



Office of the Mayor

9 February 2023

Committee Secretariat

Finance & Expenditure Committee

Parliament Buildings

WELLINGTON.

Dear Committee

Re: Water Services Reforms Bills Submission

NELSON CITY COUNCIL – POSITION STATEMENTS

Nelson City Council understands that reforms are needed in the Three Waters sector to improve New Zealand's water services. However, the majority of Councillors do not support the current direction of the Three Waters Reforms and are opposed to the current model. Additionally, feedback from the community and key stakeholders collected from May to July 2022 identified 87% were opposed to the proposed reforms.

Centralisation, and the four mega-entity Three Waters model, is not the best option for either Nelson or New Zealand. Nelson will be disadvantaged with this model under both the legislation that has been passed and this latest bill.

Please note this is a shift in stance from the previous Council. This submission represents the majority view of Council, but there is a diversity of views on some of the points raised in the submission.

We are still assessing the impact of Schedule 1 of the Water Services Legislation Bill on our Council Controlled Trading Organisation, Nelmac. That schedule inserts a new Part 2 into Schedule 1 of the Water Services Entities Act specifically relating to the transfer of assets owned by local government organisations. We understand Nelmac to be a local government organisation within the meaning of the Water Services Entities Act. We will make further oral submissions on this matter.

I wish to take this opportunity to outline my Council's significant issues with the Reforms:

CENTRAL GOVERNMENT – ISSUES OF CONCERN

1. MANDATED REFORMS.

In 2020, Central Government announced that Three Waters Reforms would be voluntary and only those Councils that wanted to participate would be involved. Yet in 2021, the Reforms were mandated and made compulsory. This is a reversal in expected outcomes and has been divisive for both Nelsonians and New Zealanders.



2. PROJECTED FIGURES.

The projected Three Waters figures are simply that – projections, based on many questionable assumptions. This includes both the \$120-185 Billion spend on infrastructure ahead to 2051, and the projected ratepayer increases to circa \$8,000/year. This anticipated spend on Nelson's infrastructure, taken in the context of the state of Nelson's well looked after assets, is excessive and not realistic.

3. THREE WATERS INFRASTRUCTURE CONTROL.

Three Waters infrastructure should firmly be in local authority control. Local authorities are better placed for the necessary pivots in direction that are required to meet consumer and community needs. *Core catchment planning* and *land use* management needs to remain in Council control. The benefit of integration is being lost under the proposed model.

The ability to respond efficiently and effectively to natural disasters (as Nelson successfully did in the extreme weather event of August 2022) is a strong reason why Councils are best placed and prepared for dealing with local issues.

4. INFORMATION TECHNOLOGY (IT) SYSTEM COST.

The proposed cost for a single IT system for the four Water Services Entities is estimated by Central Government at \$600 Million and is both high risk and high cost. Nelson's current IT system managing its three water services is well proven including asset management systems, telemetry, and CCTV. Centralising IT systems takes years, and we question whether this strategy will deliver good value for money.

5. ENTITY LOCATION.

It is disappointing that Nelson remains in Entity C rather than the best-fit Entity D. This is despite all three Te Taihū Councils and all eight Te Taihū iwi agreeing and submitting the request to move to entity D in July 2022 and providing strong reasoning including geographical location and alignment to other sector reform boundaries (e.g., Health). We are of the view that justification for the decision to decline our request remains lacking. We are not of the view that water entities need to be so large to be efficient, would prefer a Nelson/Tasman entity, but if the Government is to proceed with the large four, would much prefer to be in a single South Island entity.

NELSON'S WATER SERVICES – ISSUES OF CONCERN

1. NELSON'S WATER ASSETS.

Nelson is extremely proud of its investment and delivery of water services. This includes a world-leading water treatment plant, water supply dam, pipe upgrades, robust renewal programmes, and minimal water leak history. Over the past 170 years, Nelson City Council has, on behalf of Nelson residents, significantly invested in water infrastructure.

Nelson's water services are, by comparison, in much better shape than many around the country with major investments in water storage with the Matai Dam in the 1980's and the water treatment plant in the 2000's. Nelson's position has been further strengthened with the part investment and future water allocation from the Waimea Dam that is nearing completion.

