

New Energy and Water Public Interest Network – New-Pin

Towards a definition of the long-term public interest  
A New-Pin background working paper

Introduction

Energy and water provide essential services that are crucial to well-being whilst at the same time being fundamental to long-run sustainability. All of these desirable features can be considered to be part of ‘the public interest’. A draft definition of this term could be ‘the welfare of the general public’ or ‘a common concern amongst citizens in which the whole of society has a stake’.

There is widespread agreement amongst academics and public policy professionals, however, that the term the ‘public interest’ should be used sparingly. Indeed, in 2007 George Yarrow said the public interest is ‘*far too vague a concept to be helpful*’.<sup>1</sup> Rather than seeking to define this difficult concept, groups such as the Institute for Chartered Accountants in England and Wales (ICAEW) recommend to instead follow a *process* to determine whether in a specific circumstance something is in the public interest.<sup>2</sup>

Different groups - consumers, citizens, the environment and investors - may have different views as to the definition of the public interest, and whether the appropriate timescale over which to judge this is short, medium or long term. Arriving at a definition of what constitutes the public interest in a particular circumstance therefore frequently involves the ‘reconciliation’ of sometimes opposing views. Unless such processes are seen as legitimate, the public may not have confidence that their interests have been adequately represented in decisions.

This paper begins by discussing some of the specific features of energy and water that may help shape how the public interest is defined in these areas. It moves on to highlight some of the possible overarching public interest issues in the two sectors. A brief analysis of some of the different perspectives that people may have when considering the public interest follows. A slightly more theoretical overview of different methods of determining the public interest is then provided. The paper concludes by briefly assessing four approaches that have been used by policy and decision makers more broadly to deal with differences in views on public interest issues.

Purpose

This background working paper does **not** attempt to spell out the long-term public interest in the energy and water sectors in any detail. Rather, it is intended to provide a high-level **context** for the New-Pin project to work within, enabling individual

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<sup>1</sup> George Yarrow, House of Lords Select Committee on Regulators, 2007

<sup>2</sup> *Acting in the public interest – a framework for analysis*, Markets Foundation Initiative, ICAEW, 2012

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workshop discussions to explore the long-term public interest on a topic-by-topic basis, yet firmly anchored in wider current discourse on public interest issues. The paper is restricted to how the long-term public interest can be best represented at the national and local levels. Important questions about how the public interest is determined internationally, that are clearly important in regards to issues such as climate, are outside the scope of this project.

The companion paper that was also discussed at the Network kick-off meeting ‘*A suggested framework and process for approaching long-term public interest issues in New-Pin workshop papers and discussions*’ attempts to put some of this thinking into a practical format for use in future New-Pin workshop discussions.

### Specific features in energy and water

The following characteristics of energy and water may help shape how long-term public interest issues are viewed in the sectors:

- **Essential services that are key to public health and safety delivered directly into the work place / home yet paid for by separate bills** - in a Western democracy the public may expect that such services are a right and a basic entitlement in a civilized society. Dependent on the services for our well-being, their availability, affordability and accessibility raise questions around fairness and social justice. There is currently a high degree of public consensus around the need to retain reliable services in both sectors into the future. However, there is sometimes less agreement on the need for social protections for specific groups being delivered through service providers, as opposed to through the state;
- **Services of national strategic significance that are fundamental to security of supply and economic development** – we rely on the performance and resilience of the sectors in most aspects of our home and business lives. As without them society couldn’t function, they have a national strategic significance, although water also has a much more regional focus due to local resource availability and the costs of transporting it within and between networks
- **Part of the eco-system** – the energy and water sectors are ‘*Closely interlinked and interdependent*’<sup>3</sup> and are also a part of a wider nexus with agriculture / food and the environment. Both sectors are shaped by and contribute to climate change. Their usage has an impact on environmental habitats and bio-diversity. Given the uncertainty that still exists in many of these areas, and the fact that the linkages and systemic risks between the two areas are still a developing area of study, getting an effective ‘voice’ to ensure stewardship and inter-generational equity can be difficult. By way of background, **Annex A** outlines some of the basic links that exist between the two sectors as direct in-puts into each other’s processes;
- **A need to create new capacity for the future** – both energy and water sectors face a challenge in preparing to meet the demands of a growing population where

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<sup>3</sup> *The United Nations World Water Development Report: Water and Energy*, UNESCO, 2014

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patterns of consumption are also subject to change, through social demographic (eg smaller households) and climatic (eg more extreme weather) causes.

- **Shaped by wider social and environmental externalities** - for example, in the water sector it is recognized that public interests are wide ranging and extend beyond health to include their impact on the landscape as well as on cultural, aesthetic and recreational interests.<sup>4</sup> Accounting for externalities can be difficult as many natural resources are not fully reflected on company balance sheets;<sup>5</sup>
- **Limited differentiation between products and services, inelastic demand and a ‘continuous’ relationship with providers** – the energy and water sectors inherently have limited product or indeed service differentiation. Demand tends to be inelastic due to the essential nature of the service. This lack of responsiveness can be exacerbated by the fact that usage levels are often significantly influenced by other factors such as the thermal and water efficiency of buildings and appliances. Together, these characteristics have led Professor Michael Grubb to conclude that in the energy market ‘*low level engagement is a natural state.*’<sup>6</sup> The extent to which innovation and smart technologies can start to shape the demand side, most notably in the energy sector through smart metering, remains to be seen;
- **Have strong monopolistic elements** – as networks tend to be natural monopolies, consumers and citizens have limited choice and control and can’t ‘vote with their feet’ by switching providers or decide to alter their services in a significant way. In energy, although consumers can choose between retailers, there is no choice between distribution and transmission companies. In the water sector, competition is being introduced for business customers in England and Wales in 2017 (in Scotland these consumers can already choose). There are no plans to extend competition to domestic water users;
- **Networks with long asset lives subject to short-term regulatory cycles** – the mismatch between the length of asset lives (sometimes 100 years +) and the length of the price review periods carried out by economic regulators (8 years in energy and 5 years in water for England and Wales and 6 for water in Scotland) can be difficult to reconcile. It can potentially place more emphasis on dealing with public opinion *within* price review periods rather than on focusing on longer-term concerns where there can be significant uncertainty. To move from a focus on optimising efficiency at the best-practice frontier to more transformative efficiencies brought about by innovation and strategic investment, can be challenging within existing institutional arrangements;<sup>7</sup>
- **Significant proportion of costs are driven by European and international regulations** – in both sectors, costs are heavily influenced by decisions made

