

Extraordinary Whangarei District Council Meeting

Whangarei District Council Meeting

Supplementary Agenda

Date: Wednesday, 18 December, 2024

Time: 10:00 am

Location: Civic Centre, Te Iwitahi, 9 Rust Avenue

Elected Members: His Worship the Mayor Vince Cocurullo
Cr Gavin Benney
Cr Nicholas Connop
Cr Ken Couper
Cr Jayne Golightly
Cr Phil Halse
Cr Deborah Harding
Cr Patrick Holmes
Cr Scott McKenzie
Cr Marie Olsen
Cr Carol Peters
Cr Simon Reid
Cr Phoenix Ruka
Cr Paul Yovich

For any queries regarding this meeting please contact the Whangarei District Council on (09) 430-4200.

4. Decision Reports / Whakatauripoata

4.1 Fluoridation Update

4.1.1 Fluoridation Update – Additional Information

3

4.1.1 Fluoridation Update – Additional Information

Meeting: Extraordinary Whangarei District Council
Date of meeting: 18 December 2024
Reporting officer: Simon Weston – Chief Executive

1 Purpose / Te Kaupapa

To provide additional information for Elected Members.

2 Recommendation/s / Whakataunga

That the Council notes the additional information provided.

3 Discussion / Whakawhiti kōrero

Implications for Regional Deal Strategic Framework

The Department of Internal Affairs has highlighted that the recent Council resolution dated 28 November 2024 may be inconsistent with the Regional Deals Strategic Framework.

In particular:

- Milestone 2 – consideration of proposals regional deal criteria includes that proposals are assessed against “*that councils meet all their regulatory standards (economic and water quality regulation)*”. See attachment 1.
- In addition, staff have identified that selection is based on high level criteria with a particular emphasis on:

Councils being ready to deliver on a deal, including having the capability and capacity, a clear plan for the city/region, *and a track record of having worked successfully with central government*, other councils in the region, private sector and iwi/Māori. (emphasis added). See attachment 2.

Injunctive relief

The possibility of Council seeking injunctive relief has been raised. In response, Council’s legal advisor has provided the following advice:

In my professional opinion, the likelihood of an injunction succeeding is small. The issue of fluoride has been comprehensively and exhaustively considered by the Courts in New Zealand. At every level, the Courts have upheld the right of local authorities to fluoridate water supplies and more recently the powers of the Director-General of Health to give a direction to that effect.

Council would need to establish that the Director-General has unlawfully exercised, or refused to exercise, a public power. As this issue has already been extensively considered by the Courts in the recent bill of rights judicial review decisions, it would require the courts to undertake a reversal of their current stance. The Courts would need to grant relief not offered in any other case and go against precedent which has established that there is no reason for a local authority not to comply with the direction.

Two recent unsuccessful applications for interim relief give an indication of how the Court may find:

1. The case of *Fluoride Action Network (NZ) Inc v Hastings District Council* [2024] which occurred before the Bill of Rights reconsideration had been completed. Hastings District Council had recommenced fluoridation on 8 April 2024 following the direction, and Fluoride Action Network sought that this be stopped. As outlined in the case summary in the last Agenda item, the Courts dismissed the application. The applicants were held liable for costs of \$41,000.
2. In the decision of *New Health New Zealand Inc v Director-General of Health* [2024] NZHC 1717, an application had been made for interim orders. The Court discussed the appropriate course of action if the Director-General began enforcement action prior to the (Bill of Rights) reconsideration. The Court stated that in the event that enforcement action was threatened, then the most appropriate course would be for any council to affected to seek interim orders. Since that decision, the directions have been reconsidered as ordered by the Court (as per the letter sent to Councils on 4 December 2024).

The Courts have accepted the evidence provided by the Ministry on the safety and efficacy of fluoride so is unlikely to accept a “harm” argument as a basis for injunctive relief. Council has already installed the equipment, and accepted money from the Ministry to do so, and so an economic argument is also unlikely to be successful.

3.1 Financial/budget considerations

In addition to the potential legal costs set out in previous agendas, in terms of cost for an injunction, WDC could expect to pay approximately \$100,000 for the application (legal fees and court costs) and then the costs of the other party’s when the application is unsuccessful (potentially in the range of between \$50,000 and \$100,000 depending on how many parties are involved i.e. MoH and Attorney-General).

4 Significance and engagement / Te Hira me te Arawhiti

The decisions or matters of this Agenda do not trigger the significance criteria outlined in Council’s Significance and Engagement Policy, and the public will be informed via agenda publication on the website or Council News or Facebook or any other channel you currently use to inform customers – please also advise Communications.

