year plan allocations to waters activities and applying the formula in paragraph 70 above, Council expects a contribution of \$29M for stranded costs. Adjusted for the estimated \$8M contribution Council is underfunded for costs incurred by the government reform by \$21M.
79. This gives councils the opportunity to right size for the smaller authorities that they must become after removing such a large portion of their business. It also gives council a reasonable opportunity for the community not to be funding costs, bought about only because of the government waters reform.

80. POTENTIAL SOLUTION

We request that additional funding of \$21M be provided to fund ALL costs created by government waters reform that leave stranded costs in Council after 1 July 2024 on a declining basis of Year 1 75%, Year 2 50% and Year 3 25% of the forecast overheads budgeted in the 10-year plan.

Transformation Costs

81. **CONCERNS:** \$296M was allocated in the 2021 budget for transitioning costs. We have been advised that this funding becomes available when the decision to reform is made. This is anticipated to be between 2 October and before the parliamentary summer recess from 16 December 2021.
82. We have heard from DIA that this funding will be for:
 - a. The creation and funding of an overall transition entity;
 - b. The creation of 4 shadow entity transition entities;
 - c. Increased training for waters staff;
 - d. Costs of transitioning waters staff and activities out of councils (including significant legal costs associated with contracts) into new entities.
83. The Water Industry of Scotland (WICS) forecasts included \$1B of transition costs in the new entities. We expect the new entities would pay for the costs of:
 - a. New computer systems and technology for asset management, financial management, people management, billing and customer service and engagement.
 - b. Transitioning assets, liabilities, revenues and employment records into these new systems.
 - c. Establishing the new corporate structures.
84. We expect that all work undertaken by Department of Internal Affairs (DIA), LGNZ and other government entities will be funded from other than the above allocations.
85. Council estimates, based on its investigations in relation to the Waters CCO project, show that over the next three years Council could spend between \$5M and \$8M, participating, transitioning and

transforming the Council. We understand that all of this cost would be funded from the \$296M allocated in the budget.

86. It is not clearly obvious that sufficient funding has been made available to support participation, transition and transformation costs driven by government.
87. Council has been funded to participate in the reform with an allocation of stimulus money requested in the original stimulus package. The government has until now denied the opportunity for many of our Entity B (EB) partners (including Iwi) to be funded to participate in reform. It is clear that those funded to participate are better informed and more able to influence better outcomes for the sector. Waikato/BOP have been regularly congratulated on the high level of participation as a result of working together in the consortium. This is a small head start on other parts of the country that if capitalised on, should lead to better outcomes for EB and the EB communities.
88. Formal consultations are expensive and in the case of this reform more so due to the complex nature of the proposal. It is estimated that if consultation is undertaken by Council, that the expected cost would be between \$100,000 and \$150,000 preparing consultation information, running a consultation process and hearings. This is a cost not budgeted for by Councils and a cost directly driven by the government reform which should be paid for by the government.
89. Council stimulus funding runs out in March 2022 and there is no guarantee of any funding availability after that date to cover participation and transformation costs.
90. Attracting and retaining resources will become critical with the massive amount of work this reform will require in the next 33 months.

91. POTENTIAL SOLUTION

We request that the government guarantee that it will fund all reasonable costs of council participating, transitioning and transforming from now until 2027 (the end date for stranded costs), including the costs of any formal consultation with our community.

Owners' Representative Costs

92. **CONCERNS:** The cost of ownership of the entity should be funded and supported by the entity. This includes the following costs:
 - a. Operating the Regional Representative Group
 - b. Meetings of the owners
 - c. Owners' communications and engagements with their communities.
93. As discussed in our governance section of this feedback, the Regional Representative Group will need financial support from the Entity to fund independent advice and consultation and engagement with councils and mana whenua. We expect that to be funded by the entity once it is established. We are unclear where the funding for that comes from during the transition stage.

94. POTENTIAL SOLUTION

We request that the government guarantee funding for all reasonable costs of the Regional Representative Group during the establishment phase-up until Entity B can fund its activities.

Timetable – Key Success Factor

95. Council requires a detailed and clear timetable to 30 June 2027 (the end of the final funding), is developed to cover all significant elements of the reform, from next steps to final payments for stranded costs. It should make it clear as to when councils will be expected to formally consult with their communities.
96. **CONCERNS:** The reform timetable was first published in December 2020 and slightly modified in a presentation “Three-Waters-Reform-Programme-March-Engagement-slides” and is now archived on the Department of Internal Affairs Three Waters Reform Programme website. Dates on this timeline have not been achieved. Council as part of implementing its 10-Year Plan, a significant work programme, on the Government’s instruction councils have not budgeted for this reform. A clear timetable to fit the business of council with the business of government is urgent and essential.

97. POTENTIAL SOLUTION:

- a. **The government must develop and maintain a detailed timetable from next steps after the eight-week period to final payments for stranded costs.**
- b. **Within that timetable it must be clear when councils will formally consult with their communities.**

Communication – Key Success Factor

98. Council requires that Government dramatically improves its communication on three waters reform.
99. Council requires the Government to own its reform and communicate either directly or through its agencies (including transition agencies and waters entities) clearly, consistently and concisely.
100. **CONCERNS:** Communication by the Government and its agencies has been poor and has created significant confusions and misunderstanding. Councils appear to have had no, or limited, opportunities to review and comment on public material before release. The Three Waters official social media account has been allowed to host nonfactual posts without rebuttal, media have been released council information before councils have received it (or in parallel), official statements on the waters reform page have been verbose, inconsistent and unclear and there has been too much emphasis on economic wellbeing and grossly insufficient emphasis on cultural, social and environmental wellbeing outcomes of reform. There has been no attempt to correct misleading information in the public domain, despite that information being demonstrably false.

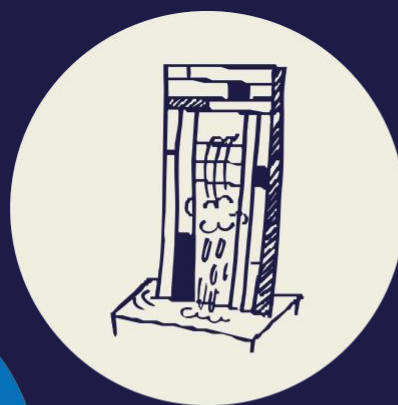
101. POTENTIAL SOLUTION

We request that:

- a. **The Government develop and share a communication strategy and timeline that clearly distinguishes the roles of government and its agencies, transition entities, local government through to 30 June 2024.**
- b. **The Government commits to engage with councils on the content of any public collateral or campaign prior to release, and actively work to respond to, and address, concerns raised by Councils regarding that communication.**
- c. **Communication should be balanced to focus on all the benefits of reform including all the wellbeings - economic, social, cultural and environmental.**
- d. **The Government funds communication in the transition costs, recognising that councils will need to communicate / engage with staff (waters staff and stranded costs) stakeholders (e.g. significant water users) and the community from now until the transfer.**
- e. **The government shows its contribution to the partnership by releasing information concerning the reform and waters matters to local government prior to releasing to media or general public.**

HAMILTON CITY COUNCIL SUBMISSION TO:

Working Group on Representation, Governance and Accountability of new Water Services Entities



3 February 2022



**Hamilton
City Council**
Te kaunihera o Kirikiriroa

Improving the Wellbeing of Hamiltonians

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

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

The topic of this submission is aligned to the priority '**A green city**'.

Water is essential to improving the wellbeing of Hamiltonians. Water brings life to our people for food, for housing, for jobs, for recreation. It is essential for our wellbeing.

Council Approval and Reference

This submission was approved by Hamilton City Council at its Council meeting held on 3 February 2022.

Hamilton City Council Reference D-4080316 - submission # 676

Key Messages

The Journey

1. Council provided feedback to Government on its proposed waters reform on 1 October 2021. This feedback was based largely on information in Cabinet Papers about the governance, representation and accountability of the four proposed Water Services Entities.
2. In December 2021 the Government published the "[Exposure Draft of the Waters Services Entities Bill](#)" (ED).
3. Council has compared its previous feedback with the ED and assessed the extent to which matters raised by Council have been addressed in the ED.
4. Council acknowledges that many matters raised in the Hamilton City Council feedback were recognised and attributed to Hamilton City Council in the "[Summary of local government feedback on the three waters reform proposals](#)" October 2021. The ED, to varying degrees, reflects the feedback and offers improvements in areas of concern previously identified by Council.

