



AGENDA

Extraordinary Council meeting Monday, 14 October 2024

I hereby give notice that an Extraordinary meeting of Council will be held on:

Date: Monday, 14 October 2024

Time: 8:30 am

Location: Bay of Plenty Regional Council Chambers
Regional House
1 Elizabeth Street
Tauranga

Please note that this meeting will be livestreamed and the recording will be publicly available on Tauranga City Council's website: www.tauranga.govt.nz.

**Marty Grenfell
Chief Executive**

Terms of reference – Council

Membership

Chairperson	Mayor Mahé Drysdale
Deputy Chairperson	Deputy Mayor Jen Scoular
Members	Cr Hautapu Baker Cr Glen Crowther Cr Rick Curach Cr Steve Morris Cr Marten Rozeboom Cr Kevin Schuler Cr Mikaere Sydney Cr Rod Taylor
Quorum	<u>Half</u> of the members present, where the number of members (including vacancies) is <u>even</u> ; and a <u>majority</u> of the members present, where the number of members (including vacancies) is <u>odd</u> .
Meeting frequency	As required

Role

- To ensure the effective and efficient governance of the City.
- To enable leadership of the City including advocacy and facilitation on behalf of the community.

Scope

- Oversee the work of all committees and subcommittees.
- Exercise all non-delegable and non-delegated functions and powers of the Council.
- The powers Council is legally prohibited from delegating include:
 - Power to make a rate.
 - Power to make a bylaw.
 - Power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan.
 - Power to adopt a long-term plan, annual plan, or annual report.
 - Power to appoint a chief executive.
 - Power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the local governance statement.
 - All final decisions required to be made by resolution of the territorial authority/Council pursuant to relevant legislation (for example: the approval of the City Plan or City Plan changes as per section 34A Resource Management Act 1991).
- Council has chosen not to delegate the following:
 - Power to compulsorily acquire land under the Public Works Act 1981.
- Make those decisions which are required by legislation to be made by resolution of the local authority.

- Authorise all expenditure not delegated to officers, Committees or other subordinate decision-making bodies of Council.
- Make appointments of members to the council-controlled organisation Boards of Directors/Trustees and representatives of Council to external organisations.
- Undertake all statutory duties in regard to Council-controlled organisations, including reviewing statements of intent and receiving reporting, with the exception of the Local Government Funding Agency where such roles are delegated to the Accountability, Performance and Finance Committee. This also includes Priority One reporting.
- Consider all matters related to Local Water Done Well.
- Consider any matters referred from any of the Standing or Special Committees, Joint Committees, Chief Executive or General Managers.

Procedural matters

- Delegation of Council powers to Council's committees and other subordinate decision-making bodies.
- Adoption of Standing Orders.
- Receipt of Joint Committee minutes.
- Approval of Special Orders.
- Employment of Chief Executive.
- Other Delegations of Council's powers, duties and responsibilities.

Regulatory matters

Administration, monitoring and enforcement of all regulatory matters that have not otherwise been delegated or that are referred to Council for determination (by a committee, subordinate decision-making body, Chief Executive or relevant General Manager).

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- 1 OPENING KARAKIA**
- 2 APOLOGIES**
- 3 ACCEPTANCE OF LATE ITEMS**
- 4 CONFIDENTIAL BUSINESS TO BE TRANSFERRED INTO THE OPEN**
- 5 CHANGE TO THE ORDER OF BUSINESS**
- 6 DECLARATION OF CONFLICTS OF INTEREST**

7 BUSINESS

7.1 Fluoridation of Tauranga City's water supply

File Number: A16733585

Author: Peter Bahrs, Manager: Water Services
Fiona Nalder, Principal Strategic Advisor

Authoriser: Nic Johansson, General Manager: Infrastructure

PURPOSE OF THE REPORT

1. To seek direction from Council as to whether to proceed with fluoridating the city's water supply.

RECOMMENDATIONS

That the Council:

- (a) Receives the report "Fluoridation of Tauranga City's water supply".
- (b) Notes the letter from the Director-General of Health which declines Council's request for an extension to the direction requiring fluoridation of the city's water supply by 30 November 2024, and highlights that contravening a direction is an offence with potentially significant penalties.

EITHER

- (c) Confirms the previous decision to not proceed with fluoridation of the water supply until the completion of the judicial review court process.

