



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	✓
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:
- (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by, or interested in, the matter.
 - (c) 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"/>

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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

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24 May 2024. That being so I will not be granting extensions because of perceived legal uncertainty as the legal position is clear."

48. Key risks: that Council halts work to introduce fluoride to the water supply, applies for an extension, is unsuccessful, and is then unable to meet the direction to fluoridate by 30 November 2024, risking non-compliance fines; and, that Council does not meet the terms of its funding agreement with the Ministry of Health and is required to repay any received funding in full.

Advantages	Disadvantages
<ul style="list-style-type: none"> • May provide more time for Council to make the community aware of the move to fluoridation. • Will be welcomed by groups and individuals in the community who are against fluoridation. • May provide Council with the opportunity to avoid fluoridation of the water supply, depending on the outcome of current legal challenges (this may be considered an advantage or disadvantage, dependent on people's views regarding fluoridation). 	<ul style="list-style-type: none"> • Risks non-compliance by the deadline of 30 November 2024 and subsequent fines. • 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. • May result in increased implementation costs due to delayed rollout. • Will not be welcomed by groups and individuals in the community who support fluoridation. • May provide Council with the opportunity to avoid fluoridation of the water supply, depending on the outcome of current legal challenges (this may be considered an advantage or disadvantage, dependent on people's views regarding fluoridation).

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

49. This option would result in Council ceasing its work to introduce fluoride to the city's water supply.
50. Key risk: that Council is fined for non-compliance (up to \$200,000 plus \$10,000 per day); and, that Council does not meet the terms of its funding agreement with the Ministry of Health, is required to repay any received funding in full and must meet the unbudgeted capital costs of the project.

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. • May damage Council's relationship with central government. • Will not be welcomed by groups and individuals in the community who support fluoridation.

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	<ul style="list-style-type: none"> • 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).
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OPTIONS ANALYSIS – INVESTIGATE APPROACHES AND OPTIONS FOR PROVISION OF UN-FLUORIDATED WATER

Option One: complete further work assessing approaches and options for providing an un-fluoridated water supply for those who want it. (RECOMMENDED)

51. This option would result in Council staff completing further work to identify options for the provision of un-fluoridated water to those who want it. This would include assessing cost, complexity, feasibility and risk. Following completion of this work, the findings would be presented to Council for review and decision.
52. Key risk: will incur additional cost to Council.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Will be welcomed by those wish to have access to an un-fluoridated water supply. • May (depending on Council's final decision) assist individuals to make a personal choice regarding the addition of fluoride to their drinking water. 	<ul style="list-style-type: none"> • Will incur additional cost to Council.

Option Two: do not complete further work assessing approaches and options for providing an un-fluoridated water supply for those who want it. (NOT RECOMMENDED)

53. Council staff would not spend any further time identifying and assessing options for the provision of un-fluoridated water.
54. Key risk: criticism of Council by those who wish to have access to an un-fluoridated water supply.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Will avoid costs to Council. 	<ul style="list-style-type: none"> • Council may be criticised by those wish to have access to an un-fluoridated water supply.

FINANCIAL CONSIDERATIONS

55. 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 invoiced the Ministry of Health for the first milestone payment (\$2,743,866) and payment is expected at the end of August 2024.
56. 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

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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.

57. 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

58. 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).
59. 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.

TE AO MĀORI APPROACH

60. 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

61. 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

62. Council has not completed consultation regarding the central government direction to fluoridate the water supply, as Council has no decision-making power and therefore there is no opportunity for community input into the decision-making process.
63. 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>

SIGNIFICANCE

64. 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.
65. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
- (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by, or interested in, the issue.
 - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
66. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the issue is of high significance.

ENGAGEMENT

67. Taking into consideration the above assessment, that the issue is of high significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

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68. No engagement or consultation is required as the decision to fluoridate the city's water supply has been made by the Director-General of Health, who has directed Council to implement this decision.
69. However, it is noted that the direction by the Director-General of Health to fluoridate Tauranga's water supply is of great interest to some residents and groups within the city, and will affect all residents who use the city's water supply, for these reasons, the issue has been assessed as having high significance.

NEXT STEPS

70. If Council adopts the recommendations of this report, the next steps would be to:
- Continue to implement the addition of fluoride to the city's water supply, ensuring legal compliance by the due date of 30 November 2024 and compliance with the terms of the funding agreement with the Ministry of Health.
 - Complete further work assessing approaches and options for providing un-fluoridated water supply for those who want it, and reporting back to Council with the outcomes of this work in December 2024.

