

Office of the Mayor

xx September 2021

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Tēnā koe Minister Mahuta

Re: Considerations from Kaipara District about the Three Waters Reforms

Mai Waipoua ki Pouto i Te Tai Hauāuru,
Whakawhiti atu i te raki o te moana o Kaipara ki Oruawharo,
Mai Oruawharo ki Mangawhai ki te rāwhiti,
Mai Mangawhai ki Tangiteroria, whakahoki atu ki Waipoua.
Ko tēnei te rohenga o te Kaipara Konihera.
Tihei Mauriora!

At its 25 August 2021 Council Meeting Kaipara District Council received an update report on the Government's Three Waters Reforms. After 90 minutes of discussion and debate, the Council voted unanimously and resolved the following:

That Kaipara District Council:

- a. *Notes the Three Waters Update report;*
- b. *Regards with uncertainty the current situation of the reforms and the proposed Entity A model, especially noting that Whangarei District Council and Far North District Council have both provisionally opted out of the reforms and Kaipara District Council has not yet considered doing so;*
- c. *Has serious concerns about the negative impacts of the proposed Three Waters Reforms on local democracy, local decision-making by elected representatives and on the mana of Kaipara District Council, Kaipara District and all the citizens of this place;*
- d. *Currently has insufficient information to have confidence in the proposed Three Waters Reforms and what they mean for Kaipara District.*

Since that meeting, as before it, Kaipara District Council has continued to engage in good faith with the processes of the Three Waters Reforms. Information has been gratefully received and duly noted, and questions have continued to arise from Elected Members and Council Officers as we have progressed. Some questions have been answered but some have not. We still have insufficient information to have confidence in the proposals but hope to get answers to our questions to help us along.

This letter includes a request for answers to those outstanding questions and they are clearly articulated here, along with an Action Sheet so Government can efficiently respond. This letter also contains key considerations from Kaipara District Council about the Three Waters Reforms as they currently stand, and this is where we begin.

Governance context in Kaipara

Kaipara District Council and its people are unique among the territorial local authorities of New Zealand in having had the longest period in our nation's history under appointed Commissioners rather than elected members. The root cause of this was a wastewater plant, and it follows that the people of Kaipara District are therefore highly attuned to issues of governance and waters infrastructure. We start from this place.

The people of Kaipara know more than anyone what it is like to lose local voice and have worked hard in recent years to gain that back and make a success of democracy again. Democracy is cherished here. It is therefore of central concern to Kaipara District Council that the Three Waters Reforms as proposed would lead to the diminishment of local voice and local decision-making about local priorities by local elected representatives. Kaipara District Council believes local voice to be a foundational core of good democracy which should be strengthened rather than diminished in these reforms and into the future.

For Kaipara District, our Council is close to the people, with each councillor representing approximately 2,600 people. We know our Kaipara people well, and the issues of this place nestled between Whangarei and Auckland are clear. With 16% Māori in our community we are similar to the national average Māori population. We have the fastest growing district in the North Island, but this growth is focused in some parts of District while other parts are barely growing at all.

Some of the highest levels of deprivation in Northland can be found in Kaipara District, but there is a wide range of income inequality also. We navigate challenges with broadband connectivity, isolation, rurality and infrastructure levels of service, particularly with our rural roads. We have some waters infrastructure which is old where there are significant renewals planned, and some which is new and in urgent need of expansion to cater for growth. We have clear plans in place for improving this with our community, however funding this work is challenging with a small ratepayer base.

Our communities may be hard to engage but we know them and are of them. Their local council has structured its governance arrangements to serve all the Kaipara District people. The last decade has brought many insights into good governance for Kaipara District, and this Council is focused on making this place better for *nga tangata katoa o Kaipara*.

The Three Waters Reform proposals mean different things in different parts of New Zealand. We seek your consideration for the view of Kaipara District here.

Consideration sought regarding Connectedness and Cross-subsidisation

In reports on the proposals, much has been made of the different rates of connectedness to reticulated water services between council areas. For Kaipara District approximately 25% of our citizens are connected to drinking water supplies and 55% to wastewater. Most Kaipara people live outside the organised public water infrastructure systems; around the Council table, only one of nine elected members of Kaipara District Council is on both reticulated drinking and wastewater at home. By contrast, in Auckland more than 90% of people are connected to both reticulated drinking and wastewater.

