

MEETING – AGENDA –

Ngā Take



COUNCIL

Te Kaunihera

Extraordinary Meeting

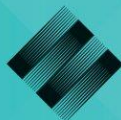
C21-7

Wednesday, 12 May 2021

Council Chambers

Barkes Corner, Tauranga

10.00am



**Western Bay of Plenty
District Council**

Council

Membership

Chairperson	Mayor Garry Webber
Deputy Chairperson	Deputy Mayor John Scrimgeour
Members	Cr Grant Dally Cr Mark Dean Cr James Denyer Cr Murray Grainger Cr Monique Gray Cr Anne Henry Cr Kevin Marsh Cr Margaret Murray-Benge Cr Don Thwaites Cr-Elect Allan Sole
Quorum	6
Frequency	Six weekly

Role:

To ensure the effective and efficient governance and leadership of the District.

Power to Act:

- To exercise all non-delegable functions and powers of the Council including, but not limited to:
 - The power to make a rate;
 - The power to make a bylaw;
 - The power to borrow money, purchase, or dispose of assets, other than in accordance with the Long Term Plan;
 - The power to adopt a Long Term Plan, Annual Plan or Annual Report;
 - The power to appoint a chief executive;
 - The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the local governance statement;
 - The power to adopt a remuneration and employment policy;
 - The power to approve a proposed policy statement or plan under clause 17 of Schedule 1 of the Resource Management Act 1991;
 - The power to make a final decision on a recommendation from the Ombudsman where it is proposed that Council not accept the recommendation.
- To exercise all functions, powers and duties of the Council that have not been delegated, including the power to compulsorily acquire land under the Public Works Act 1981.
- To make decisions which are required by legislation to be made by resolution of the local authority.
- To authorise all expenditure not delegated to officers, Committees or other subordinate decision-making bodies of Council, or included in Council's Long Term Plan or Annual Plan.
- To make appointments of members to Council Controlled Organisation Boards of Directors/Trustees and representatives of Council to external organisations;
- To consider and make decisions regarding any matters relating to Council Controlled Organisations, including recommendations for modifications to CCO or other entities' accountability documents (i.e. Letter of Expectation, Statement of Intent) recommended by the Policy Committee or any matters referred from the Performance and Monitoring Committee.

- To approve joint agreements and contractual arrangements between Western Bay of Plenty District Council and Tauranga City Council or any other entity.
- To consider applications to the Community Matching Fund (including accumulated Ecological Financial Contributions).
- To consider applications to the Facilities in the Community Grant Fund.

Procedural matters:

- Approval of elected member training/conference attendance.

Mayor's Delegation:

Should there be insufficient time for Council to consider approval of elected member training/conference attendance, the Mayor (or Deputy Mayor in the Mayor's absence) is delegated authority to grant approval and report the decision back to the next scheduled meeting of Council.

Should there be insufficient time for Council to consider approval of a final submission to an external body, the Mayor (or Deputy Mayor in the Mayor's absence) is delegated authority to sign the submission on behalf of Council, provided the final submission is reported to the next scheduled meeting of Council or relevant Committee.

Power to sub-delegate:

Council may delegate any of its functions, duties or powers to a subcommittee, working group or other subordinate decision-making body, subject to the restrictions on its delegations and any limitation imposed by Council.

Notice is hereby given that an Extraordinary Meeting of Council will be held in
the Council Chambers, Barks Corner, Tauranga on:
Wednesday, 12 May 2021 at 10.00am

Order Of Business

1	Present	5
2	In Attendance	5
3	Apologies	5
4	Consideration of Late Items	5
5	Declarations of Interest	5
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- 1 PRESENT**
- 2 IN ATTENDANCE**
- 3 APOLOGIES**
- 4 CONSIDERATION OF LATE ITEMS**
- 5 DECLARATIONS OF INTEREST**
- 6 PUBLIC EXCLUDED ITEMS**
- 7 PUBLIC FORUM**

Nil

8 REPORTS

8.1 BY-ELECTION FINAL RESULTS 2021

File Number: A4044271

Author: Barbara Whitton, Customer Services and Governance Manager

Authoriser: Miriam Taris, Chief Executive Officer

EXECUTIVE SUMMARY

The requirement for a by-election for the Katikati–Waihi Beach Ward was notified publicly on 4 February 2021 following the resignation of ward councillor, Christina Humphries. The by-election closed at noon 30 April 2021. This report includes the official declaration of results of the by-election which was publically notified on 5 May 2021.

