

Regional Council

NOTICE IS GIVEN

that the Inaugural Meeting of the **Regional Council** will commence at **Mānuka Tu Tahī Marae, 105 Muriwai Drive, Whakatāne** for the powhiri and swearing in of Members, afterwhich the meeting will resume at **Mataatua Room, Bay of Plenty Regional Council, 5 Quay Street, Whakatāne** on:

Monday, 21 October 2019 commencing at 1.00 pm.

Fiona McTavish
Chief Executive
14 October 2019



Regional Council

Terms of Reference

Purpose

- Enable democratic local decision-making and action by, and on behalf of, Bay of Plenty communities.
- Meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.
- Set the overarching strategic direction for Bay of Plenty Regional Council as an organisation.
- Hold ultimate responsibility for allocating financial resources across the Council.

Membership

All councillors are members of the Regional Council.

Quorum

In accordance with Council standing order 10.1(a), the quorum at a meeting of the Regional Council is seven members, consisting of half the number of members.

Meeting frequency

Six-weekly.

Role of Council

- Address Local Electoral Act matters and Local Government Rating Act matters.
- Oversee all matters relating to identifying and contributing to community outcomes.
- Consider and agree on matters relating to significant new activities or areas of involvement such as infrastructure which are not the responsibility of a specific committee.
- Provide regional leadership on key issues that require a collaborative approach between a number of parties.
- Develop, adopt and review Council's Policy on Significance and decision-making policy and processes.
- Develop, adopt and implement the Triennial Agreement and the Code of Conduct.
- Consider and agree on matters relating to elected members' remuneration matters.
- Appoint the Chief Executive Officer, and review their contract, performance and remuneration at least annually.
- Approve all delegations to the Chief Executive, including the authority for further delegation to staff.
- Establish committees, subcommittees, and working parties and appoint members.
- Receive and consider recommendations and matters referred to it by its committees, joint committees, subcommittees and working parties.

- Approve membership to external bodies and organisations, including Council Controlled Organisations.
- Develop, adopt and review policies for, and monitor the performance of, Council Controlled Organisations.
- Review and approve strategic matters relating to the sale, acquisition and development of property for the purposes of meeting Council's organisational requirements and implement approved Regional Council policy.
- Address strategic corporate matters including property and accommodation.
- Institute any proceedings in the High Court that are not injunctive proceedings.
- Exercise the powers and duties conferred or imposed on Council by the Public Works Act 1981.
- Consider and agree on the process to develop the Long Term Plan, Annual Plan and Annual Report.
- Adopt Council policies as required by statute (for example Regional Policy Statement and Regional Land Transport Strategy) to be decided by Council or outside of Committee delegations (for example infrastructure policy).
- Delegate to commissioners to exercise the powers, functions and duties of the Council as a consent authority under the Resource Management Act 1991 including to hear and decide a consent application.
- Monitor Council's financial and non-financial performance in-year.
- Develop, review and approve Council's Financial Strategy and funding and financial policies and frameworks.

Delegations from Council to Committees

- Full Council has a role to monitor the functioning of all committees.
- Full Council will consider matters not within the delegation of any one Council committee.
- Full Council may at any time, revoke or modify a delegation to a Council committee, either permanently, for a specified time or to address a specific matter, if it considers there is good reason to do so.
- The delegations provided to committees may be further delegated to subcommittees unless the power of further delegation is restricted by Council or by statute.

It is accepted in making these delegations that:

- The committees, in performing their delegated functions, powers or duties, may, without confirmation by the Council, exercise or perform them in a like manner and with the same effect as the Council itself could have exercised or performed them.
- The delegated powers given shall at all times be subject to their current policies and principles or directions, as given by the Council from time to time.
- The chairperson of each committee shall have the authority to exercise their discretion, as to whether or not the delegated authority of the committee be used where, in the opinion of the chairperson, circumstances warrant it.

Powers that cannot be delegated

Under Clause 32 Schedule 7 of the Local Government Act 2002, Full Council must make the following decisions:

- Make a rate.
- Make a bylaw.
- Borrow money or purchase or dispose of assets, other than in accordance with the long-term plan.
- Adopt the long-term plan, annual plan, or annual report.
- Appoint a chief executive.
- 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.
- Adopt a remuneration and employment policy.