OR

- (d) (i) Revokes resolution CO18/24/1(c) *Does not proceed with fluoridation of the water supply until the completion of the judicial review court process, regardless of whether the extension in (b)(i) is granted; and*
- (ii) To ensure Council's legislative compliance with the direction given by the Director-General of Health, commences adding fluoride to the city's water supply from 24 October 2024

EXECUTIVE SUMMARY

2. Tauranga City Council's (Council's) water supply does not currently have fluoride added to it.
3. In November 2021, the Health (Fluoridation of Drinking Water) Amendment Act (the Act) was passed. This Act empowered the Director-General of Health to direct local governments to fluoridate water supplies, i.e. it removed decision-making regarding the fluoridation of water supplies from local authorities.
4. Council has been directed to fluoridate Tauranga's water supply by 30 November 2024. Council also has a funding agreement with the Ministry of Health to cover the capital works cost of transitioning to a fluoridated water supply (up to \$3.43m). The capital work required has been completed, at a total project cost of \$3.4m.
5. On 26 August 2024 Council were provided with a report updating them on the progress made towards a fluoridated water supply, and providing background information regarding central government's decision to legislate for fluoridation, see Attachment 1.

6. The recommendations of the report noted that fluoride would begin to be added to Tauranga's water supply by mid-September, with full fluoridation of the water supply by the end of October. These timeframes ensured compliance with the direction from the Director-General of Health and the conditions of the funding agreement with the Ministry of Health.
7. The August report also sought Council approval for further investigation into options to provide a non-fluoridated water supply for those who choose it. A report back to Council with details on potential options, costs and feasibility is scheduled for December 2024.
8. At the August meeting Council decided to put work to fluoridate on-hold and request that the Director-General of Health grant an extension to the deadline for fluoridation until the judicial review process currently underway is completed. The process is considering whether the direction to fluoridate has considered the New Zealand Bill of Rights Act 1990.
9. Council also requested that the Director-General of Health confirm that no fines would be sought in the event that no extension was granted, but that Council still decided not to fluoridate, see Attachment 2.
10. The Director-General of Health responded declining Council's request for an extension and stating that Council's non-compliance risked substantial fines (up to \$200,000 plus \$10,000 per day), see Attachment 3.
11. Sections 44, 45 and 46 of the Local Government Act 2002 may also apply, i.e. elected representatives may be personally liable for costs incurred as a result of unlawful decision making.
12. This report presents Council with the choice of deciding to:
 - i. contravene the direction of the Director-General of Health and keep the city's water supply un-fluoridated until the judicial review process is completed; *or to*
 - ii. comply with the direction of the Director-General of Health and ensure the city's water supply is fully fluoridated by 30 November 2024.

BACKGROUND

13. Tauranga City Council's (Council's) water supply does not currently have fluoride added to it.
14. The fluoridation of water supplies is viewed by some groups, including the Ministry of Health as a safe, effective and affordable public health measure which improves oral health. However, other groups and individuals strongly oppose the fluoridation of water supplies.
15. In November 2021, the Health (Fluoridation of Drinking Water) Amendment Act (the Act) was passed. This Act empowered the Director-General of Health to direct local governments to fluoridate water supplies, i.e. it removed decision-making regarding the fluoridation of water supplies from local authorities.
16. On 27 July 2022, Council received a letter from the Director-General of Health directing Council to fluoridate the city's water supply by 31 July 2024. Council received an extension to this deadline for technical reasons, and fluoridation is now due to be fully operational by 30 November 2024.
17. The Ministry of Health also established an \$11.3m fund in 2022 for capital works associated with implementing fluoridation of water supplies. Councils who were directed to fluoridate their water supplies were invited to apply to this fund.
18. Tauranga was successful in their application for funding, and the capital cost of fluoridating the city's water supply is covered up to \$3.43m. This will meet the total project cost of \$3.4m (slightly lower than the 2022 estimate of \$3.6m).
19. Groups opposing fluoridation have instigated a legal challenge to the Director-General of Health's directions to councils requiring fluoridation of water supplies, and this legal challenge is currently ongoing. Specifically, this judicial review process is considering whether the direction to fluoridate has considered the New Zealand Bill of Rights Act 1990.