2. NELSON'S WATER SERVICE HISTORY.

Our region has some of the best water quality in New Zealand and will likely be a low priority for investment under the proposed model, yet Nelson will be required to pay much higher water charges to fix the existing large-scale issues in places like Wellington.

In the last 20 years and since the commissioning of the water treatment plant, Nelson has had no notifiable diseases with the source attributable to the Nelson water supply. Thousands of water tests over the last two decades further reinforces the quality of Nelson's water supply.

JOINT/REGIONAL WATER SERVICES MODEL – A POSSIBLE SOLUTION.

Nelson is open to consideration of a joint, regional Water Services company/entity (like Auckland's Watercare). This could be a combined Nelson-Tasman Water Entity (as catchments are inter-connected) including water and sewerage services. We do not support including stormwater under this model for reasons highlighted below.

A combined Entity would be larger than Port Nelson and Nelson Airport, both of which are currently in combined Council ownership and performing well. Similarly, the joint Nelson/Tasman Sewerage business unit is functioning and performing well, and is the nucleus of a specialist water entity.

The key recommendations of a water regulator are in place and will prevent a repeat of the Hastings failure. There is the potential for a much better outcome from this alternative solution.

STORMWATER AND FLOOD MANAGEMENT

Drainage and stormwater management have been hugely important issues for New Zealand and Nelson, and these remain so due to our high rainfall events and the effects of climate change.

The conclusion of years of intense policy work by officials over the Auckland Council reform and the creation of Watercare Services in 2010 concluded that stormwater should not be separated from Council's other core functions of managing the roading corridor and natural water courses. The inclusion of stormwater in the new water entities we believe will compromise the effectiveness of managing flood and storm risks, during both the emergency and recovery phase of such events.

Local authorities, with their rating, roading and reserve powers, should remain responsible for stormwater and related flood management functions.

WATER SERVICES LEGISLATION BILL – ISSUES OF CONCERN

1. NELSON'S LAND ASSET LOSS.

We have a major issue over the loss of mixed-use assets. Particularly relevant is the at-risk loss of around 8,800 hectares (almost 80%) of public reserves and recreational areas that are water reserves.

These water reserves, such as the Maitai and Roding catchments, are used extensively for walking, tramping, mountain biking, hunting, camping, mineral fossicking, and four-wheel-drive recreation. They include iconic Nelson tourism assets such as our Dun Mountain and Coppermine cycleways and walkways, which are used for major national events. They are an important part of Nelson's great outdoors lifestyle and recreational assets and we do not want to lose local control of them.

In addition to their recreational use, the Maitai and Roding water reserves also contain significant stands of commercial forestry.

Council also has a number of reserves that are part of management of its stormwater and flood protection. Whilst these reserves perform this critical function, they are also used for important recreation including sporting activities (cricket, rugby, and football for example), general recreation (walking and cycling) as well as playgrounds.

The bill does not automatically result in all these areas being lost, but gives the powers to take them without any public consultation, compensation or substantive appeal rights for Council on whether they are necessary.

If the Three Waters reforms are to proceed as currently outlined, it is Council's view that mixed-use assets (of which Nelson has a significant amount) in all facets of the Three Waters must stay in Council ownership and control, with a management agreement with the Water Services Entity. Direct ownership of catchments is not necessary in order to operate Three Waters services.

2. POWER TO RATE / TAXATION WITHOUT REPRESENTATION.

This Bill in empowering Water Entities to rate property owners breaches a fundamental principle of the 1689 Bill of Rights in enabling a tax without representation. It has long been established that no nationwide tax can be charged without the authority of the elected Parliament, and no rate without the authority of an elected council. The Water Entities with the power to impose a rate (or land tax) are not democratically elected. The significance of this flaw cannot be overstated.

One of the subtle constitutional shifts arising from these reforms is that the newly created four Waters Entities will have been given the power to tax property owners for stormwater services based on property value. Normally taxation powers are confined to governments, whether central or local, because elected members can be voted in, or voted out. Members of the Water Services Entities are not elected but appointed, either by local authorities or iwi and hapu.

