

Submission on economic regulation and consumer protection for three waters services in New Zealand

Your name and organisation

Name	Mayor Rachel Reese
Organisation (if applicable)	Nelson City Council

Responses

Economic regulation	
1	<p><i>What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?</i></p> <p>Nelson City Council (Council) agree there is a need for economic regulation of three waters infrastructure and services due to there being no significant competition within this sector. Local government is committed to providing high quality local infrastructure, and this will be reflected in the Statements of Expectation to the Water Service Entities. However, there is a lack of the usual market forces which would incentivise the new Entities.</p> <p>There is significant public concern about the proposed ownership and governance structures for the new Water Service Entities. Economic regulation will enable quality of service, investment, pricing, and information to be scrutinised and publicly available which may give the public higher confidence in the new system.</p>
2	<p><i>What are your views on whether the stormwater networks that are currently operated by local authorities should be economically regulated, alongside drinking water and wastewater?</i></p> <p>Council agree there needs to be a degree of pragmatism when developing suitable regulations for stormwater considering the nature of this service compared to drinking water and wastewater. Council notes the current mandatory levels of service for stormwater which could be used as a starting point for stormwater regulation.</p> <p>Council understands that the reform proposals include multiple suppliers of stormwater services. Any economic regulations will need to allow flexibility to enable local authorities, Waka Kotahi, and the new Water Service Entities to be able to function efficiently.</p>
3	<p><i>What are your views on whether the four statutory Water Services Entities should be economically regulated?</i></p> <p>Council agrees there should be economic regulations placed on the four statutory Water Service Entities. This should be done in an open and transparent way which includes local authorities and the public in the design.</p>
4	<p><i>What are your views on whether economic regulation should apply to community schemes, private schemes, or self-suppliers? Please explain the reasons for your views.</i></p> <p>The Local Government Act 2002, section 130, places an obligation on local authorities to</p>

	<p>maintain water services. This requirement will transfer to the new Water Service Entities. This provides a backstop for community/private operated water schemes if required. Placing undue economic regulation or heavy compliance burden on these community/private operated schemes may force these schemes to cease operations. Any new economic regulation for these schemes will also need to consider the role of Taumata Arowai and the obligations Taumata Arowai places on the water service providers.</p>
5	<p><i>What are your views on whether the Water Services Entities should be subject to information disclosure regulation?</i></p> <p>Information disclosure regulation is a tool which supports the aim of the Three Waters Reform in driving efficiency gains. The new Water Service Entities will have strong natural monopoly characteristics and information disclosure is usually a tool applied to these types of providers.</p> <p>Councils operate in a highly public environment, with meetings required to be publicly notified, minutes and agendas publicly available and meetings to the open to the public. There is concern about the public's ability to engage directly with the new Water Service Entities as they currently can with councils. Information disclosure regulation may alleviate some of this concern and should be encouraged.</p>
6	<p><i>What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?</i></p> <p>Council agrees that price-quality regulation is a highly effective tool in attaining the sorts of outcomes the Three Waters Reform aims to achieve. Council supports this measure to ensure that water services are as affordable as possible for consumers.</p>
7	<p><i>What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?</i></p> <p>Council considers a more tailored approach of individual regulation to be appropriate for the Water Service Entities (and any community/private schemes). Especially considering the differences with the entities such as Entity C which will operate across the Cook Strait.</p> <p>Any individual regulation will need to take into account the Government's commentary about the need for consistency across New Zealand and communities which share communities of interest but are in different entities.</p>
8	<p>A) <i>Do you consider that the economic regulation regime should be implemented gradually from 2024 to 2027, or do you consider that a transitional price-quality path is also required?</i></p> <p>B) <i>If you consider a transitional price-quality path is required, do you consider that this should be developed and implemented by an independent economic regulator, or by Government and implemented through a Government Policy Statement?</i></p> <p>Council agrees that commencing the first regulatory price period from 2027 is likely to delay cost and quality efficiencies which are a key aspect of the reform. However, developing transitional price-quality paths without involvement of the regulated supplier would carry process risk. Council supports the implementation of the economic regulation gradually from 2024 to 2027 to enable the Water Service Entities the time necessary to complete the transition to the new operating model.</p>
9	<p>A) <i>What are your views on whether the Minister of Commerce and Consumer Affairs should</i></p>

be able to reduce or extend the application of regulation on advice from the economic regulator?

B) What factors do you consider the economic regulator should include in their advice to the Minister?

Council agrees that the economic regulator should be able to recommend to the Minister of Commerce and Consumer Affairs that other suppliers such as private/community suppliers be subject to some, or all, economic regulations over time. Council does not support exempting a Water Service Entity from regulations but does support other providers being able to be exempted via an Order in Council.