5 Attachments / Ngā Tāpiritanga

Attachment 1 – Draft Publicly Facing Regional Deals Strategic Framework Page 20

Attachment 2 – Draft Publicly Facing Regional Deals Strategic Framework Page 25

Milestone 1

Release a national regional deal framework

Decision makers: Cabinet

A high-level framework that sets out what the government wants to see in Regional Deals. A public version of this document will be used by councils to prepare proposals for Regional Deals.

The framework is not specific to local needs and does not make specific promises of regulatory relief or funding and financing.

Milestone 2

Consideration of proposals

Decision makers: Infrastructure and Investment Ministerial Group / selected councils.

Central government invites expressions of interest (up to five in the first wave). Selected councils provide a light-touch proposal with an outline of the following:

- drivers of economic growth in a region: regions to identify their own areas of growth and key economic drivers;
- what the region will do to unlock growth: regions to identify what actions they intend to take to unlock or enable growth; and
- what the region needs from central government to assist: regions to identify policy and legislative action they need from central government.

Regional Deal Criteria

Light touch proposals assessed against (but not limited to):

- alignment with the strategic framework
- growth potential
- commitment to a regional spatial plan
- capability, capacity, readiness to deliver
- commitment to fiscal prudence
- that councils meet all their regulatory standards (economic and water quality regulation).

Milestone 3

Signed Memorandum of Understanding

Decision makers: Infrastructure and Investment Ministerial Group / LG Partners

Central government will confirm initial intent to progress into an MOU with selected regions.

Central and selected local government partners both develop and agree an MOU setting out intended areas to work together. Central government will provide guidance to support the MOU process to minimise council expenditure during this phase.

A region will need an MOU to enter the pre-deal queue.

First wave or tranche

Five regions will be invited to provide light-touch proposals for a first wave of Regional Deals. Selection of regions for the first wave will be led by Ministers, based on selection criteria, and agreed to through a Cabinet process. Selection will be supported by the high-level criteria with particular emphasis on:

- councils being in a growth area that has clear objectives around economic growth, productivity and infrastructure in alignment with the Regional Deal strategic framework;
- councils with an already identified functional economic area, such as through an existing urban partnership, and therefore have initial supporting structures, spatial plans and future development strategies in place, including where relevant, funding and financing proposals for infrastructure development and delivery; and
- councils being ready to deliver on a deal, including having the capability and capacity, a clear plan for the city/region, and a track record of having worked successfully with central government, other councils in the region, private sector and iwi/Māori.

It is noted that central and local government are part of several partnerships that may already satisfy the above criteria, including for example, Urban Growth Partnerships. These urban partnerships could be mobilised as foundations for Regional Deals.

Subsequent waves or tranches

Subsequent Regional Deals will build on the lessons learned from previous Regional Deals to ensure the system is refined as more deals are established. Regions or sub-regions for subsequent waves will be selected through an open expressions of interest process. Proposals received from the expressions of interest will be assessed against the high-level criteria set out in this strategic framework and consideration by the Office of Regional Deals.

Advice to the Infrastructure and Investment Ministerial Group will follow this assessment, and subject to their approval, will proceed to a Cabinet process for formal agreement.

RESOLUTION TO EXCLUDE THE PUBLIC

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

The general subject 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(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

1.	The making available of information would be likely to unreasonably prejudice the commercial position of persons who are the subject of the information. {Section 7(2)(c)}
2.	To enable the council (the committee) to carry on without prejudice or disadvantage commercial negotiations. {(Section 7(2)(i))}.
3.	To protect the privacy of natural persons. {Section 7(2)(a)}.
4.	Publicity prior to successful prosecution of the individuals named would be contrary to the laws of natural justice and may constitute contempt of court. {Section 48(1)(b)}.
5.	To protect information which is the subject to an obligation of confidence, the publication of such information would be likely to prejudice the supply of information from the same source and it is in the public interest that such information should continue to be supplied. {Section 7(2)(c)(i)}.
6.	In order to maintain legal professional privilege. {Section 2(g)}.
7.	To enable the council to carry on without prejudice or disadvantage, negotiations {Section 7(2)(i)}.

Resolution to allow members of the public to remain

If the council/committee wishes members of the public to remain during discussion of confidential items the following additional recommendation will need to be passed:

Move/Second

"That _____ be permitted to remain at this meeting, after the public has been excluded, because of his/her/their knowledge of Item _____.

This knowledge, which will be of assistance in relation to the matter to be discussed, is relevant to that matter because _____.

Note:

Every resolution to exclude the public shall be put at a time when the meeting is open to the public.