20. The New Zealand judicial system has confirmed that, in the interim, the existing directions to fluoridate continue to be legal and valid unless, or until, revoked by the Director-General of Health.
21. Council staff presented to Council a report on 26 August 2024 providing an update on progress towards fluoridation of the city's water supply. The report advised that work was on track to meet the deadline for fluoridation by 30 November 2024. A full copy of this report is provided as Attachment 1.
22. The recommendations of the report noted that fluoride would begin to be added to Tauranga's water supply by mid-September, with full fluoridation of the water supply by the end of October. These timeframes ensured compliance with the direction from the Director-General of Health and the conditions of the funding agreement with the Ministry of Health.
23. The August report also sought Council approval for further investigation into options to provide a non-fluoridated water supply for those who choose it. A report back to Council with details on potential options, costs and feasibility is scheduled for December 2024.
24. At the 26 August 2024 meeting, Council made the following resolutions (CO18/24/2).

That the Council:

- (a) *Receives the report "Fluoridation of Tauranga City's Water Supply".*
 - (b) *Requests of the Director-General of Health:*
 - (i) *A further extension to defer fluoridation of Tauranga's water supply until such time as the judicial review court process on this matter is completed.*
 - (ii) *Assurance that Tauranga City Council will not be subject to financial penalty should it not proceed to fluoridate the water until such time as the judicial review court process is completed and the consequences understood.*
 - (c) *Does not proceed with fluoridation of the water supply until the completion of the judicial review court process, regardless of whether the extension in (b)(i) is granted.*
 - (d) *If the Director-General of Health does not provide assurance re financial penalty requested in (b)(ii) above, that the matter be reported back to Council for further decision.*
 - (e) *If following the Judicial review process councils are required to fluoridate then Tauranga's water supply will be fluoridated.*
 - (f) *Authorises staff to complete further investigation of options to provide a non-fluoridated water supply for those who choose it.*
 - (g) *Notes that staff will return to Council with a report in December 2024 outlining options for a non-fluoridated water supply for those who choose it. This report will provide information on costs and who pays those costs, risks and feasibility.*
25. A letter was sent to the Director-General of Health, Dr Diana Sarfati, on 30 August 2024 (see Attachment 2). This letter noted concerns from the community regarding fluoridation and requested an extension of the deadline of 30 November 2024 to until the completion of the judicial process. The letter also requested confirmation that, in the event that an extension was not granted, fines would not be imposed and that Council would not be required to repay funding received from the Ministry of Health for the completion of capital works.
 26. A response from the Director-General of Health was received on 20 September 2024 (see Attachment 3). This letter highlighted the legislative authority granted to the Director-General of Health to direct councils to fluoridate water supplies, and councils' requirement to comply. It stated that the legality of this authority had been confirmed by the High Court on 24 May 2024 and that Council is expected to meet its compliance date of 30 November.

27. It also mentioned that Council choosing to contravene the direction given by the Director-General of Health would be considered an offence, and that potentially significant penalties may apply.
28. These penalties could be up to \$200,000 plus \$10,000 per day. Additionally, under the funding agreement with the Ministry of Health, Council may be required to repay the \$3.4m of funding received to meet the initial costs of implementing fluoridation. The penalties plus repayment costs would equate to a substantial sum of unbudgeted expenditure and are particularly noteworthy given Council's constrained financial position.
29. Section 44, 45 and 46 of the Local Government Act 2002 are also relevant, as they set out potential actions by the Auditor-General in regards to loss incurred by local authorities, and this is discussed further in the legal considerations section of this report.
30. On 24 September 2024 Council provided a media release which expressed Mayor Mahé Drysdale's disappointment in the Director-General of Health's decision to decline an extension (see Attachment 4).
31. The media release highlighted the costs Council could face if it continues with its previous decision not to fluoridate until the judicial review process was completed. It foreshadowed a potential Council decision to comply with the direction to fluoridate the city's water supply by the 30 November 2024 deadline. Its purpose was to raise awareness so that those in the community who wished to, could install filtration devices ahead of potential fluoridation.
32. This report presents Council with the choice of deciding to:
 - i. contravene the direction of the Director-General of Health and keep the city's water supply un-fluoridated until the judicial review process is completed; *or to*
 - ii. comply with the direction of the Director-General of Health, and ensure the city's water supply is fully fluoridated by 30 November 2024.
33. If Council chooses to comply with the direction of the Director-General of Health, fluoride will begin to be added to the city's water supply by 24 October 2024, progressing to fully fluoridated over a seven-day period. This will achieve fluoridation of the entire water supply by end of October.
34. Fluoridation of the entire water supply by end of October is required to ensure that Council achieves 'Completion of the Works' as defined in the funding agreement between Council and the Ministry of Health's funding agreement. Meeting this requirement means Council must achieve one month of continuous operation of the 'Works' by 30 November 2024.
35. Council's original implementation plans were for fluoride to begin to be added to the water supply from mid-September 2024, allowing for a six-week transition to full fluoridation. Compressing this process into seven days poses an operational challenge. Plans are being developed so that if Council chooses fluoridation, the health and safety of Council staff is maintained, together with the continued supply of safe, high-quality water.