RECOMMENDATION

1. That the Customer Services and Governance Manager's report dated 12 May 2021, titled 'By-Election Final Results 2021', be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That the 'Declaration of Result' of the Western Bay of Plenty District Council By-Election for one Member of the Katikati-Waihi Beach Ward dated 30 April 2021 is received by Council, noting that Allan Sole is the highest polling candidate.

BACKGROUND

1. Western Bay of Plenty District Council utilises the services of Dale Ofsoske, Independent Election Services Ltd as Electoral Officer.
2. Council received nominations from 10 candidates.
3. 12,629 voting documents were issued with a return rate of 29.35% (3,707 votes).
4. The successful candidate is Allan Sole who received 693 votes.

SIGNIFICANCE AND ENGAGEMENT

5. The Local Government Act 2002 requires a formal assessment of the significance of matters and decision in this report against Council's Significance and Engagement Policy. In making this formal assessment there is no intention to assess the importance of this item to individuals, groups, or agencies within the community and it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.

The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.

6. In terms of the Significance and Engagement Policy this decision is considered to be of low choose the appropriate level as reached on your assessment sheet in the report checklist) significance because (fill in appropriate criteria as identified on your assessment sheet in the report checklist).

ATTACHMENTS

1. **Declaration of Result of By-Election - Western Bay of Plenty District Council Katikati-Waihi Beach Ward**  

DECLARATION OF RESULT OF BY-ELECTION WESTERN BAY OF PLENTY DISTRICT COUNCIL KATIKATI-WAIHI BEACH WARD

I declare the result of the by-election held on Friday 30 April 2021 for one member of the **Katikati-Waihi Beach Ward** of the Western Bay of Plenty District Council to be as follows:

<u>Candidate</u>	<u>Votes Received</u>
BEVIN, Bryce (Independent)	153
CLEMENTS, John	445
COOKE, Griff	135
HEDGES, Bill (Independent)	190
HOLLIS, Andrew	529
JOYCE, Rodney (Independent)	643
MARSHALL, David Clark	595
SOLE, Allan	693
TOHIARIKI, Kevin Patrick	200
WILLIAMS, Kim (Independent)	110

(7 informal votes and 7 blank votes)

I therefore declare Allan SOLE elected.

Dated at Tauranga, 30 April 2021

Dale Ofoske, Electoral Officer
Independent Election Services Ltd

for **Western Bay of Plenty District Council**



Phone 0800 922 822

8.2 DECLARATION BY COUNCILLOR 2021

File Number: A4044279

Author: Barbara Whitton, Customer Services and Governance Manager

Authoriser: Miriam Taris, Chief Executive Officer

EXECUTIVE SUMMARY

In accordance with Clause 14 Schedule 7 of the Local Government Act 2002, the successful candidate may not act as a member of a local authority until they have made an oral declaration, and the Chairperson, Mayor or the Chief Executive Officer, witnesses the signing of the declaration.

The Making and Attesting of the Declaration of Councillor Allan Sole (to be witnessed by the Mayor).

RECOMMENDATION

1. That the Customer Services and Governance Manager's report dated 12 May 2021, titled 'Declaration by Councillor 2021' be received.
2. That the Making and Attesting of the Declaration of Councillor Allan Sole is witnessed.
3. That Council instructs the Chief Executive Officer to delegate to the appropriate staff, actions required to update all documentation and website information as required, including the updated Membership of Council, all standing Committees, and Ward Forum Membership as appropriate.

ATTACHMENTS

1. Declaration by Councillor - Allan Sole [!\[\]\(79516a995cff76a1aff85c3662aea2c5_img.jpg\)](#) 



Declaration by Member

I, **Allan Sole**, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of Western Bay of Plenty District, the powers, authorities and duties vested in, or imposed upon, me as a

Member of the Western Bay of Plenty District Council.

by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Dated at Tauranga this 12th day of May 2021.

Allan Sole

Signed in the presence of:

Garry Webber

Mayor

Western Bay of Plenty District Council



Western Bay of Plenty
District Council

Te Kaunihera a rohe mai i nga Kuri-a-Whare ki Otamarakau ki te Uru

8.3 ELECTED MEMBERS' LEGISLATIVE OBLIGATIONS 2021

File Number: A4044349

Author: Barbara Whitton, Customer Services and Governance Manager

Authoriser: Miriam Taris, Chief Executive Officer

EXECUTIVE SUMMARY

Following the resignation of an elected member (for the Katikati – Waihi Beach Ward) in January 2021, Council held a by-election for one seat on Council.