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<sup>4</sup> *Securing Water, Sustaining Growth*, OECD / GWP, 2015

<sup>5</sup> *People and the Planet*, The Royal Society, 2012

<sup>6</sup> *The distinguishing features of energy systems and innovation*, Professor Michael Grubb, UCL, April 2015

<sup>7</sup> *Ibid*

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outside GB, in water through various European Directives (often largely quality related) and in energy through various European and global carbon commitments; and

- **Subject to some on-going debates about ownership** – as ex-Nationalised Industries (apart from water in Scotland which is still in public hands and to some degree Welsh Water which is now a company limited by guarantee), the energy and water sectors are still subject to some discussion around ownership structures.

### **Possible overarching public interest issues in energy and water**

New-Pin is clearly not starting from a blank sheet of paper in asking what the long-term public interest is in the energy and water sectors. There is a tremendous amount of existing public opinion and engagement work already going on in companies, regulators and amongst public interest groups that the project will need to draw on.

Table 1 on the next page provides a very early view of the *possible* overarching public interest issues in energy and water. It is intended to be a ‘straw-man’ to stimulate discussion and to provide a framework for a far more detailed examination of the various topics in individual workshops throughout the three years of the project. The coloured rankings and comments are purely indicative at this stage and are **not** intended to be a definitive assessment. They are also very broad brush and do not fully reflect the different segments within each overarching group of interests. It should be noted that the need for good governance, and a transparent decision making process, underpins all of the different public interest issues.

**Table 1: Straw-man – possible overarching public interest issues in energy and water**

Area of public interest	Consumer interest	Citizen interest	Enviro. interest	Comments
<b>Affordability</b>				
Value for money				Energy bills currently significantly higher than water bills Awareness of what bills cover can impact on perceptions of VFM
Predictable / stable / gradual changes in price				
Simple/ transparent tariffs & methods of payment				Direct debit can make it difficult to link payment & consumption
A choice between tariffs			*	This area is less of an issue in water due to limited extent of competition. * Green energy tariffs? * Demand side response tariffs?
Fairness eg ‘Social’ tariffs & other steps to protect the vulnerable	*			Again, energy bills are currently significantly higher than water bills * Individual vulnerable consumers may of course be very interested
Quality standards of service				
Quality / safety of supplies				Particularly important for water
<b>Security of supply</b>				
Reliable short term supplies			*	* May consider short term restrictions are worth it if enable longer term environmental protection?
Resilient long term supplies	*			* Current consumers may find this difficult to engage with?
<b>Sustainability</b>				
Availability of services to enable efficient end usage	*			* Some customer segments may see this as a higher priority
Effective treatment of waste / emissions	*			Polluter pays? * Current consumers may only have an interest when things go wrong and directly impact on them
Loss / leakage reduction				Possibly more high profile / visible for water?
Low carbon technologies	*			* Clearly greater interest in energy but due to inter-dependencies, also impacts on water
Resource planning				This also impacts on landscape & visual amenity

**Key**

Likely to be very interested	Likely to be somewhat interested	Not likely to be very interested

Source: Sustainability First

### Different perspectives on the public interest

Different groups of people can have different perspectives as to what constitutes ‘the public interest’. The draft definitions of the term used at the start of this paper - ‘the welfare of the general public’ or ‘a common concern amongst citizens in which the whole of society has a stake’ – indicate that the public interest may be closer to citizen views than consumer views.

In this section, we explore a segmented set of definitions of what we mean by consumer, citizen, environment and investor interests to inform detailed consideration at future workshops. It is important to note, however, that both individuals and groups can clearly have more than one set of interests on any particular issue.

**An over-arching project working definition of the public interest may therefore be that it includes the interests of *all* consumers, citizens, the environment and investors, comprising all of these things in aggregate.** Specific context will, however, be important – and the project will also need to be flexible in how it approaches each workshop topic. The section ends with an assessment of what ‘short’ and ‘long’ term may mean in discussions around public interest.

### Interest groups

#### **Consumers**

The term ‘consumer’ can be defined as ‘a person who purchases goods or services for their personal use.’ As such, it can be taken to be concerned with short-term individual interests. Under the broad heading consumers, however, there are further possible segments -

- **Current consumers** – whose views may be focused on short-term issues. This term can be divided into two broad groups:
  - **Domestic consumers / households** - a subset of these includes -
    - **Vulnerable consumers** – vulnerability may occur where a consumer is more likely to not be able to protect or represent their interests, may be more likely to suffer detriment or for that detriment to be more significant. Vulnerability can change over time; and
  - **Business consumers** – this group can range from large industrial and commercial (I&C) users, through to farmers and SMEs.
- **Future consumers** – there is clearly some over-lap between the interests of future consumers and citizens. Although the ‘future’ is rarely clearly defined, future consumers may be more likely to also have an interest in citizen and environmental issues.

#### **Citizens**

The term ‘citizen’ can be defined as ‘a subject, national or inhabitant of a state.’ It tends to be a definition that implies a longer-term interest than those of consumers. Under the broad heading citizens, which can also have a future / current dimension, there are further possible segments:

- **GB wide** citizen interests – including national strategic interests;

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- Citizen interests at the **devolved national level**;
- **Regional** citizen interests (e.g. in large urban conurbations);
- Citizen interests at the **local** authority level;
- **Community** level citizens interests – at the grass roots in localities; and
- **Campaigning** interests – which may or may not be local or geographic.

