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Tēnā koe Morgan

Community water fluoridation extension request

Thank you for your letter, received 7 May 2024, seeking an extension to the compliance date for the Director-General of Health direction to the Kawerau District Council to fluoridate the Kawerau water supply.

Your letter requests an extension due to delays in the capital works design, legal uncertainty, and local opposition. As was confirmed by the High Court in the 16 February relief decision, the directions remain valid. This was again confirmed in a more recent High Court decision on 24 May 2024¹, in which the Court dismissed a challenge which sought to prevent a local authority's implementation of my directions to fluoridate. As such, I will not be granting extensions because of legal uncertainty raised by litigation processes.

However, my team informs me that the Council has been working actively with the Ministry to progress this work, and that since your initial delays you have made good progress towards implementing your direction.

Based on this information, I have decided to provide you with an extension to your compliance date to cover the period required for completion of capital works.

In accordance with section 116I of the Health Act 1956, you are required to ensure that you are fluoridating at the optimal levels (between 0.7mg/L and 1.0mg/L) at the Kawerau water supply by 30 September 2024.

Kawerau District Council's role in community water fluoridation

I would like to take this opportunity to remind you that by amendments passed in 2021 Parliament added Part 5A to the Health Act 1956. That Part empowers the Director-General of Health to direct councils to fluoridate water supplies, and provides that councils must comply with the Director-General's directions. The recent decision of the High Court on 24 May 2024 confirmed that the current directions are valid, and that councils subject to a direction are under a statutory duty of mandatory compliance. Under Part 5A contravening a direction is an offence, and the statute provides for potentially significant penalties.

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

Nāku noa, nā

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

¹ Fluoride Action Network (NZ) Inc v Hastings District Council [2024] NZHC 1313, available at https://www.justice.govt.nz/jdo_documents/workspace_SpacesStore_e63abcf0_b2d7_4e9c_bfbd_8907f82dca16.pdf