TIMARU, WAIMAKARIRI, WHANGAREI DISTRICT COUNCILS
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Three Waters judgement accepts confiscation of assets with no compensation

The decision of the High Court issued today confirms the Government's Three Waters plan is expropriating councils' Three Water assets and that the decision to pay compensation rests with Parliament.

Timaru, Waimakariri and Whangarei District Councils had asked the High Court for declarations on the rights and interests that property ownership entails.

In her judgement released today Justice Mallon wrote: "I accept that the Three Waters reforms involve a form of expropriation for which compensation could be given but, whether it is, is ultimately a matter for Parliament."

While the judgement declines to give the specific declarations sought by the Councils, it goes on to highlight that there is no acknowledgement from the Government that this confiscation was taking place, and that a deliberate decision was made to not compensate communities for this confiscation.

Mallon says: "I accept that these documents do not directly acknowledge that local councils will lose central incidents of ownership that they presently hold, nor that local councils' ability to control the use of their assets will be materially diluted through the WSE governance structure, and nor that local democratic accountability for the provision of the Three Waters services in local communities is essentially lost.

"However, it does not follow that the Government, and in turn Parliament, is unaware of this. The proposals are directed to a new model for delivering Three Waters services in response to what is regarded to be a significant Three Waters infrastructure challenge … It has proposed a funding package but has deliberately decided that this is not intended to compensate local councils for the value of the infrastructure assets."

Today's declaration by the High Court vindicates the widely held view the Government's current Three Waters reforms are an expropriation of community owned property but without conceding that it is a "taking", and without fair compensation being paid to communities for the loss of their property.

Additionally, the Government's proposals remove local democratic accountability inherent with the governance and management of those water assets.

On behalf of the Councils, Timaru District Mayor Nigel Bowen said that while they were unsuccessful in the declarations sought, they welcomed the clarity provided by the court on the core issues.

"This decision exposes the Government's position that councils will still own their Three Waters assets for the legal nonsense that it is. We now call on the Government to amend its proposals to recognise properly councils' ownership rights or to pay fair market compensation for those assets," he said.

"We'll be looking thoroughly at the judgement, consulting with our advisers and seeing what the next steps we can take.

"This judgement underlines that the Government has been intentionally misleading New Zealanders about the true ramifications of this law, and that is why we felt compelled to take up this case.

"The underlines many of the community concerns with the Three Waters plan, and adds more strength to calls from across the country for a significant rethinking of the plan.

"The judgement indicates that under the current plan community assets are being taken out of local ownership against the clearly expressed wishes of the community.

"As owners of this critical infrastructure on behalf of our communities we are now demanding that that any future changes to three waters policy settings respect these basic rights in a property owning democracy.

"The fact the government were seeking to undermine basic property rights without proper acknowledgement was one of the most concerning aspects of this law.

"Today's decision validates our concerns and supports our reasons for taking this action."

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