Kaipara District Council welcomed the original intent of the proposals where smaller communities would be supported by larger places to help raise the standards of water for everyone. However, cross-subsidisation has an uneven level of support among the councils in Entity A. We have seen consistent messages from our larger Metro Council neighbours, both Auckland and Whangarei, rejecting the cross-subsidisation aspects of the proposals. Our understanding is that cross-subsidisation is a leading principle for the reforms, and that without this the reforms would not achieve intended health and environmental outcomes. Kaipara District Council seeks clarification about Government's intentions for cross-subsidisation in the Three Waters Reforms proposal for Entity A, noting that its two largest councils appear to be opposed to cross-subsidisation of smaller councils and communities. This is of key importance to Kaipara District Council.

Consideration sought regarding engagement within Entity A

As the smallest (by population) of the four Councils in the proposed Entity A, responsible for a land area of c.20% of Entity A, Kaipara District Council has been working in good faith with the proposals and has not considered opting out. To have done so without accurate information would have been reckless and premature, especially for a Council of our relative size to others in Entity A. For reference the size and scale difference between populations of Kaipara District Council and neighbours in proposed Entity A is as follows:

Kaipara	25,000 citizens	3,117km ²
Far North	75,000	7,324km ²
Whangarei	100,000	2,712km ²
Auckland	1,500,000	4,894km ²

Kaipara District Council has encouraged good neighbour behaviour with other Councils and remains 'inside the tent' even when there is no collective view among Entity A councils on how to progress Entity A. The proposal has drawn criticism and presents challenges on every side of Kaipara District: two close Northland neighbour councils voted provisionally to opt out of the Three Waters Reforms, and Auckland publicly questions principles of cross-subsidisation which are central to the proposals and also challenges the proposed governance arrangements.

Kaipara District Council is staying the course and, despite the concerns and information gaps which make evidence-based policy making difficult here, has not yet considered opting out of the reforms. Kaipara District Council is frustrated at being misrepresented by Government as having opted-out of the reforms when it has not done so.

To date alignment of the four councils within Entity A has not been possible, and this is an added frustration. Auckland Council has not yet connected with the Councils of the North for any substantive talks, either through the Northland Mayoral Forum or through LGNZ Zone 1, both of which I chair. For discussions on the proposals, Auckland Council has chosen not to use LGNZ to help facilitate progress but instead chose to liaise directly with Government on this work. This has created additional asymmetry between the councils of Entity A. To an extent this has been enabled by Government which has encouraged two different engagement forums rather than one and I hope this approach will be remedied soon.

Kaipara District Council has been left with increasing numbers of questions about what the process in establishing Entity A and has diminishing satisfaction about the process at work here. We have been operating in something of a vacuum.

In the absence of joined-up discussions facilitated by an intermediary, be that LGNZ or Government, and especially considering the crucial points raised above about cross-subsidisation, there's now little alignment between the councils of Entity A on the proposal. During the recent 8-week information-sharing period it would have been constructive if relevant Government staff had engaged between Northland Councils and Auckland Council to keep the discussion about Entity A open, transparent and together. This has not occurred. To Kaipara the process feels lopsided and uneven, and it is difficult to envisage a balanced and equitable outcome from this point. Kaipara District Council seeks assurance from you that every effort is being made by Government to 'bring the table' around which the four Entity A Councils can meet to address these imbalances.

Consideration sought about Representative Governance Group and the needs of *nga tangata katoa o Kaipara*

Given the significant levels of deprivation, wide ranges of income inequality, rapid growth and other challenges faced by Kaipara District, as noted above, we are concerned at the idea of Kaipara not being directly represented on the Representative Governance Group. No-one knows this place like Kaipara District Council does. We struggle to understand how someone not from Kaipara's council would fully understand the complexities and needs of our fast-growing District, nor would they have the local relationships across all sectors to effectively engage on those issues.

If the Three Waters Reforms are to proceed then Kaipara District Council should have an enduring seat on the proposed Representative Governance Group precisely because of the reasons outlined above. The specificities and peculiarities of Kaipara District make it very distinct from the other parts of proposed Entity A. We believe that to represent a community you must know and be of that community. For Kaipara not to be "worse off" there must be a Kaipara voice at the table.

Therefore, **if** the current proposed Representative Governance Group arrangements including Mana Whenua are to proceed then Kaipara District proposes your approach includes 12 seats for Entity A, comprising:

Auckland Council	3
Far North District Council	1
Whangarei District Council	1
Kaipara District Council	1
Mana Whenua	6

The numerical basis for this proposal is that each Council should be represented by at least one seat with proportional representation after that.

In addition to the points above Kaipara District Council requests further information and clarity on the following matters. These questions have been asked during the 8-week period and remain unanswered as yet.

Information sought relating to Debt

Kaipara District Council has almost all of its debt relating to waters infrastructure. Kaipara District Council has both internal and external loans relating to water assets that would need to be assigned or taken over by Central Government. Kaipara District Council also has a number of interest rate swap agreements to minimize risk in the short- and medium-term future that would need to be paid out or taken over by Central Government.