Public Forum

1. A period of up to 15 minutes may be set aside near the beginning of the meeting to enable members of the public to make statements about any matter on the agenda of that meeting which is open to the public, but excluding any matter on which comment could prejudice any specified statutory process the council is required to follow.
2. The time allowed for each speaker will normally be up to 5 minutes but will be up to the discretion of the chair. A maximum of 3 public participants will be allowed per meeting.
3. No statements by public participants to the Council shall be allowed unless a written, electronic or oral application has been received by the Chief Executive (Governance Team) by 12.00 noon of the working day prior to the meeting and the Chair's approval has subsequently been obtained. The application shall include the following:
 - name of participant;
 - organisation represented (if any);
 - meeting at which they wish to participate; and matter on the agenda to be addressed.
4. Members of the meeting may put questions to any public participants, relevant to the matter being raised through the chair. Any questions must be asked and answered within the time period given to a public participant. The chair shall determine the number of questions.

Membership

Councillors:	N Bruning W Clark S Crosby T Iti D Leeder D Love M McDonald	J Nees S Rose P Thompson L Thurston A von Dadelszen T White K Winters
Committee Advisor:	T Nerdrum-Smith	

Recommendations in reports are not to be construed as Council policy until adopted by Council.

Agenda

E te Atua nui tonu, ko mātau ēnei e inoi atu nei ki a koe, kia tau mai te māramatanga ki a mātau whakarite mō tēnei rā, arahina hoki mātau, e eke ai te ōranga tonu ki ngā āhuatanga katoa a ngā tangata ki tō mātau rohe whānui tonu. Āmine.

“Almighty God we ask that you give us wisdom in the decisions we make here today and give us guidance in working with our regional communities to promote their social, economic, environmental and cultural well-being. Amen”.

1 Whakatau/Welcome

2 Making and Attesting of Declarations by Elected Members Pursuant to Clause 14(3), Schedule 7 of the Local Government Act 2002

3 Reports

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4 Closing Karakia

Reports



Report To: Regional Council
Meeting Date: 21 October 2019
Report From: Fiona McTavish, Chief Executive

Election of Chairperson

Executive Summary

The Chief Executive must chair the meeting until the election of the Chairperson and the making and attesting of the declaration required of the Chairperson under Clause 14, Schedule 7, of the Local Government Act 2002 (LGA).

The process for how the Chairperson is elected is determined by Clause 24, Schedule 7, of the LGA that states; the acts of a local authority must be done, and the questions before the local authority must be decided at a meeting by –

- (a) *vote; and*
- (b) *the majority of members that are present and voting.*

The LGA sets out two voting options (System A and System B, both explained in the report) and before Council can begin the process of electing its Chairperson it must first determine by resolution its preferred voting system.

After the Chairperson election, and the making and attesting of the Chairperson declaration, the newly elected Council Chairperson takes the chair for the rest of the meeting.

Recommendations

That the Regional Council:

- 1** **Receives the report, Election of Chairperson;**
- 2** **Selects System A or selects System B as the voting system to elect the Chairperson.**
- 3** **Elects Cr as the Chairperson of Bay of Plenty Regional Council – Toi Moana.**

1 Introduction

The Chief Executive is required to call for nominations for the election to the office of Chairperson as outlined in clause 21 of Schedule 7 of the Local Government Act 2002.

If a vote is required the Chief Executive must follow the provisions of clause 25 of Schedule 7 of the Local Government Act 2002, which states:

1.1 Voting System

“Voting Systems for Certain Appointments

(1) *This clause applies to-*

- (a) *the election or appointment of the chairperson and deputy chairperson of a regional council; and*
- (b) *the election or appointment of the deputy mayor; and*
- (c) *the election or appointment of the chairperson and deputy chairperson of a committee; and*
- (d) *the election or appointment of a representative of a local authority.*

If this clause applies, a local authority or a committee (if the local authority has so directed) must determine by resolution that a person be elected or appointed by using one of the following systems of voting.