STATUTORY CONTEXT

36. Under the Health (Fluoridation of Drinking Water) Amendment Act 2021, local authorities are required to fluoridate a water supply if directed to do so by the Director-General of Health. Council has been directed to fluoridate Tauranga city's water supply by 30 November 2024, and has completed the physical works needed to comply with this direction.
37. If Council does not comply with the direction to fluoridate the city's water supply, there is a risk of substantial fines (up to \$200,000 plus \$10,000 per day).

STRATEGIC ALIGNMENT

38. This contributes to the promotion or achievement of the following strategic community outcome(s):

	Contributes
We are an inclusive city	<input type="checkbox"/>
We value, protect and enhance the environment	<input type="checkbox"/>
We are a well-planned city	<input checked="" type="checkbox"/>
We can move around our city easily	<input type="checkbox"/>
We are a city that supports business and education	<input type="checkbox"/>

39. The delivery of infrastructure, including water infrastructure, falls under the strategic community outcome ‘We are a well-planned city’. However, the addition of fluoride to the city’s water supply is a central government direction and does not form part of Council’s strategic direction as such.

OPTIONS ANALYSIS

Option One: Choose to ignore the legal direction and leave the city’s water supply un-fluoridated.

40. This option would result in Council choosing not to introduce fluoride to the city’s water supply, contravening the direction from the Director-General of Health.

41. Key risks: that Council is fined for non-compliance (up to \$200,000 plus \$10,000 per day); and additionally, that Council does not meet the terms of its funding agreement with the Ministry of Health, so is required to repay any received funding in full and must meet the unbudgeted capital costs of the project. There is also potential under sections 44,45 and 46 of the Local Government Act 2002 for elected representatives to be personally liable for costs incurred as a result of unlawful decision making.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Will be welcomed by groups and individuals in the community who are against fluoridation. • Avoids fluoridation of the water supply (this may be considered an advantage or disadvantage, dependent on people’s views regarding fluoridation). 	<ul style="list-style-type: none"> • Risks fines for non-compliance. • Means Council will not meet the terms of its funding agreement with the Ministry of Health, potentially resulting in unbudgeted expenditure of \$3.4m by Council. • Risks elected members being personally liable for costs resulting from unlawful decision making. • May damage Council’s relationship with central government. • Will not be welcomed by groups and individuals in the community who support fluoridation. • Will result in sunk costs and staff time (as the work to introduce fluoride to the water supply is well advanced). • Avoids fluoridation of the water supply (this may be considered an advantage or disadvantage, dependent on people’s views regarding fluoridation).

Option Two: Fluoridate the city’s water supply in compliance with the legal direction given to Council.

- 42. This option would see fluoride begin to be added to the city’s water supply on 24 October, progressing to fluoridation of the entire water supply over a seven-day period. This option ensures Council’s legal compliance.
- 43. Key risk: that interest groups file an injunction seeking to halt the fluoridation of Tauranga’s water supply.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Ensures legal compliance by the deadline of 30 November 2024. • Ensures compliance with the funding agreement between Council and the Ministry of Health. • Removes personal liability risk to elected members. • Expenditure and work done to date to prepare for fluoridation is utilised. • Council does not risk being fined for non-compliance. • Council does not risk being required to repay funding received by the Ministry of Health. • Will be welcomed by groups and individuals in the community who support fluoridation. • Delivers a fluoridated water supply (this may be considered an advantage or disadvantage, dependent on people’s views regarding fluoridation). 	<ul style="list-style-type: none"> • Risks interest groups filing an injunction seeking to halt fluoridation of the water supply (note Hastings example and outcome, as discussed in the 26 August 2024 report, Attachment 1). • Will not be welcomed by groups and individuals in the community who are against fluoridation. • May be an unanticipated change for some residents. • Delivers a fluoridated water supply (this may be considered an advantage or disadvantage, dependent on people’s views regarding fluoridation).

