



NOTICE OF AN INAUGURAL COUNCIL & COAST COMMUNITY BOARD MEETING

Thursday, 31 October 2019

**9.00am Pōhiri Whakatau, Ōpōtiki RSA, 103 St John Street,
Ōpōtiki**

10.00am Commencement of meeting

10.45am Meeting adjourns

**11.00am Meeting reconvenes in the Ōpōtiki District Council
Chambers, 108 St John Street, Opotiki**

ORDER PAPER

OPENING KARAKIA – ROGER RAKURAKU

APOLOGIES

Chair – Chief Executive Officer, Aileen Lawrie

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HER WORSHIP THE MAYOR

Chair – Her Worship the Mayor, Lyn Riesterer

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COAST COMMUNITY BOARD MEMBERS

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ŌPŌTIKI DISTRICT COUNCIL

Chair: Chief Executive Officer Aileen Lawrie, in accordance with Clause 21(4) of Schedule 7 to the Local Government Act 2002, until such time as the Mayor has made and attested the declaration

Mayor: Her Worship the Mayor – Lyn Riesterer

Members: Councillor Shona Browne
Councillor Barry Howe
Councillor Debi Hocart
Councillor David Moore
Councillor Steve Nelson
Councillor Louis Rāpihana

Quorum: 4

COAST COMMUNITY BOARD

Members: Councillor Louis Rāpihana
Michael Collier
Gail Keepa
Jack Parata
Allen Waenga

Quorum: 3

Committee Secretary: Gae Finlay

LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968

Councillors and members are reminded that if you have a pecuniary or non-pecuniary interest in any item on the agenda, then you must declare this interest and refrain from discussing or voting on this item, and are advised to withdraw from the Council chamber.

Aileen Lawrie

CHIEF EXECUTIVE OFFICER

REPORT

Date : 21 October 2019

To : Inaugural Council and Coast Community Board Meeting, 31 October 2019

From : Chief Executive Officer, Aileen Lawrie

Subject : **ELECTION RESULTS**

File ID : A180468

EXECUTIVE SUMMARY

Ōpōtiki District Council has received the final results for the 2019 Local Authority Elections from the Electoral Officer, Dale Ofoske of Independent Election Services Limited.

PURPOSE

To notify the final election results received from Independent Election Services Limited.

COMMENTARY

The final results for the Ōpōtiki District 2019 Local Authority Elections are attached to this report.

Aileen Lawrie

CHIEF EXECUTIVE OFFICER

DECLARATION OF RESULTS OF ELECTION for the Ōpōtiki District Council 2019 elections



Ōpōtiki District Council
STRONG COMMUNITY STRONG FUTURE

I hereby declare the results of the elections held on 12 October 2019 for the following offices:

Mayor (one vacancy)

	Votes Received
CHEN, Xiao Yu	76
DOBIE, Alex	673
IRVING, Peter	247
KEANE, Les	26
MCROBERTS, Haki	198
RĀPIHANA, Louis	468
RIESTERER, Lyn	1378

Informal votes received: 12

Blank votes received: 23

I therefore declare Lyn RIESTERER to be elected.

Ōpōtiki Ward (three vacancies)

	Votes Received
BLACK, Paula (Independent)	397
BROWNE, Shona Rosalie	734
CHEN, Xiao Yu	74
DOBIE, Alex	533
HOWE, Barry	940
IRVING, Peter	296
KEANE, Les	59
NEISH, Laura	353
NELSON, Steve	727

Informal votes received: 0

Blank votes received: 13

I therefore declare Shona Rosalie BROWNE, Barry HOWE and Steve NELSON to be elected.

Council

Coast Ward (one vacancy)

	Votes Received
MCROBERTS, Haki	120
RĀPIHANA, Louis	236
WAENGA, Allen	106

Informal votes received: 0

Blank votes received: 7

I therefore declare Louis RĀPIHANA to be elected.

Waioeka-Waiōtahe Ward (two vacancies)

	Votes Received
COLLIER, Michael Spike	244
FINDLAY, Ron	218
HOCART, Debi	614
KERR, Lew (Independent)	368
MOORE, David (Independent)	580

Informal votes received: 3

Blank votes received: 13

I therefore declare Debi HOCART and David MOORE to be elected.