- (a) *the voting system in subclause (3) (system A):*
- (b) *the voting system in subclause (4) (system B).”*

“(3) System A-

- (a) *requires that a person is elected or appointed if he or she receives the votes of a majority of the members of the local authority or committee present and voting; and*
- (b) *has the following characteristics:*
 - (i) *there is a first round of voting for all candidates; and*
 - (ii) *if no candidate is successful in that round there is a second round of voting from which the candidate with the fewest votes in the first round is excluded; and*
 - (iii) *If no candidate is successful in the second round there is a third, and if necessary subsequent round of voting from which, each time, the candidate with the fewest votes in the previous round is excluded; and*
 - (iv) *In any round of voting if two or more candidates tie for the lowest number of votes, the person excluded from the next round is resolved by lot.”*

“(4) System B-

- (a) requires that a person is elected or appointed if he or she receives more votes than any other candidate; and*
- (b) has the following characteristics:*
 - (i) there is only one round of voting; and*
 - (ii) if two or more candidates tie for the most votes, the tie is resolved by lot.”*

2 The Voting Process Step

- a) Council resolves its voting procedure to be adopted and the procedure in the event of a tie.
- b) Nominations for Chairperson called for (nominated and seconded).
- c) Nominees may be allowed a period of up to 10 minutes to make a presentation.
- d) Voting for Chairperson as per agreed system.
- e) Chairperson declared elected.

In agreeing the voting process, ground rules need also to be agreed.

2.1 Ground Rules

- a) A member may nominate or second themselves.
- b) Any member can call for a Division.
- c) Standing Orders apply – Divisions will be carried out with names called in random order.
- d) Any member can abstain from voting.
- e) In the event of a tie between the highest (and/or lowest) polling candidates, the names of the candidates receiving an equal number of votes be put into a container and the candidate drawn out, by an independent person (such as the Chief Executive), is deemed to be elected.

3 Budget Implications

3.1 Current Year Budget

This work is planned under the Governance Services Activity in the Annual Plan 2019-2020.

3.2 Future Budget Implications

All future costs related to Council and Committee meetings and Elected Member events are included in the Governance Services Activity in the Long Term Plan 2018-2028.

4 Community Outcomes

The appointment of the Chairperson directly contributes to all Community Outcome in the Council's Long Term Plan 2018-2028.

Yvonne Tatton
Governance Manager

for Chief Executive

11 October 2019



Report To: Regional Council
Meeting Date: 21 October 2019
Report From: Fiona McTavish, Chief Executive

Election of Deputy Chairperson

Executive Summary

Clause 21, Schedule 7, of the Local Government Act 2002 (LGA) provides that the Deputy Chairperson of a regional council shall be elected by the regional council from among its members' at its first meeting following the election of a regional council. Clause 17 states that the Deputy Chairperson continues to hold office until the election of a successor.

Similar to the process already discussed for the election of the Chairperson, Clause 24, Schedule 7, of the LGA states; the acts of a local authority must be done, and the questions before the local authority must be decided at a meeting by –

- (a) *vote; and*
- (b) *the majority of members that are present and voting*

The LGA sets out two voting options (System A and System B, both explained in the report) and before Council can begin the process of electing its Deputy Chairperson it must first determine by resolution its preferred voting system.

The Deputy Chairperson position is not required to make and attest a declaration.

Recommendations

That the Regional Council:

- 1** **Receives the report, Election of Deputy Chairperson;**
- 2** **Selects System A or selects System B as the voting system to elect the Deputy Chairperson.**
- 3** **Elects Cr as the Deputy Chairperson of Bay of Plenty Regional Council – Toi Moana.**

1 Introduction

The Chief Executive is required to call for nominations for the election to the office of Deputy Chairperson as stipulated in clause 21 of Schedule 7 of the Local Government Act 2002.

If a vote is required the Chief Executive must follow the provisions of clause 25 of Schedule 7 of the Local Government Act 2002, which states.

1.1 Voting System

“Voting Systems for Certain Appointments

(1) *This clause applies to-*

- (a) *the election or appointment of the chairperson and deputy chairperson of a regional council; and*
- (b) *the election or appointment of the deputy mayor; and*
- (c) *the election or appointment of the chairperson and deputy chairperson of a committee; and*
- (d) *the election or appointment of a representative of a local authority.*

If this clause applies, a local authority or a committee (if the local authority has so directed) must determine by resolution that a person be elected or appointed by using one of the following systems of voting.

