

10 April 2022

Hon. Nanaia Mahuta
Minister of Local Government
Parliament Buildings
WELLINGTON

By email: n.mahuta@ministers.govt.nz
Copy to: Rt. Hon. Jacinda Ardern, Prime Minister
Hon. Grant Robertson, Minister of Infrastructure

Tēnā koe e te Rangatira,

ALTERNATIVE PROPOSAL TO ADVANCE THREE WATERS

Thank you for your letter dated 8 April 2022 and for meeting with the representatives of Communities 4 Local Democracy - He hapori mō te Manapori ("C4LD") on 4 April 2022.

We received your 8 April letter just prior to the dispatch of our own letter to you setting out in summary form C4LD's proposals and, in particular, our offer to partner and champion a revised set of policy proposals that are more likely to achieve multi-party support in Parliament. Multi-party support would deliver a set of reforms that would be more durable and provide better outcomes for our country.

We have accordingly taken the time to consider the points in your letter and to reflect to you our immediate perspective on them, as well as making the points we originally intended to convey to you on Friday. This has necessitated responding in the weekend as we are anticipating early Cabinet consideration of your proposals, perhaps as soon as Monday.

As we mentioned at our meeting with you, C4LD is comprised presently of Partner Councils, representing 1.4 million people. We came together to work collectively to find a better way to achieve the health and environmental outcomes that we all desire. However, the Government should clearly understand that, quite apart from the Partner Councils of C4LD, there are many other councils that do not support the mandated four entity model. Most notably Auckland Council representing 1.7 million people. And there are many others.

In this letter we record the parameters formally of an alternative set of reform proposals which would achieve the health and environmental policy outcomes that most parties agree are desirable. More importantly, and as signalled above, it is our view that the set of proposals outlined in this letter are likely to achieve multi-party support in Parliament; indeed, this is an outcome we are prepared to champion with all Members of Parliament.

Without multi-party support the Government's reforms will not be durable. Without regulatory certainty there cannot be investment certainty. Without investment certainty there will not be investment. Such an outcome accordingly fails the chief measure of success for any set of infrastructure policy reform. The result is that needed improvements to health and environmental settings will once again be delayed.

As we outlined in our meeting with you (the presentation is appended in **Attachment 1**), our alternative proposal has 10 high-level components. They are:

1. Foundation principle - community property rights in Three Waters assets are to be both respected and meaningful;
2. The Government should agree to amend its current reform process and allow time for the revised approach to be reflected in draft legislation;
3. With respect to investment decision-making, asset owners should be required to actively seek to initiate authentic discussions with mana whenua at a local level that consider co-design and partnership arrangements that acknowledge and enable Te Tiriti based pathways at a local and regional level;
4. In return, asset owners agree to commit to meeting health and environmental standards, once known, within an appropriate time frame;
5. The regulatory framework should specify a "backstop" provision that identifies a set of circumstances which would justify future Crown intervention if an asset owner was not making acceptable progress towards meeting those regulatory requirements;
6. Progress should be reported on annually by asset owners and be benchmarked across the sector;
7. To further incentivise sector progress, a formal process might be established that requires an asset owner to prepare a plan for ministerial approval that would map out the steps it proposes to take to meet the required standards in a financially viable and sustainable manner (a similar process that respected property rights was used in the Energy Companies Act 1992);
8. A process to finance and allocate funds to areas that will require financial assistance, be designed that is national in application and independently administered accordingly to objective and transparent criteria (this is consistent with the recommendation of the Productivity Commission in November 2019);
9. This subsidy scheme will be designed to meet investment shortfalls until such time as sufficient progress has been made. At which point the scheme will cease and asset owners will finance matters on a business-as-usual approach; and
10. A sector-wide sector best-practice improvement process be created and membership made compulsory (in similar manner used to implement successfully the One Network Road Classification Framework and now One Network Framework in the road infrastructure area; and governed by Waka Kotahi (NZTA) and the Local Government Sector).

Our analysis (**Attachment 2**) prepared by our independent consultants, Castalia, show that alternative structural arrangements to that proposed by the Government are perfectly capable, and in most cases, more capable, of achieving the desired policy outcomes. Importantly, these alternative structural arrangements protect local voice, respect community property rights, and

just as importantly, are a far more effective protection against privatisation than any legislation which could be easily unwound by a future Parliament. As we all know, a current Parliament cannot bind a future Parliament.

