

Reference Number: 2024/1093

14 May 2024

[REDACTED]
[REDACTED]

Tēnā koe [REDACTED]

Thank you for email of 30 April 2024 requesting under the Local Government Official Information and Meetings Act 1987 (LGOIMA), information relating to fluoridation. Please see outlined below a response to your request.

Please provide all correspondence between the council and the Ministry of Health regarding fluoridation since 22 September 2023

Please find attached correspondence between Horowhenua District Council and the Ministry of Health regarding fluoridation since 22 September 2023.

You are entitled to seek an investigation and review by the Office of the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Horowhenua District Council publishes responses to Local Government Official Information and Meetings Act 1987 (LGOIMA) requests that we consider to be of wider public interest, or which relate to a subject that has been widely requested. To protect your privacy, we will not generally publish personal information about you, or information that identifies you. We will publish the LGOIMA response along with a summary of the request on our website. Requests and responses may be paraphrased.

If you would like to discuss this decision or any of the information provided as part of this request, please contact Daniel Haigh (Group Manager Community Infrastructure) on danielh@horowhenua.govt.nz.

Ngā mihi



Nicki Brady
Executive Sponsor



133 Molesworth Street
PO Box 5013
Wellington 6140
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17 November 2023

Monique Davidson
Chief Executive
Horowhenua District Council
moniqued@horowhenua.govt.nz

Tēnā koe Monique

Update on directions for community water fluoridation

As you may be aware, in June 2023, New Health New Zealand Incorporated filed an application for judicial review of the directions issued by the Director-General of Health in July 2022, that required 14 local authorities to fluoridate one or more of their drinking water supplies. Your local authority was one of those issued with a direction.

On 10 November 2023, the High Court issued its judgment on the preliminary issue, finding that the Director-General of Health made an error of law by not explicitly considering the rights under the New Zealand Bill of Rights Act 1990 in making a decision on each direction.

The implications of the judgment are being considered by Manatū Hauora (Ministry of Health). It's important to note that the Court has not quashed the directions, and at this time the directions remain in force. Manatū Hauora will continue to support you to implement your direction, including by providing funding for the capital works.

Should you wish to read the judgment, you can find it on the Courts of New Zealand website, at [2023-NZHC-3183.pdf \(courtsofnz.govt.nz\)](https://www.courtsofnz.govt.nz/2023-NZHC-3183.pdf).

The decision pertains to the process required to be used in deciding to issue a direction. The judgment is not about the public health merits of fluoridation, or whether fluoridation can be justified under the New Zealand Bill of Rights Act 1990.

Thank you for your ongoing collaboration as we work together to improve the oral health of the communities we serve.

If you have any questions or would like to contact the team, please continue to use the email address: fluoride@health.govt.nz. The team is more than happy to respond to any inquiries.

Nāku noa, nā



Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora



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19 January 2024

Monique Davidson
Chief Executive
Horowhenua District Council
moniqued@horowhenua.govt.nz

Ref H2024034942

Tēnā koe Monique

Re: Community water fluoridation – Levin drinking water supply

Thank you for your letter of 21 December 2023 regarding the compliance date for fluoridation of the Levin drinking water supply.

As you are aware, the High Court (the Court) released a preliminary finding in November 2023 that, in the process for making each 2022 direction to fluoridate, the Director-General of Health made an error of law by not expressly considering the limitations on rights affirmed by the New Zealand Bill of Rights Act 1990. The Court did not quash the directions, and a second hearing is scheduled for February 2024 to decide on related matters.

The Ministry of Health - Manatū Hauora (the Ministry) will be in contact with affected local authorities when it has the Court's decision on the current directions. I am aware of the uncertainty this raises for local authorities, and my team will continue to support you where they can. The Ministry is continuing to provide funding for each local authority that is implementing a direction to fluoridate, and my team will be in touch regarding the funding for Levin.

If you have any questions or would like to contact the team, please continue to use the email address: fluoride@health.govt.nz. The team is happy to respond to any inquiries.

Nāku noa, nā



Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora

21 December 2023

Dr Diana Sarfati
Director-General of Health
[REDACTED]

Tēnā koe Diana

Re: Community Water Fluoridation – Levin Drinking Water Supply

Horowhenua District Council (HDC) previously requested on 24 February 2023 to amend the compliance date for fluoridating the Levin drinking water supply from 31 July 2023 to 30 April 2024. Your letter dated 28 March 2023 accepted our proposed extension of time in accordance with section 116I of the Health (Fluoridation of Drinking Water) Amendment Act 2021 (the Act), where we are required to ensure that we are fluoridating at the optimal levels (between 0.7ppm to 1ppm, parts per million) at the Levin supply by 30 April 2024.

I also refer to your letter dated 17 November 2023 which informed HDC of the recent judicial review of the directions issued by the Director-General of Health in July 2022. As stated in your letter the Court has not quashed the directions, and at this time the directions remain in force. It is our understanding that further review of the fluoridation directive will be taken to the High Court in February 2024 where a decision will be made if the directive remains in force.