**Table 2: An overview of some of the broad differences that may sometimes exist between generic consumer and citizen views**

	<b>Consumers</b>	<b>Citizens</b>
<b>Interest</b>	<p>Personal</p> <p>Transactional</p> <p>Coming together as users to influence service delivery</p> <p>Primarily interested in short-term outcomes. Process / frameworks also important in areas such as essential services</p>	<p>Social / collective</p> <p>Beliefs / values / ideologies</p> <p>Individuals democratically coming together to give their ‘consent’ to representatives to make decisions and deal with choices / trade-offs</p> <p>Public involvement in, and oversight of, the decision making process and frameworks essential if democratic system is to retain its legitimacy</p>
<b>Typical time horizon</b>	Tends to be short-term	Can be short, medium or longer term
<b>Means through which interest is expressed</b>	Markets and / or regulation	Government - national and local / community (including public bodies)
<b>Financial locus</b>	Bill payers (tends to be regressive)	Tax payers (can be progressive)
<b>Scope</b>	Individuals without ‘access’ or those that are not ‘desirable customers’ may find it hard to get voice heard	Inclusive - enables a plurality of views to be expressed
<b>Risk &amp; reward</b>	Individual bears the risk and reaps the rewards	<p>Risks are pooled and benefits are socialised</p> <p>May be more likely to have to meet unfunded long-term or unexpected costs (e.g. costs of pollution)</p>
<b>Means of influencing change</b>	<p>In competitive markets through ensuring that markets work and through individual choice / switching</p> <p>In monopolistic markets through regulation</p> <p>In all markets – consumer pressure on company reputation</p>	<p>Elections, referenda, ballots, campaigns</p> <p>Ensuring policy makers and regulators are accountable</p> <p>Public pressure on all decision makers</p>
<b>Type of engagement</b>	Can tend to be reactive	Can be participative – but even for ‘active’ citizens can be in a specific, episodic or ad-hoc way

Source: Sustainability First

### **Environmental interests**

As well as having an interest in habitats, species and bio-diversity, environmental groups are more likely to be concerned with natural resources and the under-pinning need for long-term sustainability. Although there will frequently be a great deal of convergence between the interests of different environmental groups, this is not always the case, and there may be understandable differences in emphasis between groups working on different issues and in the two sectors. However, many such groups often come together in networks (such as the Blueprint for Water group) to co-ordinate their work.

### **Investor interests**

Although all investors will be interested in returns, their specific objectives may vary depending on their investment goals and time horizons, the asset classes they invest in (e.g. equities, debt or infrastructure), the extent to which they take environmental, social or governance factors into account (e.g. through specific fund choices or through tilting or screening portfolios) and whether they are individual or institutional 'universal' investors (such as pension funds). In the case of the latter, the extent to which the ultimate end investors / asset owners ensure that their interests are heard by fund / asset managers varies.

The differences between the interests of consumers, citizens, the environment and investors are increasingly being blurred by the following factors:

- **Policy costs are being met through bills rather than taxation** - In the energy and water sectors, the economic squeeze is making it more apparent that policy costs are increasingly recovered through consumer bills. This is making the division between consumer and citizen interests perhaps less clear-cut than in the past. This trend is likely to lead to on-going questions about how the public interest is defined, represented and protected in this area.
- **The democratising impact of digital technologies** - Decentralised communication channels are changing and challenging many of the established ways that the public interact with all types of service providers and decision makers. Social media and on-line activism do not always recognise, and can easily transcend, existing decision making structures, further eroding the boundaries of what have traditionally been seen as consumer, citizen, environmental and investor interests.
- **Increasing localism, regionalism and nationalism** – The Scottish Referendum and the 2015 election have given momentum to debates on different concepts of identity, citizenship and community.
- **The emergence of new types of producers / providers** – Increases in distributed generation in the energy sector (eg solar and wind) are raising questions about the right to generate power and put it on the system. This can take many forms including as individual 'pro-sumers' or as communities or citizen groups (who may raise funds themselves through mechanisms such as crowd funding). The new business models and arrangements that result can blur traditional divisions between consumers, citizens, the environment and investors. Although this is currently most pronounced in energy, there is



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scope for the emergence of new providers, and more local approaches, in water.

### Time horizons

Citizen interests tend to be longer term than consumer interests. This may be due to: the fact that citizenship rarely if ever changes; the term incorporates a concept of the need to preserve the ‘body politic’ for future generations; and democratic interactions are largely shaped by medium-term electoral cycles. Environmental interests, in contrast, tend to be far more long-term and can be measured in terms of the interests of at least ‘one generation.’<sup>8</sup> Investors are likely to have a slightly more long-term view but this will very much depend on the type of investment. A day trader may only be thinking in terms of hours, an investor in equities may be thinking about performance over the next three years plus and an investor in perpetuity over the length of the asset life (which in energy and water could be significant).

From each of these varying perspectives, it can be difficult to take a view that extends beyond the next five or so years. This is in part due to the following factors:

- **Lack of future ‘voice’** – the opinions of future citizens and consumers, by their very definition, can be difficult to ascertain. Current debates around lowering the voting age for decisions of national importance, such as the EU Referendum, are testament to some of the difficulties in this area;
- **Tragedy of the commons** – individual consumers acting in their own rational best interests in the short term, can erode the interests of future consumers, citizens and the environment over the longer term by depleting common resources. The ‘global commons’ – including the oceans and climate – are particularly vulnerable in this way;
- **Cognitive biases** – people frequently discount the future in public opinion surveys, putting greater weight on the needs of the present. This is because present needs are concrete, whereas there are many possible futures. People are also excessively optimistic and in developed societies are increasingly risk and loss averse (tending to prefer sticking with the status quo, leading to ‘innovation neglect’ in public and private institutions alike);<sup>9</sup>
- **Political cycles** - can interrupt debates about longer term plans in areas such as infrastructure investment. In addition, our adversarial political system can make it difficult to tackle the uncertainty surrounding some of the associated challenges or to admit that there are no easy answers to the problem being faced.<sup>10</sup> Many commentators have highlighted the need for honesty about what is known and not known on long-term issues and the importance of developing a more ‘*coherent mechanism for taking into account the distribution of gains and losses for future generations;*’<sup>11</sup> and

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<sup>8</sup> *Long term environmental policy*, D. Sprinz, MIT, 2009

<sup>9</sup> Nicholas Stern in, *Innovation – Managing risk not avoiding it*, Annual report of the Government Chief Scientific Adviser, Sir Mark Walport, 2014

<sup>10</sup> *And Now for the Long-Term*, Oxford Martin Commission for Future Generations, 2013

<sup>11</sup> Walport op cit

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- **Existing data overload** –there is often plenty of data measuring short-term performance. Accountants, for example, may therefore view anything beyond the next 12 month financial reporting period as ‘long-term’. There is frequently far less available data to shape long-term opinion, particularly in areas such as finance and investment<sup>12</sup> or on environmental issues such as climate change.