The Chief Executive Officer is required to provide a general explanation of the laws affecting Elected Members at the first meeting of the local authority following the triennial general election, in accordance with Clause 21 Schedule 7 of the Local Government Act 2002.

This report outlines the recently nominated Elected Members' obligations in relation to:

- The Local Government Act 2002
- Local Government Official Information and Meetings Act 1987
- The Local Authorities (Members' Interests) Act 1968
- Crimes Act 1961
- Secret Commissions Act 1910
- Financial Markets Conduct Act 2013
- Resource Management Act 1991
- Health and Safety at Work Act 2015.

RECOMMENDATION

1. That the Customer Services and Governance Manager's Report dated 12 May 2021, titled 'Elected Members' Legislative Obligations 2021' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That Council notes that a Register of Members Interests has been established in accordance with the provisions of the Local Authorities (Members' Interests) Act 1968.
4. That the newly Elected Member discloses to Council for entry into the Register of Members' any pecuniary interests the Member or their spouse/partner may have in relation to their dealings with the Western Bay of Plenty District Council and update their disclosures annually, or as required.

BACKGROUND

Clause 21(5)(c) Schedule 7 of the Local Government Act 2002 requires the Chief Executive Officer to provide a general explanation of the laws affecting members at the Inaugural Council meeting, including the following legislation:

- a) Local Government Official Information and Meetings Act 1987
- b) Local Authorities (Members' Interests) Act 1968
- c) Crimes Act (sections 99, 105)
- d) Secret Commissions Act 1910

e) Financial Markets Conduct Act 2013.

Information relating to the Local Government Act 2002, Resource Management Act and Health 1991 and Safety Act 2015 is also included in this report.

LOCAL GOVERNMENT ACT 2002 ('LGA 2002')

The Local Government Act 2002 ('LGA 2002') is the principal empowering legislation for local authorities. It defines the purpose of local government and the role of local authorities and provides a framework and powers that enable Council to decide which activities it undertakes and the manner in which it undertakes them.

The purpose of local government is defined in section 10:

- a) To enable democratic local decision-making and action by and on behalf of communities; and
- b) To promote the social, economic, environmental, and cultural well-being of communities in the present and the future.

The role of a local authority is set out in section 11:

- a) To give effect, in relation to its district or region, to the purpose of local government stated in section 10; and
- b) To perform the duties, and exercise the rights, conferred on it by or under statute.

Section 12 LGA 2002 grants a general power of competence to Council to carry on or undertake activities, enter into business transactions and do whatever is necessary for the purpose of performing its role.

There are a number of controls on the manner in which Council may exercise these powers prescribed in legislation and the general law.

In performing its role, Council must act in accordance with nine broad principles set out in section 14 LGA 2002. These principles demonstrate the spirit and intent of the LGA 2002 and govern the way Council undertakes decision-making. Council must conduct its business in an open, transparent and democratically accountable manner and give effect to identified priorities and outcomes in an effective and efficient manner. Council must provide opportunities for Maori in decision-making and, when making decisions, take account of the diversity of the community, the interests of current and future communities and the likely impact of any decision on the social, economic, environmental, and cultural well-being of these communities. If any of the principles in section 14 are in conflict, Council must resolve that conflict in an open, transparent and democratically accountable manner, taking into account the social, economic, environmental, and cultural well-being of the community.

Every decision made by Council, including a decision not to take action, must be made in accordance with sections 77, 78, 80 and 82 of the LGA 2002. A higher standard of compliance is required for significant decisions, as defined in the LGA 2002 and Council's Significance and Engagement Policy.

Part 4 of the Act sets out the principles of Governance and Management of local authorities and community boards. These include the role and powers of the Mayor (section 41A) and the Chief Executive (section 42).

The role of a Mayor is to provide leadership to —

- a) the other members of the territorial authority; and
- b) the people in the district of the territorial authority.

It is the Mayor's role to lead the development of the territorial authority's plans (including the long-term plan and the annual plan), policies, and budgets for consideration by the members of the territorial authority (section 41A(1) and (2)).

Part 6 of the Act contains detailed provisions relating to planning, decision making and accountability. This part of the Act specifies a mandatory process for decision making and includes principles governing consultation, consideration of the views of persons likely to be affected by, or who have an interest in, a decision, and the contribution of Maori to decision making processes. In addition,

Part 6 sets out requirements for reporting, financial management, and the long term and annual plans.

