

# Office of Hon Nanaia Mahuta

MP for Hauraki-Waikato

Minister of Foreign Affairs

Minister of Local Government

Associate Minister for Māori Development



2 August 2022

Luke

fyi-request-19493-c07595ff@requests.fyi.org.nz

Tēnā koe Luke

Thank you for your email of 28 May 2022 requesting information under the Official Information Act 1982 (the Act) about co-governance in relation to the Three Waters Reform Programme (Reform Programme).

On 28 June 2022, pursuant to sections 15A(1)(a) and (b) of the Act, I extended the date to respond to your request to 2 August 2022.

Set out below are my separate responses to the six parts of your request.

1. *Please release all advice given to the Minister on why a co-governance structure is necessary to improve water quality for all New Zealanders.*

As you are aware, the Government has confirmed it will establish four publicly owned water entities by July 2024 to deliver three waters services for the benefit of all New Zealanders. The Reform Programme as a whole will improve water quality for all New Zealanders and the mechanisms relating to iwi/Māori are a part of that reform. The case for this transformational reform is clear and is essential for the health and wellbeing of our communities and our environment.

The Department of Internal Affairs (the Department) did not provide me with any briefings specifically detailing "... *why a co-governance structure is necessary to improve water quality for all New Zealanders.*"

However, you may like to note that the Department has received advice from international ratings agency Standard & Poor, which notes that the introduction of co-governance supports the position that the entities are not controlled from an accounting perspective by any council or the Crown, enabling them to operate independently for the provision of water services.

I am therefore refusing this part of the request under section 18(e) of the Act on the basis that the document alleged to contain the information requested does not exist.

2. *Please release the advice given to the Minister on why a co-governance structure in the Three Waters reforms is justified.*

I have identified 12 documents in scope of your request. These are detailed, along with my decisions on release, in **Appendix A** attached. I am releasing 12 documents in part and refusing to release parts of four documents under section 18(d) of the Act on the basis that the information is publicly available at the links detailed in the documents. Information that is deemed out of scope of the request has been removed and it is necessary to withhold some information under the following sections of the Act:

- 9(2)(a) to protect the privacy of natural persons; and
- 9(2)(h) to maintain legal professional privilege.

I also refer you to the publicly available information at the following links:

- Cabinet Paper: *Protecting and Promoting Iwi/Māori Rights and Interests in the New Three Waters Service Delivery Model* - 14 June 2021  
[https://www.dia.govt.nz/diawebsite.nsf/Files/three-waters-reform-programme-2021/\\$file/cabinet-paper-three-and-minute-protecting-and-promoting-iwi-maori-rights-and-interests-30-june-2021-a.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/three-waters-reform-programme-2021/$file/cabinet-paper-three-and-minute-protecting-and-promoting-iwi-maori-rights-and-interests-30-june-2021-a.pdf)
- Cabinet Paper: *Strengthening representation, governance and accountability of the new water services entities* - 19 April 2022  
[https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Cabinet-Paper-Strengthening-representation-governance-and-accountability-19-April-2022.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Cabinet-Paper-Strengthening-representation-governance-and-accountability-19-April-2022.pdf)
- Cabinet Paper: *Managing cost pressures associated with implementing the three waters reform programme* – 6 April 2022  
[https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Cabinet-Paper-Managing-cost-pressures-associated-with-implementing-the-three-waters-reform-programme-6-April-2022.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Cabinet-Paper-Managing-cost-pressures-associated-with-implementing-the-three-waters-reform-programme-6-April-2022.pdf)
- *Recommendations from the Working Group on Representation, Governance and Accountability of New Water Services Entities* – 7 March 2022  
[https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Governance-Working-Group-Report-7-March-2022.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Governance-Working-Group-Report-7-March-2022.pdf)
- *Recommendations from the Working Group on Representation, Governance and Accountability of New Water Services Entities – Executive Summary* - 7 March 2022  
[https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Governance-Working-Group-Report-Executive-Summary-7-March-2022.PDF](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Governance-Working-Group-Report-Executive-Summary-7-March-2022.PDF)
- *Three Waters Service Delivery Reform - Terms of Reference for Working Group on Representation, Governance and Accountability of New Water Services Entities*  
[https://www.dia.govt.nz/diawebsite.nsf/Files/three-waters-reform-programme-2021/\\$file/terms-of-reference-working-group-on-representation-governance-and-accountability-of-water-services-entities-november-2021.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/three-waters-reform-programme-2021/$file/terms-of-reference-working-group-on-representation-governance-and-accountability-of-water-services-entities-november-2021.pdf)
- *Government Response to Three Waters Working Group on Representation, Governance and Accountability recommendations*  
[https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\\$file/Summary-Table-of-Working-Group-recommendations-and-Government-response-2022.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/$file/Summary-Table-of-Working-Group-recommendations-and-Government-response-2022.pdf)
- Summary of Local Government New Zealand feedback on the Three Waters Reform Proposals (Page 24)  
<https://www.dia.govt.nz/local-government-feedback-on-reform-proposals-three-waters-reform-programme#summary-of-local-government-feedback>

- Individual local council submissions including Local Government New Zealand submissions on the Three Waters Reform Proposals

<https://www.dia.govt.nz/local-government-feedback-on-reform-proposals-three-waters-reform-programme#individual-local-government-submissions>.

