

<b>Report to:</b>	<b>Council Public Excluded</b>
<b>Date:</b>	24 November 2021
<b>Subject:</b>	Three waters Reform Next Steps
<b>Prepared by:</b>	Will Doughty - Chief Executive
<b>Input sought from:</b>	Dave Clibbery – Senior Manager Operations Murray Dickson – Senior Manager Corporate Services
<b>Authorised by:</b>	Will Doughty - Chief Executive

## 1. PURPOSE

To seeks Council's approval for the next steps in responding to the Government's Three Waters Reform proposals.

## 2. RECOMMENDATION

THAT the Council:

- (a) **Receives** this report
- (b) **Approves** the Kaikōura District Council joining the multi Council campaign to convince the Government to alter its intention to proceed with legislation that will compel Councils to transfer their 3 Waters assets into the ownership and/or operational control of another legal entity without the agreement of an affected Council to that transfer.
- (c) **Approves** a commitment of a maximum of \$10,000 unbudgeted expenditure to the campaign.
- (d) **Authorises** the Mayor to enter into the MOU on KDC's behalf and to be the main KDC point of contact for the Campaign.
- (e) **Delegates** the Chief Executive to determine the release of the public excluded report.

## 3. THE PROPOSAL

### Background

On Wednesday 27 October 2021 the Minister for Local Government announced that the three waters reform process would become mandatory for all Councils. The Government intends to introduce legislation into the House before Christmas which would in effect force Councils to hand over control and effective ownership of their water assets to one of the four new water entities.

Government had previously promised that, as part of a signed Memorandum of Understanding (MoU), Councils would have an option whether to join (opt-in/opt-out). Many Councils have objected strongly to the Government's decision to remove the ability of Councils to opt out.

The Kaikōura District Council, as part of its feedback to the Government on 29 September, questioned the reliability of underlying data, and reiterated the results of community feedback which showed strong feeling against the proposed reform as it currently stood.

### Current workstreams

The announcement by central government to mandate the three waters service delivery reform has not been received well across the country. Central government has set up a number of working groups to consider the main issues that were raised in the feedback from Councils. However, there is strong

view that they are still not listening and that the decision to mandate the reforms and remove local authority decision making ability goes beyond the reforms and affects local democracy in general. Various options to resist the proposal have been discussed at both a regional and national level. Normally this sort of process would be run by LGNZ. However, LGNZ, although not supportive of making the reforms mandatory, are still of a view of continuing to work alongside central government to leverage the best outcomes possible. They are also hamstrung through the signed Heads of Agreement (HOA) with Central Government that prevents them opposing a mandatory approach. Our view is that LGNZ did not have a mandate from its membership to sign this HOA and we do not consider LGNZ has acted in the interests of its member in this situation.

Three initiatives currently being conducted by local authorities in opposition to the reforms are as follows:

(1) Approximately 30 Mayors across the country, including our Mayor, have signed a letter to the Prime Minister requesting a meeting to discuss concerns in Wellington. At the time of writing a response had not been received.

(2) Three Councils – Waimakariri, Timaru and Whangarei have lodged legal proceedings seeking a judicial declaration. This is being funded by the three Councils and is focused on issues of asset ownership and the provision of incorrect or misleading information in the promotion of the reforms. A copy of the Statement of Claim is included in Appendix 2. It should be noted that the traditional option of a judicial review has been ruled out as the Courts are unlikely to interfere with a decision to introduce legislation.

(3) Over 17 Councils have now signed a Memorandum of Understanding to establish a Campaign to convince the Government to alter its intention to proceed with legislation that will compel Councils to transfer their 3 Waters assets into the ownership and/or operational control of another legal entity without the agreement of an affected Council to that transfer. The Councils have engaged Malcolm Alexander (former Chief Executive of LGNZ) to oversee and co-ordinate the campaign. The group are encouraging other likeminded Councils to join the campaign. A campaign strategy is being developed which is focusing on joint communications/ messaging for use at a local, regional and national level and consideration of alternative models to those proposed by central government. Joining the Campaign requires a financial commitment of \$10,000 for rural Councils. It should be noted that by joining the Campaign there is no commitment to join the legal action started by the three Councils. Consideration is being given to how other Councils may join in the future should they so wish.

### **Council options**

We believe that we have heard a strong voice from our community against the current reforms and would stand a stronger chance of influencing outcomes via a collective approach than by standing alone.

It is therefore recommended that at this point Kaikōura District Council commits to joining the campaign and signing the associated MOU (initiative 3 above). This will join the voice in opposition to the mandated reforms as they currently stand and also assist the public to generate the political pressure on Government necessary for it to consider altering its decision. It should be noted that the basis for opposition is around the loss of local democracy in decision making as well as the issue of ownership of assets in the proposed entity model. With the information provided to date from the Department of Internal Affairs (DIA) we do not believe a compelling case for change has been made at a local level. Our concerns have not been answered despite consistently being raised. It is also recommended that we cap our financial contribution to the Campaign at \$10,000. This will be signalled to the group should we join the campaign.

#### 4. FINANCIAL IMPLICATIONS AND RISKS

A decision to join the Campaign requires unbudgeted expenditure of \$10,000.

One risk from joining the Campaign is that Central Government single those that have joined as troublemaking which could impact relationships going forward.

#### 5. COMMUNITY OUTCOMES SUPPORTED



##### Community

We communicate, engage and inform our community



##### Development

We promote and support the development of our economy



##### Services

Our services and infrastructure are cost effective, efficient and fit-for-purpose



##### Environment

We value and protect our environment



##### Future

We work with our community and our partners to create a better place for future generations

**Appendix 1: Memorandum of Understanding between Partner Councils in relation to their 3 Waters Campaign.**

**Appendix2: Statement of Claim lodged by three Councils.**