- 44. If Council chooses this option, it will first need to revoke the decision made on 26 August 2024 ((CO18/24/3(c) *Does not proceed with fluoridation of the water supply until the completion of the judicial review court process, regardless of whether the extension in (b)(i) is granted*).
- 45. This report does not recommend either option, instead provides both options in the form of either-or recommendations for Council decision.

FINANCIAL CONSIDERATIONS

- 46. The total project cost for the fluoridation of Tauranga’s water supply is estimated to be \$3.4m (slightly lower than the 2022 estimate of \$3.6m). This cost will be covered by funding provided by the Ministry of Health, which has approved funding of up to \$3.43m. Council has received the first milestone payment from the Ministry of Health (\$2,743,866) and payment of the remaining amount will occur once the terms of the funding agreement have been met.
- 47. The Ministry of Health funding is contingent on Council delivering a fluoridated water supply as per the terms of the funding agreement (discussed earlier in this report). Failure to meet the terms of the funding agreement may result in Council being required to repay funding received in full, as a lump sum, to the Ministry of Health.

48. The ongoing operating and maintenance costs related to fluoridation were estimated in 2022 as \$175,500 per year. These costs will be rate funded and increase water rates by an estimated 0.4%.

LEGAL IMPLICATIONS / RISKS

49. If Council does not comply with the direction to fluoridate the city's water supply, it will be considered an offence (see Attachment 3) and there is a risk of substantial fines (up to \$200,000 plus \$10,000 per day).
50. Additionally, if Council does not meet the terms of its funding agreement with the Ministry of Health, it may be required to repay any received funding in full and meet the unbudgeted capital costs of the project.
51. Sections 44, 45 and 46 of the Local Government Act 2002 are also relevant, particularly s44(1)(c) and s46(1). If a local authority (Council) incurs a loss, such as a liability that has been incurred unlawfully by a local authority, then the Auditor General may report on that loss and potentially '*the loss is recoverable as a debt due to the Crown from each member of the local authority jointly and severally*' (s46(1)).
52. Effectively this means that elected representatives may be personally liable for costs incurred as a result of unlawful decision making.

TE AO MĀORI APPROACH

53. Not applicable – this report is regarding a legal requirement, the direction from the Director-General of Health requiring Council to fluoridate the city's water supply.

CLIMATE IMPACT

54. Not applicable – this report is regarding a legal requirement, the direction from the Director-General of Health requiring Council to fluoridate the city's water supply.

CONSULTATION / ENGAGEMENT

55. Council has not completed consultation regarding the central government direction to fluoridate the water supply. This is because, as Council is not the decision-maker on this issue, community feedback should be directed to the Ministry of Health.
56. Information on the timeline for fluoridation of Tauranga's water supply is publicly available and can be found at <https://www.tauranga.govt.nz/council/water/drinking-water/whats-in-my-water/fluoride>. Additionally, Council distributed a media release on 24 September 2024 with the objective of raising awareness, so that those in the community who wished to, could install filtration devices ahead of potential fluoridation.

SIGNIFICANCE

57. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
58. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
- the current and future social, economic, environmental, or cultural well-being of the district or region
 - any persons who are likely to be particularly affected by, or interested in, the matter.
 - the capacity of the local authority to perform its role, and the financial and other costs of doing so.

59. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the matter is of high significance.





ENGAGEMENT

60. Taking into consideration the above assessment, that the matter is of high significance, officers are of the opinion that no further engagement is required prior to Council making a decision.
61. Engagement is not recommended or required, as this is a decision which has already been made by central government.

NEXT STEPS

62. Depending on the decisions made by Council, the next steps will be to *either*:
- i. contravene the direction of the Director-General of Health and keep the city's water supply un-fluoridated until the judicial review process is completed; *or*
 - ii. comply with the direction of the Director-General of Health, and aim to have the city's water supply fully fluoridated by 30 November 2024.
63. Additionally, work will continue assessing approaches and options for providing un-fluoridated water supply for those who want it, and the outcomes of this work will be reported back to Council in December 2024.