Given the difficulties in establishing future interests, and how quickly things can change that may make long-term decisions redundant, there are questions about ‘how long-term’ it is sensible to consider. There is clearly a danger in being too specific about the future. This may suggest the need for flexibility in considering the use of long-term decisions. Such an approach could be combined with greater focus on the costs of inaction and the importance of avoiding closing off options.

### **Methods of determining the public interest**

An obvious way to go about defining the public interest is to ask the public themselves. The approach taken clearly needs to reflect the particular circumstances and the ‘problem’ in question. However, it must be remembered that what interests the public may not necessarily be synonymous with what’s in the public interest. In this section we examine different ways of testing public opinion before looking at different approaches that can be taken to try and reconcile any differences in views. We will be returning to this subject in New-Pin’s future capacity building and governance work.

### **How to understand public opinion**

A plethora of different engagement mechanisms have evolved to help identify public opinion. To decide on what is the most appropriate mechanism to use in a specific circumstance, it is important to ask the following types of questions:

- Given that ‘public opinion’ is a collective and not an individual concept, who are the relevant public? In an increasingly pluralistic and multi-polar world, who are the society or community in question?
- Is the issue in hand one of consumer, community, national or public interest, and if so, how are these different?
- Who should make this decision and decide what the ‘scope’ of the public interest is?
- Is the expressed opinion of those involved the same as their actual opinion? Will stated preferences and views be matched by real behaviour / reactions?
- Is the voice of all those affected equally heard or is it easier for smaller well resourced groups (such as producers) or lobbies to have a more concerted and hence effective voice than more diverse and dispersed groups (such as consumers)?<sup>13</sup>
- How do relevant interests that are currently excluded from or under-represented in decision-making get their voices heard?

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<sup>12</sup> *The Kay Review of Equity Markets and Long Term Decision Making*, BIS, July 2012

<sup>13</sup> ICAEW op cit

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- Is the purpose of the exercise to establish public opinion or to actively engage the public in a democratic decision making process?
- In the more sophisticated types of public engagement, what right or legitimacy do those involved have to speak out on behalf of public interests?

Public interest groups have in the past used the model of a ‘ladder of involvement’ to plot the ways in which public opinion and engagement can shape decision-making.<sup>14</sup> Passive forms of involvement such as basic market research are deliberately placed at the bottom of the ladder to indicate these are the very basic foundations of involvement that all organisations need to at least start with. Many of these types of engagement are focused on people in their capacity as current consumers.

The more complex or contentious the issue, the greater the need to move beyond simple opinion polling (which can be viewed as a way of rubber stamping decisions that have already been taken) to earlier and more ‘upstream’ involvement in the decision making process when options are still open and there is space to take a greater plurality of views on board. More sophisticated types of engagement along these lines may be more suitable to determine future consumer, citizen, environmental and investor interests where there is a greater need for the public themselves to be involved and ensure that decisions are seen as legitimate. Table 3 summarises the different ways decision makers can seek to test and identify the public interest.

**Annex B** provides a more detailed description of each method.

**Table 3: A possible ladder of involvement – different methods for testing and identifying the public interest**

Method	Comments
Direct influencing of markets through customer contacts, switching and behaviour change	Reflects current consumer interests  Switching behaviour mainly relevant in competitive markets (although some choice in monopolistic markets e.g. voluntary water metering)  Markets for essential services frequently still have large numbers of inactive consumers
Complaints	Reflects current consumer interests  Analysing trends and themes can identify emerging future consumer issues and some citizen issues
Market research – opinion polls	Primarily reflects current public interests  Top down – public are reactive & largely passive
Consultation	Can reflect a wide variety of consumer, citizen, environmental and investor views  Formal - and can be technocratic and difficult for interest groups to engage  Top down – but requires greater involvement

<sup>14</sup> This takes as a starting point Sherry Arnstein’s ‘ladder of participation’ drawn up for US planning problems in the 1960s in the US.

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Market research – deliberative research (e.g. citizens juries)	<p>Enables engagement on complex and more long-term consumer, citizen and environmental issues</p> <p>Allows different groups of interests to explore agreements and disagreements</p> <p>Top down – but requires greater involvement</p>
Digital activism (e.g. on-line petitions or crowdsourcing ideas)	<p>Can reflect a wide variety of public views but may be short-term and not necessarily representative</p> <p>Hard for companies to harness / manage</p> <p>Bottom up grass roots democratic engagement</p>
Limited involvement in governance (e.g. through ‘reserved’ seats on board)	<p>Individual public interest advocates involved are engaged</p> <p>If ‘reserved seats’ are for ‘political appointees’, can bring some legitimacy to the decision making process</p>
‘Expert’ challenge or advisory groups and panels embedded within decision makers	<p>Enables engagement on complex and more long-term consumer, citizen and environmental issues</p> <p>Can allow different groups of interests to explore agreements and disagreements</p> <p>Initiated by decision makers but enables targeted and sustained involvement. However, legitimacy of ‘experts’ may be questioned</p>
Negotiated settlement (e.g. Scottish Strategic Review of Water Charges)	<p>Enables engagement on complex and more long-term consumer, citizen and environmental issues</p> <p>Public interest groups have active involvement and stake in final decisions</p>
Independent forums and commissioners	<p>Enables engagement on potentially wide range of complex and more longer term public interest issues</p> <p>As policy interventions, have democratic legitimacy</p>
Direct customer oversight (e.g. Welsh Water)	<p>Enables engagement on current and future consumer, citizen and environmental issues</p> <p>As an accountability mechanism, can bring legitimacy to the decision making process</p>
Democratic decision (e.g. vote) but delegated control (to company)	<p>Enables full range of public interest to be represented on specific issue</p> <p>Fully democratic / bottom up</p>
Full direct public control (e.g. community energy scheme)	<p>Enables consumers and citizens to express their views and be fully engaged</p> <p>Bottom up / participative</p>

Source: Sustainability First

### **How to deal with differences of opinion**

The various methods for testing public opinion may well reveal differences in views between different interest groups. A brief literature review has identified four ways of ‘reconciling’ different views of what the long-term public interest may be. These approaches all have their strengths and weaknesses and are clearly not mutually exclusive. The ‘right’ approach will clearly vary depending on the context and will also need to complement and build on the ways in which public opinion has been established. However, just as the public interest may evolve over time, so too will the methods needed to deal with differences in views.