Hamilton City Council's Core Concerns

5. Council disagrees that the Entity B model proposed by Government will deliver the best outcomes. In particular we are concerned that the proposed entity would not be able to sufficiently respond to the unique needs of growth metros such as Hamilton, and that an entity based on existing strategic relationships between Waikato/Bay of Plenty councils would be more appropriate.

On this basis, we consider it critical that work continues on different models, with entities of different sizes and make-ups, which could still deliver scale while ensuring that the entities cover more natural groupings of communities, rather than the potentially unwieldy super entities currently proposed. This work must include a central North Island (Waikato and Bay of Plenty) entity. We have had constructive discussions with a range of partners, in particular the Tauranga commissioners, and believe there is strong appetite for exploring alternative models such as this to deliver the outcomes we need.

6. There also remain several areas of concern which have been previously highlighted by Hamilton City Council in its feedback to Government. These areas have either been only partly addressed, or not addressed at all in the ED.
 - a. As summarised in Point 5 above, we formally request the Working Group consider an alternative regional entity structure which would provide a smaller, regional entity which is more reflective of the needs and community of Waikato/Bay of Plenty. Council is prepared to work with partners in our region to develop a formal proposal and seeks endorsement from the Working Party to allow time for this proposal to be considered meaningfully by Government before any applicable legislation is proposed.
 - b. The rights of ownership (while significantly improved) remain diluted from what they would be if the entities operated under a conventional CCO business structure. Council wishes to see the rights of ownership strengthened through closer alignment to a CCO model and seeks further information on the reform's interpretation of a 'body corporate' structure.
 - c. The RRG as proposed (44 members) is potentially unwieldy and presents the risk that the needs of Metro councils are drowned out by smaller councils with different needs.
 - d. Proportional representation to reflect the population and economic contribution of Metro councils would address (c) and needs to be part of Governance arrangements.
 - e. Hamilton is a high-growth area. This requires significant coordination to achieve the necessary growth investment on-time in the right place. We require that the entity is mandated to consult with Council to ensure efficient and effective outcomes. This requirement should be embedded within the constitution of the entity, drawing from, and reflecting consultation requirements in the current LGA.

- f. There must be local input to waters investment to ensure that communities' placemaking needs are met. Again, we require that close working relationships between Council and the entity are mandated and are most effectively guaranteed through the constitution.
 - g. Linkages to other reforms are weak and in practice appear non-existent. Alignment with RM reform and other legislative changes impacting urban development and future housing capacity are critical for high-growth councils such as Hamilton. Council's investment and expertise in regional and sub-regional spatial planning needs to be protected and enhanced for the future and the entity must be required to give consideration to Council's planned strategic growth. Any further government reforms which are based on new boundaries, should reflect the water reform entity boundaries (for example, spatial planning, building or resource consenting).
 - h. Without a synchronised and aligned approach, outcomes sought by Hamilton, and Government, around housing, employment, transport and environmental improvement, will be at risk. Water reform must be consistent and aligned with all other planned reform, Council's Long Term Plan and existing regional partnerships such as Future Proof.
 - i. Community engagement and consultation. Council has strongly and consistently argued for far greater opportunities for public participation and consultation in the Three Waters Reform process. Genuine engagement is a critical part of accountability for future entities and there is little confirmed detail in the ED on mechanisms to ensure community voice is heard in the new entities. Although outside the scope of this Working Group, Council notes there have been minimal opportunities for direct community involvement in the reform process to date. Information delivery to our communities and councils from Government has been poorly handled, difficult to access, and ambiguous. We urge the Working Group to use its influence to improve communication of the reform and provide meaningful opportunities for our community to access and respond to the changes proposed.
7. In making this submission, Hamilton City Council reserves its right to update or alter its submission subject to receiving and reviewing the feedback from all other submitters to the Working Group. Council further requests greater frequency of updates and minutes of meetings from the Working group.

ATTACHMENTS

Attachment 1: Comparison of Hamilton City Council's Feedback to the Exposure Draft of the Water Services Entities Bill (December 2021)

- 8. This attachment identifies each of the Critical Success Factors and our potential solutions and compares that with the ED. The assessment includes a RAG (red, amber, green) analysis to indicate the extent to which Council's feedback has been addressed.
- 9. We request the Committee further consider those items of governance, representation and those items which we have highlighted as amber and red.

Attachment 2: Feedback to Government (October 2021)

- 10. We have attached our Feedback document to assist in providing fuller information on Hamilton City Council's position on the matters summarised in Attachment 1.

Further Information and Opportunity to Discuss Our Submission

- 11. Should the Working Group on Representation, Governance and Accountability of new Water Services Entities require clarification of the submission from Hamilton City Council, or additional information, please contact **Andrew Parsons** (Executive Director – Strategic Infrastructure) on 07 838 6896 or 021 791 612, email andrew.parsons@hcc.govt.nz in the first instance.

12. Hamilton City Council would welcome the opportunity to discuss the content of our submission with the Working Group on Representation, Governance and Accountability of new Water Services Entities in more detail.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'LV', is positioned above the printed name.

Lance Vervoort
CHIEF EXECUTIVE

Hamilton City Council
Garden Place, Private Bag 3010, Hamilton

 /HamiltonCityCouncil

 @hamiltoncitycouncil

 07 838 6699

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Attachment 1: Comparison of Hamilton City Council's Feedback to the Exposure Draft of the Water Services Entities Bill (December 2021)





In December 2021, an [Exposure Draft of the Water Services Entities Bill \(ED\)](#) was released to assist the Representation, Governance and Accountability Working Group with its mahi. This ED is the first time we have seen a version of this.



On 1 October 2021, Council provided feedback on the Government's reform proposal. This feedback was based on information on the DIA three waters website available during the September 2021 period of the Government Reform pause for Council feedback. Our feedback was largely based on formal statements in Cabinet Minutes and Papers one, two and three and the Treasury Regulatory Impact Statement.



This ED contains matters that were represented differently in the material available during the feedback pause and reflects some of the feedback provided by councils.





The table below provides a staff perspective of matters raised by Council and the extent to which those matters are addressed in this ED. Note, some matters of feedback may not be relevant to the purpose of this proposed piece of legislation.


The purpose of this table is to identify areas Council may look to advocate on through the Working Group.





Key	Feedback not addressed	Feedback somewhat addressed	Feedback largely addressed	Not applicable to Bill
				



Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
Big Critical Success Factors			
1.	7a Consultation: We require absolute assurance that formal, effective and transparent consultation with our community will be undertaken before any structural changes to Council's management of Three Waters services.	Not applicable to the content and purpose of the Bill. The Government is currently engaging with local government and mana whenua through the Representation, Governance and accountability Working Group. Formally consultation on the Bill will occur using the Select Committee process.	
2.	7b Local Voice: Councils and communities must have meaningful input and influence over strategic directions, investment plans and service delivery standards of 3 Waters entities, especially as these relate to specific communities.	Local Voice is provided through a representative of the RRG, an operating principle for the entity of <i>partnering and engaging early and meaningfully with territorial authorities and their communities</i> and specific engagement requirements on statutory policies and other decisions	 Good partnering will be essential to achieving this. Achievement of great outcomes will be more to do with relationships than statute.




Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
3.	7c Ownership: There must be proper rights of ownership for councils as the owner. Nominal ownership by councils, without any of the benefit of ownership is meaningless without the rights of ownership and accountability of the entity to the owners, and thereby to the owner's community.	<p>ED Cl.13 states:</p> <ol style="list-style-type: none"> 1. <i>A water services entity—</i> <ol style="list-style-type: none"> a. <i>is a body corporate; and</i> b. <i>is accordingly a legal entity separate from the entity's board members, the entity's employees, the Crown, the entity's regional representative group, and the entity's territorial authority owners; and</i> c. <i>continues in existence until it is dissolved by an Act.</i> 2. <i>A water services entity is owned collectively by its territorial authority owners.</i> 3. <i>Despite subsection (2), a water services entity is not—</i> <ol style="list-style-type: none"> a. <i>A council organisation or a council-controlled organisation as those terms are defined in section 6 of the Local Government Act 2002; or</i> b. <i>a local government organisation as defined in section 124 of the Local Government Act 2002.</i> <p>ED Cl.25 This clause modifies the functions of the RRG from the Cabinet Minutes. The RRG functions are now:</p> <ol style="list-style-type: none"> a. <i>appointing and removing the entity's board members under this Part; and</i> b. <i>participating in the process of setting the entity's strategic direction and performance expectations under subpart 4 of Part 4; and</i> c. <i>reviewing the performance of the entity under section 120; and</i> d. <i>approving the appointment and remuneration policy prepared by its board appointment committee under section 35.</i> <p>See items below also.</p>	 <p>Ownership and the rights of ownership have improved significantly from the Cabinet Minute.</p> <p>Collectively the RRG has more influence over the appoint and removal of Board members.</p> <p>The RRG also produces and holds the Board accountable for delivering the RRG's Statement of Strategic and Performance Expectations.</p> <p>The RRG receives and provides comments on the strategic documents.</p> <p>The rights of ownership are less than a CCO in that:</p> <ul style="list-style-type: none"> • HCC has no equity and no voting according to its amount of equity (shares) in the entity. • HCC voting on Board appointments is indirect through a committee of the RRG (which HCC could or could not be represented) and • HCC representatives influence voting on the decisions is subject to the constitution voting rules (not drafted) • Non-owners get a vote on the RRG.
4.	7d Placemaking: There must be a strong connection to councils' roles in placemaking and supporting thriving communities and the future of local government reform.	<p>Overall, the linkages to growth, development, and council priorities and preferences are only considered at the objectives and operating principles level.</p>	 <p>Good partnering (as stated in the Operating principles) will be essential to achieving this. Achievement of great outcomes will be more to do with relationships than statute.</p>



Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
5.	7e Other Reforms: There must be a strong connection to the existing resource management framework (e.g. the National Policy Statement on Urban Development), future of local government and resource management reform.	Overall, the linkages to growth, development, and council priorities and preferences are only considered at the objectives and operating principles level.	 This item remains a significant risk to achieve Council's goals for the City. Council and the public have insufficient information to understand how waters reform and the Future Local government roles will work together.
Overall Governance Concerns			
6.	27a A shareholders' forum, where every asset-owning council is represented, and where strategic directions are discussed and recommended back to councils before going to the Board/company for approval. This could include iwi in an advisory capacity.	The ED makes significant changes to the Regional Representation Group (RRG) from what was proposed in Cabinet Minutes. ED Cl.24 provides for the Entity B RRG to have up to 44 representatives, being 1 from each TLA and an equal number from Mana Whenua. ED Cl.36 to 43 provides for the RRG to have a constitution. This constitution will state <i>"how the group will perform or exercise its functions, powers, and duties"</i> ED Cl.49 provides that the Board is accountable to the RRG.	 Matters in 27a should all be able to be addressed in constitution.
7.	27b Councils and iwi develop a skills matrix and approve Board members.	ED Cl.25, 33, 34, 35 address the Board appointment process including a requirement to have an "Appointment and Remuneration Policy".	 Council and Iwi will be involved in the Board appointments through RRG representatives.
8.	27c A requirement for direct negotiation with individual local councils or groups of councils should they choose (such as the 3 currently working on the Future Proof wastewater plans) over service delivery levels and infrastructure investment plans in their respective areas.	The high-level Objective and Principles for the Entity include: Objective statement to: <i>"support and enable urban development"</i> Cl.10 and the operating principle of: <i>"(f) partnering and engaging early and meaningfully with territorial authorities and their communities; and (g) co-operating with, and supporting, other water services entities, infra- structure providers,</i>	 While high level objectives and plans indicate a strong intention, the draft legislation does not specifically require direct early partnership or engagement with councils.




Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
		<p><i>local authorities, and the transport sector.”Cl.12</i></p> <p>ED Cl. 116 provides for the RRG to issue a Statement of Strategic and Performance Expectations every three years. It includes:</p> <ul style="list-style-type: none"> • <i>the regional representative group’s expectations and strategic priorities for the entity:</i> • <i>the outcomes the group expects to be achieved through the delivery of water services by the entity:</i> • <i>how the group expects the water services entity to fulfil its objectives, functions, and operating principles; and</i> • <i>require the entity to give effect to the objective under section 10(a) of delivering water services and related infrastructure in an efficient and financially sustainable manner.</i> <p>ED Cl.94 provides that the Minister nor a territorial owner or their representative can <u>direct</u> the Board to act or bring a result.</p> <p>The ED requires the Board must prepare, deliver to the RRG and publish the following accountability documents:</p> <ul style="list-style-type: none"> • Cl. 125 a Statement of Intent (SOI) annually. ED Sch.3 includes provisions similar to CCO provisions for RRG consideration of the draft SOI. • Cl.128 an Asset Management Plan (AMP), every three years. AMP. • Cl.131 a Funding and Pricing Plan (FPP) for 10 years, every three years. The FPP includes the Financial Strategy. • Cl.134 an Infrastructure Strategy (IS) for 30 years, every three years. • Cl.137 an Annual Report, annually. 	
9.	27d Accountability through annual reporting to each council and iwi within the entity.	ED Cl.95 provides the Entity must hold at least two meetings annually that are open to the public.	 <p>Accountability and reporting is achieved through the RRG representation and publication of key strategic</p>






Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
		<p>The Board is now required to deliver strategic documents and annual report to the RRG. See item 20 for more detail.</p> <p>There is no requirement for individual reporting to councils.</p>	and planning documents and is not directly with each individual council.
10.	27e Local council decision-making over the method/split of charges, once the water is delivered, or the wastewater 'uplifted' at the city/district boundary	The RRG will see and get to comment on the draft Funding and Pricing Plan (every three years) and there is a principle that the entity will work with local authorities and a requirement to engage with consumers and communities.	 <p>Influence on funding and pricing is reliant on representation on the RRG.</p>
11.	27f Plans that correspond to the timing of each Council's 10 and 30 year plans.	While key plans are not dissimilar to current local government plans and have similar time frames, the ED is not specific as to the timing of these policies with the LTP processes.	 <p>It might be possible that the Constitution of the RRG include provision for alignment in timing of these processes.</p>
12.	27g Required involvement of the entity in spatial planning groupings (e.g. Future Proof, Smart Growth), where alignment with environmental/conservation measures, transport and stormwater issues, community wellbeings, etc. can be better assured.	<p>The ED includes high level objective and purpose statements in relation to urban development and partnering.</p> <p>ED Cl.19 provides an Objective statement to: <i>"support and enable urban development"</i></p> <p>ED Cl.12 provides an operating principle of:</p> <p><i>"(f) partnering and engaging early and meaningfully with territorial authorities and their communities; and (g) co-operating with, and supporting, other water services entities, infra- structure providers, local authorities, and the transport sector."</i></p>	 <p>The entities involvement with matters of local interest to the growth and development of the city is reliant on the RRG and Boards interpretation of high-level objective and purpose statements.</p>
13.	Protection against privatisation is required.	<p>The ED sets out strong safeguards against privatisation or loss of control of water services and significant infrastructure. In particular, the ED provides for—</p> <ul style="list-style-type: none"> <i>"collective territorial authority ownership of entities, to ensure appropriate over- sight and influence on behalf of the communities:</i> <i>joint oversight of entities by mana whenua:</i> 	 <p>Provides the best protection available under NZ law.</p>

Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
		<ul style="list-style-type: none"> <i>clear legislative protections against loss of ownership or control based on provisions in the Local Government Act 2002, which are that an entity must not use water services assets as security for any purpose, divest its ownership in a water service, or sell or lose control of significant infrastructure:</i> <i>a requirement that, for a divestment proposal to proceed, it must have support from 75% of both an entity's regional representative group and a poll of the electors in its service area.</i> <p><i>The ED provides that territorial authority owners may not receive profits from the entity and have no beneficial interest in the security of an entity. The constitution must not give members of the RRG rights or interests in assets of an entity."</i> (Quote from page 5 of ED Explanatory Note)</p> <p>Schedule 4 provides detailed information on Divestment Proposals.</p>	
Purpose and objectives of the Entity			
14.	49 The entity must ensure that Council's aspiration for growth and spatial planning outcomes (including any Special Purpose Vehicle or Infrastructure Funding and Financing solutions) has surety that any waters entity will prioritise and give effect to our long term local, sub-regional and regional plans.	See Item 12 and 15.	
15.	49 Objective 15.7 and operating principle 20.5 (from Cabinet Minute CAB-21-MIN-0226) must provide stronger support or Resource Management planning (spatial planning and natural and built environments planning) its development and implementation.	<p>Cabinet Min. Obj. 15.7 is unchanged in ED S.10(c) and Cl. 20.5 has been modified by ED S.12(f) & (g).</p> <p>This modification removed the words "<i>– including in relation to infrastructure planning, and development control and land-use planning processes.</i>"</p>	

Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
16.	49 Objective 15.5 and operating principle 20.2 (from Cabinet Minute CAB-21-MIN-0226) must provide strong expectations to climate change mitigation including supporting the expectations of government to be carbon neutral.	Cabinet Min. Obj. 15.5 is modified in ED S.10(g) and Cl. 20.2 is unchanged in ED S.12(b). Reference to climate change mitigation is improved in ED S.10(g).	 Although there are improved references to climate change mitigation proposed in Water Services Entities high level objectives, there is no reference to achieving carbon neutral objectives.
Regional Governance Group			
17.	53 We would prefer the legislation includes a schedule that defines the process by which the 22 councils come together to make decisions with regard to their representatives and to hear from their representatives on the Regional Reference Group.	The ED makes significant changes to the Regional Representation Group (RRG) from what was proposed in Cabinet Minutes. ED Cl.24 provides for the Entity B RRG to have up to 44 representatives, being 1 from each TLA and an equal number from Mana Whenua. ED Cl.36 to 43 provides for the RRG to have a constitution. This constitution will state <i>"how the group will perform or exercise its functions, powers, and duties"</i> This also includes the voting rights of members <i>"which may include voting procedures or procedures for the weighting of votes, or require consensus decision-making."</i> ED Cl.49 provides that the Board is accountable to the RRG.	
18.	53 The entity should fund all three waters governance meetings and engagements for the councils, the group of councils, mana whenua and the regional representative group.	There is no specific provision for this.	 The ability to appoint and remove members of the Board, with all Council's represented on the RRG and with the RRG able to draft a constitution which could include addressing these matters. This could provide a mechanism for the council and mana whenua representatives to ensure sufficient funding is available to meaningfully participate in the governance of the entity.
Consumer, Community and Council Engagement			

Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
19.	60. We strongly prefer that individual councils are treated individually and with priority by the entity.	<p>The ED makes no specific provision for individual council's to be treated individually by the Entity.</p> <p>The high-level Objective and Principles for the Entity include: Objective statement to: <i>"support and enable urban development"</i> Cl.10 and the operating principle of: <i>"(f) partnering and engaging early and meaningfully with territorial authorities and their communities; and (g) co-operating with, and supporting, other water services entities, infra- structure providers, local authorities, and the transport sector."</i> Cl.12</p> <p>Engagement is addressed in ED Cl.176 to 179.</p> <p>Cl.176 requires the entity to consult and/or seek input during the formulation of a proposal or feedback on a proposal before deciding on a matter.</p> <p>Cl.177 provides for a Consumer Forum.</p> <p>Cl.178 provides for an annual Consumer Engagement Stocktake.</p> <p>Schedule 3 of the ED includes a requirement for the Board to engage with consumers and communities on the strategic plans.</p>	 <p>While there is somewhat of an improvement, combined with poor linkages to urban planning and RM reform there is no certainty that individual councils plans will be well co-ordinated with the Water Services Entities plans. Council's feedback sought to have specific local pre-engagement by the entity with each TLA. It might be possible that the Constitution of the RRG includes provision for each council to provide feedback.</p>
20.	60. We have developed a proposed process that gives each council the opportunity to participate in an engagement process and work with the entity on its strategic documents, as representatives of their community to ensure alignment with that council's plans. This pre-engagement is prior to the entity undertaking its own consumer consultation or engagement	<p>The accountability of the Board to the RRG has significantly improved</p> <p>ED Cl. 25 Role of RRG provides the RRG must participate in the process of setting the Entity's strategic direction and performance expectations under Cl. 124 to 145.</p> <p>ED Cl. 116 provides for the RRG to issue a Statement of Strategic and Performance Expectations every three years (but may be reviewed and not inconsistent with the Government Policy Statement (GPS)). It must be published.</p>	

Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
		<p>The ED requires the Board must prepare, deliver to the RRG and publish the following accountability documents:</p> <ul style="list-style-type: none"> • Cl. 125 a Statement of Intent (SOI) annually. ED Sch.3 includes provisions similar to CCO provisions for RRG consideration of the draft SOI. • Cl.128 an Asset Management Plan (AMP), every three years. AMP. • Cl.131 a Funding and Pricing Plan (FPP) for 10 years, every three years. The FPP includes the Financial Strategy. • Cl.134 an Infrastructure Strategy (IS) for 30 years, every three years. • Cl.137 an Annual Report, annually. <p>Sch. 3 also includes requirements for the CE to prepare and publish reports on how consumer and community input into and feedback on these key strategic documents was considered and incorporated. Cl 130(b)AMP,133(b) FPP, 136(b) IS.</p>	
Financial Implications for our Community			
21.	67. More information for the community on how it impacts the community them in the short term is required for all models considered.	<p>Not applicable to the content and purpose of the Bill.</p> <p>This is a matter for the local government and mana whenua through the Representation, Governance and accountability Working Group.</p>	
Better Off Package			
22.	72. We request that additional funding of \$15M is provided to contribute to the necessary community infrastructure for placemaking and build strong, resilient new communities.	<p>Not applicable to the content and purpose of the Bill.</p> <p>The Government has allocated funding, whether that reaches Hamilton is unknown.</p>	
Worse Off Package			
23.	80. We request that additional funding of \$21M be provided to fund ALL costs created by government waters reform	Not applicable to the content and purpose of the Bill.	

Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
	that leave stranded costs in Council after 1 July 2024 on a declining basis of Year 1 75%, Year 2 50% and Year 3 25% of the forecast overheads budgeted in the 10-year plan.	The Government has allocated funding, whether that reaches Hamilton is unknown.	
Transformation Costs			
24.	91. We request that the government guarantee that it will fund all reasonable costs of council participating, transitioning and transforming from now until 2027 (the end date for stranded costs), including the costs of any formal consultation with our community.	Not applicable to the content and purpose of the Bill. The Government has allocated funding, whether that reaches Hamilton is unknown.	
Owners' Representative Costs			
25.	We request that the government guarantee funding for all reasonable costs of the Regional Representative Group <u>during the establishment phase-up</u> until Entity B can fund its activities.	Not applicable to the content and purpose of the Bill. The Government has allocated funding, whether that reaches Hamilton is unknown.	
Timetable – Key Success Factor			
26.	97a The government must develop and maintain a detailed timetable from next steps after the eight-week period to final payments for stranded costs.	Not applicable to the content and purpose of the Bill. November 2021 updated timetable	
27.	97b Within that timetable it must be clear when councils will formally consult with their communities.	Not applicable to the content and purpose of the Bill. The Governments decision to make participation mandatory leaves community consultation as a choice for Council's. Council has chosen this option. To be implemented to align with the select committee processes.	
Communication – Key Success Factor			
28.	101 a. The Government develop and share a communication strategy and timeline that clearly distinguishes the roles of government and its agencies, transition entities, local government through to 30 June 2024. b. The Government commits to engage with councils on the	Not applicable to the content and purpose of the Bill. We guess that a new government communication may start soon to support engagement with the select committee process. We have no information on this.	

Item	Feedback Paragraph number and Potential Solution	Response in Exposure Draft of Water Services Entities Bill (ED)	Degree Solution Addressed
	<p>content of any public collateral or campaign prior to release, and actively work to respond to, and address, concerns raised by Councils regarding that communication.</p> <p>c. Communication should be balanced to focus on all the benefits of reform including all the wellbeings - economic, social, cultural and environmental.</p> <p>d. The Government funds communication in the transition costs, recognising that councils will need to communicate / engage with staff (waters staff and stranded costs) stakeholders (e.g. significant water users) and the community from now until the transfer.</p> <p>e. The government shows its contribution to the partnership by releasing information concerning the reform and waters matters to local government prior to releasing to media or general public.</p>		

Attachment 2: Feedback to Government (October 2021)

Three Waters Reform Formal Feedback to Government

This feedback is provided to give focussed feedback to the Government on Council's areas of concern on critical success factors the Council has previously identified. The Feedback does not focus on the positive aspects of the Government's proposal.