Water and wastewater charges are based on individual connections to the system much like electricity and telecommunication charges. However, stormwater services are not reliant on individual connections and there is a high level of "public good" in protecting properties from flooding and the risk of contamination from polluted waters. In this proposed Three Waters legislation, consumers will have to pay, with no choice to opt-out. The convention has been that public goods of this type are a function of government, or entities set up but accountable back to government.

The recently introduced Water Services Legislation Bill has a number of checks and balances where the Waters Services Entities will act as if they were local authorities and, perhaps, this is why the Government would say that it has given them rating powers for stormwater services. However, you cannot get away from the fact that the decision-makers will be appointees, and this goes against the old adage of "no taxation without representation."

3. CHARGING.

Confusion is likely if local authorities, at least until 1 July 2029, have to send out bills on behalf of the Waters Services Entities (the scope of which is unclear in the draft legislation). This billing requirement may be because of the historical powers that local government has had and the rating infrastructure that has been set up. However, this was not a feature of the electricity reforms of the 1980s with some lines companies that were previously owned by local authorities, nor when Telecom was separated from the New Zealand Post Office, and they had to set up their own charging system.

To require local authorities to be involved in invoicing for services that they no longer deliver is an unfair impost. It will be an additional cost to consumers as local authorities will need to be able to recover a reasonable administration charge from the Entities. These proposed charging provisions are wrong. At present these costs would be absorbed as part of local authority overheads.

If these reforms proceed as currently shaped, they should not compel local authorities to collect new water charges for the water service entities.

4. CONSENTS MORE COMPLICATED FOR THE COMMUNITY.

Council has concerns about the consenting processes for developments. Resource consenting will be more complex and arduous for customers to navigate as they will have to deal with two organisations (Councils and the Water Service Entity), instead of a single local entity.

In addition, there are also inconsistencies on the timeframe requirements (and timeframe extensions) for Councils, and those for the Water Service Entities.

WATER SERVICES ECONOMIC EFFICIENCY AND CONSUMER PROTECTION BILL – ISSUES OF CONCERN

1. ECONOMIES OF SCALE.

This bill is predicated on the Government's belief that centralisation and economies of scale will result in better and more efficient water services.

In reviewing other recent centralised reforms, the current issues and success facing housing delivery (Kiwibuild), and the Polytechnic sector merger (Te Pūkenga), gives real concerns and risks for the proposed Water Services model.

THREE WATERS REFORMS OPPOSING COUNCILS.

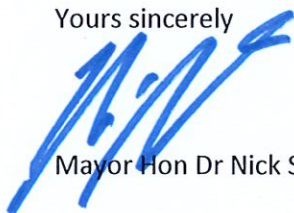
Please note I have signed a Mayoral Declaration joining the Opposing Councils group.

SUPPLEMENTARY SUBMISSIONS.

We thank you for the opportunity to submit on both Water Services Bills currently with select committee. Attached are two additional submissions for both the Water Services Legislation and Water Services Economic Efficiency and Consumer Protection Bills.

I wish to speak to my Council's submission.

Yours sincerely



Mayor Hon Dr Nick Smith

On behalf of:

Nelson City Council

APPENDIX ONE: WATER SERVICES LEGISLATION BILL - NELSON CITY COUNCIL SUBMISSION

Thank you for the opportunity to submit on the Water Services Legislation Bill (the Bill) as first read in Parliament on 13 December 2022.

Nelson City Council (Council) has made submissions to the previous legislation that established the three waters entities and the water services regulator. As a result of our earlier community involvement, we continue to have a strong interest in the legislative, regulatory, strategic and operational frameworks under which water services will be delivered.

While Council supports the intent to provide safe, reliable, and efficient water services, Council's earlier submissions have expressed our community's reservations about the details contained in those pieces of (now) legislation. The Water Services Legislation Bill currently before parliament has done nothing to allay our concerns.

Council has reviewed the draft submissions from Local Government NZ and Taituarā – Local Government Professionals Aotearoa to the Bill, and their comments won't be replicated in this submission.

Council has a number of general and specific issues relating to the Bill that we would like to bring to the committee's attention.