Kaipara District Council is a guarantor of LGFA and would be concerned if water entities are intending to borrow from LGFA that our guarantee would be greater than anticipated when we became a guarantor. Government has stated clearly that no council would be worse off through these proposed reforms. Kaipara District Council expects this will include any and all interest costs on debts if they cannot be novated to the proposed water entity.

Kaipara District Council seeks confirmation of the approach being taken by Government regarding these debt-related matters.

Information sought relating to the transfer of stormwater assets and functions

Central Government is proposing to transfer control of stormwater systems which are integral to land use and a means of protecting our key towns (housing and roading) from flooding and response to climate change.

In Kaipara District some of these stormwater networks are land drainage systems, which are long established in local community control, and were not passed to the Northland Regional Council in the 1989 Local Government reforms as Kaipara District Council was deemed to have better expertise in this area. We are concerned that the 29 land drainage networks and flood protection systems Kaipara District Council manages, covering some 200km² which perform the same function to protect housing, schools, state highways, and highly productive agricultural land, seem to have been excluded from the proposed reforms.

It would seem stormwater infrastructure interventions (e.g. pipes) would sit in the water services entity. Land drainage and flood protection responses would need to be aligned and this may not occur with different organisations responsible for the hazard management.

Kaipara District Council seeks clarity about land drainage parts of the stormwater network, which in Kaipara are little to do with Northland Regional Council. Kaipara District Council seeks engagement with Government on the subject of land drainage in the Three Waters Reforms.

Information sought relating to Planning for Growth

Kaipara is the fastest growing district for population in the North Island. The Government's proposal is that local government will continue to have primary responsibility for urban and land use planning. The intention is that local authorities would collaborate with the new water entities to achieve integration and alignment of infrastructure provision with land use planning processes and that there would be a "reciprocal obligation" on the water entities in the legislation to ensure this occurs.

Currently Council's decisions across water, transport and community infrastructure are guided by various Kaipara District Council strategy documents including the District Plan, the Kaipara District

Spatial Plan *Nga Wawatā*, a 30-year Infrastructure Strategy, etc. to ensure infrastructure investment can be aligned with growth requirements. Council is managing this well. However, it is not clear how this growth will be handled in partnership with the proposed water services entity. Furthermore, it is not clear how Council's future spending on transport and community infrastructure would be expected to align with the water entity's spend without clear agreements over the timing and staging of growth with the water entity. Kaipara District Council seeks clarity on this matter.

Kaipara District Council is of the view planning for growth should remain a local council function, in close consultation with its community.

Information sought relating to future potential obligations

Responsibility for future failing water systems would need to be the responsibility of the water services entity. Exactly which entity would be responsible for what water system has not been clarified. We seek clarity on this matter.

The Government's objectives for the reform include building resilience to natural hazards and climate change, but how this will be addressed by each individual water service entity is unclear at this stage.

Kaipara District Council seeks confirmation that the proposed water entity will align with and support the outcomes of the climate change adaptation work being done with our communities.

Information sought relating to Consultation by the Water Entity

The current proposals do not specify how communities will be consulted or involved in local decisions and projects. It is important that the community voice is not lost. We note we have good engagement on our key water projects and this core function of local democracy needs to be protected and, where possible, enhanced. The opportunity under the proposal for the community to influence a larger water entity will be less than at present.

We ask that Government recognise that councils already have a significant role in representing the views of their communities, and that councils are well placed to represent the communities' views. To protect consumer rights, the proposals need to be clear how service standards and prices will be set and monitored, consumer advocacy ensured, and complaints processes and mechanisms set up for dispute resolution.

Kaipara District Council seeks information on how the proposed Entity A body would ensure engagement with Kaipara people which is at least as good as the engagement of Kaipara District Council. A lower level of engagement would mean the people and Council would be worse off.

In summary, Kaipara District seeks:

- further information about the Three Waters Reforms proposals with particular regard to the matters raised in this letter and the attached summary of requested actions;
- clarity from the Minister on progress towards and buy-in from other councils to the proposed Entity A, particularly as this relates to cross-subsidisation and governance arrangements;
- assistance from central Government regarding bringing together the councils of Entity A;
- a guaranteed seat at the table of the Representative Governance Group, if the proposals are to be progressed.

At present Kaipara District Council has concerns that, when taken as a whole, the Three Waters Reforms proposals may be replacing something that's not working with something else that also may not work. But for now, we cannot see far into that future as there is too much requested information missing for us to be able to make an informed view. We look forward to your

responses to the matters raised in this letter to assist us with moving forward. Thank you in advance for your prompt response to our request for information.