We proposed to you two broad approaches:

1. A regional multiply-owned council water enterprise. Such an approach achieves your goal of balance sheet separation provided no one council owns more than 50% of that enterprise. This is specifically provided for in International Financial Reporting Standard 10. The proposed Hawkes Bay regional model is a good example of the type of enterprise that could be established and which would have local community support; and
2. A single council owned water enterprise. We accept that this option would not achieve balance sheet separation. Accordingly, we think proponents of this approach would have to satisfy you that it would be backed by a financially viable investment plan (using the proposed process noted above). But in principle, if a single-council owned entity is viable and could achieve the health and environmental outcomes required, then the Government ought to be agnostic about organisational design, particularly for assets it neither owns nor is proposing to purchase.

Mana whenua involvement in investment decision-making (as opposed to regulatory decision-making) is a key aspect of the reforms for your Government. The Partner Councils of C4LD support that objective consistent with the protection of both local voice and community property rights. Indeed in our view, the Government's proposal will not reflect local realities and communities of interest and, importantly, iwi and hapū rohe and areas of interest, in most parts of the country. We consider that a more local approach gives better representation to mana whenua, particularly in the North Island where there are very many iwi and hapū.

We are conscious that there is significant and mischievous comment currently circulating about C4LD's approach to mana whenua involvement in investment decision-making. We reject categorically such comment. To clarify matters, Partner Councils have prepared the attached statement (**Attachment 3**) which clearly sets out our position.

Turning now to some of the points raised in your letter of 8 April.

Your summary of the points of agreement between C4LD and the Government is generally correct. However there is one significant point of clarification required.

C4LD believes that 3 Waters assets should continue to be owned by councils either directly or through real shareholding arrangements that confer the usual rights and obligations that go with equity ownership. The Government's approach does not do that. Further it is our view that the Government's approach amounts to the expropriation of council assets without true value compensation. We note that this matter is at issue in the litigation being pursued by some councils at present.

We note your comments that regulatory levers alone are unlikely strongly to incentivise improvements. Clearly we disagree on this point. But again we emphasise that our view is also the view of the Productivity Commission. It is a conventional viewpoint and one that protects community property rights. This is why the Government's approach ultimately will not be durable.

On our proposal for a FAR type approach to assisting deprived areas, you have misunderstood our suggestion. This approach would not require additional taxes. It would require additional revenue, but this could be sourced, for example, contractually through connection charges which would reduce over time. Connection charges are very common in utility markets.

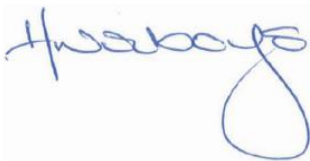
All Partner Councils are budgeting significant expenditure on 3 Waters in their Long Term Plans (which we understand to be many billions of dollars). We are confident that with the regulatory backstop, the direct charge for services that the Council entities would be putting in place, and the sector wide best practise improvement process – that your concerns that future Councils will not vote appropriate budget for the investment required would not be an issue.

In terms of the Working Group, we must, we think, agree to disagree. We do not think that the Working Group has developed proposals that address our fundamental concerns. The fact that one member (Hon Phil Goff Mayor of Auckland representing 1.7 million people) wrote a minority report and another has dissociated himself from the Working Group indicates that the Working Group's approach is not the breakthrough it has been presented as being. We will be developing further our critique of the Working Group in due course depending on the degree of take-up by the Government of the Working Group's recommendations.

Minister, at this point in time, the Government's proposals are widely opposed across the country and as others have noted, the Government simply has failed to bring the people with it on this initiative. Whilst presently, you have the Parliamentary majority to achieve your preferred position, this does not mean that the position is durable. It is not. The Opposition Parties have already publicly committed to repeal any such legislation. Our preference, and we think the country's preference is to achieve a multi-party and durable approach. In our view our proposal can achieve that with the Government's support. We commend it to you.

As we discussed it is not too late to rectify matters. We are not that far apart in our objectives. Indeed, what we are offering in our 10 point plan is an approach that we believe would achieve broad support. We ask that you take the time to allow for a revised approach to be refined. We are prepared to partner and work with you and the Government to turn this around and find a lasting solution that we can all support.

Nāku noa, nā



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Att 1: Presentation to Minister of Local Government 4 April 2022

Att 2: Castalia Report - Improved Options for Three Waters reform January 2022

Att 3: Communities 4 Local Democracy He hapori mō te Manapori (C4LD) Position on Iwi Māori Partnership