ATTACHMENTS

1. **Timeline - Fluoridation and Tauranga City Council - A16447544**

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ATTACHMENT 1: Timeline – Fluoridation and Tauranga City Council (as at August 2024)**Pre-amendment of the Health Bill**

Date	Action
1963	Fluoride first added to the water supply for the Tauranga City Council government area.
1986	Referendum resulting in removal of fluoride from the Tauranga City Council water supply.
1989	Amalgamation. Tauranga City Council and Mount Maunganui Borough Council amalgamated to become Tauranga District Council (name changed to Tauranga City Council in 2003). Mount Maunganui Borough had a fluoridated water supply at the date of amalgamation.
1990	Referendum resulting in the addition of fluoride to the Tauranga District Council water supply.
1992	Referendum resulting in removal of fluoride from the Tauranga District Council water supply - 13,456 voted for fluoridation (48.12%) and 14,510 voted against fluoridation (51.88%).
1995 and 2004	Fluoridation of the water supply reviewed, status quo retained. Reviews occurred as part of the 10-year planning process (currently known as the Long-term Plan). Status quo (no fluoridation) retained. The view of Tauranga City Council at the time was that fluoridation decisions are a health issue and should therefore be made by the Ministry of Health, rather than by local government.

Health (Fluoridation of Drinking Water) Amendment Act 2021

Date	Action
2016	The Health (Fluoridation of Drinking Water) Amendment Bill was introduced to parliament. The Bill amends Part 2A of the Health Act 1956 by inserting a power enabling District Health Boards to make decisions and give directions regarding the fluoridation of local government drinking water supplies in their areas.
9 Nov 2021	The Health (Fluoridation of Drinking Water) Amendment Act (the Act) was passed. The Act confirmed that the decision making authority, on community water fluoridation, transferred from local government to the Director-General of Health. As a result, water suppliers will be required to fluoridate a water supply if directed to do so by the Director-General of Health.
11 Nov 2021	The Ministry of Health sent a letter to Tauranga City Council (Council) providing an update on the Act. Along with advising Council of the powers granted to the Director-General of Health under the Act, the letter also encouraged directing members of the public and/or interested groups to resources on fluoride (https://www.fluoridefacts.govt.nz/ https://www.pmcsa.ac.nz/topics/fluoridation-an-update-on-evidence)
15 Dec 2021	The Ministry of Health requested information from Council regarding the estimated cost and process for fluoridating the city's water supply.
8 Mar 2022	Council responds to the Ministry of Health information request. The response estimated that fluoridating the water supply would take

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	approximately 24 months to implement and have an estimated capital cost of \$2.13m.
3 May 2022	Letter from the Ministry of Health to Council outlining the next steps for fluoridation of the water supply. This letter included a requirement for Council to provide, in writing, a) the estimated financial cost of adding fluoride to the city's drinking water, including any additional costs of ongoing management and monitoring, and, b) the date by which the Council would be able to comply with a direction to fluoridate.
22 Jun 2022	Letter from Council to the Ministry of Health. This letter updated the estimated cost of implementing a fluoridated water supply in Tauranga. The estimated financial cost of adding fluoride to the Tauranga drinking water had increased significantly to a total of \$3,585,220 (previously notified capital cost of \$2,131,920). This increase was due to supply chain disruptions and the impact of inflation. The ongoing management and monitoring costs were estimated to be \$175,500 per annum (not taking into account future increases due to growth). The estimated timeframe to implement remained at 24 months. The response noted that the cost of fluoridating the water supply was not included in the Council's Long-term Plan.
27 July 2022	Council receives directions from the Director-General of Health to fluoridate the Tauranga water supply by 31 July 2024 (fluoridation to be at optimal levels of between 0.7ppm to 1ppm, parts per million, Ministry of Health).
2 May 2024	Council seeks an extension to the compliance date to fluoridate the water supply. The extension was sought due to technical delays in the early stages of construction and additional commissioning requirements.
6 Jun 2024	The Director-General of Health grants an extension to 30 Nov 2024. The letter confirming the extension also confirmed that the current directives were still valid and that councils subject to a direction are under a statutory duty of mandatory compliance. (Note: whilst the legality of directing local governments to fluoridate their water supplies is being reviewed via the judicial system, this does not affect the validity of the directive to Tauranga to fluoridate, as confirmed by the extension letter).



30 August 2024

Dr Diana Sarfati
Director General of Health
Ministry of Health
PO Box 5013
Wellington 6140

By email: karen.beirne@health.govt.nz

Dear Dr Sarfati

On Monday 26 August 2024, Tauranga City Council considered the current direction to fluoridate the city's water supply. The decisions made by Council at this meeting are attached in full to this letter.

In accordance with the decisions made by Council, and in-line with the very considerable concerns raised by some members of our community about the imposition of the fluoridation programme, I would like to request an extension to the deadline to fluoridate Tauranga city's water supply until the judicial review process currently underway is completed and the directive reaffirmed in light of any directions of the court.

I am also requesting confirmation that, in the absence of an extension to the current 30 November 2024 deadline, fines will not be imposed or payment for capital works to date related to the program withheld, if Council chooses not to fluoridate until the outcomes of the judicial process referred to above are known.