Part 8 of the Act covers regulatory, enforcement and coercive powers of local authorities, including the power to make bylaws, prescribe fees, and to require development contributions.

Schedule 7 of the LGA 2002 sets out provisions relating to Elected Members and includes the process for establishing committees, joint committees and other subordinate governance bodies, delegations, remuneration and meeting requirements (in addition to Local Government Official Information & Meetings Act 1987 requirements). Schedule 7 also includes the Elected Members' obligations to act as a good employer in respect of the Chief Executive and to abide by the Code of Conduct and Standing Orders.

PERSONAL LIABILITY OF ELECTED MEMBERS

Section 43 of the Local Government Act 2002 ('LGA 2002') provides that Elected Members are indemnified in respect of their actions as a member of the Council in relation to:

- a) civil liability (both for costs and damages) if the Member is acting in good faith and in pursuance of the responsibilities or powers of the Council.
- b) costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as an Elected Member.

Elected Members may, theoretically, be exposed to personal liability in certain circumstances if the Council has incurred loss due to actions of the Council (Section 44 of the LGA 2002). The loss must arise out of one of the following situations:

- if the Council unlawfully spends money;
- if the Council unlawfully sells or disposes of an asset;
- if the Council unlawfully incurs a liability;
- if the Council intentionally or negligently fails to enforce the collection of money it is lawfully entitled to receive.

If the Auditor-General has reported on a "loss", then that loss is recoverable as a debt due to the Crown. This must be paid back to the Council from each Elected Member jointly and severally. However, an elected member has a defence under section 46 LGA 2002 if they can prove that the act or failure that led to the loss occurred:

- without their knowledge; or
- with their knowledge, but against protest made at, or before, the time when the loss occurred; or
- contrary to the way the member voted on the issue at a meeting of the Council; or
- in circumstances where the member acted in good faith and relied on information or professional or expert advice given by a Council officer or professional advisor on matters which the member reasonably believed were within that person's competency.

LOCAL GOVERNMENT OFFICIAL INFORMATION & MEETING ACT 1987 ('LGOIMA')

The purpose of the Act is to enable more effective participation by the public in the actions and decisions of Council and to promote accountability of Elected Members and officials. The intention of the Act is to ensure that local government activities take place in an open and transparent manner and that information held by Council is made available to the public. Parts 1 – 6 of LGOIMA refer to access to local authority information, including requests for personal information. Part 7 relates to the conduct of local authority meetings and should be read in conjunction with Council's Standing Orders.

Official Information

The Act requires all information held by Council to be made available to the public unless there are good reasons for withholding it. Requests must be responded to as soon as practicable and no later than 20 working days (there are some circumstances in which this may be extended).

The principal reasons for withholding information are in sections 6 and 7 LGOIMA. Council must provide reasons for refusing a request and advise the requester of their right to have the decision reviewed by the Ombudsman.

Section 6 provides two conclusive reasons for withholding official information:

- The making available of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial, or
- The making available of the information would be likely to endanger the safety of any person.

Section 7 lists the following as 'good reasons' for withholding information, where withholding is necessary to:

- Protect privacy;
- Protect information where its release would disclose a trade secret or would prejudice the commercial position of the person who supplied, or who is the subject of, the information;
- Avoid offence to tikanga Maori or avoid disclosure of waahi tapu locations;
- Protect information that is subject to an obligation of confidence where making it available would affect the future supply of information or would otherwise damage the public interest;
- Maintain the free and frank discussion of or protect officers and members from harassment;
- Avoid prejudice to measures protecting the health or safety of members of the public;
- Avoid prejudice to measures that prevent or mitigate material loss to members of the public;
- Protect members, officers, employees and persons from improper pressure or harassment;
- Maintain legal professional privilege;
- Enable Council to carry out commercial activities without prejudice or disadvantage;
- Enable Council to carry out negotiations without prejudice or disadvantage;
- Prevent disclosure or use of official information for improper gain or advantage.

The reasons for withholding in section 7 may, in the particular circumstances, be outweighed by other considerations, which render it desirable, in the public interest, to make that information available.

Section 17 of the Act provides further reasons for refusing a request, such as when the information will soon be publically available, where information does not exist or cannot be found, or where information cannot be made available without substantial collation or research.