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A fuller description of each of the following approaches, drawing on wider thinking outside of the energy and water sectors, is at **Annex C**. The Annex also outlines two possible simple diagrammatic models that can be used for thinking through these different approaches.

1. **Utilitarianism or identifying a balance of common interests** – this approach is based on Jeremy Bentham’s idea that the public good should be viewed as ‘the greatest happiness for the greatest number.’ This concept involves balancing the trade-offs between different interests to reach a compromise position.
2. **A values based approach** – identifying the core values that might be shared between different interest groups can help smooth the process for making contentious decisions. Such values could include inter-generational fairness and justice.
3. **An innovative or creative approach** – rather than focusing on existing differences in opinion, this approach seeks to identify new ways of reframing questions and solutions and decision makers showing leadership in the change agenda. Rather than asking what the common interest is, it can turn the question on its head and ask what the most effective approach to a common problem is. This can involve new ways of communicating and forging relationships as well as exploring the scope for technical, commercial and institutional (in policy, regulation and company governance) innovation.
4. **A focus on process** – a robust decision making process can help ensure that differences in views are taken on board. This requires a governance and regulatory process that is: evidence based (this may require new data or existing data to be articulated / presented / shared in a different way); transparent; engages those effected in an inclusive way; responsive; and accountable. Ensuring that decision makers act with integrity, safeguard democratic processes and seek best value is also clearly important.

**Annex A – The interdependencies between the energy and water sectors**

There are many overlaps between the energy and water sectors. This Annex is intended for the lay reader and focuses on the relationship the two sectors have in terms of providing direct in-puts into each other's processes.

**Water usage by energy sector**

- Production
  - Hydro- electric
  - Thermo-electricity cooling – conventional and nuclear
  - Fracking
  - Biofuels – high water intensity for irrigation<sup>15</sup>
  - CCS
- End usage
  - Domestic and non domestic heating and cooling
  - District heating
  - Enabling smart usage - cooling data warehouses

**Trends**

On average, 76% of total water abstracted in England and Wales was used for electricity supply between 2000 and 2012 and this percentage is growing.<sup>16</sup> Energy is becoming a 'thirstier resource.'<sup>17</sup> With increasing inter-connection of Europe's energy system, issues with access to water for energy production in one country could have a knock on effect on the availability and cost of power supplies in other states.

**Energy usage by water sector**

- Construction
  - Wells, pipes, new plant
- Operation
  - Pumping. Constitutes 60% of the total energy used for water supply in the UK.<sup>18</sup> Increased climatic variability can lead to an increase in pumping costs.
  - Deep aquifer pumping – high energy intensity
  - Water treatment
  - Water distribution
  - Inter-basin transfer – high energy intensity
  - Wastewater treatment. In part due to the Water Framework Directive, treatment of sewage is more energy intensive than treatment of water. The largest energy usage process in wastewater treatment is sludge

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<sup>15</sup> IPCC 5<sup>th</sup> Assessment Report

<sup>16</sup> DECC 2013

<sup>17</sup> World Energy Outlook, IEA 2012

<sup>18</sup> Energy Efficient Water and Wastewater Treatment, Environmental Knowledge Transfer Network, I. Caffoor 2008

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aeration, which accounts for 55% of total wastewater treatment energy use.<sup>19</sup>

- Production
  - Desalination – high energy intensity
- End usage
  - Domestic hot water heating. End use comprises 70–90% of potable water-related energy use. Domestic water heating accounts for 5.5% of UK total GHG emissions, whereas the rest of the potable water sector accounts for 0.8%, with wastewater treatment being the dominant process.<sup>20</sup>
  - Irrigation

## Trends

Energy use in the water sector has intensified by about 10% over the last eight years.<sup>21</sup> In the UK the water industry uses around 3% of total national electricity consumption and is the fourth most energy intensive sector in the UK. Its energy use has increased substantially over the past 20 years. By 2013/14 energy costs had risen to 15% of operational expenditure in the sector.<sup>22</sup>

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<sup>19</sup> Caffoor op cit.

<sup>20</sup>, Greenhouse-gas emissions from energy use in the water sector Nature, Climate Change, Sabrina Rothhausen and Declan Conway, June 2011

<sup>21</sup> Water UK, Sustainability Indicators 2009/10, 2010

<sup>22</sup> Bridging the gap between the energy and water sectors, Cornwall Energy, May 2015

**Annex B – A possible ladder of involvement – different methods for testing and identifying the public interest**

The different methods of assessing public opinion outlined in this Annex range from basic consumer market interactions to far more democratic and involved mechanisms to engage the public. We will be returning to this subject in New-Pin's future capacity building and governance work.

**Direct influencing of markets through switching and behaviour change** - Some aspects of the consumer interest in a competitive market can be determined by switching activity between providers. However, there has been much discussion about how effective this process has been in markets for essential services such as energy and the level of consumer inactivity.<sup>23</sup> Consumers, and indeed citizens, may have many other interests with a particular service that they do not always take into account / or may be unable to take into account, when making a choice between providers. Consumers can also influence markets through changing their behaviour (for example, through installing water efficiency devices and other demand reduction or demand response measures). Again, it is not always possible from these actions to assess what the views driving such changes may be (for example, is it to save money or protect the environment?).

**Complaints** - The number of complaints received by an organisation can give a very basic idea of what consumers are concerned about. However, this is clearly a reactive means of intelligence gathering and is normally associated with specific current issues. Analysing the themes and trends that lie behind complaints can give a better idea of developing areas of interest.

**Market research – opinion polls** Opinion polls, surveys and focus groups initiated by a policy maker, company or regulator, are a standard business approach to gathering market intelligence and public views. They are normally just a one way process with limited scope for commenting outside the structured questionnaire or topic sheet. Samples can be structured to be representative of the population.