I would be happy to discuss this matter with you, if that would be of assistance, and look forward to your response.

Yours sincerely

A handwritten signature in black ink, appearing to read "Mahé Drysdale", with a horizontal line underneath.

Mahé Drysdale MNZM
Mayor of Tauranga

Attachment 1 – Council decisions (26 August 2024)

RESOLUTION CO18/24/2

Moved: Deputy Mayor Jen Scoular

Seconded: Mayor Mahé Drysdale

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.



133 Molesworth Street
PO Box 5013
Wellington 6140
New Zealand
T+64 4 496 2000

20 September 2024

Mahē Drysdale
Mayor of Tauranga
Private Bag 12022
TAURANGA 3143

Tēnā koe Mahē

Community water fluoridation extension request

Thank you for your letter of 30 August 2024, seeking an extension to the compliance date for the Director-General of Health direction to the Tauranga City Council to fluoridate the Tauranga water supply.

I note that your letter seeks an extension until after the current judicial review process is completed. As was confirmed by the High Court in the 16 February 2024 relief decision, the directions to fluoridate remain valid. This was again confirmed in a recent decision of the High Court on 24 May 2024, in which the Court dismissed a challenge which sought to prevent a local authority's implementation of the Director-General of Health's direction to fluoridate. That being so, I will not be granting your request for an extension, given it is based on the state of the litigation processes.

As was outlined in my 6 June 2024 letter to Marty Grenfell, Chief Executive of Tauranga City Council, Part 5A to the Health Act 1956 empowers the Director-General of Health to direct councils to fluoridate water supplies and provides that councils must comply with the Director-General's directions. The recent decision of the High Court on 24 May 2024 confirmed the current directions are valid, and that councils subject to a direction are under a statutory duty of mandatory compliance. I would like to highlight that under Part 5A, contravening a direction is an offence, and the statute provides for potentially significant penalties.

My team informs me Tauranga City Council is on track to implement fluoridation by 30 November 2024, and accordingly, I expect the council to meet its compliance date.



Thank you for your ongoing collaboration as we work to improve the oral health of the communities we serve.

Nāku noa, nā

A handwritten signature in blue ink, appearing to be 'Diana Sarfati'.

Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora

cc: Marty Grenfell, Chief Executive Tauranga City Council
Marty.grenfell@tauranga.govt.nz

Attachment 4: media release

Fluoridation delay request denied

Tauranga Mayor Mahé Drysdale has expressed disappointment at a decision by the Director-General of Health not to grant an extension which would allow fluoridation of the city's water supply to be delayed.

Tauranga City Council had sought to delay the start-up of fluoridation beyond 1 November, noting that 30 days of continual dosing must be carried out prior 30 November, the date required by a mandatory Ministry of Health direction.

Mahé says Council elected members had wanted matters currently before the High Court to be finalised before the system is brought permanently on-line.

"We acknowledge that the Ministry is empowered to mandate water supply fluoridation under the Health Fluoridation of Drinking Water Amendment Act 2021, but feel that this was an important opportunity to allow Court processes to run their course and provide direction for water consumers and water supply authorities," Mahé says.

"However, the Director-General of Health, Dr Diana Sarfati, has turned down our request and repeated earlier advice that councils subject to a fluoridation direction must comply, or face significant financial penalties if they fail to do so."

In a letter received on 20 September, the Ministry stated that the High Court has twice confirmed that the directions for councils to fluoridate their water supplies remain valid and Tauranga's request for an extension would therefore not be granted.

"While the Ministry's response has yet to be considered by elected members, the scale of the financial penalties the council could face if it does not comply with the fluoridation direction are extreme, including a fine of up to \$200,000 and an additional \$10,000 for each day of non-compliance. Additionally, we could also be required to pay back the Ministry's contribution towards the fluoridation dosing equipment, which is estimated at \$3.4 million," Mahé says. "Those costs would fall directly on ratepayers, and I therefore think it's likely the Council will decide to comply with the directive."

A report will be brought to the council in December exploring options and detailing the costs of establishing an unfluoridated water supply point for the community.

"In order to comply with the 1 November deadline, testing and commissioning of the fluoridation dosing system would need to begin by mid-October. In order to give everyone certainty and as much time as possible I have asked that no fluoride is added through system testing until at least 24 October, after the Council has had the chance to consider the letter from Dr Sarfati. I don't want to influence Council's decision, however I want to give anyone who wishes to install filtration devices capable of removing fluoride as much notice as possible to get organised, as there is likely to be very little turnaround time between the Council decision and a potential start to testing the dosing system," Mahé concludes.

Posted: Sep 24, 2024,

8 DISCUSSION OF LATE ITEMS

9 CLOSING KARAKIA