Council supports the ability to provide different forms of regulation under the legislation.

The Minister of Commerce and Consumer Affairs should consider the size, scope, location, historic nature, and levels of service of a supplier prior to determining if economic regulations should be applied.

A) What are your views on whether the purpose statement for any economic regulation regime for the water sector should reflect existing purpose statements in the Telecommunications Act and Part 4 of the Commerce Act given their established jurisprudence and stakeholder understanding?

B) What are your views on whether the sub-purpose of limiting suppliers' ability to extract excessive profits should be modified or removed given that Water Services Entities will not have a profit motive or have the ability to pay dividends?

C) Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?

D) What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of an economic regulatory regime for the three waters sector?

A) Council agrees that a common set of objectives promotes regulatory coherence. Council supports consistency across economic regulation purpose statements, such as in the Commerce Act, to support public understanding of the economic regulatory system.

B) This should be modified to reflect the legislative restrictions on profit and dividends of the Water Service Entities.

C) While there are non-economic considerations, there are other mechanisms for advancing these objectives. For example, Council notes that climate change mitigation and adaptation activities can be better advanced by the Water Service Entities, Climate Change Commission, the Government and councils.

D) Throughout the Three Waters Reform, the Government have placed significant emphasis on the Treaty of Waitangi and partnership with iwi. This is reflected in the proposed governance structure of the Water Services Entities and other factors such as Te Mana o te Wai statements. These aspects should be reflected in the economic regulatory system where appropriate.

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

Council agrees a sector-specific regime would be more appropriate given the characteristics

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of three waters, such as the monopolistic nature of only having the infrastructure and one sole supplier in a geographical area and local government ownership. These aspects will be difficult to reflect through Part 4 of the Commerce Act.

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

Currently consumers (ratepayers) can be involved in three waters investment and levels of service discussions every three years through council's long term planning cycles. This is in addition to the annual planning process.

By nature, three waters infrastructure involves long-term planning processes. Council supports the ability for the economic regulatory to consider a different period if it believes it would better meet the purpose of the legislation, such as three-yearly, but this needs to be balanced with the ability for consumers and community voices to be heard as part of the process.

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A) *What are your views on whether the economic regulator should be required to develop and publish input methodologies that set out the key rules underpinning the application of economic regulation in advance of making determinations that implement economic regulation?*

B) *What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?*

C) *What are your views on whether the economic regulator should be required to set a strong efficiency challenge for each regulated supplier? Would a strong 'active' styled efficiency challenge potentially require changes to the proposed statutory purpose statement?*

A) Council supports the publishing of input methodologies and application rules to support transparency

B) Council supports minimising price shocks to consumers and suppliers, but this needs to be balanced with the investment needed in infrastructure which is a driving factor in these reforms. Council notes that lower overall prices are considered more equitable, so any efforts to minimize price shocks need to keep that in mind.

C) One of the key assumptions in the Three Waters Reforms is the efficiency gains the Water Service Entities can achieve. An active efficiency challenge for each regulated supplier should be established to ensure these assumptions can be met.

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A) *What do you consider are the relevant policy objectives for the structure of three waters prices? Do you consider there is a case for parliament to directly control or regulate particular aspects in the structure of three waters prices?*

B) *Who do you consider should have primary responsibility for determining the structure of three waters prices:*

a) *The Water Services Entity, following engagement with their governance group, communities, and consumers?*

b) *The economic regulator?*

c) *The Government or Ministers?*

C) *If you consider the economic regulator should have a role, what do you think the role of the economic regulator should be? Should they be empowered to develop pricing*

	<i>structure methodologies, or should they be obliged to develop pricing structure methodologies?</i>
	<p>A) The policy objectives of the Three Waters Reform, such as environmental protections and enhancement, responding to climate change, reflecting the Treaty partnership, resilience of supply and local ownership should be reflected in the three waters pricing.</p> <p>B) Council supports the Water Service Entities, following engagement, to have the primary responsibility for determining the structure of three waters prices as this process will involve the consumers and provide the ability to engage with local communities and councils.</p> <p>C) Council supports the economic regulator having a reviewing role to provide a level of consistency across the entities.</p>
15	<i>What are your views on whether merits appeals should be available on the regulators decisions that determine input methodologies and the application of individual price-quality regulation?</i>
	Communities currently have strong links to councils which provide the ability for officers and elected members to hear directly from people affected by Council decisions. Having merit appeals in the economic regulation provides another level of scrutiny and community voice which Council would support.
16	<i>Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?</i>
	Council broadly supports the compliance and enforcement tools which are similar to those available in other infrastructure economic regulatory systems.
17	<i>Who do you think is the most suitable body to be the economic regulator for the three waters sector? Please provide reasons for your view.</i>
	Council supports the Commerce Commission being the economic regulator for the three waters sector. The role of the Commerce Commission is already understood in the community and this can be leveraged to support the community having a voice in the new regime. Council agrees there should be dedicated water sector focus/unit within the overarching structure of the Commerce Commission.
18	<i>What are your views on whether the costs of implementing an economic regulation regime for the three waters sector should be funded via levies on regulated suppliers?</i>
	Council supports the Government funding the transition costs. Council believes funding via levies, if Government proposes this, should be communicated to the public and the levies need to be presented in a transparent manner to consumers.
19	<p><i>Do you think that the levy regime should:</i></p> <p>A) <i>Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR</i></p> <p>B) <i>Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?</i></p>
	Council supports a regulator-led levy regime as this provides for public consultation on its