GENERAL COMMENTS

1. Councils and Water Services Entities (WSE)

- The Bill does little to direct or mandate operational/planning (integration and partnering). It is unclear also how it connects with Councils placemaking and community wellbeing functions.
- No to Councils handling water services invoices (see 'Collecting Charges' below: proposed through to 1 July 2029 i.e., 5 years). This creates an unacceptable primacy issue for Council where a non-governmental organisation will be able to direct the financial activities of Council.
- Concerns re expectations on Councils when staff transition

2. Absent alignment of 'purpose' between Councils and WSEs

- The Local Government Act governs the purpose of Councils – WSEs don't share this (i.e., it favours the plan implementer versus the plan maker).
- Councils are potentially limited to escalating issues to the Regional Representative Groups (unless a resolution is in the relationship agreement).
- we support proposing Councils can challenge and seek reconsideration of WSE decisions that negatively impact delivery of elements of an approved Long Term Plan.

3. Relationship Agreements

- it is unclear what 'status' and 'binding effect' these agreements will have. If not legally binding, then an express statutory basis and mandate is required (i.e., analogous for WSEs to address Te Mana o te Wai and respond to statements by mana whenua).
- local development plans: need upped requirements of WSEs to contribute or comment (as per the Scottish model).

APPENDIX ONE: WATER SERVICES LEGISLATION BILL - NELSON CITY COUNCIL SUBMISSION

4. GPS Purpose – Geographic averaging

- The WSE Act has been expanded to include statements in relation to geographic averaging, redressing inequities in services to Māori, and redressing historic service inequities. This adds unfunded mandates for Councils. Therefore, funding for Councils is required, as local priorities may be sacrificed on central government priorities.

5. Stormwater functions

The failure to adequately address the issue of stormwater – exactly what functions will transfer to the three waters entities and what remain with council's is a significant short-coming in the Bill.

5. Asset / Land Transfer

There remains confusion re asset/land transfer in the Allocation schedule, and the decision/appeal process. Schedule 1 (38) Mixed-use asset or property: more than one purpose, but the *primary purpose or predominant use* is the delivery of water services.

The Implementation Arrangements Factsheet states:

- *along with the Water Services Entities Act, the Water Services Legislation Bill will ensure that only land which is essential for providing water services such as the land at a water treatment plant, or wastewater pump station will transfer from councils to water services;*
- *where the primary purpose of any council owned land is as a park, it will remain a park and remain in council ownership. The public will have the same access to parks that they currently have and enjoy, and this will not be affected by the new water services delivery system;*

There is no guidance on the case of water catchments. In Nelson, it would give very wide powers for the new water entity to take from Council the Matai and Roding Reserves of 8800 hectares that, while acquired for water catchment purposes, today have a far wider purpose for recreation and conservation.

CLAUSE SPECIFIC COMMENTS

Part 1 – Amendments to Water Services Entities Act 2022

7 Section 13 replaced (Functions of water services entities)

13 Functions of water services entities (WSE)

(b) *to own or operate water services infrastructure; and.* Council requests the circumstances where the WSE might 'operate water services infrastructure' rather than 'own' it should be defined.

Proposed change:

22 Part 6 replaced

APPENDIX ONE: WATER SERVICES LEGISLATION BILL - NELSON CITY COUNCIL SUBMISSION

Part 6 Provisions relating to water services infrastructure

Subpart 1-Water services infrastructure on or under land

Subpart 4-Further provisions relating to water services infrastructure

220 Maintenance of water services infrastructure

(2) Despite subsection (1), the owner of the land may be required to maintain an overland flow path in accordance with a rule made under section 260.

Council believes this is poorly written and does not allow for the great variety of overland flow paths across the country or the varying circumstances of property owners.

Proposed change:

Despite subsection (1), where any property within a water services entity's service area is subdivided or further developed after 1 July 2024 the owner of the land may be required to maintain an overland flow path in accordance with a rule made under section 260.

231 Board may designate controlled drinking water catchment areas

(2) A designation under subsection (1) may be made only if—

(a) the water services entity owns or has long-term control of the land to which the designation relates; or

(b) the owner of the land to which the designation relates agrees to the designation.