- (a) *the voting system in subclause (3) (system A):*
- (b) *the voting system in subclause (4) (system B).”*

“(3) System A-

- (a) *requires that a person is elected or appointed if he or she receives the votes of a majority of the members of the local authority or committee present and voting; and*
- (b) *has the following characteristics:*
 - (i) *there is a first round of voting for all candidates; and*
 - (ii) *if no candidate is successful in that round there is a second round of voting from which the candidate with the fewest votes in the first round is excluded; and*
 - (iii) *If no candidate is successful in the second round there is a third, and if necessary subsequent round of voting from which, each time, the candidate with the fewest votes in the previous round is excluded; and*
 - (iv) *In any round of voting if two or more candidates tie for the lowest number of votes, the person excluded from the next round is resolved by lot.”*

- “(4) System B-
- (a) *requires that a person is elected or appointed if he or she receives more votes than any other candidate; and*
 - (b) *has the following characteristics:*
 - (i) *there is only one round of voting; and*
 - (ii) *if two or more candidates tie for the most votes, the tie is resolved by lot.”*

2 The Voting Process Step

- a) Council resolves its voting procedure to be adopted and the procedure in the event of a tie.
- b) Nominations for Deputy Chairperson called for (nominated and seconded).
- c) Nominees may be allowed a period of up to 10 minutes to make a presentation.
- d) Voting for Deputy Chairperson as per agreed system.
- e) Deputy Chairperson declared elected.

In agreeing the voting process, ground rules need also to be agreed.

2.1 Ground Rules

- a) A member may nominate or second themselves.
- b) Any member can call for a Division.
- c) Standing Orders apply – Divisions will be carried out with names called in random order.
- d) Any member can abstain from voting.
- e) In the event of a tie between the highest (and/or lowest) polling candidates, the names of the candidates receiving an equal number of votes be put into a container and the candidate drawn out, by an independent person (such as the Chief Executive), is deemed to be elected.

3 Budget Implications

3.1 Current Year Budget

This work is planned under the Governance Services Activity in the Annual Plan 2019-2020.

3.2 Future Budget Implications

All future costs related to Council and Committee meetings and Elected Member events are included in the Governance Services Activity in the Long Term Plan 2018-2028.

4 Community Outcomes

This item directly contributes to the Safe and Resilient Communities and A Vibrant Region Community Outcome in the Council's Long Term Plan 2018-2028.

Yvonne Tatton
Governance Manager

for Chief Executive

11 October 2019

Receives Only – No Decisions



Report To: Regional Council

Meeting Date: 21 October 2019

Report From: Fiona McTavish, Chief Executive

Summary of Relevant Legislation Affecting Members

Executive Summary

This report provides a high-level general explanation of key legislation affecting Elected Members. This is required under the Local Government Act 2002 for the first meeting of a local authority following general election.

Recommendations

That the Regional Council:

- 1 Receives the report, Summary of Relevant Legislation Affecting Members**

1 Introduction

The primary legislation which establishes the Regional Council and sets out the role, functions and powers of councils is the Local Government Act 2002 (LGA). Under Part 1 of Schedule 2 of the LGA, Regional Council is a “local authority” as distinct from a territorial authority.

Clause 21(5) of Schedule 7 of the LGA requires that the business to be conducted at the first Council meeting following the triennial elections must include a general explanation of:

- The Local Government Official Information and Meetings Act 1987; and
- Other laws affecting members, including:
 - (i) the appropriate provisions of the Local Authorities (Members Interests) Act 1968;
 - (ii) sections 99, 105, and 105A of the Crimes Act 1961;
 - (iii) the Secret Commissions Act 1910; and
 - (iv) the Financial Markets Conduct Act 2013.

This report also includes a general explanation of other key legislation affecting members, namely:

- (v) the Health and Safety at Work Act 2015; and
- (vi) the Public Records Act 2005.

2 Summary of Legislation Affecting Members

2.1 Local Government Act 2002 (LGA)

The purpose, role and powers of local authorities (City Councils, District Councils, Regional Councils, Unitary Authorities and Community Boards) are set out in Part 2 of the LGA.

Under section 10, the primary purpose of local government is to enable democratic local decision-making by and on behalf of communities; and meet current and future needs of communities for good-quality local infrastructure, public services and performance of regulatory functions in a way that is most cost-effective for households and businesses.

In giving effect to that primary purpose, “good-quality” means infrastructure, services and performance that are efficient, effective, and appropriate to present and anticipated future circumstances.