As a final note, and in the spirit of mana-enhancing partnership intended in the proposals, please note for the avoidance of doubt that Kaipara District Council will not be undertaking or participating in consultation with the Kaipara people about your proposed Three Waters Reforms. Kaipara District Council considers the Three Waters Reforms to be a Central Government proposal. Consequently, any consultation with the Kaipara community would need to be done by Government. As part of that, I look forward to welcoming your Government Departmental staff, and hopefully your good self, to Kaipara District to present your proposal to the people of Kaipara District. There may yet be much to celebrate here.

Nāku iti noa, nā

Dr Jason Smith
Mayor

Summary of Issues and Requested Actions

Issue	Details / Issues	Requested Actions
Transfer of Debt	Kaipara District Council has significant debt relating largely to the Mangawhai Community Wastewater Scheme. This debt is held in most part with LGFA and was recently locked into longer terms and secured by hedging instruments.	Kaipara asks for confirmation where possible that this 3 Waters debt be novated in full along with the associated hedging instruments. Where this is not possible Kaipara asks that, in line with government's assurances of "no Council worse off" that Council is appropriately compensated for any ongoing costs of the retained debt, in addition to the actual value of the remaining debt.
LGFA Guarantees	Kaipara District Council is a guarantor of LGFA and would be concerned if water entities are intending to borrow from LGFA that our guarantee would be greater than anticipated when we became a guarantor.	Kaipara District Council seeks assurances from central government that any additional borrowing by Entities through LGFA will not create additional risk or liability to Council.
Land Drainage	We are concerned that the 29 land drainage networks and flood protection systems Kaipara District Council manages in partnership with our communities, covering some 200km ² which perform the same function to protect housing, schools, state highways, and highly productive agricultural land, seem to have been excluded from the proposed reforms.	Kaipara District Council seeks clarity about land drainage parts of the stormwater network, which in Kaipara are little to do with Northland Regional Council. KDC seeks engagement with Government on this.
Planning for Growth	Kaipara District is experiencing significant growth and in the Eastern parts of the district this is some of the fastest growth in the North Island. Much of this growth is likely to be in areas where infrastructure is yet to be developed. It is not clear how this growth will be handled in partnership with the proposed water services entity.	Kaipara would like to see the responsibility for planning for growth to remain led by councils as the "plan-makers" in partnership with the entities as "plan takers". Council has strong established relationships in our community that have led to the development of our comprehensive Spatial Plan. We are keen to remain involved in this democratic process. Kaipara District Council seeks clarity about future planning linkages between Entity A and Council.

Engagement with Entity A	Kaipara District Council has sought to be a good neighbour to other Councils and remain 'inside the tent' even when there is no collective view among Entity A councils on how to progress Entity A. However, with two close Northland neighbour councils voting provisionally to opt out of the Three Waters Reforms, and Auckland publicly rejecting principles of cross-subsidisation which are central to the proposals and challenging the proposed governance arrangements; Kaipara continues to have concerns.	Kaipara asks government to assist with the facilitation of discussions within proposed Entity A members to allow these matters to be resolved.
Importance of Cross-Subsidization	Kaipara District Council welcomed the original intent of the proposals where smaller communities would be supported by larger places to help raise the standards of water for everyone. However, cross-subsidisation is not equally supported by all councils in Entity A.	Kaipara District Council seeks clarification about what cross-subsidisation can be expected in the Three Waters Reforms proposal for Entity A, noting that its two largest councils appear to be opposed to cross-subsidisation.
Representation	Given the significant levels of deprivation, wide ranges of income inequality and other challenges faced by Kaipara District, we are concerned at the idea of Kaipara not being directly represented on the Representative Governance Group as suggested by Auckland Council in their communications.	Kaipara District Council proposes there be 12 seats for Entity A, comprising: Auckland Council 3 Far North District Council 1 Whangarei District Council 1 Kaipara District Council 1 Mana Whenua 6 We seek the opportunity to discuss this in the appropriate forum.
Consultation and engagement with the Community	The current proposals do not specify how communities will be consulted or involved in local decisions and projects. It is important that the community voice is not lost. We note we have good engagement on our key water projects and this core function of local democracy needs to be protected and, if possible, enhanced.	Councils already have a significant role in representing the views of their communities and are well placed to represent the communities' views. Kaipara asks that government consider how this effective arrangement could be continued under the proposal. In addition, we ask for clarity on how service standards and prices will be set and monitored, consumer advocacy ensured, and complaints processes and mechanisms set up for dispute resolution.