



The respondents by their solicitor says in response to the first amended statement of claim dated 13 April 2022:

1. In relation to paragraph 1:
  - (a) They admit that the Water Users' Group (NZ) Incorporated is listed on the Incorporated Society Register.
  - (b) They admit that proposals to reform drinking water, stormwater and wastewater services are currently being considered by the Government ("**Three Waters Reform**").
  - (c) To the extent they are required to plead to the remainder of paragraph 1, they have insufficient knowledge and therefore deny paragraph 1.
2. They admit paragraph 2.
3. They admit paragraph 3.

**Background facts and circumstances**

4. They admit paragraph 4.
5. They admit paragraph 5.
6. They are not required to plead to paragraph 6.
7. They admit paragraph 7.
8. In relation to paragraph 8 they:
  - (a) deny paragraph 8.1 that drinking water, wastewater and stormwater did not exist before 1840.
  - (b) admit paragraphs 8.2 - 8.4; and
  - (c) Say further that:
    - (i) in the Three Waters Reforms the phrase "three waters services" has been used to refer to the council-owned infrastructure network and processes used to treat,

transport, and discharge drinking water, wastewater and stormwater (referred to below as “three waters assets and services”);

- (ii) local authorities have specific statutory obligations in relation to “water services”, which include “water supply and wastewater services”; and rely on s 124 of the Local Government Act 2002 as if pleaded in full for its terms and effect.

### **The three waters paper**

- 9. They admit paragraph 9.
- 10. In relation to paragraph 10, they:
  - (a) admit that proposals were placed before Cabinet in three papers, A New System for Three Waters Service Delivery (“Paper One”), Designing the New Water Service Delivery Entities (“Paper Two”), and Protecting and Promoting Iwi/Māori Rights and Interests in the New Three Waters Services Delivery Model (“Paper Three”), together the “Three Papers”; and
  - (b) say further that there were, and have been, further Cabinet papers relevant to the Three Waters Reform both before and after 14 June 2021, including CAB-21-MIN-0419, CAB-22-MIN-0144 and DEV-21-MIN-0268; and
  - (c) that the proposals in the three papers agreed to by Cabinet are subject to legislation being introduced to give effect to the proposals and decisions.
- 11. They admit paragraph 11 and say further that Ministers in Cabinet are also separately briefed by their agencies and bring their own information to Cabinet.
- 12. They admit paragraph 12.

13. They admit paragraph 13 and say further that on 14 June 2021 that Cabinet noted that the papers to be considered followed on from initial decisions made during 2020 to reform three waters service delivery arrangements to create large-scale water services entities, including agreement that these entities would:

“2.2 be publicly owned, with mechanisms to protect against privatisation;

2.3 be statutory entities, designed and established by legislation; and

2.4 have financial and operational autonomy and be able to borrow in their own right, independent of local government debt restrictions and the legislative decision-making framework Local Government Act 2002;” (CAB-21-MIN-0227).

#### **Alleged rights and interests**

14. They admit paragraph 14 and say further:

(a) that the Minister advised Cabinet in Paper 3, in summary, that:

(i) an important part of the three waters work is to ensure recognition of the rights and interests of iwi/Māori in the three waters

(ii) how the Crown engages with iwi/ Māori on the three waters reform, and how the interests of iwi/ Māori are recognised through the reforms is not only important to ensure effective public policy decision making, but also from a Māori /Crown relationship perspective, and also ensures the Crown meets its obligations under te Tiriti; and

(b) that Cabinet:

“3. noted that Paper 3 focuses on how iwi/Māori rights and interests feature in the proposed reforms, including by:

3.1 considering and addressing the requirements of the Cabinet Office Circular, Te Tiriti o Waitangi / Treaty of Waitangi Guidance [CO (19) 5];

3.2 explaining how iwi/Māori rights and interests have been considered in the development of the overall reform package; and

3.3 proposing specific mechanisms for addressing iwi/Māori rights and interests in the new service delivery model, as set out in Paper 1 and Paper 2” (CAB-21-MIN-028); and

(c) repeats paragraph 10(b) and 10(c).

### **Adoption of the three waters proposals by Cabinet**

15. They admit paragraph 15 and repeat paragraphs 10(b) and 10(c) and paragraph 11(a).
16. They admit paragraph 16 and repeat paragraphs 10(b) and (c) and paragraph 11(a).
17. They admit paragraph 17.
18. They admit paragraph 18 and repeat paragraphs 10(b) and (c).
19. They admit paragraph 19 and repeat paragraphs 10(b) and (c) and paragraph 11(a).
20. They are not required to plead to paragraph 20.

