



MINUTES

**Extraordinary Council meeting
Monday, 14 October 2024**

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**MINUTES OF TAURANGA CITY COUNCIL
EXTRAORDINARY COUNCIL MEETING
HELD AT THE BAY OF PLENTY REGIONAL COUNCIL CHAMBERS,
REGIONAL HOUSE, 1 ELIZABETH STREET, TAURANGA
ON MONDAY, 14 OCTOBER 2024 AT 8:30 AM**

PRESENT: Mayor Mahé Drysdale (Chairperson), Deputy Mayor Jen Scoular, Cr Hautapu Baker, Cr Glen Crowther, Cr Rick Curach, Cr Steve Morris, Cr Marten Rozeboom, Cr Kevin Schuler, Cr Rod Taylor

LEAVE OF ABSENCE: Cr Mikaere Sydney

IN ATTENDANCE: Marty Grenfell (Chief Executive), Paul Davidson (Chief Financial Officer), Nic Johansson (General Manager: Infrastructure), Christine Jones (General Manager: Strategy, Growth & Governance), Peter Bahrs (Manager: Water Services), Coral Hair (Manager: Democracy & Governance Services), Anahera Dinsdale (Acting Team Leader: Governance Services), Caroline Irvin (Governance Advisor), Aimee Aranas (Governance Advisor)

1 OPENING KARAKA

Cr Hautapu Baker opened the meeting with a karakia.

2 APOLOGIES

The leave of absence granted to Cr Mikaere Sydney was noted.

3 ACCEPTANCE OF LATE ITEMS

Nil

4 CONFIDENTIAL BUSINESS TO BE TRANSFERRED INTO THE OPEN

Nil

5 CHANGE TO THE ORDER OF BUSINESS

Nil

6 DECLARATION OF CONFLICTS OF INTEREST

Nil

7 BUSINESS

7.1 Fluoridation of Tauranga City's water supply

Staff Nic Johansson, General Manager: Infrastructure
Peter Bahrs, Manager: Water Services

Key Points

- Council sought an extension of time from the Director-General of Health until after the completion of the Judicial Review.

- The response from the Director-General of Health to the Council's request highlighted the legislative authority granted to the Director-General of Health to direct councils to fluoridate water supplies which councils were required to comply with.
- Staff had provided all of the information for Council to make an informed decision, but had not made any recommendation as this was a decision that Council must make.

In response to questions

- The water supply plants were set up and ready to include fluoride but would only commence once permission had been given to do so.
- One reimbursement payment had been received from the Ministry of Health (MoH) as per funding agreement of \$2.74m from an expected total of \$3.4m. The final payment would be made subject to the funding agreement arrangement to meet the deadline date.
- Fluoride would take several days to get into the water supply from commencement and would take up to a week to remove it completely from the supply for the outer areas of the network.
- Testing prior to the due date was needed as there was a requirement from the MoH to get assurance that Council had successfully implemented the project.
- TCC had spent \$2.7m in order to commence fluoridating the water and this would be at risk if the project did not proceed.
- No legal advice had been sought on whether Council could take out an interim injunction on the order to fluoridate, but this could be obtained if requested.
- No consultation was undertaken at the time of receiving the directive as the legislation did not require it. The topic was widely publicised at the time the MoH issued the notice to the councils affected.
- Council had been provided with regular updates on the progress of the installation of the equipment needed to fluoridate the supply.

Key discussion points

- Mayor Drysdale noted that further legal advice had been received during the meeting which Councillors needed to understand with the public excluded.

RESOLUTION TO EXCLUDE THE PUBLIC

Resolution to Exclude the Public

RESOLUTION CO20/24/1

Moved: Deputy Mayor Jen Scouler

Seconded: Cr Kevin Schuler

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
7.1 – Fluoridation of Tauranga City's water supply	s7(2)(g) - The withholding of the information is necessary to maintain legal professional privilege	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

CARRIED

At 9:10am the meeting adjourned to the Councillor's lounge to continue in public excluded.

RESUME OPEN MEETING

At 9:50am the meeting resumed in public.