There has been no opportunity for detailed formal consultation with the community on a complete reform proposal. As this is the Government's reform Council expects clear information which would include a formal proposal and opportunities for councils to formally consult with their communities.

Overview

1. Hamilton City Council supports the Government's goals of ensuring safe, sustainable, and economically efficient delivery of three waters services but notes effective transition to any new structure must be in full and equitable partnership with local government.
2. Hamilton City Council has sought to work with its neighbours on waters activities for many years. In 2015-16 we undertook a significant investigation for a Waikato Water CCO proposal where the benefits of working together with our neighbours were clear and there was a strong case for change. Despite support from two of three councils, this didn't proceed. Council also works well with its neighbours in the very successful Waikato Regional Airport Ltd community owned CCO. Our learnings from that waters and airport CCO journey and have been applied to this reform proposal.
3. The Government's current reform proposal has been developed following nationwide systemic failings identified through inquiries into a water contamination issue in Havelock North in 2016. A wide-ranging reform programme to address compliance, regulatory frameworks and investment in infrastructure was developed. In August 2020 Council committed to engaging with the Government on Three Waters Reform and has responded with feedback to Local Government New Zealand in June and August 2021. On 10 June 2021 we identified 11 key areas that are critical to the reform's success. This feedback on the government's three waters reform proposal focusses on those crucial success areas that need more work.
4. The Government has foreshadowed a [new future for local government](#). A future with flexibility and incentives to adapt to the future needs of local communities and to provide better social, environmental and cultural and economic wellbeing to these communities.
5. In this Feedback document we have looked at the Government proposal in detail and have given feedback on those critical success factors that need work. There will be detail more appropriate to feedback to the Select Committee process when the legislation is drafted.
6. In the spirit of partnership, we have provided feedback on improving the proposed governance structure as proposed. However, getting the governance structures right is a big critical success factor. The current proposal needs work to be a successful model for central and local government and our communities. We have separately addressed this below.

The Big Critical Success Factors

7. Council has identified that effective communication, governance and aligned delivery with other reforms are the big critical success factors that need work. Council is concerned the Government's governance proposals provide no guarantee that local governance would be preserved in any meaningful way. For the reforms to be successful to following matters are required:
 - a. **Consultation:** We require absolute assurance that formal, effective and transparent consultation with our community will be undertaken before any structural changes to Council's management of Three Waters services.
 - b. **Local Voice:** Councils and communities must have meaningful input and influence over strategic directions, investment plans and service delivery standards of 3 Waters entities, especially as these relate to specific communities.
 - c. **Ownership:** There must be proper rights of ownership for councils as the owner. Nominal ownership by councils, without any of the benefit of ownership is meaningless without the rights of ownership and accountability of the entity to the owners, and thereby to the owner's community.
 - d. **Placemaking:** There must be a strong connection to councils' roles in placemaking and supporting thriving communities and the future of local government reform.
 - e. **Other Reforms:** There must be a strong connection to the existing resource management framework (e.g. the National Policy Statement on Urban Development), future of local government and resource management reform.
8. Crucial to success is community support for the reform. Council has not been able to consult formally and has found informing our community problematic due to poor quality information, information gaps and insufficient central rebuttal to national and regional misinformation.
9. The future of local government review states the following areas of focus. *"The Review's initial focus will be on how local government will be a key contributor to the wellbeing and prosperity of New Zealand and an essential connection to communities in the governance of New Zealand in the future."* The Minister of Local Government said, "Local government plays an important role in our democratic system, giving people a voice in the leadership of their communities and in the governance of services and publicly owned assets." The proposed governance structure does not support the Government's own recognition of the role of local government.
10. It appears the governance model is compromising ownership rights and accountabilities in order to fund the \$185B forecast spend from debt. This places too much emphasis on the finances and not enough on the social and cultural needs of communities in the design of the governance model.
11. Is the proposed structure the best governance model for success? We cannot assess this. The Regulatory Impact Statement includes five alternative governance structure models. The comparison and information sharing of these models has been insufficient for councils to conclude which is the best model. Our Waikato Water CCO study showed significant financial savings and greater investment could be achieved with a CCO structure. Waikato Regional Airport Ltd demonstrates councils can be shareholders of a community owned company that thrives.
12. Resource management reform and its links to three waters investment is critical to placemaking and building thriving communities. A strong voice for the local community would support greater alignment with other community planning mechanisms (e.g. RMA and its successors, responding to growth, Council investment planning in 10 and 30-year plans) and community driven solutions to water conservation, climate change, price allocation and other social and cultural matters connected with waters.
13. Council is proposing that part of the potential governance solution sits in having strong links to the outcomes of the resource management reform in the entities' objectives and operating principles. These provide the foundation for what must be embedded in all aspects of the waters business, not just the waters entities but the waters regulators as well.

14. POTENTIAL SOLUTION:

There must be an opportunity for formal consultation with our community before any proposal is implemented.

Hamilton City Council is not satisfied with the Government's proposed governance structure. Council is looking for an improved structure that meets financial and community objectives better, provides for localism and placemaking and strongly integrates with other reforms.

Council would like to explore alongside government an opportunity to understand, review and evaluate alternative ownership models including the Tasmanian, Welsh and other company models (like a CCO, joint ventures or other off-balance sheet funding models) that use well established governance and business structures. Council would like to explore regional and sub-regional options with the Government.

Central and local government must come together to share knowledge and experience and wholly redesign the governance structure.

Introduction

15. Council supports the Government's goals of ensuring safe, sustainable, and economically efficient delivery of three waters services but notes effective transition to any new structure must be in full and equitable partnership with local government.
16. On 10 June 2021 Council provided feedback to Local Government New Zealand (LGNZ) on the three waters reform. In that feedback we identified 11 key areas that are critical to the reform's success. On 15 July 2021 LGNZ and the Government signed a Memorandum of Understanding on the three waters reform. Further feedback was provided to LGNZ as an addendum in August 2021.
17. To assist LGNZ's discussions with the Government on the three waters reform programme, we have considered the current status of our 11 key areas. We have found that the status of these key areas can change positively or negatively as the reform continues depending on both new information and community perceptions. The 11 key areas and their status are shown in the table below.

Key Area for success	Overview	Status
Governance	see The Big Critical Success Factors para. 7-14 Governance para. 19-60	NEEDS WORK
Community ownership	see The Big Critical Success Factors para. 7-14 Governance para. 19-60	NEEDS WORK
Enabling Legislation and other reforms	see The Big Critical Success Factors para. 7-14 Governance para. 19-60	NEEDS WORK
Financial	see para. 61-98	NEEDS WORK
Community engagement and information	see para. 98-101	NEEDS WORK

Geography	Any entity in our region should include the Waikato and Bay of Plenty regions in their entirety, even if the entity included Taranaki. 'Our region' includes Thames-Coromandel and Hauraki and ensures areas of common interest and lifestyle make a cohesive whole.	Neutral
Iwi participation	<p>Hamilton City Council has built enduring and mutually-supportive relationships with iwi/Maori in our region. Any waters decision-making in our region must be directed by the vision and principles of Te Mana O Te Wai, recognise treaty settlements and give effect to Te Ture Whaimana/the Vision and Strategy for the Waikato River.</p> <p>Council acknowledges and supports the need for greater efforts in sustainability of healthy water and increased awareness of the precious and finite nature of this resource.</p> <p>We will be working with our iwi partners throughout the reform but need clear guidance from Government on what aspects of the reform are for councils to respond to, and what aspects will be managed by centrally. Establishing mechanisms for iwi co-management is best framed consistently at a national level rather than entities attempting to create potentially disparate bespoke arrangements.</p> <p>We support, as has been made clear by the Government, the Entities are not owned by mana whenua, although they have representation on the proposed Regional Representation Group.</p>	Neutral
Early transition	<p>A long transition process will increase costs and create uncertainty.</p> <p>Incentives for early adopters of the transition process would allow development of transition plans even ahead of legislation for those entity areas willing and able to do the work. The early creation of a transition entity and transition Board would enable regional decision-making in the same way as the Auckland Transition Agency enabled the creation of what is now Auckland Council.</p> <p>Council supports a trial transition governance arrangement. This would enable testing of governance models and representation to identify and resolve issues of localism, control and accountability.</p>	Proposal largely acceptable
Model	<p>We understand the Government favours a model with deemed participation by councils who could choose to opt out.</p> <p>A fragmented approach to establishing regional entities would undermine the benefits to community health, the environment and efficiencies. Therefore, a collaborative approach to a model would be more efficient.</p> <p>If a council(s) can demonstrate individually or collectively that they can demonstrate a cost effective, safe, and sustainable service which achieves all of the reform outcomes then they should retain the ability to opt out.</p>	Next steps unresolved.
Staff Welfare	<p>Staff are our greatest asset and reform places impacts our waters specialists as well as on staff in the remaining Council activities.</p> <p>We strongly support the Government on their announcements regarding the transfer of waters staff.</p> <p>Waters roles will remain with councils until transition to a new entity in June 2024, should reform proceed on the planned timeline. Council</p>	Proposal largely acceptable