Council considers that the WSE will need the ability to ensure water services are protected regardless of ownership of the land.

Proposed change:

(2) A designation under subsection (1) may be made only if—

(a) the water services entity owns or has long-term control of the land to which the designation relates; or

(b) the owner of the land to which the designation relates agrees to the designation – such agreement not to be unreasonably withheld.

Part 9 Service provider and assessment obligations

Subpart 4—Water restrictions and consumer behaviour rules

276 Requirements for water usage restrictions and consumer behaviour rules

To ensure legislative alignment, such restrictions and rules should not be inconsistent with any water shortage direction issued under section 329 of the RMA

Part 12 Compliance and enforcement

Subpart 4—Offences

Other offences relating to water supply network, wastewater network, and stormwater network

407 Carrying out work in immediate proximity to water supply network, wastewater network, or stormwater network without notification

Immediate proximity is not defined.

Proposed change:

Provide a definition.

Part 11 Charging – Pass through billing

336 Chief executive of water services entity may authorise local authorities to collect charges

337 Terms of charges collection agreements

338 Local authorities not responsible for collecting unpaid charges

Proposed change: Delete clauses 336-338 inclusive.

348 Crown exempt from water infrastructure contribution charges

The Crown is a major developer across the country and should not unfairly add additional costs to other developers and Councils. Paying water infrastructure contribution charges also allows the true cost of a development to be recognised.

Proposed change: Delete clause 348.

Schedule 1 – New Part 2 inserted into Schedule 1 of Water Services Entities Act 2022

Part 2

Provisions relating to Water Services Legislation Act 2022

Clause 63 Charges for stormwater services

Council believes this clause should be removed on the basis that the clause creates an un-acceptable situation where a NGO can direct Council.

Proposed change:

Delete cl 63.

Schedule 3 – New Part 7 inserted into Schedule 1AA of Local Government Act 2002

Local Government Act 2002

Cl 125 – *Requirement to assess drinking water services*. This appears to serve no purpose and should be repealed.

- Cl 145 *General bylaw-making power for territorial authorities*. This clause also appears to serve no purpose and should be repealed.

APPENDIX TWO: WATER SERVICES ECONOMIC EFFICIENCY and CONSUMER PROTECTION BILL - NELSON CITY COUNCIL SUBMISSION

Thank you for the opportunity to submit on the Water Services Economic Efficiency and Consumer Protection Bill (the Bill) as first read in parliament on 13 December 2022.

Nelson City Council (Council) has made submissions to the previous legislation that established the Water Services Entities (WSE) and the water services regulator. As a result of our earlier community involvement, we continue to have a strong interest in the legislative, regulatory, strategic and operational frameworks under which water services will be delivered.

While Council supports the intent to provide for economic efficiency and consumer protection in the three waters space, Council has reservations about the overarching premise behind the Bill – that *'...there is a risk that, without sufficient independent scrutiny, the entities will act inefficiently.'* Council maintains that the governments choice of four extremely large water services entities plays a dominant part in creating that risk.

Council is also deeply concerned that together with the operations of the services regulator – Taumata Arowai, the Bill creates a significant bureaucratic burden on the ultimate funders of the various activities – the customer.

Council has reviewed the draft submissions from Local Government NZ and Taituarā – Local Government Professionals Aotearoa to the Bill, and their comments won't be replicated in this submission.

In addition to the above Council has a number of general and specific issues relating to the Bill that we would like to bring to the committee's attention.

GENERAL COMMENTS

1. Problem Definition

There is a lack of acknowledgement of exactly what the problem is that the Bill seeks to address. Without this the success of the measures contained in the Bill cannot be evaluated.

Information Disclosure should be the primary focus of the Commerce Commission in the first instance ... then (2) Water Quality Information (3) Economic Efficiency (4) Operational Transparency and accountability for expenditure and investment.

2. Information Disclosure

- is there a need for a costly resource expertise/reporting/compliance regime?
- an 'Information disclosure' step would deliver substantially on all benefits of economic regulation. Keep it simple in the early stages and avoid regulation risk when key WSE systems are being established (for both Councils and communities).