### **New water services entities**

21. They admit paragraph 21 and say further that Cabinet noted:
 

“in June and December 2020, Cabinet made initial decisions to address this situation, by reforming three waters service delivery arrangements to create large-scale water services entities, to achieve scale-related efficiencies and other benefits, and with sufficient balance sheet capacity to raise debt to fund these investment requirements” (CAB-21-MIN-0226).
22. They admit paragraph 22.
23. They admit paragraph 23 and say further that Cabinet Minute CAB-21-MIN-0419 is also relevant to the agreed boundaries for the proposed entities.
24. They admit paragraph 24.
25. They deny paragraph 25 and:

(a) say that since the proceedings were filed, and following a Working Group Report, the proposals have developed;

(b) say that Cabinet has:

“12 noted that the Working Group recommended collective ownership of each water services entity by local communities, through a direct shareholding interest allocated to their territorial authorities, and this approach would:

12.1 provide a tangible expression of ownership that is recognisable by communities and territorial authorities; and

12.2 strengthen protections against privatisation;

13 agreed to amend the Bill to provide that ownership of a water services entity is through shares assigned to each territorial authority in an entity’s service area, with each share assigned to the relevant territorial authority per 50,000 people in its district (rounded up, with a one share minimum for every territorial authority);

...

55 agreed to amend the Bill to require a minimum of 12 and a maximum of 14 representatives on a regional representative group

...

69 noted that Schedule 3 of the Bill already contains detailed arrangements that require the board of a water services entity to:

69.1 engage with consumers and communities on its draft asset management plan, funding and pricing plan, and infrastructure strategy; and

69.2 following this engagement, provide the draft asset management plan, funding and pricing plan, or infrastructure strategy to its regional representative group, along with a summary of the results of the engagement;” (CAB-22-MIN-0144)

(c) repeat paragraphs 10(b) and (c).

26. In respect of paragraph 26 they deny the characterisation of the “the proposal for iwi/Māori control and influence” as a “fundamental component of the Minister’s proposals from the outset”, repeat paragraph 25, and:

(a) say that Cabinet agreed:

“to provide for a statutory set of operating principles, to guide and inform how the water services entities deliver their objectives and functions, and these principles would broadly relate to:

- 20.1 developing and sharing capability and technical expertise – both internally, and across the wider three waters, development control, and land-use planning sectors;
- 20.2 being innovative in the design and delivery of water services and infrastructure;
- 20.3 being open and transparent – including in relation to the calculation and setting of prices, determining levels of service, and reporting on performance;
- 20.4 partnering and engaging early and meaningfully with Māori, local government, and communities;
- 20.5 cooperating with, and supporting, other water services entities and infrastructure providers, local authorities, and the transport sector – including in relation to infrastructure planning, and development control and land-use planning processes;
- 20.6 understanding, supporting, and enabling mātauranga Māori and tikanga Māori and kaitiakitanga to be exercised – both within the entities and when engaging with iwi/ Māori;” (CAB-21-MIN-0226):

(b) say that Cabinet noted:

“that a consistent guiding principle throughout the three waters regulatory and service delivery reforms has been ensuring the Treaty of Waitangi and Te Mana o Te Wai are referenced appropriately within the legislative framework” (CAB-21-MIN-0228); and

(c) repeat paragraphs 10(b) and (c).

27. In respect of paragraph 27 they:

- (a) repeat paragraph 25 and deny the characterisation of the proposal as for “iwi/ Māori control and influence”, and
- (b) admit that that the proposals for protecting Māori interests are based on the advice set out in paragraph 14; and

(c) repeat paragraphs 10 (b) and (c) and paragraph 14.

28. In relation to paragraph 28 they:

(a) admit paragraph 28.1, 28.2 and 28.5.

(b) deny paragraph 28.3 and state further that since these proceedings were filed, a Draft Exposure Bill has been released, and Cabinet:

“13 noted that provisions have been incorporated into the Bill to:

13.1 provide greater flexibility for the regional representation group to determine its own arrangements through a constitution;

13.2 enable the board appointment panel to be a committee of the regional representative group;

13.3 clarify that the board is accountable to the regional representation group;

13.4 require the board to give effect to the strategic and performance expectations issued by the regional representation group;” (DEV-21-MIN-0268)

“55 agreed to amend the Bill to require a minimum of 12 and a maximum of 14 representatives on a regional representative group;” (CAB-22-MIN-0144)

(c) deny paragraph 28.4 and state further that Cabinet has:

“28 agreed to amend the Bill so that decisions taken by a regional representative group must be made:

28.1 by consensus, if possible; and

28.2 if consensus cannot be reached within an appropriate timeframe, by 75 percent majority vote;

29 agreed that procedural detail relating to decision-making arrangements, including the role of co-chairs where consensus cannot be reached, will be set out in the constitution of each water services entity;” (CAB-22-MIN-0144)

(d) repeat paragraphs 10(b) and (c).