	<p>staff will be impacted in ways that will have both positive and negative wellbeing implications for them.</p> <p>It is essential there is clear direction and communication from the Government and its agencies, as well as government and funding support for councils to transition, retain and develop all affected staff (waters and outside the waters business) over the next three years.</p>	
Data-led decision-making	<p>Councils must have access to clear, timely and accurate data to make informed decisions within the Governments timeframes.</p> <p>One example is the methodology to calculate and transfer financial assets, debt and cash reserves in a way which is understandable and acceptable to councils and communities. Council wishes to avoid a situation where Government timelines are impacted because a lack of data means Council is unable to make an informed decision.</p>	<p>Information supplied largely acceptable however there are many gaps in the data. See Financial.</p>

Detailed Feedback

18. The following are the concerns and potential solutions of Hamilton City Council to the proposed Government three waters reform. We have focussed on four critical success factors that need work:

- a. Governance
- b. Financial
- c. Timetable
- d. Communication

Governance – Key Success Factor

19. Council requires that the principle of localism (working with local people to solve local issues) is not lost and the community has a voice, particularly in regard to:
- a. service level,
 - b. waters investment
 - c. rates, fees and charges.
20. Resource management (RM) reform and its links to three waters investment is critical to placemaking and having thriving communities. Hamilton City is a big growth council and Three Waters services are essential to growth. The community having a strong voice in the waters entity is essential to aligning council and waters community planning mechanisms (e.g. RMA and its successors, national policy statement e.g. NPS-UD, and Council investment in 10 and 30-year plans) and community driven solutions to water conservation, climate change, price allocation and other social and cultural matters connected with waters.

Overall governance concerns

21. **CONCERNS:** Council acknowledges that the entity structure is highly influenced by the benefits of balance sheet separation (to achieve significant financial opportunities for the entity and council) and protection from privatisation.
22. Governance structures are complex, needing to address a mix of financial, cultural and social matters. The impact of focusing on the financial matters has virtually remove all community influence in governance, based on the role of the Regional Reference Group as represented in Clause 17 of Cabinet Minute (CAB-21-MIN-0227).

23. The multi-tiered governance structure, which requires an additional structure for 22 councils and another for mana whenua so that they each can select their six representatives is cumbersome, opaque and distant from the owners (the councils on behalf of the community).
24. Furthermore, Council does not accept the proposed concept of statutory ownership of the asset, where we have no rights of ownership. We are not aware of another example of this type of ownership structure in use anywhere else in New Zealand. Company models using well established governance and business structures are successful in Australia.
25. The Regulatory Impact Statement refers to 5 other governance models. The comparison and information sharing of these models has been insufficient for councils to conclude which is the best model. Our Waikato Water CCO study showed significant financial savings and greater investment could be achieved with a CCO structure and Waikato Regional Airport Ltd demonstrates councils can be shareholders of a community owned company that thrives.
26. Council expects that the three water assets will always remain in public ownership. New Zealand is a country where the legal framework for Parliament prevents a government from binding future government. Given this reality, achieving community governance objectives (including influence, localism and wellbeing) and the financial objectives (associated with the governance structure) should come first.

27. POTENTIAL SOLUTION:

Council has provided solutions below to improve the current proposal, however Council continues to look for a better overall structure that can meet the financial and community objectives better. See the *Big Critical Success Factors* para. 7-14

As part of the solution, Council proposes the following matters are considered:

- a. A shareholders' forum, where every asset-owning council is represented, and where strategic directions are discussed and recommended back to councils before going to the Board/company for approval. This could include iwi in an advisory capacity.
- b. Councils and iwi develop a skills matrix and approve Board members.
- c. A requirement for direct negotiation with individual local councils or groups of councils should they choose (such as the 3 currently working on the Future Proof wastewater plans) over service delivery levels and infrastructure investment plans in their respective areas. (Also see para. 29-38)
- d. Accountability through annual reporting to each council and iwi within the entity. (Also see para. 50-60)
- e. Local council decision-making over the method/split of charges, once the water is delivered, or the wastewater 'uplifted' at the city/district boundary. (Also see para. 50-60)
- f. Plans that correspond to the timing of each Council's 10 and 30 year plans. (Also see para. 50-60)
- g. Required involvement of the entity in spatial planning groupings (e.g. Future Proof, Smart Growth), where alignment with environmental/conservation measures, transport and stormwater issues, community wellbeings, etc. can be better assured. (Also see para. 50-60)
- h. Protection against privatisation is required (also see para. 26).

Purpose and objectives of the Entity

28. **CONCERNS:** We have two main concerns with the purpose and objectives of the entity:
 - a. Weak integration with the Government's Resource Management (RM) reform.
 - b. Weak integration with the Government's Climate Change response.
29. Resource Management Reform (RM reform)

30. Water services entity objective 15.7 and operating principle 20.5 (from Cabinet Minute CAB-21-MIN-0226) need work:
- a. "15.7 Supporting and enabling housing and urban development."
 - b. "20.5 Cooperating with, and supporting, other water services entities and infrastructure providers, local authorities, and the transport sector – including in relation to infrastructure planning, and development control and land-use planning processes."
31. These important strategic references will guide the entities direction and priorities. The link to the suite of proposed RM reform documents needs work.
32. We note the Government recognises these important links, but with multiple reforms happening at once and an often-siloed public sector, we are uncertain that the links are being built in as the programme develops.
33. It is essential that there are strong connections between all planning, which by implication has strong linkages to growth, the current housing challenges and government policy such as the National Policy Statement for Urban Development.
34. RM reform is not providing any certainty of sub-regional or local growth and spatial plans (like the Hamilton Urban Growth Strategy (HUGs), Hamilton-Waikato Metropolitan Spatial Plan (MSP) and Future Proof | Te Tau Tiitoki) nor recognising Hamilton's high growth demands (giving it tier 1 status under the National Policy Statement for Urban Design (NPS UD)).
35. This uncertainty creates significant risk that three waters investment needs will not be appropriately recognised in the new RM reform plans. With Entity B straddling 3.5 regions and potentially needing to work with 4 RM entities, the three waters investment risk for NPS UD tier 1 areas is further increased. If these links fail NZ Inc goes backwards, housing shortages exacerbate and GDP growth shrinks.
36. Managing these risks starts at the drafting of the legislation for both reforms and is essential. In the case of waters reform, building strong links with the entities purpose and its objectives is the start of accountability for getting this right.
37. The uncertainty of the future of these reforms makes determining the costs of future asset investment for councils and water entities difficult and challenging. As a result assumptions have been made about future costs and revenues that are rebuttable.
38. We are proposing that part of the potential solution sits in having strong links to the outcomes of the RM reform in the entities' objectives and operating principles. These provide the foundation for what must be embedded in all aspects of the waters business, not just the waters entities but the three waters regulators as well.
39. Climate Response
40. Three waters reform presents an opportunity to embed a low-carbon approach in entity planning from the outset. It is critical that action in this area is consistent with, and supportive of, Government's wider climate action goals. Building resilience to climate change is commendable but a failure to implement benchmarks to transition toward a net zero carbon future would be an opportunity missed.
41. Water services entity objective 15.5 and operating principles (from Cabinet Minute CAB-21-MIN-0226) need work:
- a. "15.5 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."
42. We are very concerned that the environment or climate change mitigations are not referenced in the operating principles. These could be added to "20.2 being innovative in the design and delivery of water

services and infrastructure” as it is likely that improving the environment and reducing carbon emissions will best be achieved by innovation.