**Consultation** - Public interest advocates are frequently invited to respond to consultations from policy makers, regulators and companies. In the first two cases, certain groups may be statutory consultees to certain decisions. Written consultation exercises can also be accompanied by wider engagement exercises, such as round table discussions, to try and work through any differences. However, these are still largely top-down and formal ways of soliciting public views.

**Market research – deliberative research** - Deliberative research, such as citizens' juries, can help shed light on complex decisions or longer term issues that will impact on future generations. They enable more informed and nuanced dialogues between participants that can encourage a wider range of views to be expressed (i.e. beyond current consumer interests) tease out differences in opinion and identify possible areas

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<sup>23</sup> For example, see Updated Issues Statement, CMA Energy market investigation, February 2015



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of agreement and disagreement. Samples can be structured to be representative of the population.

**Digital activism** - Rapidly evolving digital technologies are creating new ways for the public to initiate debates, provide ideas and ensure that their voice is heard in decisions. Groups like 38 Degrees (whose slogan is ‘People, Power, Change’) and a whole host of other online and social media platforms, enable consumers, individual citizens and wider community and public interest groups to get their interests heard in a way that was not previously possible. Crowdsourcing initiatives can also provide other routes for online communities to share their ideas and get their opinions heard. Decision makers can find it difficult to know how to respond to such populist and grass roots digital activism, particularly if it is based around a very specific single issue that may not have been presented in context. It is also not always easy to judge what stake those involved have in the issue and on occasion even who they are.<sup>24</sup> Established decision making processes can appear clunky, unresponsive and remote in the face of slick, fast moving and targeted digital public interest campaigns.

**Limited involvement in governance** – The board of a company / organisation has a limited number of ‘reserved seats’ for public interest advocates. Many housing associations, schools and NHS Boards, for example, used this model of governance in the past, with local councillors often having a ‘reserved’ seat on the board. Following criticism of tokenism and spurred on by the financial crisis, most have now moved away from this to board appointments primarily based on skills and experience.

**‘Expert’ challenge or advisory groups and panels embedded within decision makers** - Groups of public interest advocates that have some expertise in an area are brought together by a company or regulator, and within their structures give advice and act as a ‘critical friend’. As such, they can sometimes be viewed as slightly technocratic. These types of groups can be standing (e.g. the Financial Services Consumer Panel that is embedded within the FCA) or established to in-put into a particular issue or decision (e.g. the Customer Challenge Groups that were set up by water companies for the 2014 Periodic Review [PR14] or the Consumer Challenge Group that was set up by Ofgem for the first electricity distribution price control [ED1 in 2014]). The expertise of the members of these groups is largely drawn from their skills developed from working for or with wider public interest organisations. Such groups tend to be involved over a period of years, ‘upstream’ in the decision making process, enabling them to help shape the final decision before options have been chosen.<sup>25</sup> In some cases, they have been resourced to be able to carry out their own independent research (e.g. new energy consumer challenge arrangements in Australia).

**Negotiated Settlement** – Public interest groups are actively involved in negotiating directly with decision makers and are hence given a stake in a final decision, such as a price control. This approach was taken for the 2015-21 Strategic review of water charges in Scotland where the Customer Forum negotiated with Scottish Water to reach a final agreement and has been used with private service providers in US States such as Florida.

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<sup>24</sup> For example: *Online reviews and endorsements*, CMA, June 2015

<sup>25</sup> Involving consumers in the development of policy, UKRN, 2014

**Independent forums and commissioners** - Independent bodies, potentially containing consumer, citizen and other public interest advocates, are sometimes established to ensure that a public interest perspective is heard in decision-making. Such policy interventions may be concerned with a single issue (for example, to advise decision makers on a significant specific strategic investment decision such as a new nuclear plant) or a more generic public interest issue (for example, Scotland's Futures Forum that was created by the Scottish Parliament to look beyond immediate time horizons at future challenges and opportunities (and was previously been recommended for replication in Westminster),<sup>26</sup> or the Future Generations Commissioner for Wales (who will be appointed by the Welsh Government later this year). The Green Alliance's proposal to establish a 'Citizen Voice' for strategic infrastructure planning could fall into this category.<sup>27</sup> The experiences of the Parliamentary Committee for the Future in Finland and the Israeli Knesset Commission for Future Generations also fall into this category.

**Direct customer oversight** – Mechanisms are put in place to ensure that the company acts in the best interests of its customers. Welsh Water, a company limited by guarantee, is a possible example of such arrangements. The company's owner, Glas Cymru, has 57 independent members whose task is to ensure that the business remains focused on its primary role of providing high quality water and sewerage services.

**Democratic decision but delegated control** - Through the democratic process (e.g. local or national elections, referendum or ballots) citizens are actively engaged in making a decision (e.g. to build a new reservoir) but delegate control to carrying this out to others (usually companies but could be a third sector provider). In practice, as most elections are fought on a range of often national issues, these will not always give a clear indication of the public interest on a particular issue. Issue specific ballots and referendum address this point but their expense can be such that they may be limited to significant issues that will impact on future consumers, citizens or environmental interests.

**Full direct public control** - People take direct control of the service either as citizens (e.g. through a local community energy scheme) or as consumers (e.g. through a water co-operative in a rural area). If this was carried out a national level by Government, it would clearly equate to re-nationalisation.

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<sup>26</sup> Governing the future, The House of Commons, Public Administration Select Committee Report, 2007

<sup>27</sup> Opening up infrastructure planning, Green Alliance, 2014

**Annex C –Four methods of reconciling differences in opinion**

**1. Utilitarianism or identifying a balance of common interests**

At a high level, the public interest could be defined as a set of pragmatic interests we all have in common such as clean air, defence and security, public safety and a strong economy. This way of approaching the public interest has its roots in Jeremy Bentham's principle of utility that argues that: the best action is the one that brings the greatest utility; the greatest utility is what is good; and good is whatever brings the greatest quantity of happiness.<sup>28</sup> Arriving at a balance or compromise between the different interests involved in an issue would seem to be at the heart of this approach to the public interest.