	work programme and required funding.
20	<i>Are there any other levy design features that should be considered?</i>
	No comment
Consumer protection	
21	<p>A) <i>What are your views on whether additional consumer protections are warranted for the three waters sector?</i></p> <p>B) <i>What are your views on whether the consumer protection regime should contain a bespoke purpose statement that reflects the key elements of the regime, rather than relying on the purpose statements in the Consumer Guarantees Act and Fair Trading Act? If so, do you agree with the proposed limbs of the purpose statement?</i></p>
	Council supports additional consumer protections in the three waters sector to ensure the interest of consumers and the community are protected and that a bespoke purpose statement should reflect the environment water suppliers operate within.
22	<i>What are your views on whether the consumer protection regulator should be able to issue minimum service level requirements via a mandated code that has been developed with significant input from consumers?</i>
	<p>Council supports minimum service level requirements, after consultation with the community of what these levels of service should be, similar to the process currently undertaken by councils in the long term planning process.</p> <p>Council supports a mandatory code which sets minimum service quality requirements, again after consultation with the community of what these levels of service should be, similar to the process currently undertaken by councils in the long term planning process. A Consumer Charter or Consumer Code option, similar to what is in place for the Electricity Authority should also be considered.</p>
23	<i>What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?</i>
	Council supports a consumer protection regulator with the power to issue guidance which is publicly available. This should be provided for in the economic regulation and consumer protection legislation
24	<i>What are your views on whether it is preferable to have provisions that regulate water service quality (not regulated by Taumata Arowai) in a single piece of economic regulation and consumer protection legislation?</i>
	Council supports one piece of economic regulation and consumer protection legislation to make it easier for consumers to navigate and understand their rights.
25	<i>What are your views on whether minimum service level requirements should be able to vary across different types of consumers?</i>
	Council agrees there is a strong case for minimum service level requirements to be able to vary across different types of consumers to reflect the community.
26	<i>What are your views on whether the regulatory regime should include a positive obligation to</i>

	<i>protect vulnerable consumers, and that minimum service level requirements are flexible enough to accommodate a wide range of approaches to protecting vulnerable consumers?</i>
	Water services are important to the whole community, including traditionally under-served or vulnerable communities. Councils, who currently manage most of these water services, have a mandate to act on behalf of the whole community, and this mandate should extend to the Water Service Entities. Council supports an obligation on the regulator to consider the interest of vulnerable consumers.
27	<i>What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of a consumer protection regime for the three waters sector?</i>
	Throughout the Three Waters Reform, the Government have placed significant emphasis on the Treaty of Waitangi and partnership with iwi. This is reflected in the proposed governance structure of the Water Services Entities and other factors such as Te Mana o te Wai statements. Council supports factoring in the Treaty of Waitangi and the rights and interests of iwi/Māori in the design of the consumer protection regime.
28	<i>A) Do you consider that the consumer protection regime should apply to all water suppliers, water suppliers above a given number of customers, or just Water Services Entities? Could this question be left to the regulator? B) Do you support any other options to manage the regulatory impost on community and private schemes?</i>
	A) Council agrees that the full consumer protection regime should apply to Water Service Entities. Questions around other water service providers should be left to the regulator to undertake analysis and community engagement before determining if the consumer protection regime should apply to them.
29	<i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i>
	Council broadly supports the compliance and enforcement tools proposed. However, Council believes the power to disclose/correct information should be included to enhance transparency and give the public access to information.
30	<i>Do you agree with our preliminary view that the Commerce Commission is the most suitable body to be the consumer protection regulator for the three waters sector?</i>
	Council supports the Commerce Commission being the consumer protection regulator for the three waters sector. The role of the Commerce Commission is already understood in the community and this can be leveraged to support the community having a voice. Council agrees there should be dedicated water sector focus/unit within the overarching structure of the Commerce Commission given the size, scope and importance of water services.
31	<i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i>
	Council supports efforts to increase high-quality consumer and community engagement and for this to be provided for in legislation. Council notes its role through the Statements of Expectation process to place consumer engagement expectations on the Water Service