ATTACHMENTS

1. **Attachment 1 - Council Report 26 August 2024 - Fluoridation - A16739794** [↓](#) 
2. **Attachment 2 - Letter to Director General of Health 30 August 2024 - Fluoridation - A16739803** [↓](#) 
3. **Attachment 3 - Letter to TCC from Director General of Health 20 September 2024 - Fluoridation - A16739815** [↓](#) 
4. **Attachment 4 - Media Release 24 September 2024 - Fluoridation - A16739848** [↓](#) 

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11.1 Fluoridation of Tauranga City's Water Supply

File Number: A16415420

Author: Peter Bahrs, Manager: Water Services
Fiona Nalder, Principal Strategic Advisor

Authoriser: Nic Johansson, General Manager: Infrastructure

PURPOSE OF THE REPORT

1. To provide elected members with background information regarding the Director-General of Health's direction to fluoridate the Tauranga's water supply by 30 November 2024, noting that plans are well advanced to achieve full fluoridation of the city's supply by end of October 2024, ensuring Council meets its legal obligations.
2. To seek approval to complete further work investigating approaches and options for the provision of a non-fluoridated water supply for those who choose it.

RECOMMENDATIONS

That the Council:

- (a) Receives the report "Fluoridation of Tauranga City's Water Supply".
- (b) Notes that fluoride will begin to be added to Tauranga's water supply by mid-September, with full fluoridation of the water supply by the end of October, to allow for compliance with the direction from the Director-General of Health and the conditions of the funding agreement with the Ministry of Health.
- (c) Authorises staff to complete further investigation of options to provide a non-fluoridated water supply for those who choose it.
- (d) Notes that staff will return to Council with a report in December 2024 outlining options for a non-fluoridated water supply for those who choose it. This report will provide information on costs, risks and feasibility.

EXECUTIVE SUMMARY

3. Tauranga City Council's (Council's) water supply does not currently have fluoride added to it.
4. In November 2021, the Health (Fluoridation of Drinking Water) Amendment Act (the Act) was passed. This Act empowered the Director-General of Health to direct local governments to fluoridate water supplies, i.e. it removed decision-making regarding the fluoridation of water supplies from local authorities.
5. On 27 July 2022, Council received a letter from the Director-General of Health directing Council to fluoridate the city's water supply and this is now due to occur by 30 November 2024.
6. The fluoridation of water supplies is viewed by some groups, including the Ministry of Health as a safe, effective and affordable public health measure which improves oral health. However, other groups and individuals strongly oppose the fluoridation of water supplies.
7. Groups opposing fluoridation have instigated a legal challenge to the Director-General of Health's directions to councils requiring fluoridation of water supplies, and this legal challenge is currently ongoing.

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8. The New Zealand judiciary system has confirmed that, in the interim, the existing directions to fluoridate continue to be legal and valid unless, or until, revoked by the Director-General of Health.
9. This means that Tauranga City Council is legally required to fluoridate the city's water supply by 30 November 2024 or risk substantial fines.
10. Additionally, Council has a funding agreement in place with the Ministry of Health, which will cover the capital costs of fluoridating Tauranga's water supply (estimated as \$3.4m). If Council does not meet the terms of funding agreement, which require fluoridation of the water supply to have been in continuous operation for one month prior to 30 November, it may be required to repay in full any received funding.
11. The technical upgrades required to allow for the fluoridation of Tauranga's water supply are now almost complete, and fluoride will begin to be added to the water supply from mid September 2024, with the entire water supply scheduled to be fluoridated by the end of October 2024. This will ensure that Council is compliant with the 30 November 2024 deadline and with the terms of the funding agreement with the Ministry of Health.
12. This report recommends that Council continues to progress the well-advanced plans to fluoridate the city's water supply.
13. Alternative options are:
 - Seek an extension to the deadline of 30 November 2024, until after the judicial review process is completed in 2025.
 - Choose to ignore the legal direction and leave the city's water supply un-fluoridated.
14. This report also recommends that Council authorise staff to complete further work investigating options for the provision of un-fluoridated water to those who want it.

BACKGROUND

15. Tauranga City Council's (Council's) water supply does not currently have fluoride added to it. The fluoridation of community water supplies is viewed by the Ministry of Health, World Health Organization, and Centres for Disease Control and Prevention as a safe, effective and affordable public health measure which improves the oral health of communities¹.
16. However, the fluoridation of water supplies is a contentious issue for some individuals and groups, including active community groups within Tauranga. In the past, Tauranga City Council has taken the position that fluoridation decisions are a health issue and should therefore be made by the Ministry of Health, rather than by local authorities. As a result, Tauranga City Council's water supply has been un-fluoridated since 1992.
17. In November 2021 the Health (Fluoridation of Drinking Water) Amendment Act (the Act) was passed. This Act empowered the Director-General of Health to direct local governments to fluoridate water supplies, i.e. it removed decision-making regarding the fluoridation of water supplies from local authorities.
18. On 27 July 2022 Council received a letter from the Director-General of Health directing Council to fluoridate the city's water supply by 31 July 2024. Council was one of 14 local authorities directed to fluoridate water supplies. A further 27 councils are being considered and may also be directed to add fluoride to their water supplies.
19. Council sought an extension to this timeline due to technical issues, and the due date for fluoridation of the city's water supply is now 30 November 2024. For further detail on historical fluoridation of Tauranga's drinking water and on the Act, refer to Attachment 1: Timeline - Fluoridation and Tauranga City Council.
20. The technical upgrades required to allow for the fluoridation of Tauranga's water supply are now almost complete, and fluoride will begin to be added to the water supply from mid