Section 14 stipulates “principles” for the governance and management of local authorities. These principles and other provisions are intended to ensure that members are responsible, open, transparent, and democratically accountable in their decision-making, as well as making clear the role of the Chief Executive.

Schedule 7 sets out numerous issues of relevance to members including remuneration, code of conduct, meeting procedures and conduct, subordinate decision-making structures, delegations and other matters.

Legislative reform for the LGA is currently before the House. The Bill seeks to implement the Government’s Better Local Services reform package, which intends to deliver better public services and build a more productive and competitive economy

Proposed key changes include flexibility for joint services and infrastructure; stronger accountability arrangements for council-controlled organisations; more proactive role for the Local Government Commission; changes to local government reorganisation process; and delegated law-making powers. .

2.2 Local Government Official Information and Meetings Act 1987 (LGOIMA)

The LGOIMA has the following purposes, to:

- make official information held by local authorities more freely available;
- provide for proper access to official information held by local authorities relating to any person;
- provide for the admission of the public to meetings of local authorities; and
- protect official information and deliberations of local authorities to the extent consistent with the public interest and preservation of personal privacy.

The LGOIMA framework is based on the overarching principle of availability of official information unless there is good reason for withholding it. This reflects ethics of openness, transparency, accountability and participation in local government affairs.

Sections 6 and 7 set out the good reasons for withholding information, which include:

- prejudice the maintenance of law, including detection of offences and right to a fair trial;
- endanger the safety of any person;
- protect the privacy of natural persons;
- avoid disclosure of a trade secret or unreasonably prejudice the commercial position of a person who supplied information;
- protect an obligation of confidence (although this ground has qualifications);
- avoid prejudice to measures protecting public health or safety;
- avoid prejudice to measures to mitigate material public loss;
- maintain effective conduct of public affairs through free and frank expression of members or officials in course of their duty; or protection of them from improper pressure or harassment;
- maintain legal professional privilege;
- avoid prejudice or disadvantage in the conduct of commercial activities;
- enable, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); and
- prevent the use of official information for improper gain or advantage

The application of any of these withholding grounds is subject to consideration of any countervailing public interest which may (or may not) render it desirable to make the official information available.

Unless one or more of these withholding grounds is present - then Council cannot exclude the public from a meeting. Every resolution to exclude the public from a meeting is required to state the:

- general subject of each matter to be considered;
- reason why the matter is considered to be confidential; and
- LGOIMA ground(s) under which the exclusion of public resolution is based.

The LGOIMA also contains “rules” for the conduct of meetings of Council. These rules are mandatory and additional to those contained in Schedule 7 of the LGA or in the Council’s standing orders. The rules imposed under LGOIMA for meetings are intended to ensure that:

- Meetings of Council and its Committees are publicly notified.
- Members of the public can obtain copies of agendas of all meetings including the reports and other information to be provided to members for consideration and discussion at meetings.
- All the business dealt with at the meeting will be listed in the agenda for the meeting. However, an item that is not on the agenda can be considered at a

meeting if special circumstances exist and procedures and restrictions imposed by the act are observed.

- The public may only be excluded from a meeting or part of a meeting on one of the grounds specified in LGOIMA. In general terms, this permits an item to be discussed in private if to do so in public would be likely to result in the disclosure of information which the Council has good reason to withhold for one of the reasons set out in sections 6 or 7 (noted above). The LGOIMA also stipulates the procedure to be followed at a meeting where it is intended to conduct some business in the absence of the public.

2.3 Local Authorities (Members' Interests) Act 1968 (LAMIA)

This legislation regulates the making of contracts between a local authority and elected members, and has restrictions for such matters under consideration by Council where a member has a pecuniary interest.

Section 6(1) of the LAMIA stipulates that any member who has "...*directly or indirectly any pecuniary interest other than an interest in common with the public...*" being dealt with by Council or a Committee shall not vote or take part in any discussion on the matter.

Instances where a member is deemed to have a pecuniary interest are set out in section 6. In particular, the interest of a spouse is deemed to be interest of the member for the purposes of this legislation. Section 6 also identifies situations that are deemed not to create a pecuniary interest.

Section 3(1) of the LAMIA operates to limit the extent to which a member may act as a contractor (or subcontractor) to Council. Any member who earns more than \$25,000 (GST inclusive) in a year from contracts with Council, is automatically disqualified from office unless Audit Office approval to the excess is obtained under section 3(3)(aa).