Mayor Drysdale advised the public gallery that the Council was seeking further legal advice and would reconvene in public excluded at 12.15pm. The public meeting would reconvene following that at around 1.30pm.

At 9.54am the meeting adjourned.

At 12.15pm the meeting resumed and went into public excluded.

RESOLUTION TO EXCLUDE THE PUBLIC

RESOLUTION CO20/24/2

Moved: Mayor Mahé Drysdale

Seconded: Deputy Mayor Jen Scoular

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
7.1 – Fluoridation of Tauranga City's water supply	s7(2)(g) - The withholding of the information is necessary to maintain legal professional privilege	s48(1)(a) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

CARRIED

RESUME OPEN MEETING

At 1.46pm the meeting reconvened in public.

7 BUSINESS *(continued)*

7.1 Fluoridation of Tauranga City's water supply

Tabled document – letter from Mayor Drysdale to Director-General of Health 10 October 2024

Key Points noted by Mayor Drysdale

- There were further ideas that needed to be explored prior to a decision being made and the Council had an opportunity to do so this morning.

- Appreciation passed on to the public for their patience.
- Understood it was a polarising issue and Council wanted to make the best decision it could.
- A summary of the legal advice received issue noted that a number of court cases discussed the directive of the Director-General of Health regarding the requirement to fluoridate which had been found to be legal by the Courts.
- There had been an issue around the consideration of the Bill of Rights and whether that was being impacted by this directive. These court cases were still ongoing and due to be heard next year.
- In relation to personal Councillor liability, it was noted that if Council acted illegally or outside the law, any loss suffered by Council could potentially be charged back to the Councillors that made that decision.
- Whether an interim order could be obtained that would delay fluoridation until the court cases had been heard, the legal advice was that if the Director-General did threaten penalties an order could be sought, but it was unknown whether that would be successful and there would still be liability on Council for the upfront capital costs, and potential fines.
- Noted the concerns raised with regards to impact on residents' health and the Bill of Rights Act with Council trying to find a solution, however there was no legal avenue to follow.
- Discussion had also included obtaining an order to extend the process out, but the advice was this was unlikely to success considering the results from the previous cases before the courts.

Discussion points raised

- The verbal legal advice received noted that Council would be acting unlawfully if it did not comply with the Director-General of Health's directive by 24 October 2024.
- An alternative motion was proposed to comply with the Director-General of Health's directive.
- Mayor Drysdale tabled the letter he had written to the Director-General of Health dated 10 October 2024 seeking confirmation and assurance that she had reviewed and considered all of the relevant evidence in the updated Gluckman report and further reports seeking assurance that addition fluoride to the Tauranga water supply was still safe for the whole community, with no risk of reducing cognitive ability or IQ. The letter also sought confirmation that the Director-General of Health considered adding fluoride involved no unjustified limitations on rights set out under the Bill of Rights Act.
- It was agreed that Council was in a difficult legal position as court cases were pending relating to the possible impingement of rights set out under the Bills of Rights Act by the Director-General of Health's directive to fluoridate the water supply.
- The community was clearly divided on the issue.
- There were remedies that were available to the Council once it breached the law on 24 October 2024 if it resolved not to fluoridate the water supply.
- Councillors acknowledged that they swore an oath to uphold the law when coming into office and this was a legally binding directive. Acting unlawfully could be used against the democratically elected council.
- Council could not afford the financial consequences of not complying with the directive.
- The statement from the Director-General of Health in the court of law in June 2024 that there was no indication she would take enforcement action was considered an unusual statement. It was considered that the Director-General should be asked to respond and confirm whether she stood by those comments.
- An amendment was proposed to request an urgent reply from the Director-General of Health by 22 October 2024 as to whether enforcement action will or will not be taken if the Council does not comply with the Directive. If the response was that no penalties would be imposed, Council could then wait until the outcome on the Bill of Rights Act judicial review process prior to Council making a decision.