	Entities.
32	<i>What are your views on whether there is a need to create an expert advocacy body that can advocate technical issues on behalf of consumers?</i>
	Council supports an advocacy body to advocate for technical issues on the basis that specific three waters, local government and iwi/Māori experience and expertise are included.
33	<i>What are your views on whether the expert body should be established via an extension to the scope of the Consumer Advisory Council's jurisdiction?</i>
	Council supports extending the mandate of an existing advocacy body, such as the Consumer Advisory Council. Any design of a consumer advocacy body needs to consider the ability of the public to engage with it.
34	<i>What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?</i>
	Council supports a dedicated consumer dispute resolution scheme, noting the scope will not include issues which could be better dealt with through the judicial process, economic regulatory issues or quality issues administered by Taumata Arowai.
35	<i>What are your views on whether these kinds of disputes should be subject to a dispute resolution schemes? Are there any other kinds of issues that a consumer dispute resolution provider should be able to adjudicate on?</i>
	Council agrees that the disputes resolution scheme should deal with issues between consumers and water service providers such as compliance and service complaints, charging and billing disputes and the actions of staff and contractors.
36	<i>What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?</i>
	Council supports the consumer disputes resolution scheme being mandatory and provided for in legislation, so consumers know their rights and obligations.
37	<i>Do you consider that a new mandatory statutory consumer disputes resolution scheme should be achieved via a new scheme or expanding the jurisdiction of an existing scheme or schemes?</i>
	Due to the essential nature of water, Council would support a new scheme which reflects the community and the Treaty partnership approach.
38	<i>Do you consider that the consumer disputes resolution schemes should apply to all water suppliers, water suppliers with 500 or more customers, or just Water Services Entities?</i>
	Council believes the consumer dispute resolution scheme should apply to the Water Service Entities.
39	<i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i>
	Where possible, complaints should be resolved directly with consumers and the Water Service Entities should be encouraged to ensure this happens. Publishing the benchmarks and

	performance of the Water Service Entities is one way to incentive this behaviour.
40	<i>Do you consider that there should be special considerations for traditionally under-served or vulnerable communities? If so, how do you think these should be given effect?</i>
	Water services are important to the whole community, including traditionally under-served or vulnerable communities. Councils, who currently manage most of these water services, have a mandate to act on behalf of the whole community, and this mandate should extend to the Water Service Entities. Information campaigns, building networks, translation services and publications which are accessible are all options to ensure the whole community has access.
41	<i>What are your views on whether the costs of implementing a consumer protection regime for the three waters sector should be funded via levies on regulated suppliers?</i>
	Consumer protection regimes should be funded by levies on regulated suppliers, noting this cost is paid through the prices consumers will pay for their water services. To increase transparency, consideration should be given to how this information is shared with consumers as part of the billing arrangements.
42	<i>Do you think that the levy regime should:</i> A) <i>Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR</i> B) <i>Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?</i>
	B) Council supports measures to increase community participation in the water services. Consultation will enable the community to have their say and this should be reflected in the legislation.
43	<i>Are there any other levy design features that should be considered?</i>
	No comment

Implementation and regulatory stewardship

44	<i>Do you consider that regulatory charters and a council of water regulators arrangements will provide effective system governance? Are there other initiatives or arrangements that you consider are required?</i>
	Council agrees coordination across drinking water, environmental, economic, and consumer protection regulation will be essential for the delivery of high quality outcomes. Any approach, such as a regulatory charter or increased community engagement, to ensure that system wide governance is effective, is supported by Council.
45	<i>Do you consider it is useful and appropriate for the Government to be able to transmit its policies to the economic and consumer protection regulator(s) for them to have regard to?</i>
	The Government has indicated the new Bill will have provision for a Government Policy Statement (GPS) to provide high level strategic direction to the Water Service Entities. Council supports information and guidance to the Water Service Entities to ensure they are fulfilling their statutory objectives. Having regard to the GPS will support the Water Service Entities to

meet their economic and environmental outcomes.

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

Council agrees that sharing information with other regulatory agencies is a core part of a modern and cohesive regulatory system, noting the need to ensure privacy and natural justice provisions are included. It would reduce the compliance costs for the Water Service Entities, and therefore consumers, if this information was only collected once.

Other comments

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