At the recent Council meeting on 13 December 2023, elected members discussed the fluoridation project and the implications of your letter dated 17 November 2023. The current Council is split on a way forward, and on this basis at this stage, I do not have sufficient mandate to continue with the project, therefore are needing to stop any further work on the Levin fluoridation project as at 14 December 2023 until such time as a final decision has been made at the High Court review in February 2024. Some Elected Members have signalled an interest in consulting with the community in order to honour any commitments to the NZ Bill of Rights Act 1990, a matter which we understand the courts are considering.

In the event that the direction remains in force, HDC are seeking an extension of time to fluoridate Levin Drinking Water Supply in accordance with section 116I of the Health (Fluoridation of Drinking Water) Amendment Act 2021 (the Act). We are proposing a new date of 30 June 2024 which will allow time for the High Court decision, any subsequent guidance or action that follows from that decisions and sufficient time to complete the fluoride project.

As HDC entered into a contract with Filtec on 11 October 2023 for the design & build of the new fluoride dosing plant, we will be engaging with Allen & Clarke in relation to options for recovery of costs to date via a separate contract or separable portion to cover work to date and committed materials purchase (~\$450k).

I look forward to your response and please do not hesitate to contact me if you require any further information.

Ngā mihi nui

A handwritten signature in black ink, appearing to read 'Monique Davidson'. The signature is written in a cursive, flowing style.

Monique Davidson
Chief Executive



133 Molesworth Street
PO Box 5013
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New Zealand
T+64 4 496 2000

22 February 2024

Monique Davidson
Chief Executive
Horowhenua District Council
moniqued@horowhenua.govt.nz

Tēnā koe Monique

Community water fluoridation court decision update

I am contacting you to provide an update on the judicial review of the directions issued by the Director-General of Health in July 2022, that required 14 local authorities to fluoridate one or more of their drinking water supplies.

As you are aware, on 10 November 2023, the High Court issued its judgment on the preliminary issue, finding that the Director-General of Health made an error of law by not explicitly considering the rights under the New Zealand Bill of Rights Act 1990 in making a decision on each direction. There was a second hearing on 2 February 2024 to consider the validity of the current directions, and any relief.

The Judge decided that the directions remain in place. However, the Judge directed the Director-General of Health to assess whether each of the 14 directions made in 2022 were, in terms of section 5 of the New Zealand Bill of Rights Act, a justified limit on the right to refuse medical treatment that is provided for in section 11 of the New Zealand Bill of Rights Act.

As directed by the Judge, I will carry out this assessment against the New Zealand Bill of Rights Act, for each of the directions. I will continue to update you as this process progresses.

Manatū Hauora is continuing to provide support to local authorities that are implementing their directions, including by providing funding for the capital works.

Thank you for your ongoing collaboration as we work together to improve the oral health of the communities we serve.

Nāku noa, nā



Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora

7 May 2024

Dr Diana Sarfati
Director-General of Health

E: [REDACTED]

E: [REDACTED]

Dear Dr Diana Sarfati

Fluoridation Direction - Request for an Extension

I am writing to you regarding our request to amend the date for fluoridating the Levin drinking water supply.

On 28 March 2023 we obtained approval from you for an extension of time in accordance with section 116I of the Health (Fluoridation of Drinking Water) Amendment Act 2021 (the Act), where we are required to ensure that we are fluoridating at the optimal levels (between 0.7ppm to 1ppm, parts per million) at the Levin supply by 30 April 2024.

We also wrote to you on 21 December 2023 with a further request to extend our compliance date to 30 June 2024 due to the recent judicial review of the directions. You responded on 19 January 2024 provided an update on the High Court preliminary findings and informed that a second hearing was scheduled for February 2024, but no approval was given for our requested time extension to 30 June 2024.

A further letter was received from you on 22 February 2024 providing an update on the judicial review from the second hearing. This letter also informed us that the directions remain in place, however the Judge directed that MoH assess whether the directions made in 2022 were, in terms of section 5 of the New Zealand Bill of Rights Act, a justified limit on the right to refuse medical treatment that is provided for in section 11 of the New Zealand Bill of Rights Act.

We have been informed by your staff that a timeframe cannot be given as to when this assessment will be completed, or whether the direction will remain in force.

In the event that the direction remains in force following your assessment, HDC is seeking an extension of time to fluoridate the Levin Drinking Water Supply in accordance with section 116I of the Health (Fluoridation of Drinking Water) Amendment Act 2021 (the Act). We are proposing a new date of 30 December 2024 which will allow time for your review, any subsequent guidance or action that follows from that review and sufficient time to complete the fluoride project.

I look forward to your response and please do not hesitate to contact me if you require any further information.

Yours sincerely

A handwritten signature in black ink that reads "Davidson". The signature is written in a cursive style with a large, prominent 'D' and a long, sweeping tail.

Monique Davidson
Chief Executive