A MOTION WAS PROPOSED

Moved: Deputy Mayor Jen Scoular

Seconded: Cr Rick Curach

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.
- (c) Revokes resolution CO18/24/1(c) which reads "*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
- (d) Acknowledges a preference to wait for court cases in New Zealand to be resolved and for personal assurance from the Director-General of Health that fluoride is safe and that adding fluoride involves no unjustified limitations on rights set out under the Bill of Rights Act, legal advice received requires that, in order to remain lawful. Council will take the only option available and comply with the directive of the Director-General of Health to fluoridate the potable water system of Tauranga, starting on 24 October 2024 to meet the directive deadlines.

At 2.03pm the meeting adjourned to craft an amendment.

At 2.20pm the meeting reconvened.

An amendment was proposed.

Discussion points raised on the amendment

- Concern was expressed that in the event enforcement action was not being taken it would still put Council in an unlawful position.
- If the Director-General responded that no penalties would be imposed, Council could then wait until the outcome on the Bill of Rights Act judicial review process prior to Council making a decision.
- Council needed to set the right example by upholding the law as that would set a precedent to others.

AN AMENDMENT WAS PROPOSED

Moved: Cr Glen Crowther

Seconded: Mayor Mahé Drysdale

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.
- (c) Revokes resolution CO18/24/1(c) which reads "*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
- (d) Acknowledges a preference to wait for court cases in New Zealand to be resolved and for personal assurance from the Director-General of Health that fluoride is safe and that adding fluoride involves no unjustified limitations on rights set out under the Bill of Rights Act, legal advice received requires that, in order to remain lawful. Council will take the only option available and comply with the directive of the Director-General of Health to fluoridate the potable water system of Tauranga, starting on 24 October 2024 to meet the directive deadlines.

- (e) Sends a further letter to the Director-General of Health to request an urgent reply by 22 October 2024 as to whether enforcement action will or will not be taken if TCC does not comply with the Directive. This letter is to note the Director-General's statement in the June 2024 Judicial Review.
- (f) If the response to the letter, as per (e) is that enforcement action will not be taken, the TCC will not proceed to fluoridate the water from 24 October 2024 until the conclusion of the Bill of Rights Act judicial review process or subsequent directive from the Director-General of Health following that process.
- (g) If subsequent to the letter being sent, as per (e), either
 - (1) A response is received that enforcement action will be taken, or
 - (2) No response is receivedthen TCC will proceed to fluoridate the water from 24 October 2024.

DECLARED LOST 4/5

In Favour: Mayor Mahé Drysdale, Crs Glen Crowther, Steve Morris and Marten Rozeboom

Against: Deputy Mayor Jen Scoular, Crs Hautapu Baker, Rick Curach, Kevin Schuler and Rod Taylor

THE ORIGINAL MOTION WAS THEN PUT.

RESOLUTION CO20/24/3

Moved: Deputy Mayor Jen Scoular

Seconded: Cr Rick Curach

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.
- (c) Revokes resolution CO18/24/1(c) which reads "*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
- (d) Acknowledges a preference to wait for court cases in New Zealand to be resolved and for personal assurance from the Director-General of Health that fluoride is safe and that adding fluoride involves no unjustified limitations on rights set out under the Bill of Rights Act, legal advice received requires that, in order to remain lawful. Council will take the only option available and comply with the directive of the Director-General of Health to fluoridate the potable water system of Tauranga, starting on 24 October 2024 to meet the directive deadlines.

CARRIED 6/3

In Favour: Deputy Mayor Jen Scoular, Crs Hautapu Baker, Rick Curach, Steve Morris, Kevin Schuler and Rod Taylor

Against: Mayor Mahé Drysdale, Crs Glen Crowther and Marten Rozeboom

Attachments

- 1 Tabled Letter - Council 14 October 2024

8 DISCUSSION OF LATE ITEMS

Nil

9 CLOSING KARAKIA

Cr Hautapu Baker closed the meeting with a karakia.

The meeting closed at 2.52 pm.

The minutes of this meeting were confirmed at the Ordinary meeting of the Tauranga City Council held on 12 November 2024.

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Mayor Mahé Drysdale
CHAIRPERSON