29. In relation to paragraph 29, they:
- (a) admit paragraph 29.1 and say that Cabinet agreed:
- “19.1 each member of the Regional Representative Group will, in most cases, have an equal share of voting rights for decisions made by that Group; and
- 19.2 decisions of the Regional Representative Group will require a super majority decision of 75 percent;”  
(CAB-21-MIN-0227)
- (b) say further that, since the proceedings were filed, and following the Working Group Report, Cabinet has:
- “28. agreed to amend the Bill so that decisions taken by a regional representative group must be made:
- 28.1 by consensus, if possible; and
- 28.2 if consensus cannot be reached within an appropriate timeframe, by 75 percent majority vote;
- ...
- 37 agreed to amend the Bill so that the regional representative group will have power to approve the strategic direction of the entity in its statement of intent;”  
(CAB-22-MIN-0144)
- (c) admit that local authorities will not have a say in the day-to-day administration of three waters, otherwise deny paragraphs 29.2-29.3 and say that since the proceedings were filed, and following the Working Group Report, Cabinet has:
- “12. noted that the Working Group recommended collective ownership of each water services entity by local communities, through a direct shareholding interest allocated to their territorial authorities, and this approach would:
- 12.1 provide a tangible expression of ownership that is recognisable by communities and territorial authorities; and
- 12.2 strengthen protections against privatisation;
- 13 agreed to amend the Bill to provide that ownership of a water services entity is through shares assigned to each territorial authority in an entity’s service area, with each share assigned to the relevant territorial

authority per 50,000 people in its district (rounded up, with a one share minimum for every territorial authority);” (CAB-22-MIN-0144) and

- (d) deny paragraph 29.4 and say that:
- (i) RRGs of which local authorities are members will issue a statement of Statement of Strategic and Performance Expectations, which the Water Services Entity will need to respond to through its statement of intent and report on Statement of Strategic and Performance Expectations (see CAB-21-MIN-0227 paragraphs 17 and 30);
  - (ii) Cabinet agreed that the water services entities will be required in legislation to undertake engagement with their consumers and communities on the:
    - “62.1 prioritisation methodology that informs the asset management plan;
    - 62.2 Asset Management Plan; and
    - 62.3 Funding and Pricing Plan;”
 (CAB-21-MIN-0227)
- (e) repeat paragraph 10 (b) and(c).

### **Further mechanisms enabling iwi/Māori control and influence**

30. In relation to paragraph 30:

- (a) They admit paragraphs 30.1, 30.2, 30.5 and 30.6.
- (b) In relation to paragraph 30.3, they admit that Cabinet agreed to propose for legislation that the board of each water services entity will be required to have “general collective competence in understanding the principles of the Treaty of Waitangi and mātauranga Māori, tikanga Māori, and te ao Māori” (CAB-21-MIN-0228) and otherwise deny paragraph 30.3
- (c) In relation to paragraph 30.4, they admit that Cabinet agreed to propose for legislation that the board of each water services

entity will be required to have “members with specific expertise in supporting and enabling the exercise of and mātauranga Māori, tikanga Māori, kaitiakitanga, and te ao Māori with respect to the delivery of water services” (CAB-21-MIN-0228) and otherwise deny paragraph 30.4.

- (d) They deny paragraph 30.7, and say that no one has a right to receive a form of return from the controlling entities under the proposals agreed by Cabinet; and
- (e) They repeat paragraph 10 (b) and (c).

### **Justifications for iwi/Māori control and influence**

31. In relation to paragraph 31:

- (a) they admit that the Minister’s reasons for proposing structures and mechanisms to recognise the rights and interests of iwi/Māori included the reasons set out at paragraphs 31.1 and 31.2;
- (b) they refer to CAB-21-MIN-0226, CAB-21-MIN-0227, and CAB-21-MIN-0228 and the corresponding papers;
- (c) they repeat paragraphs 10 (b) and (c); and
- (d) otherwise deny paragraph 31.

32. In relation to paragraph 32:

- (a) they admit that Cabinet’s justifications for accepting the Minister’s proposals included the reasons set out at paragraphs 32.1 and 32.2;
- (b) they refer to CAB-21-MIN-0226, CAB-21-MIN-0227, and CAB-21-MIN-0228 and the corresponding papers;
- (c) they repeat paragraphs 10 (b) and (c); and
- (d) otherwise deny paragraph 32.

