

29 September 2021

Hon Nanaia Mahuta
Minister for Local Government

By email: nanaia.mahuta@parliament.govt.nz

Tēnā koe Minister

Re: Three Waters Reform proposal

Thank you for the opportunity to offer feedback on the Government's proposed entity structure for delivery of Three Waters services and the impact such a proposal would have on our council and our communities.

Further to my letter of 16 September, this letter supports and is part of our formal response to the Department of Internal Affairs (DIA).

As you will see from the response, the information and analysis put forward through the reform programme is insufficient at this stage for this Council to support the proposal.

In addition, Council has now specifically resolved that any model of delivery that prevents Council from requiring a water services entity to work towards or maintain an exemption from mandatory residual disinfection (chlorination) is unacceptable. Our community is relying on us getting back to delivering safe drinking water that is chlorine-free.

The Council also resolved to both strongly and actively oppose Government mandating the proposed entity-based model for water services delivery. As we have said to you, our obligation under the Local Government Act 2002 is to act and make decisions in the best interests of our residents and communities. Councillors were very concerned that you would remove our statutory obligations to provide water services and to consult before such a significant decision is made. We have resolved that we fully intend to meet our obligations under our Significance and Engagement Policy and consult our communities should we be asked or required to transfer our assets to an entity that we have no control over.

We surveyed our community on the key principles associated with Three Waters. The results indicate support for the outcomes desired however it was clear our community wants assets to remain in local ownership and for service delivery to be managed locally.

At the same time, we remain absolutely committed to working with you to achieve a result that addresses the deficits the reforms have identified while meeting the obligations we hold to our residents and communities. We are also very willing to work towards the co-governance objectives that Cabinet has identified as important. They are important to us too.

Council's relationship with mana whenua has been evolving since my election as Mayor in October 2013. We have established Te Hononga Council - Papatipu Rūnanga Committee, co-chaired by the Upoko of Te Ngāi Tūāhuriri Rūnanga and the Mayor, and which includes the Council's standing committee chairs, alongside the chairs of each of the Papatipu Rūnanga.

We have been developing partnerships with Papatipu Rūnanga within our rohe and with Te Rūnanga o Ngāi Tahu. We acknowledge the significance of the Crown's commitment to a 'new age of co-operation' as contained within the Ngāi Tahu Claims Settlement Act 1998, along with the recognition of Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

As you know Council is working towards a co-governance model for the Otakaro-Avon River Corridor, and we will continue to work with Ngāi Tahu in terms of Three Waters planning and delivery - with or without these reforms.

Our real contention with the Government's proposed model lies in the balance sheet separation and consequential governance arrangements that takes away any say we have in a series of workstreams in which we have invested heavily with the support of our communities.

None of the alternative delivery models that were considered by the Government (as set out in the Regulatory Impact Analysis) were consulted with us and were essentially ruled out due to the pre-requisite balance sheet separation. This is not in line with good practice.

A case for change

We acknowledge that the Government's review of Three Waters has identified an unacceptable level of risk exposure to the country that has been hidden in the disparate planning, asset management and delivery systems, and the funding capability of 67 councils. That there is a case for change for greater investment is accepted. However, the model that has been chosen has focused on the method of funding (balance sheet separation to increase debt capacity) to the detriment of local decision-making and exposing community owned assets to future privatisation.

As I said in my last letter to you, Christchurch is one of many councils that was identified as "delivering high quality water services that comply with requirements, are monitored and managed by capable people, and subject to effective governance and decision-making processes" (DIA Review of Three Waters' Infrastructure Nov 2017). Many of the assumptions that sit behind the reforms simply do not apply to us.

I have attached our official's summary of Councillors' key issues with the reforms proposed. I want to focus on the context of the reforms and the place of stormwater.

Context of reforms

The impact of Covid-19 on local authorities being able to engage with a reform process, which looked a lot more negotiable last year than it does now, and which councils (and their communities) believed they could opt out of, has led to a break down in trust – between councils and LGNZ and between councils and Government.

In response to a question in Parliament you said there would not be a pause, as that "will not change the scale, size, or complexity of the challenge confronting councils". You said that we had been "provided evidence and research that shows that the looming costs facing councils will be unbearable by ratepayers".

As you can see from our analysis, that is wrong for our residents. Quoting from the formal response:

"Based on our review of WICS' calculations and the corrections/sensitivities that we believe are required to the underlying assumptions, we project it is a realistic outcome that the 'Average Household Cost' of 'opting out' would in fact be cheaper for Christchurch than 'opting in'."