¹ <https://www.fluoridefacts.govt.nz/> <https://www.pmcsa.ac.nz/topics/fluoridation-an-update-on-evidence>

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September 2024, with the entire water supply scheduled to be fluoridated by the end of October 2024. This will ensure that Council is compliant with the 30 November 2024 deadline.

Legal challenges

21. The directions by the Director-General of Health to the 14 local authorities to fluoridate water supplies have been the subject of a judicial review challenge brought by New Health New Zealand Inc.
22. As a result of this challenge, in November 2023 Justice Radich instructed the Director-General of Health to “turn his mind to” whether the directions to fluoridate were a reasonable limit on the right to refuse medical treatment (s11 Bill of Rights), and if so, provide the reasons why. This analysis by the Director-General of Health is ongoing.
23. In the meantime, the Director-General of Health and the Attorney General have appealed the decision by Justice Radich. The appeal is scheduled to be heard by a Full Bench of the Court of Appeal in June 2025.
24. In February 2024 Justice Radich issued a relief judgement which confirmed that the existing directions to fluoridate continue to be legal and valid unless, or until, revoked by the Director-General of Health.
25. More recently, on 8 April 2024 the Hastings District Council recommenced fluoridation of their water supply, in accordance with the direction given to them by the Director-General of Health.
26. The Fluoride Action Network (NZ) Inc and New Zealand Doctors Speaking Out with Science Inc immediately applied for an urgent injunction to stop the fluoridation of the Hastings water supply.
27. These organisations viewed their application as acting in the interests of the general public and argued that it was unlawful for Hastings District Council to fluoridate the water supply before the final resolution of the challenge by New Health New Zealand Inc (scheduled for 2025 as discussed above).
28. The application was dismissed in May 2024. In July 2024 the Fluoride Action Network (NZ) Inc and New Zealand Doctors Speaking Out with Science Inc were instructed to pay \$20,470 to Hastings District Council and \$20,566 to central government to cover costs.
29. Whilst the Fluoride Action Network (NZ) Inc and New Zealand Doctors Speaking Out with Science Inc viewed their actions as in the general public’s interest, the judge (Justice La Hood) determined their actions “reflected the special interests of their members”.

Ministry of Health funding

30. In 2022 the Ministry of Health established an \$11.3m fund for capital works associated with implementing fluoridation of water supplies. Councils who were directed to fluoridate their water supplies were invited to apply to this fund.
31. Tauranga was successful in their application for funding, and the capital cost of the project will be covered up to \$3.43m. The total project cost for the fluoridation of Tauranga’s water supply is estimated to be \$3.4m (slightly lower than the 2022 estimate of \$3.6m).
32. The Ministry of Health funding is contingent on Council having achieved ‘Completion of the Works’ as defined in the funding agreement. Meeting this requirement means Council must achieve one month of continuous operation of the ‘Works’ by 30 November 2024.
33. This condition will be met if Council maintains its current work programme, which has full fluoridation of the city’s water supply scheduled for the end of October 2024.

Tauranga City Council’s options

34. There is a legal direction in place requiring Council to fluoridate the city’s water supply by 30 November 2024. Given this, Council has the following options.

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- i. Continue existing work to fluoridate the city’s water supply in compliance with the legal direction given to Council and the funding agreement with the Ministry of Health.
 - ii. Seek an extension to the deadline of 30 November 2024, until after the judicial review process is completed in 2025.
 - iii. Choose to ignore the legal direction and leave the city’s water supply un-fluoridated.
35. These options are discussed in more detail in the options analysis section of this report. If Council adopts the recommendations of this report, the work underway by the organisation will continue, ensuring legal compliance.