33. In relation to paragraph 33 they admit that “mechanisms to recognise the rights and interests of iwi/Māori” was an element of the reform, but otherwise deny paragraph 33.
34. To the extent they are required to plead to paragraph 34, they admit paragraph 34.
35. To the extent they are required to plead to paragraph 35, they:
- (a) admit that the iwi/Māori rights and interests taken into account by Cabinet included Treaty rights and interests;
  - (b) refer to the wording of CAB-21-MIN-0228 and the corresponding paper; and
  - (c) otherwise deny paragraph 35.
36. To the extent they are required to plead to paragraph 36, they admit that the iwi/Māori rights and interests taken into account by Cabinet included Treaty rights and interests, repeat paragraph 35 and otherwise deny paragraph 36.
37. To the extent they are required to plead to paragraph 37, they admit that the iwi/Māori rights and interests taken into account by Cabinet included Treaty rights and interests, repeat paragraph 35 and otherwise deny paragraph 37.
38. They admit paragraph 38.
39. They admit paragraph 39.
40. To the extent they are required to plead to paragraph 40, they deny paragraph 40.
41. To the extent they are required to plead to paragraph 40, they deny paragraph 41.
42. To the extent they are required to plead to paragraph 40, they deny paragraph 42.

43. In relation to paragraph 43, they admit that the first line of Paper 3, paragraph 2 states: “This paper summarises iwi/Māori rights and interests in the three waters service delivery reforms, and proposes a number of specific mechanisms for protecting and promoting rights and interests in the new service delivery model.”
44. They admit paragraph 44.
45. In relation to paragraph 45:
- (a) they admit that paragraph 10 of Paper Three states:
- “This paper focuses on how iwi/Māori rights and interests feature in the proposed reforms. It considers and addresses the requirements of the Cabinet Office Circular, Te Tiriti o Waitangi / Treaty of Waitangi Guidance (CO (19) 5), explains how iwi/Māori rights and interests have been considered in the development of the overall reform package, and seeks agreement to specific mechanisms for addressing rights and interests in the new service delivery model”
- (b) And otherwise deny paragraph 10.
46. To the extent they are required to plead to paragraph 46, they admit paragraph 46.
47. They do not plead to paragraph 47 as it refers to privileged legal advice and otherwise deny paragraph 47.
48. They do not plead to paragraph 48 as it refers to privileged legal advice and otherwise deny paragraph 48.

#### **Errors of law**

49. They admit as a general principle the rule of law requires that the law be capable of applying equally to all persons unless there are legally valid reasons to differentiate between them, but says further that a pleading as to the application of general constitutional principles is too vague and not explicit enough for them to plead to, and therefore they do not otherwise plead to paragraph 49.
50. To the extent they are required to plead to paragraph 50, they deny paragraph 50.

51. To the extent they are required to plead to paragraph 51, they deny paragraph 51.
52. To the extent they are required to plead to paragraph 52, they admit paragraph 52.
53. To the extent they are required to plead to paragraph 53, they deny paragraph 53.
54. To the extent they are required to plead to paragraph 54, they deny paragraph 54.
55. To the extent they are required to plead to paragraph 55, they deny paragraph 55.
56. To the extent they are required to plead to paragraph 56, they deny paragraph 56.
57. To the extent they are required to plead to paragraph 57, they deny paragraph 57.
58. To the extent they are required to plead to paragraph 58, they deny paragraph 58.
59. To the extent they are required to plead to paragraph 59, they deny paragraph 59.
60. To the extent they are required to plead to paragraph 60, they deny paragraph 60.
61. To the extent they are required to plead to paragraph 61, they deny paragraph 61.
62. To the extent they are required to plead to paragraph 62, they admit paragraph 62.
63. To the extent they are required to plead to paragraph 63, they deny paragraph 63.
64. To the extent they are required to plead to paragraph 64, they deny paragraph 64.

65. To the extent they are required to plead to paragraph 65, they deny paragraph 65.
66. To the extent they are required to plead to paragraph 66, they deny paragraph 66.
67. To the extent they are required to plead to paragraph 67, they deny paragraph 67.
68. To the extent they are required to plead to paragraph 68, they deny paragraph 68.
69. To the extent they are required to plead to paragraph 69, they deny paragraph 69.
70. To the extent they are required to plead to paragraph 70, they deny paragraph 70.
71. To the extent they are required to plead to paragraph 71, they deny paragraph 71.
72. To the extent they are required to plead to paragraph 72, they deny paragraph 72.
73. To the extent they are required to plead to paragraph 73, they deny paragraph 73.

**First Affirmative Defence**

74. The declarations sought in the statement of claim should not be made as the Court should not intervene in or seek to constrain the Crown in relation to:
  - (a) how the Crown makes policy;
  - (b) how the Crown advances legislative reforms; and/or
  - (c) the development and introduction of legislation.

**Second Affirmative Defence**

75. The declarations sought in the statement of claim should not be made as they:
- (a) do not relate to a live dispute;
  - (b) will be of no practical consequence to the parties or the public;
  - (c) do not seek declarations of legal rights;
  - (d) relate to prospective matters not existing legal rights; and/or do not have utility.

**Costs**

76. The respondents seek costs in relation to this proceeding.