The issues may be complex as you say, but the model that has been developed to transform elements of a community owned asset delivery system into a corporatised delivery system, is far more complicated than it needs to be.

When councils make significant decisions, we are required to identify and analyse options. Setting out options in a regulatory impact analysis and ruling them out as they don't have balance sheet separation would not suffice in local government.

In addition, the environment we are providing feedback in is riddled with uncertainty.

- the Stormwater Technical Working Group's report had a narrow focus and has only just been released,
- the proposed amendments to the Local Government Act 2002 should the reform proceed are yet to be disclosed,
- the Water Services Bill has only just had its final reading in Parliament,
- legislation relating to the proposed economic regulator and consumer safeguards is yet to emerge,
- there has only been the partial exposure draft of the first of three legislative changes under the proposed Resource Management Act (RMA) Reform,
- the Essential Freshwater policies and legislation are emerging in isolation to the Three Waters Reform proposal, and
- The first report on the Future for Local Government is not due with you until the end of the month.

This lack of information or confirmation of proposed policy makes it difficult for our Council to stand in front of its residents and ratepayers and confidently say that we know what the full proposal is if we opt in or what the counterfactual to the proposal is if we opt out.

Stormwater

I also want to focus on stormwater. Stormwater services have two fundamental differences to drinking water and wastewater. First, they are open systems and integrated with the natural systems of streams, rivers and wetlands, as well as with modified drains, culverts, pipes and roads. Second, they cannot easily be funded per connection or by volume as with the closed systems of drinking water and wastewater. In Christchurch our stormwater management for the city extends across into floodplain management and the provision of flood protection infrastructure such as stop banks.

The key to managing stormwater and our floodplains is integration with land use planning and such alignment is particularly important for a low lying coastal city, such as Christchurch, in the face of the increasing risk of flooding from climate change. Our flood protection and stormwater infrastructure is planned and managed in accordance with our six values approach – ecology, landscape, recreation, cultural, heritage and drainage. Our modified and natural waterways are integrated into our urban form, provide public open space and are highly valued by residents and communities.

Christchurch's new stormwater consent requires a whole of council response to reducing discharges of contaminants into our waterways. This recognises that land use is the primary determinant of the contaminant loads in stormwater. The irony is that we have asked government to require copper-free brake pads in vehicles. The one thing we have asked you to do to reduce contaminants at source, and the answer has been no.

The new Entity would need to collaborate with multiple Council units to reduce contaminants at source, from building site runoff to roof material approval to industrial site audits, amongst many others. This will introduce inefficiencies and gaps in the response.

While we accept the need for investment in different parts of the country, even if the case for change for two waters were made for Christchurch, we do not agree that a case for change has been made with respect to stormwater services. It may be different in other parts of the country, but the risks of undermining what has been a fully integrated and holistic approach here are enormous.

The Stormwater Technical Working Group report highlights the complexities and risks associated with the transfer of services and assets to Water Service Entities. However, their report simply assumes that transfer will occur and doesn't consider the option, and obvious benefits, of stormwater services staying with Councils. It should be noted that WICS has no experience with stormwater service provision.

We therefore don't have any confidence that the Government has a sound understanding of stormwater service provision and the place of urban waterways. There is almost no information or analysis regarding stormwater, waterways and floodplain management in the proposals. The focus has been on drinking water with some reference to wastewater; and we agree these two waters should be the priority.

With no expertise or understanding of stormwater service provision, it appears to be an unacceptable risk to continue to include stormwater in the reform programme. The complexity of stormwater networks and the risks that come with that complexity mean the proposed approach is not tenable.

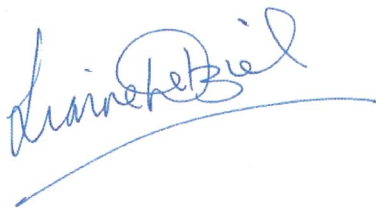
Conclusion

Minister, this is a significant decision for you and your colleagues. As the country's second largest city, we are very willing to work with you to find solutions to the challenges that have been identified. We have a lot to offer both at the governance and officer level. At this point however, based on the information we have, we cannot support the proposal put forward.

Our request to pause would enable a reset to occur, allowing an integrated partnership approach to considering the future for local government at the same time as considering two/three waters, along with the reforms associated with resource management and climate adaptation, and the overarching issues of co-governance.

I hope you and your colleagues are able to step back and allow a more holistic approach to emerge.

Ngā mihi nui



Hon. Lianne Dalziel
Mayor of Christchurch