Personal Information

Under section 23 of the Act, every person has the right to access personal information held about them by a local authority and may request a correction to that information if necessary. The Act provides very limited grounds for refusing such a request (section 26).

Under LGOIMA Elected Members are not able to be held liable for any information released in good faith pursuant to the Act, however there are strict limitations on the release of information held by Council relating to private individuals under the Privacy Act 1993.

Local Authority Meetings

Section 46 of the Act requires the local authority to publicly notify all meetings that are scheduled to be held the following month within certain timeframes and also sets out the procedure for notification of any additional meetings where that timeframe cannot be met.

Members of the public are entitled to inspect the agenda and associated reports at least two working days before each meeting.

Meetings of the local authority must be open to the public unless there is a good reason to exclude the public (section 47).

A resolution to exclude the public must be put when the meeting is open to the public. The wording of the resolution must be available to those present and be recorded in the minutes.

The reasons for excluding the public are set out in section 48:

Conclusive reasons (section 6):

- The making available of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial, or
- The making available of the information would be likely to endanger the safety of any person.

Good reasons (section 7):

- Protect the privacy of natural persons, including deceased natural persons;
- Protect information where its release would disclose a trade secret or would prejudice the commercial position of the person who supplied, or who is the subject of, the information;
- Avoid offence to tikanga Maori or avoid disclosure of waahi tapu locations;
- Protect information that is subject to an obligation of confidence where making it available would affect the future supply of information or would otherwise damage the public interest;
- Avoid prejudice to measures protecting the health or safety of members of the public;
- Avoid prejudice to measures that prevent or mitigate material loss to members of the public;
- Protect members, officers, employees and persons from improper pressure or harassment;
- Maintain legal professional privilege;
- Enable Council to carry out commercial activities without prejudice or disadvantage;
- Enable Council to carry out negotiations without prejudice or disadvantage;
- Prevent disclosure or use of official information for improper gain or advantage.

Additional reasons:

- The conduct of the meeting would be likely to result in disclosure of information which would be contrary to the provisions of a specified enactment, or would constitute contempt of Court or of the House of Representatives;
- The meeting is to consider a recommendation from the Ombudsman;
- Any proceedings before Council where there is a right of appeal to any Court or Tribunal against the final decision of Council; or Council is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings.

Information that is marked 'Confidential' or 'Public Excluded' remains confidential unless a resolution has been passed to move the information into the Open section. Any requests for confidential information should be referred to the Chief Executive Officer. If confidential information is released by an elected member which subsequently causes a loss to Council, the member may become personally liable for the Council's loss if it is proven that the member was not acting in good faith.

Maintenance of Order:

The Chairperson can require a person to leave the meeting if they believe, on reasonable grounds, their behaviour is likely to prejudice or continue to prejudice the orderly conduct of the meeting. If a person refuses to leave, or returns without the consent of the Chairperson, the Chairperson may ask a constable, or any officer or employee of the local authority to remove them from the meeting.

LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968

This Act regulates the conduct of elected members in situations where there is, or could be, a conflict of interest between their duties as an elected member and their financial interests (either directly or indirectly). It contains provisions relating to pecuniary and non pecuniary interests.

Pecuniary interests

Under the Act Elected Members cannot:

- a) Enter into contracts with their Local Authority worth more than \$25,000 (including GST) in a financial year unless the contract is approved by the auditor general. Breach of this rule results in automatic disqualification from office.
- b) Participate in Council matters in which they have a pecuniary interest other than an interest in common with the public. Breach of this rule is a criminal offence and will result, upon conviction, on automatic disqualification from office.

The disqualification remains until the next triennial election. The Act applies if a member's spouse or partner has, directly or indirectly, a pecuniary interest, other than an interest in common with the public. Members who are prohibited from voting or taking part in discussion are under a duty to declare their interest to the meeting, and their abstention from discussion and voting must be recorded in the minutes. The local authority can seek the approval of the Audit Office, which will be considered on a case by case basis.

It is noted that Community Boards are subject to the Act in their own right, separate from their "parent" authority. The disqualification rule does not apply to contracts between a member of a community board and the "parent" Council. This is because the disqualification rule only applies to contracts between a member and the authority to which that member is appointed.

Non pecuniary interest

A non pecuniary interest is an interest an Elected Member may have relating to an issue that does not involve money. This is sometimes referred to as 'bias'. The rules relating to bias cover actual bias and also perception of bias. An example of bias or perceived bias may arise where a member demonstrates, by their statements or conduct, that they have predetermined a matter before considering or hearing all relevant information relating to that matter. Another instance may be where a member has a close relationship with an organisation or individual involved with that matter.