How this thinking is applied to real decisions is unsurprisingly more complex. For example, for many years assessment of the acceptability of takeovers and monopolies was based on a rather generic 'public interest' test. The Fair Trading Act 1973 specified that:

*'In determining ... whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall take into account all matters which appear to them in the particular circumstances to be relevant and, among other things, shall have regard to the desirability –*

*(a) of maintaining and promoting effective competition... (b) of promoting the interests of consumers, purchasers and other users of goods and services ... in respect of ... prices ... quality and ... variety...; (c) of promoting ...reduction of costs... development and use of new techniques and new products, and... new competitors into existing markets; (d) of maintaining and promoting the balanced distribution of industry and employment in the United Kingdom; and (e) of maintaining and promoting competitive activity in markets outside the United Kingdom on the part of producers of goods...'*

No guidance was given, however, on how any conflicts between these considerations should be balanced. In the UK Enterprise Act 2002, public interest was directly preserved only for media mergers, to cover matters such as accurate presentation, free expression of opinion and the plurality of views. In other cases the public interest test was replaced by and large, with a pure competition-based test, although the Secretary of State retained the power to intervene in cases where the public interest merited it, thus ensuring Government involvement in potential issues of judgment and conflict of interest.<sup>29</sup>

The increasing focus on competition and market forces to deliver solutions in the public interest has also in itself come in for some criticism. For example, there has been some discomfort in the legal services sector, that an economic interpretation of the public interest through a focus on consumers, is overriding a democratic view in terms of peoples' interests as citizens '*... self-interested profit-maximising behaviour, while good for some, might not be inherently good for all. Even regulated*

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<sup>28</sup> Jeremy Bentham, An Introduction to the principles of morals and legislation

<sup>29</sup> ICAEW op cit

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*economic activity is quite capable of undermining or damaging the institutional fabric and well-being of society.*<sup>30</sup>

In seeking to balance these different interests, much of Western discourse in this area is concerned with choices and trade-offs, avoiding disadvantage or limiting the negative effects of a decision. There is often less attention given to how different objectives may be harmonised, by looking for equilibrium in inter-related areas. This could be as a result of the Western cultural focus on the individual, compared to some aspects of Eastern culture (such as through the influence of Confucianism) that tends to focus on harmonious relationships. How these underlying traits impact on how increasingly multi-national businesses and foreign investors perceive public interest issues remains to be seen.

## 2. Values

Many commentators consider that the public interest is best defined as a set of shared values, beliefs or ethics. These moral views will often underpin what people want and shape public opinion. Some of the key philosophical approaches to determining values include:

- Virtue – which would require an action in keeping with a chosen characteristic, such as being honest or exercising integrity so that concepts such as ‘trusteeship’ and ‘stewardship’ are meaningful;
- Consequentialism – which requires consideration of the expected consequences rather than the means, and the maximum greatest well-being;
- Duty – which is based on the rights of others, such as through the chain of obligations between generations; and
- Justice – which focuses on fairness, including between generations.<sup>31</sup>

Following the financial crisis, there has been much discussion about what values should underpin our future models for growth and development and what ‘inclusive capitalism’ might look like. Unilver’s CEO Paul Polman has said:

*‘Redefining capitalism requires businesses to develop longer-term models in which growth is aligned with the needs and aspirations of the communities that they serve. Being ‘less bad’ is no longer sufficient. This goes beyond corporate social responsibility. It’s about moving from share value to shared values where business sees itself as part of society, not separate from it; where the focus is on the long term, not on quarterly earnings; and where the needs of citizens and communities carry the same weight as those of shareholders.’*<sup>32</sup>

In the scientific community, there has recently been a similar focus on values in discussions around risk and innovation. The Government’s Chief Scientific Adviser has said,

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<sup>30</sup> Stephen Mayson, Legal Services Institute, Legal Service Regulation and the Public Interest, 2013

<sup>31</sup> Flanagan, Values, Codes of Ethics and the Law, quoted in ICAEW op cit

<sup>32</sup> Making Capitalism More Inclusive, D.F. Carney and C. Freeland, 2014

*'Debates about risk are also debates about values, ethics and choices; about how benefits and risks are judged; and about fairness, or who benefits and who carries the risk. If these broader questions are ignored, conflicts can become intensive and disabling. Widening the conversation is a democratic necessity and an expression of responsible citizenship.'*<sup>33</sup>

### **3. Innovation and creative approaches**

In order to address some of the drawbacks in the previous methods, some commentators are now proposing that a more creative approach is needed to address public interest issues. An approach that does not perpetuate the existing system but adapts to emerging trends – in the social sphere as well as technically – and looks for creative combinations and consensual compromise. For example, at the 2014 Conference on Inclusive Capitalism, Roger Martin of The Rotman School of Management at the University of Toronto said:

*'It is unhelpful to promote the existence of a trade-off between shareholder value maximization and benefit to society, and then plead with managers to trade the former off for the latter. This simply entrenches the self-fulfilling prophecy and makes it harder to dispel. Instead, proponents of inclusive capitalism should argue that the trade-off is not inherent; it is a product of the model in people's heads. The core task of management is not to choose between shareholder value maximization and benefit to society; it is to seek creative resolutions that enhance both.'*<sup>34</sup>

This view was echoed at the conference by Richard Edelman:

*'Business must shift from seeking a 'licence to operate' to pursuing a 'licence to lead'. The sector must move away from its microeconomic, legalistic focus on solving the challenges of production, delivery, marketing, pricing, innovation and finance alone, and invest far greater effort in responding to macroeconomic and societal challenges.'*<sup>35</sup>

To help stimulate creative approaches, rather than focus on the difficult issue of identifying what is in the 'common interest,' an alternative could be to turn the question on its head and to assess what would need to happen for a decision to be able to withstand 'common challenges.' This can also help address the temptation to put public interest issues into the 'too difficult box' by getting people to confront what the costs of inaction may be. According to the Oxford Martin Commission<sup>36</sup>, in the Twenty First Century globally we face the following categories of common challenge:

1. Society – how can growth and development be made more sustainable and inclusive, including to meet the needs of a growing, and in the West ageing, population?
2. Resources – how do we ensure that our food, energy, water and biodiversity are more secure, including in the face of *climate change*, and that we use

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<sup>33</sup> M. Walport op cit

<sup>34</sup> Roger Martin in Making Capitalism More Inclusive, op cit

<sup>35</sup> Richard Edelman, in Making Capitalism More Inclusive, op cit

<sup>36</sup> Oxford Martin Commission for Future Generations, op cit

technology and changing public expectations in service delivery and representation to help us do this?