43. The Ministry for the Environment promotes the Carbon Neutral Government Programme set up to accelerate the reduction of emissions within the public sector. Three waters entities should be ambitious in reducing their carbon footprint.
44. We support the Government’s objective to increase the resilience of three waters service provision to climate change risks. However, more emphasis needs to be put on rapidly reducing the significant carbon footprint of water services. This includes emissions from capital delivery, such as the embodied carbon in concrete and steel; operational emissions from electricity and fuel use; and waste gases (methane and nitrous oxide) from wastewater.
45. As highlighted by Waters NZ in its submission to the Climate Change Commission, the reforms open a “window of opportunity” for reassessing past practices and design philosophies to re-orientate the sector towards low carbon approaches. This includes contributing to the circular economy by capturing the energy contained in wastewater and bio-solids.
46. There needs to be a clear commitment to transitioning the sector to net zero carbon. Given both the public nature of the water entities and the serious risks that climate change poses to water services, targets for reducing emissions should be ambitious.
47. In 2018/2019, the treatment of Hamilton’s wastewater produced more than half of the organisation’s emissions. Council has already committed in its 2021-2031 10-year Plan to switch away from natural gas at its wastewater treatment plant.
48. We are proposing that part of the potential solution sits in having strong links to climate change outcomes in the entities’ objectives and operating principles. These provide the foundation for what must be embedded in all aspects of the waters business.

49. POTENTIAL SOLUTION:

The entity must ensure that Council’s aspiration for growth and spatial planning outcomes (including any Special Purpose Vehicle or Infrastructure Funding and Financing solutions) has surety that any waters entity will prioritise and give effect to our long term local, sub-regional and regional plans.

Objective 15.7 and operating principle 20.5 (from Cabinet Minute CAB-21-MIN-0226) must provide stronger support or Resource Management planning (spatial planning and natural and built environments planning) its development and implementation.

Objective 15.5 and operating principle 20.2 (from Cabinet Minute CAB-21-MIN-0226) must provide strong expectations to climate change mitigation including supporting the expectations of government to be carbon neutral.

Regional Governance Group

50. **CONCERNS:** Council considers that the Regional Governance Group does not support our critical success factor for good governance. It does not provide councils with the benefits of ownership, nor does it provide councils with the ability to influence the entity and provide a link to communities on waters matters. We have addressed these and other concerns about governance in the *Big Critical Success Factors* para. 7-14.
51. Council has considered ways to improve the proposed Regional Reference Group, should this feature be included in the reform. We note that these solutions do not meet all our concerns or expectation of an appropriate governance structure that will deliver good governance to Hamilton.

52. Entity B has 22 councils that need to appoint 6 representatives. We require that the legislation provides for appropriate processes for this diverse group to appoint these representatives. We recognise that a solution for Entity B may not work for other waters entities. Key items that could be included in a schedule to the Entities founding legislation include:

- a. A democratic process to ensure the members are representative of the populations. This could include the legislation creating a permanent joint committee, with a single representative of each council and voting based on population. For example, the *Joint Committee of Owners of Entity B*.
- b. We acknowledge it is perverse to add another structure into an already overly complex structure, but perhaps this is representative of the flaws in the proposed structure.
- c. There is no legislative confirmation the Entity will fund all activities including but not limited to: meetings costs, independent expert advice, communication, engagement and consultation with councils and mana whenua, and meetings costs of councils and mana whenua in the selection and replacement of RRG members.

53. POTENTIAL SOLUTION:

We would prefer the legislation includes a schedule that defines the process by which the 22 councils come together to make decisions with regard to their representatives and to hear from their representatives on the Regional Reference Group.

The entity should fund all three waters governance meetings and engagements for the councils, the group of councils, mana whenua and the regional representative group.

Strategic Documents to be delivered to Regional Governance Group

54. **CONCERNS:** We are concerned that:

- a. the legislation provides only for the *Board Appointment and Remuneration Policy* to be delivered to the Regional Representative Group.
- b. Other strategic documents are not required to be delivered.

55. POTENTIAL SOLUTION

56. We would prefer that the legislation should require the Entity Board to report the following to the Regional Representative Group:

- a. Their response to the Statement of Strategic and Performance Expectations.
- b. The Statement of Intent
- c. The Engagement Policy (currently not required for Entity)

Consumer, Community and Council Engagement

57. **CONCERNS:** Council is concerned that we will be treated as a customer and not as a trusted partner in the development of the city. There is no evidence in the proposal that the principles of localism and working with communities to find solutions that fit with the values and aspirations of those communities are recognised. There must be alignment with council planning processes and planning documents.

58. Councils provide a unique perspective of local community wellbeing (economic, cultural, social and environmental). Councils have the benefit of having managed waters activities, own or manage a significant part of the stormwater network and are intimately involved in the planning for the shape of their communities, housing, business development and growth. This perspective across the multidisciplinary activities of councils cannot be provided by community and consumer engagement alone.

59. To improve the opportunity for local input and better alignment policies and plans we have developed the following process improvements.
- a. That the entity should be required develop an Engagement Policy and engage with councils, communities and consumers on the proposed policy within 12 months of 1 July 2024 and reviewing and re-consulting no less than every 6 years.
 - b. That the entity must adopt by 1 March 2025 the following documents which have been audited and reviewed in line with Council long-term planning cycles:
 - a. Prioritisation methodology that informs the asset management plan;
 - b. Asset Management Plan; and
 - c. Funding and Pricing Plan.
 - c. That the above plans provide sufficient information for councils to be clear on the service levels in their communities, the investment in assets, rates, fees and charges that the entity intends to levy within Council boundaries.
 - d. That the entity consults with each council on the above policies prior to consulting with consumers and the community.
 - e. That a council may prepare a written statement, expressing a view on the entities proposals, to be included by the entity in its community and consumer engagement information.
 - f. That having regard to its own long term planning and other strategic documents a council's statement would state whether each plan (see para 56):
 - a. Is supported by the council, and
 - b. If part of the plan is not supported by the council, the council's views on why it is not supported and a potential solution to the issues identified by the council.
 - g. That the entity will be required to include the statement in the community and consumer engagement.
 - h. That the entity may express its own views on the matters raised by the council and include those views in their engagement material.

60. POTENTIAL SOLUTION:

We strongly prefer that individual councils are treated individually and with priority by the entity.

We have developed a proposed process that gives each council the opportunity to participate in an engagement process and work with the entity on its strategic documents, as representatives of their community to ensure alignment with that council's plans. This pre-engagement is prior to the entity undertaking its own consumer consultation or engagement

Financial – Key Success Factor

61. Council requires an absolute guarantee that, from 2024, its community and consumers are financially better off with waters reform than they would be should Council continue to operate three waters activities.
62. Council requires that the transfer of assets and liabilities and revenues is designed so that Council and the community are no worse off.
63. Council requires that the cost of the Government's Three Waters Reform is fully funded by the government allowing council and the community to:
 - a. fully participate in the reform;
 - b. transition assets, liabilities, and revenues and staff to EB; and
 - c. transform (right size) council, including stranded costs and a new direction.

Financial Implications for our Community

64. **CONCERNS:** Council's have been provided with significant amounts of data. It is spread across many reports, dashboards and the occasional spreadsheet. Some of the data was sourced from council direct or

indirectly from audited annual reports and plans. Most of the data is based on significant assumptions, which in some cases have been peer reviewed and accepted as reasonable for the purpose of long term forecasting.

65. Council however has been unable to get answers to many questions as the data either does not exist, has not been shared or has not been found in the mass of data provided at short notice.
66. Council is particularly concerned in the immediate years after the transfer. These are questions the community will expect answers to when the time to consult occurs.
 - a. What will happen to pricing at day one of the Entity?
 - b. Has the cost of reform been added to the price of services in these early years?
 - c. When will harmonisation start and what cost does that Hamilton ratepayers?
 - d. Does harmonisation mean a loss of capital value rating for waters?
 - e. When will the community see the benefits of economies of scale on pricing?

67. POTENTIAL SOLUTION:

More information for the community on how it impacts the community them in the short term is required for all models considered.