Audit Office approval is likely for specific contracts if - the contract was put out to public tender and the member submitted the best price; and approval is sought (and obtained) before the contract is entered into.

For more information please refer to "*The Office of the Auditor General – Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968 (October 2010).*"

As well, should any Councillor have a concern that a conflict of interest may exist (either for pecuniary or other general interests), you should immediately discuss it with the Chief Executive, the Governance Manager or the Audit Office (if applicable).

For more information please refer to "*The Office of the Auditor General – Managing Conflicts of Interest: Guidance for Public Entities (June 2007).*"

2.4 Crimes Act 1961 (CA)

The CA makes it a crime for any official to corruptly accept any bribe, to do or fail to do any act in official capacity. This includes Councillors and staff. It is also illegal to corruptly use information acquired in an official capacity.

Under Part 6 – Crimes affecting the administration of law and justice - sections 99, 105 and 105A are quoted below and need no further explanation.

99 *Interpretation – In this part of the Act, unless the context otherwise requires -*

“Bribe” *means any money, valuable consideration, office or employment, or any benefit, whether direct or indirect:*

“Judicial Officer” *means a Judge of any Court, or a Magistrate, Coroner, or Justice of the Peace, or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath:*

“Law Enforcement Officer” *means any constable, or any person employed in the detection or prosecution or punishment of offenders:*

“Official” *means any person in the service of the Sovereign in right of New Zealand (whether that service is honorary or not, and whether it is within or outside New Zealand), or any member or employee of any local authority or public body, or any person employed in the education service within the meaning of State Sector Act 1988.*

105 *Corruption and bribery of official*

(1) *Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted by him or her in his or her official capacity.*

(2) *Everyone is liable to imprisonment for a term not exceeding three years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him or her in his or her official capacity.”*

105A *Corrupt use of official information*

Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly uses or discloses any information acquired by him or her in his or her official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself or any other person.

2.5 **Secret Commissions Act 1910 (SCA)**

Under the SCA, it will be an offence for an officer or a member of a local authority to accept any gift or inducement for doing or not doing any act in relation to the business of Council.

An elected member of Council could commit an offence under the SCA by, for example:

- Corruptly accessing or soliciting gifts as an inducement or reward for carrying out, or forbearing to carry out some act in relation to Council's business; or
- Securing a Council contract for a third person in exchange for a reward; or
- By falsifying receipts.

2.6 Finance Markets Conduct Act 2013 (FMCA)

The FMCA repealed the Securities Act 1978. The main purposes of the FMCA are to promote and facilitate the development of fair, efficient and transparent financial markets, and to promote the confident and informed participation of businesses, investors and consumers in financial markets.

The FMCA 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 FMCA also regulates the provision of certain financial services.

This legislation 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). Members may be personally liable if documents that are registered under the FMCA (i.e. such as a product disclosure statement containing false or misleading statements). Members may also be liable if the requirements of the FMCA are not met in relation to offers of financial products

2.7 Health and Safety at Work Act 2015 (HSWA)

While not required under the LGA to provide an explanation of this legislation, it is important for elected members to be aware of certain requirements of the HSWA.

The main purpose of the HSWA is to provide a balanced framework to secure the health and safety of workers and the workplace. This legislation reflects wholesale reforms in this arena and degree of obligations and/or liabilities are still being tested in the Courts.

The HSWA places a duty of "due diligence" on Councillors as deemed "Officers" of the Council under the legislation. Section 18 defines an "Officer" as including any person occupying a position in relation to the business or undertaking that allows that person to exercise significant influence over the management of the business or undertaking.

Section 44 of the HSWA stipulates the "Duty of Officers" and requires Officers to take reasonable steps to:

- a. acquire, and keep up to date, knowledge of work health and safety matters; and*
- b. 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. 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. *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. *ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and*
- f. *verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).*

While the due diligence requirements fully apply, members of a territorial authority or regional council are expressly excluded from liability for offences under sections 47, 48 and 49 of the HSWA for failing to comply with a duty imposed on Officers under section 44. In essence, this means elected members are responsible but not accountable for a due diligence failure.

Section 44(3) clarifies that members will not have any duties or obligations under the legislation in relation to a council-controlled organisation, except where a member is also an Officer of that CCO.