In cases of actual or perceived bias an elected member should declare their interest and withdraw from discussion of the matter in order to avoid the potential validity of Council's decision being challenged.

Council maintains a Register of Interests and all Elected Members have been asked to make a written declaration of any personal and financial interests that may conflict with their role as an Elected Member. Members are responsible for keeping their written declarations up to date at all times. The Register of Interests is regularly reviewed by Audit New Zealand. Further information from the Office of the Auditor General, including the 2007 and 2010 guidelines, has been provided to all elected members in the 2019 Induction Pack.

CRIMES ACT 1961

Sections 99, 105 and 105A of the Crimes Act 1961 relate to corruption and bribery of an official or by a person acting in his/her capacity as an official; and the corrupt use of official information.

The term "official" is defined in section 99 of the Act and includes any member or employee of a local authority.

Under section 105 it is an offence for an official to corruptly accept or obtain, or agree or offer to accept or attempt to obtain, a bribe for him/herself or any other person in respect of any act done or omitted, or to be done or omitted, by him/her in their official capacity.

It is also an offence to corruptly give or offer or agree to give a bribe to any person with the intent to influence any official in respect of any act done or omitted, or to be done or omitted, by him/her in their official capacity.

Under section 105A, it is an offence for any official to corruptly use or disclose any information acquired by him/her in their official capacity, to obtain (either directly or indirectly) an advantage or pecuniary gain for him/herself or any other person.

Each of these provisions are punishable by up to 7 years imprisonment and a conviction would also result in loss of office under the LGA 2002.

SECRET COMMISSIONS ACT 1910

The Secret Commissions Act 1910 prohibits elected representatives from accepting gifts or rewards that could be seen to sway them to perform their duties in a particular way. The Act deals with the commission of offences by an 'agent'. The term "agent" is defined in section 16(1)(b) of the Act and includes any Elected Member or employee of a local authority.

An agent is deemed to commit an offence if they have a pecuniary interest in a contract made on behalf of the principal; or if they accept or attempt to obtain for themselves or any other person, any gift or inducement or reward for doing or not doing something in relation to the principal's business.

Under section 5 of the Act an agent who makes a contract on behalf of the principal must disclose any pecuniary interest in the contract.

Persons convicted of an offence under this Act are liable for a fine not exceeding \$1000 or imprisonment for a term not exceeding 2 years in the case of an individual; or a \$2000 fine if a corporation.

FINANCIAL MARKETS CONDUCT ACT 2013

The Financial Markets Conduct Act 2013 replaced the Securities Act 1978. The purpose of the Act is (i) to promote the confident and informed participation of businesses, investors and consumers and (ii) to promote and facilitate the development of fair, efficient and transparent financial markets. The Act works to reform the regulation of financial conduct and governs the way financial products are offered, promoted, issued and sold. This includes the on-going responsibilities of those who offer, issue, manage, supervise, deal in and trade financial products. The Act also regulates the provision of certain financial services.

This Act essentially places Elected Members in the same position as company directors whenever the Council offers financial products (such as an issue of debt or equity securities). Elected Members may be personally liable if documents that are registered under the Act, such as a product disclosure statement, contain false or misleading statements. Elected Members may also be liable if the requirements of the Act are not met in relation to offers of financial products.

RESOURCE MANAGEMENT ACT 1991

The purpose of the Resource Management Act 1991 (the Act) is to promote the sustainable management of natural and physical resources while enabling people and communities to meet their needs. It provides a formal framework against which standards, policy statements and plans can be formulated and evaluated.

The Act identifies the following as matters of national importance which are required to be recognised and provided for:

- Preservation of the natural character of the coastal environment;
- Protection of outstanding natural features and landscapes;
- Protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;

- Maintenance and enhancement of public access to and along the coastal marine area, rivers and lakes;
- The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga;
- The protection of historic heritage;
- The protection of protected customary rights;
- The management of significant risks from natural hazards

The Act provides for a hierarchy of planning documents including: National Policy Statements, Regional Policy Statements and Plans, and District Plans.

(a) National Policy Statements

National Policy Statements are made about matters with national implications and their purpose is to state objectives and policies for matters that are relevant to achieving the purpose of the Act. Regional Plans and District Plans must not be inconsistent with a National Policy Statement.