Better Off Package

68. **CONCERNS:** Providing financial support to councils is a critical success factor for waters reform. Hamilton has been disadvantaged by the allocation formula of population, deprivation and area. The government formula has not taken account of growth and the placemaking role of future councils to invest in community infrastructure to build strong and resilient communities.
69. For more than a decade Council has been challenged by growth. Information supplied in the RFI in late 2020 and early 2021 indicated Council has a waters debt to revenue ratio of 522%, illustrating the large investment that has been made in waters infrastructure predominantly driven by growth. This has come at a considerable cost to the community infrastructure investment (as demonstrated by the high waters debt to revenue ratio).
70. The funding allocation has not recognised this investment of waters infrastructure to enable growth, at the expense of community infrastructure.
71. It is a key goal of waters reform to increase housing availability. Hamilton's investment has been large to achieve this. However, our investment in community infrastructure is less than desirable and delivered later than the community needs due to financial constraints and other waters investment needing to be prioritised. Also, Hamilton's investment in three waters infrastructure to support the government's growth and freshwater agenda must be financially recognised.

72. POTENTIAL SOLUTION:

We request that additional funding of \$15M is provided to contribute to the necessary community infrastructure for placemaking and build strong, resilient new communities.

Worse Off Package

73. **CONCERNS:** Providing financial support to councils is a critical success factor for waters reform. Councils have not budgeted for waters reform in their 10-year plans at the request of the government. Councils' ability to fund participation, transition and transforming (right sizing) council is a critical success factor for the reform. Without this funding, councils' ability to represent and/or invest in their communities would

be restricted as funds are diverted or are not available. The success of implementation of findings from the Future of Local Government review relies on an efficient transition and transformation.

74. DIA have advised they estimate \$8M would be paid to Hamilton in 2024 to fund stranded costs. This is a small fraction of the expected 2024 stranded costs that Council will carry for a number of years until it is able to right size the council.
75. In the Waikato Water CCO project (2016) it was proposed that the waters entity would pay the councils for stranded cost on a decreasing scale over five years. This provides time for councils to shed or absorb those costs.
76. A fair and appropriate funding of stranded costs would be:
 - a. 2024/5 75% of waters overheads
 - b. 2025/6 50% of waters overheads
 - c. 2026/7 25% of waters overheads
77. After 2027 Council would then fund all costs itself.
78. Based on the audited 10-year plan allocations to waters activities and applying the formula in paragraph 70 above, Council expects a contribution of \$29M for stranded costs. Adjusted for the estimated \$8M contribution Council is underfunded for costs incurred by the government reform by \$21M.
79. This gives councils the opportunity to right size for the smaller authorities that they must become after removing such a large portion of their business. It also gives council a reasonable opportunity for the community not to be funding costs, bought about only because of the government waters reform.

80. POTENTIAL SOLUTION

We request that additional funding of \$21M be provided to fund ALL costs created by government waters reform that leave stranded costs in Council after 1 July 2024 on a declining basis of Year 1 75%, Year 2 50% and Year 3 25% of the forecast overheads budgeted in the 10-year plan.

Transformation Costs

81. **CONCERNS:** \$296M was allocated in the 2021 budget for transitioning costs. We have been advised that this funding becomes available when the decision to reform is made. This is anticipated to be between 2 October and before the parliamentary summer recess from 16 December 2021.
82. We have heard from DIA that this funding will be for:
 - a. The creation and funding of an overall transition entity;
 - b. The creation of 4 shadow entity transition entities;
 - c. Increased training for waters staff;
 - d. Costs of transitioning waters staff and activities out of councils (including significant legal costs associated with contracts) into new entities.
83. The Water Industry of Scotland (WICS) forecasts included \$1B of transition costs in the new entities. We expect the new entities would pay for the costs of:
 - a. New computer systems and technology for asset management, financial management, people management, billing and customer service and engagement.
 - b. Transitioning assets, liabilities, revenues and employment records into these new systems.
 - c. Establishing the new corporate structures.
84. We expect that all work undertaken by Department of Internal Affairs (DIA), LGNZ and other government entities will be funded from other than the above allocations.
85. Council estimates, based on its investigations in relation to the Waters CCO project, show that over the next three years Council could spend between \$5M and \$8M, participating, transitioning and

transforming the Council. We understand that all of this cost would be funded from the \$296M allocated in the budget.

86. It is not clearly obvious that sufficient funding has been made available to support participation, transition and transformation costs driven by government.
87. Council has been funded to participate in the reform with an allocation of stimulus money requested in the original stimulus package. The government has until now denied the opportunity for many of our Entity B (EB) partners (including Iwi) to be funded to participate in reform. It is clear that those funded to participate are better informed and more able to influence better outcomes for the sector. Waikato/BOP have been regularly congratulated on the high level of participation as a result of working together in the consortium. This is a small head start on other parts of the country that if capitalised on, should lead to better outcomes for EB and the EB communities.
88. Formal consultations are expensive and in the case of this reform more so due to the complex nature of the proposal. It is estimated that if consultation is undertaken by Council, that the expected cost would be between \$100,000 and \$150,000 preparing consultation information, running a consultation process and hearings. This is a cost not budgeted for by Councils and a cost directly driven by the government reform which should be paid for by the government.
89. Council stimulus funding runs out in March 2022 and there is no guarantee of any funding availability after that date to cover participation and transformation costs.
90. Attracting and retaining resources will become critical with the massive amount of work this reform will require in the next 33 months.

91. POTENTIAL SOLUTION

We request that the government guarantee that it will fund all reasonable costs of council participating, transitioning and transforming from now until 2027 (the end date for stranded costs), including the costs of any formal consultation with our community.

Owners' Representative Costs

92. **CONCERNS:** The cost of ownership of the entity should be funded and supported by the entity. This includes the following costs:
 - a. Operating the Regional Representative Group
 - b. Meetings of the owners
 - c. Owners' communications and engagements with their communities.
93. As discussed in our governance section of this feedback, the Regional Representative Group will need financial support from the Entity to fund independent advice and consultation and engagement with councils and mana whenua. We expect that to be funded by the entity once it is established. We are unclear where the funding for that comes from during the transition stage.

94. POTENTIAL SOLUTION

We request that the government guarantee funding for all reasonable costs of the Regional Representative Group during the establishment phase-up until Entity B can fund its activities.

Timetable – Key Success Factor

95. Council requires a detailed and clear timetable to 30 June 2027 (the end of the final funding), is developed to cover all significant elements of the reform, from next steps to final payments for stranded costs. It should make it clear as to when councils will be expected to formally consult with their communities.
96. **CONCERNS:** The reform timetable was first published in December 2020 and slightly modified in a presentation “Three-Waters-Reform-Programme-March-Engagement-slides” and is now archived on the Department of Internal Affairs Three Waters Reform Programme website. Dates on this timeline have not been achieved. Council as part of implementing its 10-Year Plan, a significant work programme, on the Government’s instruction councils have not budgeted for this reform. A clear timetable to fit the business of council with the business of government is urgent and essential.
97. **POTENTIAL SOLUTION:**
- a. The government must develop and maintain a detailed timetable from next steps after the eight-week period to final payments for stranded costs.
 - b. Within that timetable it must be clear when councils will formally consult with their communities.

Communication – Key Success Factor

98. Council requires that Government dramatically improves its communication on three waters reform.
99. Council requires the Government to own its reform and communicate either directly or through its agencies (including transition agencies and waters entities) clearly, consistently and concisely.
100. **CONCERNS:** Communication by the Government and its agencies has been poor and has created significant confusions and misunderstanding. Councils appear to have had no, or limited, opportunities to review and comment on public material before release. The Three Waters official social media account has been allowed to host nonfactual posts without rebuttal, media have been released council information before councils have received it (or in parallel), official statements on the waters reform page have been verbose, inconsistent and unclear and there has been too much emphasis on economic wellbeing and grossly insufficient emphasis on cultural, social and environmental wellbeing outcomes of reform. There has been no attempt to correct misleading information in the public domain, despite that information being demonstrably false.
101. **POTENTIAL SOLUTION**
- We request that:
- a. The Government develop and share a communication strategy and timeline that clearly distinguishes the roles of government and its agencies, transition entities, local government through to 30 June 2024.
 - b. The Government commits to engage with councils on the content of any public collateral or campaign prior to release, and actively work to respond to, and address, concerns raised by Councils regarding that communication.
 - c. Communication should be balanced to focus on all the benefits of reform including all the wellbeings - economic, social, cultural and environmental.
 - d. The Government funds communication in the transition costs, recognising that councils will need to communicate / engage with staff (waters staff and stranded costs) stakeholders (e.g. significant water users) and the community from now until the transfer.
 - e. The government shows its contribution to the partnership by releasing information concerning the reform and waters matters to local government prior to releasing to media or general public.