In general terms, however, elected members do have a level of personal responsibility and potential exposure for ensuring the Council meets its obligations under the HSWA. At a practical level, members should proactively engage in health and safety matters during the performance of their governance role and/or when they are on the premises managed or controlled by the Council.

Councillors are responsible and accountable under the HSWA for ensuring their own safety while undertaking their duties as a Councillor and that his or her acts or omissions do not adversely affect the health and safety of other persons.

2.8 **Public Records Act 2005 (PRA)**

While not required under the LGA to provide an explanation of this legislation, it is important for elected members to be aware of certain requirements of the PRA.

The PRA provides a framework to keep central and local government organisations accountable by ensuring records are full and accurate, well maintained and accessible. The legislation provides for the continuity of the National Archives and the role of the Chief Archivist. The PRA enables accountability by ensuring that full and accurate records of the affairs of local government are created and maintained. It also provides a framework within which local authorities create and maintain their records and has a role in enhancing public confidence in the integrity of local authority records.

The definition of a “record” includes information, whether in its original form or otherwise, and is not limited to just written information. The definition also includes (but is not limited to) a signature, a seal, texts, images, sound, speech, or data in any medium and recorded or stored by any electronic device or process.

In the conduct of their affairs, elected members may receive information directly (e.g. from their constituents). Members will need to consider whether that information meets the definition of a local authority record and if so, will need to ensure it is included in the Council’s records.

3 Relevant Council Policy

Regional Council maintains its own internal policies in respect of fraud, elected member sensitive expenditure, elected member allowances and recovery of expenses.

Copies of these policies will be included in the newly Elected Members Administration Pack distributed during the administration day for councillors on 30 October 2019.

4 Budget Implications

4.1 Current Year Budget

This is planned under the Governance Services Activity in the Annual Plan 2019-2020.

4.2 Future Budget Implications

All future costs related to Regional Council and Committee meetings and elected member events are included in the Governance Services Activity in the Long Term Plan 2018-2028.

5 Community Outcomes

This item directly contributes to all Community Outcomes in Council's Long Term Plan 2018-2028.

Donna Llewellyn
In-House Legal Counsel

for Chief Executive

14 October 2019



Report To: Regional Council
Meeting Date: 21 October 2019
Report From: Fiona McTavish, Chief Executive

The fixing of the Date and Time of the First Meeting of Council

Executive Summary

The Local Government Act 2002 requires Council, at its Inaugural Meeting, to fix the date and time of the first meeting of the Council in a new triennium.

Recommendations

That the Regional Council:

- 1 Receives the report, The fixing of the Date and Time of the First Meeting of Council;**
- 2 Confirms the first meeting of the Bay of Plenty Regional Council will be held on Tuesday, 26 November 2019, starting at 9.30 am in the Council Chambers, Regional House, Elizabeth Street, Tauranga.**

1 Fixing the date and time of the first meeting required by legislation

Clause 21, Schedule 7 of the Local Government Act 2002 requires the Council at its Inaugural Meeting to fix the date and time of the first meeting of Council.

It is proposed that the first meeting of the Bay of Plenty Regional Council will be held on Tuesday, 26 November 2019, starting at 9.30 am in the new Council Chambers, Regional House, Elizabeth Street, Tauranga. At this meeting Council will adopt its Governance Structure. Once adopted, staff are then able to schedule committee

2 Budget Implications

2.1 Current Year Budget

This work is planned under the Governance Services Activity in the Annual Plan 2019-2020.

2.2 Future Budget Implications

All future costs related to Council and Committee meetings and Elected Member events are included in the Governance Services Activity in the Long Term Plan 2018-2028.

3 Community Outcomes

This item directly contributes to the Safe and Resilient Communities and A Vibrant Region Community Outcome in the Council's Long Term Plan 2018-2028.

Yvonne Tatton
Governance Manager

for Chief Executive

11 October 2019



Report To: Regional Council
Meeting Date: 21 October 2019
Report From: Yvonne Tatton, Governance Manager

Plan Change 10 Appeals Subcommittee - Confirmation of Members

Executive Summary

Plan Change 10 (Lake Rotorua Nutrient Management) Appeals Subcommittee was not discharged at the end of the 2016-2019 triennium to enable it to act prior to this Council establishing its Governance Structure. Appointments to this subcommittee are required at the Inaugural Council meeting to enable the appeals process to progress without unnecessary delays within timeframes set by the Environment Court.