(b) Regional Policy Statements and Plans

Regional Policy Statements and Plans are made about matters of regional significance and cross district boundaries. Regional Policy Statements provide an overview of the resource management issues and policies and methods to achieve integrated management of the natural and physical resources of the whole region. Regional Plans assist a regional council to carry out its functions.

(c) District Plans

The District Plan contains a statement of issues, objectives, policies and methods/rules for the use of resources within that district. It is developed to ensure that territorial authorities carry out their functions to achieve the purpose of the Act. The District Plan provides the basis for considering land use and subdivision activities, including the assessment of resource consents.

District Plans cannot be inconsistent with a Regional Policy Statement or Plan.

(d) Resource Consents

Resource consents are specific approvals to undertake activities that may not proceed as-of-right. Applications for resource consent must assess actual or potential environmental impacts of the proposed activity and identify ways in which any adverse effects can be prevented or mitigated. If a resource consent is granted, it allows the consent holder to undertake a particular activity, usually subject to conditions. Resource consents may be publicly notified or not, depending on the circumstances of the application.

(e) Resource Consent Hearings

Resource Consent Hearings can take place when development proposals are for activities that are required to have resource consent, and it is determined that they require public notification under the notification provisions of the Act.

Resource consent hearings are public meetings. After hearing evidence from the applicant and reporting staff, the Hearings Panel may deliberate in private but then must announce its decision in public. Hearings may also be conducted by an independent Commissioner(s) appointed by Council.

Council is required to have all of its Hearings Committee qualified under the Making Good Decisions accreditation programme sponsored by the Ministry for the Environment. The Chairperson is required to hold a separate (Chairperson's) accreditation.

HEALTH AND SAFETY AT WORK ACT 2015

The Health and Safety at Work Act 2015 came into force in April 2016. It represented a significant change to New Zealand's health and safety legislation, in response to the scrutiny placed on New Zealand's health and safety practices following the Pike River tragedy.

The Act allocates duties to those people who are in the best position to control risks to health and safety as appropriate to their role in the workplace, and for the person conducting a business or undertaking ('PCBU') (i.e. the Council) to ensure, as far as is reasonably practicable, the safety of workers and others who may be impacted by the work the business undertakes.

One of the significant changes is the introduction of "Officers", who are defined as any person occupying a position in relation to the business or undertaking, that allows the person to exercise significant influence over the management of the business or undertaking.

For the purposes of the Act, Elected Members of Council (which include the Mayor Councillors and Community Board members) and the Chief Executive are by default identified as "Officers". The Council has also designated Group Managers as "Officers".

Officers have obligations of due diligence, which are:

- a) To acquire, and keep up-to-date, knowledge of work health and safety matters; and
- b) To gain an understanding of the nature of the operations of the business or undertaking of the PCBU, and generally of the hazards and risks associated with those operations; and
- c) To ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- d) To ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and
- e) To ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
- f) To verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

Duties of the Officers and of the PCBU are independent of each other, which means if a PCBU has failed to meet its duty, but the Officers exercised due diligence, then Officers would not be personally liable for health and safety failings.

CONCLUSION

In fulfilling its purpose, Council exercises powers, functions and duties conferred by a wide range of legislation, in addition to the above statutes, and this is subject to amendment from time to time.

If Elected Members have any questions relating to the legislation outlined above or any other legal obligations, they are welcome to discuss these with the Chief Executive Officer.

8.4 APPOINTMENT OF NEWLY ELECTED COUNCILLOR TO KATIKATI COMMUNITY BOARD

File Number: A4059896

Author: Garry Webber, Mayor

Authoriser: Miriam Taris, Chief Executive Officer

EXECUTIVE SUMMARY

Council is required under the Local Government Commission determination on representation dated 8 April 2019 to appoint Councillors to each of its five Community Boards.

Following the resignation of Councillor Christina Humphries (Katikati–Waihi Beach Ward) in January 2021, Council publicly notified the requirement for a by-election on 4 February 2021. The by-election closed at noon on 30 April 2021.

The highest polling candidate in the by-election was Allan Sole, who is to be sworn in as a Councillor on 12 May 2021. Councillor Sole will then be appointed as a Member of the Katikati Community Board, filling the membership vacancy following Councillor Humphries's resignation.