3. *Please release any concerns presented to the Minister regarding co-governance and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Minister's response.*

The Department did not provide me with any briefings detailing “... any concerns ... regarding co-governance and the International Convention on the Elimination of All Forms of Racial Discrimination” and therefore I was not required to respond to any concerns raised. I am therefore refusing this part of the request under section 18(e) of the Act on the basis that the document alleged to contain the information requested does not exist.

4. *Please release any advice/reports presented to the Minister regarding co-governance in Three Waters and the New Zealand Bill of Rights Act 1990.*

The Department did not provide me with any briefings “... regarding co-governance in Three Waters and the New Zealand Bill of Rights Act 1990”. I am therefore refusing this part of the request under section 18(e) of the Act on the basis that the document alleged to contain the information requested does not exist.

5. *Please explain why Iwi/Maori are justified in controlling 50% of water assets when they only represent 16% of the population.*

To be clear, the reform does not provide iwi/Māori with any ownership rights of water assets. Iwi/Māori will not have any ownership, or receive shares, royalties or dividends in the water services entities.

Iwi/Māori will have a joint and equitable role with councils in the oversight and strategic direction of the water services entities, with mana whenua having equal representation alongside local authorities on a Regional Representative Group for each entity. This reflects Te mana o Te Wai interests that iwi/Māori have in how these services are delivered under the Treaty of Waitangi, which seek to benefit all users.

As well as a Regional Representative Group, each entity will have an independent board to manage the operational day-to-day business of the entities. There is no co-governance at this operational board level, as board members are appointed on a merit-basis.

No single local government or mana whenua representative will have a veto right or ability to exert negative control over decisions for the Regional Representative Group.

6. *Please explain why Iwi/Maori have a greater interest in water quality compared to all New Zealanders.*

In June 2021, Cabinet agreed to proposals to promote and address iwi/Māori rights and interests as part of the Reform Programme. The agreed proposals honour the Crown's obligations under the Treaty.

I again refer you to the 14 June 2021 Cabinet Paper *Protecting and Promoting Iwi/Māori Rights and Interests in the New Three Waters Service Delivery Model: Paper Three* and supporting Cabinet Minute which are available at the above link.

As stated, the proposals outline that iwi/Māori will have a joint role with councils in the oversight and strategic direction of the new water services entities, with mana whenua having equal representation alongside local authorities on a Regional Representative Group guiding each entity. This is a step toward removing inequities and establishing truly inclusive institutions that reflect the society we believe Aotearoa is.

No single local government or mana whenua representative would have a veto right or ability to exert negative control over decisions for the regional representative group. No participants will receive benefits (such as royalties) for their input into these governance arrangements. Equally, any surpluses generated by the new water services entities will be reinvested in water services for their communities, rather than turn a profit.

The Reform Programme provides a step change for iwi/Māori to participate in the delivery of three water services with several new areas of opportunity for iwi/Māori.

A core principle in the Reform Programme is that redress set out in Treaty settlement legislation will continue to apply and, where relevant, be explicitly provided for in the new regime. It is expected that protection for current Treaty settlements will be within the suite of establishing legislation.

It is important to note that the Reform Programme is intended to deliver equitable outcomes for communities that have been historically underserved by council-supplied three waters services, face affordability issues due to living in remote/small communities, or simply do not receive a service at all. Unfortunately, Māori represent a disproportionate percentage of these underserved communities. These arrangements will provide an opportunity for both local authority and mana whenua representatives to communicate expectations on behalf of their communities.

The Department has published a significant amount of information about the Reform Programme, and this can be viewed at the following link: <https://www.dia.govt.nz/Three-Waters-Reform-Programme>.

In accordance with section 9(1) of the Act, I do not consider the withholding of information under sections 9(2)(a) and 9(2)(h) is outweighed by other considerations which render it desirable, in the public interest, to make that information available.

You have the right, under section 28(3) of the Act, to make a complaint to an Ombudsman and seek an investigation and review of my decision on your request. The contact address is: Office of the Ombudsman, PO Box 10152, Wellington 6143. Alternatively, you can phone 0800 802 602 or email [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz).

Nāku noa



Hon Nanaia Mahuta  
**Minister of Local Government**