3. Health – how can public health infrastructures and practices respond to the needs of all?
4. Geo-politics – how can power transitions be the basis for fresh forms of collaboration?
5. Governance – how can businesses, institutions and governments contribute to more inclusive and sustainable growth?

#### **4. A focus on process**

If defining ‘the common good’ is problematic, focusing on the process by which decisions are made is in some ways more straightforward. The public interest test used by the Information Commissioner provides a good starting point here:

*‘The public interest can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. Thus, for example, there is a public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes. There is a public interest in good decision-making by public bodies, in upholding standards of integrity, in ensuring justice and fair treatment for all, in securing the best use of public resources and in ensuring fair commercial competition in a mixed economy. This is not a complete list; the public interest can take many forms.’<sup>37</sup>*

A robust decision making process is vital if differences in views are going to be effectively dealt with. This requires a governance and regulatory process that is evidenced based (this may require new data or existing data to be articulated / presented / shared in a different way) as well as being transparent etc. The UKRN have identified some helpful principles for dealing with consumer engagement in this sort of area. These include ensuring that engagement is: tailored; inclusive, transparent; and developing.<sup>38</sup> Clearly if wider citizen issues are involved, it will also be important to ensure the process recognises the principle of accountability and the need to safeguard democratic processes.

Expectations around what makes a successful process for dealing with public interest issues are changing. In many ways this is an international phenomena, in part driven by digital technologies that give people more insight into, and opportunities to participate in or critique, decision-making processes. For example, a 2004 study on smart regulation in Canada found,

*‘Effectiveness...is linked in many of the reports to a notion of public confidence, and moreover, confidence among a more sophisticated public. At the same time, there is a need to be aware of the costs of regulating in the public interest. Stewardship, mutual responsibility and the need for a more holistic approach in regulation are also*

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<sup>37</sup> The Public Interest Test and the Freedom of Information Act, Information Commissioners Office, 2013

<sup>38</sup> Ibid

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*seen as being important.*<sup>39</sup>

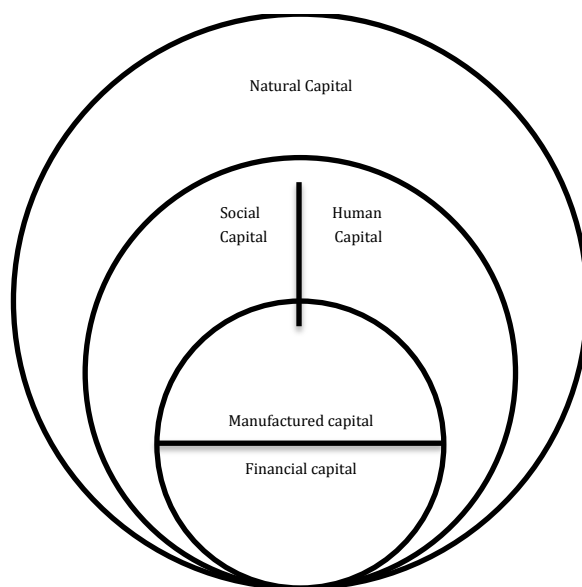
To try and address some of these problems, it has been suggested that more attention needs to be given to *how* dialogues around the public interest are conducted. Various commentators have pointed to the value of ‘*Active and reflective listening – not just speaking.*’ This could involve exploring the underlying causes, rules and assumptions in a debate to expose deeper questions and enable the reframing of problems.<sup>40</sup> Using narratives and stories to help people understand more complex issues, can also help by putting these into context and creating shared understanding.<sup>41</sup>

The following simple models could be used to help ensure a robust process and guide discussions as to what may constitute the long-term public interest in a particular area.

### Model A – Forum for the Future’s ‘Five capitals’

This model is based around five groups of ‘capital’: natural (e.g. resources and ‘sinks’ that absorb waste); human (e.g. health or skills); social (e.g. communities or institutions); manufactured (e.g. technology and infrastructure); and financial (e.g. shares or bonds).

The model can be used to help think through what can be done to maintain and where possible enhance these stocks of capital assets, rather than deplete or degrade them. The model encourages users to recognise the inter-dependencies between the different types of capital.



Source: Forum for the Future

<sup>39</sup> Assessing the public interest in the twenty first century: a framework, Canadian Policy research Network, A paper prepared for the external advisory committee on smart regulation, L.A. Pal and J. Mazwell, 2004

<sup>40</sup> Barry Quirk, Inside Out, The Institute for Government, February 2014

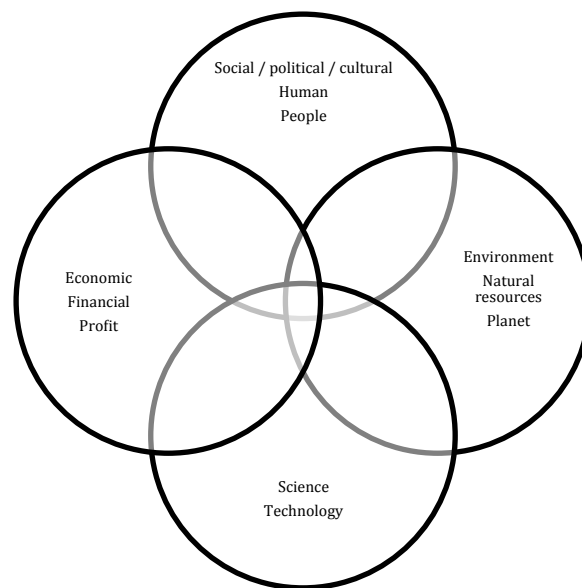
<sup>41</sup> Tim O’Riordan in Sir Mark Walport op cit

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### Model B – Maximising well-being

In this model, the overlap between the four circles / spheres of interest in the centre could be taken to represent the public interest or well-being. Presenting these different interests in this way can help to raise questions such as:

- What balance is needed between the different spheres of interest to get to the centre?
- What creative solutions can bring the circles closer together to maximise the size of the centre?
- What are the ‘shared values’ in the centre?



Source: Sustainability First