Providing alternatives for Tauranga’s communities

36. There are some residents and groups within Tauranga city which strongly oppose fluoridation. In recognition of this, there has been some limited initial identification of approaches which would support these residents and groups to access treated, but un-fluoridated, water.
37. There are three potential approaches to deliver this outcome.
- i. **Prevent fluoride from being added at the source, or remove it at the source** (the water treatment plant). For example, this may look like stopping the addition of fluoride for a period of time, or removing the fluoride from a certain quantity of water. The resulting treated but un-fluoridated water would be made available to those who wanted it.
 - ii. **Provide a new, un-fluoridated source.** For example, this may look like providing an un-fluoridated water source at an accessible point in the city, such as a tap which provides treated but un-fluoridated water.
 - iii. **Remove the fluoride at the point of supply.** For example, this may look like a in-home filter which removes fluoride from drinking water.
38. The complexity, cost and feasibility of these approaches have not been assessed. Approaches i. and ii. above are likely to be higher in cost and complexity, and may also risk Council being viewed as non-compliant with the legal direction to fluoridate the city’s water supply.
39. This report recommends that staff complete further work assessing approaches and options for providing an un-fluoridated water supply for those who want it, and that this information is presented to Council at a later date for decision making. This would include assessing cost, complexity, feasibility and risk.

STATUTORY CONTEXT

40. Under the Health (Fluoridation of Drinking Water) Amendment Act 2021, local authorities are required to fluoridate a water supply if directed to do so by the Director-General of Health. Council has been directed to fluoridate Tauranga city’s water supply by 30 November 2024, and the process of complying with this direction is well-advanced.
41. If Council does not comply with the direction to fluoridate the city’s water supply, there is a risk of substantial fines (up to \$200,000 plus \$10,000 per day).

STRATEGIC ALIGNMENT

42. This contributes to the promotion or achievement of the following strategic community outcome(s):

	Contributes
We are an inclusive city	<input type="checkbox"/>
We value, protect and enhance the environment	<input type="checkbox"/>
We are a well-planned city	<input checked="" type="checkbox"/>

agenda

- We can move around our city easily
- We are a city that supports business and education

43. The delivery of infrastructure, including water infrastructure, falls under the strategic community outcome 'We are a well-planned city'. However, the addition of fluoride to the city's water supply is a central government direction and does not form part of Council's strategic direction as such.

OPTIONS ANALYSIS – FLUORIDATION OF TAURANGA'S WATER SUPPLY

Option One: Continue existing work to fluoridate the city's water supply in compliance with the legal direction given to Council. (RECOMMENDED)

44. This is the status quo option. It results in the continuation of work that is already well progressed and will result in the full fluoridation of Tauranga's water supply by the end of October 2024, ahead of the due date of 30 November 2024. This option ensures Council's legal compliance.
45. Key risk: that interest groups file an injunction seeking to halt the fluoridation of Tauranga's water supply.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Ensures legal compliance by the deadline of 30 November 2024. • Ensures compliance with the funding agreement between Council and the Ministry of Health. • Expenditure and work done to date to prepare for fluoridation is utilised. • Council does not risk being fined for non-compliance. • Council does not risk being required to repay funding received by the Ministry of Health. • Will be welcomed by groups and individuals in the community who support fluoridation. • Delivers a fluoridated water supply (this may be considered an advantage or disadvantage, dependent on people's views regarding fluoridation). 	<ul style="list-style-type: none"> • Risks interest groups filing an injunction seeking to halt fluoridation of the water supply (note Hastings example and outcome, as discussed earlier). • Will not be welcomed by groups and individuals in the community who are against fluoridation. • May be an unanticipated change for some residents, as there has been limited publicity regarding the move to fluoridation. • Delivers a fluoridated water supply (this may be considered an advantage or disadvantage, dependent on people's views regarding fluoridation).

Option Two: Seek an extension to the deadline of 30 November 2024, until after the judicial review process is completed in 2025. (NOT RECOMMENDED)

46. This option involves Council formally seeking an extension to the deadline of 30 November 2024, delaying the fluoridation of Tauranga's water supply. Some councils have already applied for extensions, including Waitaki District Council and Far North District Council, and have been unsuccessful.
47. The Ministry of Health provided Council with the following quote from the Director-General of Health "...the directions to fluoridate remain valid, as confirmed by the High Court in the 16 February relief decision and was again confirmed in a recent decision of the High Court on

8 DISCUSSION OF LATE ITEMS

9 CLOSING KARAKIA