RECOMMENDATION

1. That the Mayor's report dated 12 May 2021, titled 'Appointment of New Councillor to Katikati Community Board', be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That, pursuant to section 50 of the Local Government Act 2002 and section 19S of the Local Government Act 2001, Council appoints newly elected Councillor Allan Sole to the Katikati Community Board.
4. That Council instructs the Chief Executive Officer to delegate to the appropriate staff the updating of the Membership of the Katikati Community Board and all related documentation and website information.

BACKGROUND

Pursuant to section 50 of the Local Government Act 2002, Council may appoint Councillors to Community Boards, provided such appointments are made in accordance with the Local Electoral Act 2001.

Section 19F(1) of the Local Electoral Act 2001 gives Council the authority to appoint members to the Community Boards. Section 19F(2) states that the number of appointed members must be less than half the total number of members.

Section 19F(3) further states that if the territorial authority is divided into wards the appointed members must be members of the territorial authority representing the ward in which the community is situated.

In addition, as part of the 2018 representation review under section 19R of the Local Electoral Act 2001 the Local Government Commission formally established the membership requirements of each of the Community Boards (extract included) and stipulated that 2 Councillors are to be appointed to each Board. The Chairpersons and Deputy Chairpersons of each Community Board will be elected at the inaugural meeting of the respective Boards on 7 November 2019.

SIGNIFICANCE AND ENGAGEMENT

The Local Government Act 2002 requires a formal assessment of the significance of matters and decisions in this report against Council's Significance and Engagement Policy. In making this formal assessment there is no intention to assess the importance of this item to individuals, groups, or agencies within the community and it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.

The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.

In terms of the Significance and Engagement Policy this decision is considered to be of low significance because it is an administrative requirement.

EXTRACT FROM LOCAL GOVERNMENT COMMISSION DETERMINATION DATED 8 APRIL 2019

Under section 19R of the Local Electoral Act 2001, the Commission determines that for the general election of Western Bay of Plenty District Council to be held on 12 October 2019, the following representation arrangements will apply:

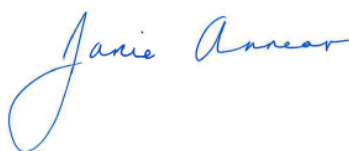
1. Western Bay of Plenty District, as delineated on Plan LG-022-2019-W-1 deposited with the Local Government Commission, will be divided into three wards.
2. Those three wards will be:
 - a. Katikati-Waihi Beach Ward, comprising the area delineated on Plan LG-022-2019-W-2 deposited with the Local Government Commission
 - b. Kaimai Ward, comprising the area delineated on Plan LG-022-2019-W-2 deposited with the Local Government Commission
 - c. Maketu-Te Puke Ward, comprising the area delineated on Plan LG-022-2013-W-4 deposited with the Local Government Commission
3. The council will comprise the mayor and 11 councillors elected as follows:
 - a. 3 councillors elected by the electors of Katikati-Waihi Beach Ward
 - b. 4 councillors elected by the electors of Kaimai Ward
 - c. 4 councillors elected by the electors of Maketu-Te Puke Ward
4. There will be five communities as follows:
 - a. Katikati Community, comprising the area delineated on Plan LG-022-2019-Com-1 deposited with the Local Government Commission
 - b. Waihi Beach Community, comprising the area delineated on SO Plan 58078 deposited with Land Information New Zealand
 - c. Omokoroa Community, comprising the area delineated on SO Plan 382062 deposited with Land Information New Zealand
 - d. Maketu Community, comprising the area delineated on SO Plan 58102 deposited with Land Information New Zealand
 - e. Te Puke Community, comprising the area delineated on SO Plan 58076 deposited with Land Information New Zealand.
5. The membership of each community board will be as follows:

- a. Katikati Community Board will comprise four elected members and two members appointed to the community board by the council representing Katikati-Waihi Beach Ward
- b. Waihi Beach Community Board will comprise four elected members and two members appointed to the community board by the council representing Katikati-Waihi Beach Ward
- c. Omokoroa Community Board will comprise four elected members and two members appointed to the community board by the council representing Kaimai Ward
- d. Maketu Community Board will comprise four elected members and two members appointed to the community board by the council representing Maketu-Te Puke Ward
- e. Te Puke Community Board will comprise four elected members and two members appointed to the community board by the council representing Maketu-Te Puke Ward.

LOCAL GOVERNMENT COMMISSION



Commissioner Pita Paraone (Chairperson)



Commissioner Janie Annear



Commissioner Brendan Duffy

8 April 2019