3. Quality regulation

- Quality Regulation also applies to other utilities in New Zealand but requires a performance baseline on which to measure success. Performance baseline measures include information on service level, customer support and price, level of quality performance in the future, and on timeframe and cost.

APPENDIX TWO: WATER SERVICES ECONOMIC EFFICIENCY and CONSUMER PROTECTION BILL - NELSON CITY COUNCIL SUBMISSION

- The performance baseline is important, as the lack of it exposes WSEs, directors and officers to civil and criminal liability.
- other utility sectors had performance baselines with historic data (ie could predict). Outside of the metros, it will be difficult to establish for the three waters entities.
- Council suggests there is a better defined staged commencement for the requirements of any eventual Act - REGULATORY PERIOD 1= Information gathering (and engagement with consumers) should last for five years with actual regulation to begin at the end of this period. REGULATORY PERIOD 2 = Quality Regulation (based on information gathered in Period 1).

4. Price-Quality Regulation

- Price Quality regulation is extremely costly and complex. Not realistic to roll out after 3 years. Information Disclosure alone should be the short-term focus. It works in other sectors (eg Airports) – effective in driving efficiency and a soft form of price control.
- Price-Quality tackles excessive profits – not an issue with Three Waters.

5. Debt Capacity and Financial Concerns

- Council has concerns re debt capacity of WSEs in the short-medium term. It would be appropriate for central government to establish a pool of 'Better Off Funding' to help the WSE meet compliance costs and investment requirements. Suggest that the Crown funds this, then transition out when WSEs can cope with debt alongside the day-to-day operations.

6. Role of Taumata Arowai

- It is unclear how the economic and consumer protection regime fits with the health and regulatory requirements set by Taumata Arowai. There is the potential for the two regulators to duplicate or (worse) set a conflicting standard: what quality standards will be set by the Commission and how those will differ from those that are set by Taumata Arowai is a significant issue. As an additional backstop, the Bill should specifically prohibit setting any input methodologies and quality standards that are within the purview of Taumata Arowai.

CLAUSE SPECIFIC COMMENTS

Part 2 – Price and quality regulation

Subpart 1-General

12 Purpose of this Part

The purpose of this Part is to promote the long-term benefit of consumers in markets referred to in section 11 by promoting outcomes that are consistent with outcomes produced in competitive markets so that regulated water services providers—

Proposed change: Replace the emphasis on 'long-term benefit' with a requirement to promote 'short, medium and long-term benefit'

15 Determinations made by Commission under this section

APPENDIX TWO: WATER SERVICES ECONOMIC EFFICIENCY and CONSUMER PROTECTION BILL - NELSON CITY COUNCIL SUBMISSION

(2) A determination must—

- (a) specify the regulated water services providers to which it applies; and*
- (b) specify the water infrastructure services in respect of which it applies; and*
- (c) set out, for each type of regulation, the requirements under this Act that apply to each regulated water services provider; and*
- (d) set out any time frames (including regulatory periods) that must be complied with or that apply; and*
- (e) specify any input methodologies that apply; and*
- (f) be consistent with this Part.*

Proposed change:

(2) A determination must—

- (a) specify the regulated water services providers to which it applies; and*
- (b) specify the water infrastructure services in respect of which it applies; and*
- (c) set out, for each type of regulation, the requirements under this Act that apply to each regulated water services provider; and*
- (d) set out any time frames (including regulatory periods) that must be complied with or that apply; and*
- (e) specify any input methodologies that apply; and*
- (f) be consistent with this Part.*

(g) not include measures controlled by Taumata Arowai or its successors

Subpart 5-Quality regulation

39 Section 15 determination to set out quality path requirements

(3) A quality path may include—

- (a) incentives for a regulated water services provider to maintain or improve its quality of supply, and those incentives may include (without limitation) either of the following:*
 - (i) compensation schemes that set minimum standards of performance and require the provider to pay prescribed amounts of compensation if it fails to meet those standards;*

Council submits this is grossly unfair given the issues with the three waters networks are more often than not going to require the replacement of great parts of the underground network. A task that could take decades. This is revenue gathering and will only hurt those who can least afford it.

Proposed change:

Delete clause 39(3)(a)(i).