Recommendations

That the Regional Council:

- 1 Receives the report, Plan Change 10 Appeals Subcommittee - Confirmation of Members;**
- 2 Confirms Councillors: _____ and _____ as members of the Plan Change 10 Appeals Subcommittee:**

1 Discharging of Committees at the End of a Triennium

Unless Council resolves otherwise, all committees, subcommittees or other subordinate decision-making bodies are deemed to be discharged on the coming into office of the new Council.

The following resolution was passed by the previous Council on 26 September 2019:

Resolves to not discharge the Plan Change 9 Appeals Subcommittee and Plan Change 10 Appeals Subcommittee at the end of the triennium to enable the subcommittees to progress Environment Court matters as required, prior to the new Council establishing its committee structure.

2 Plan Change 10 Appeals Subcommittee

At its meeting on 17 September 2019, the Regional Direction and Delivery Committee recommended the establishment of a Plan Change 10 Appeals Subcommittee to consider matters arising from the Environment Court. As the term of the subcommittee would continue into the new triennium until the conclusion of the Environment Court process, Council, at its meeting on 26 September 2019, resolved that the subcommittee not be discharged at the end of the triennium.

For the purposes of the hiatus period, Chairman Leeder and Cr Thompson were appointed as members to the subcommittee.

While the subcommittee members would be unable to act during the hiatus period, it was noted that the new Council would be asked to confirm the membership after the swearing in at the Inaugural meeting to enable the appeals process to progress without unnecessary delay.

A copy of the Terms of Reference for the Subcommittee is attached to this report.

2.1 Plan Change 9 Appeals Subcommittee

Councillor appointed membership of the PC9 (Region-wide Water Quality) Appeals Subcommittee was discharged by the Regional Direction and Delivery Committee at their meeting on 17 September 2019 and replaced with Jane Nees, Paula Thompson and Matemoana McDonald as accredited Independent Hearing Commissioners. As such, there is no need to reconfirm their membership for this subcommittee.

1 Budget Implications

1.1 Current Year Budget

This work is planned under the Governance Services Activity in the Annual Plan 2019-2020.

1.2 Future Budget Implications

All future costs related to Council and Committee meetings and Elected Member events are included in the Governance Services Activity in the Long Term Plan 2018-2028.

2 Community Outcomes

This item directly contributes to the Safe and Resilient Communities and A Vibrant Region Community Outcome in the Council's Long Term Plan 2018-2028.

Tone Nerdrum Smith
Committee Advisor

for Governance Manager

11 October 2019

APPENDIX 1

PC10 Appeals Subcommittee Terms of Reference (Adopted 17 September 2019)

Plan Change 10 Appeals Subcommittee – Terms of Reference

(Adopted by Regional Direction & Delivery Committee – 17 September 2019)

1. Delegated Function

The Proposed Plan Change 10 Appeals Subcommittee was established by the Regional Direction and Delivery Committee on 17 September 2019 for the purpose of guiding recommendations and changes in relation to the directions within the stage one Environment Court decision (released 9 August 2019). If required, the Appeals Subcommittee will also be available to provide guidance within stage two of the Environment Court appeals.

2. Membership

- Chairman Leeder
- Councillor Thompson

3. Term of the Committee

For the duration of the Environment Court Appeals process on Proposed Plan Change 10 (Lake Rotorua Nutrient Management) unless discharged earlier by the Regional Direction and Delivery Committee.

4. Specific Responsibilities and Delegated Authority

The Proposed Plan Change 10 Appeals Subcommittee is delegated the power of authority to:

1. Provide guidance on recommendations to the Court and responses required in relation to the directions within the interim Environment Court decision (stage one), released 9 August 2019.
2. Provide guidance on actions necessary for the resolution of stage two of the Environment Court appeal process.

Note: Council has delegated the authority to reach agreement on appeals while in mediation or at Court on the Regional Natural Resources Plan to the Environmental Strategy Manager, previously Natural Resources Policy Manager (Section 4.2.3(13) of the Chief Executive Delegations Manual 2015). For PPC10 this delegation is to be used in a manner that is consistent with direction received from the Appeals Subcommittee.