Dated at Ōpōtiki, 18 October 2019

Dale Ofsoske, Electoral Officer

Ōpōtiki District Council

108 St John Street, Ōpōtiki

Phone 0800 922 822



DECLARATION BY MAYOR

I, **LYNETTE JEAN RIESTERER** declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best of interests of the Ōpōtiki District, the powers, authorities, and duties vested in, or imposed upon me as a member of the Ōpōtiki 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 ŌPŌTIKI THIS 31ST DAY OF OCTOBER 2019

SIGNED by)
LYNETTE JEAN RIESTERER)
in the presence of) _____

Aileen Lawrie
CHIEF EXECUTIVE OFFICER



DECLARATION BY COUNCILLOR

I, _____ declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best of interests of the Ōpōtiki District, the powers, authorities, and duties vested in, or imposed upon me as a member of the Ōpōtiki 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 ŌPŌTIKI THIS 31ST DAY OF OCTOBER 2019

SIGNED by _____)
_____)
in the presence of _____) _____

MAYOR



DECLARATION BY COAST COMMUNITY BOARD MEMBER

I, _____ declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best of interests of the Ōpōtiki District, the powers, authorities, and duties vested in, or imposed upon me as a member of the Ōpōtiki 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 ŌPŌTIKI THIS 31ST DAY OF OCTOBER 2019

SIGNED by _____)
_____)
in the presence of _____) _____

MAYOR



HE WAHKAPUAKANGA NĀ TE MEMA KŌWHIRI

E whakapuaki ana ahau, a _____, ka mahi ahau i runga i te ngākau pono me te tōkeketanga e ai ki ōku pūkenga me ōku mōhiotanga mō te tino painga te rohe o Ōpōtiki, ā, ka manaaki ahau i ngā mana, ngā manatū, me ngā kawenga ka whakareia mai, ka ūhia rānei ki runga ahau hei mema o te kaunihera o Ōpōtiki i raro i te Ture Kāwanatanga ā-Rohe 2002, te Ture Mōhiohio Ōkawa Kāwanatanga ā-Rohe 1987, i raro rānei i tētahi ture kē.

I Ōpōtiki i tēnei rā te 31 o Whiringa-ā-nuku 2019.

Moko)

_____)

I mua i te aroaro o:) _____

KOROMATUA

REPORT

Date : 21 October 2019

To : Inaugural Council and Coast Community Board Meeting, 31 October 2019

From : Her Worship the Mayor, Lyn Riesterer

Subject : **APPOINTMENT OF DEPUTY MAYOR**

File ID: A180473

EXECUTIVE SUMMARY

The Council is required to appoint the Deputy Mayor at the first meeting of Council. Under the Local Government Act 2002 the Mayor has the power to appoint the Deputy Mayor.

REASON FOR THE REPORT

The reason for this report is to consider the appointment of the Deputy Mayor.

DUTIES OF THE DEPUTY MAYOR

Clause 17 of Schedule 7 of the Local Government Act 2002 states outlines the roles of a Deputy Mayor as:

- (3) *The deputy mayor or deputy chairperson must perform all the responsibilities and duties, and may exercise all the powers, of the mayor or chairperson, -*
 - (a) *with the consent of the mayor or chairperson, at any time during the temporary absence of the mayor or chairperson:*
 - (b) *without that consent, at any time while the mayor or chairperson is prevented by illness or other cause from performing the responsibilities and duties, or exercising the powers, of his or her office:*
 - (c) *while there is a vacancy in the office of the mayor or chairperson.*
- (4) *In the absence of proof to the contrary, a deputy mayor or deputy chairperson acting as mayor or chairperson is presumed to have the authority to do so.*

- (5) *A deputy mayor or deputy chairperson continues to hold his or her office as deputy mayor or deputy chairperson, so long as he or she continues to be a member of the territorial authority or regional council, until the election of his or her successor."*

APPOINTMENT OF THE DEPUTY MAYOR

Clause 3 of section 41A of the Local Government Act 2002 states:

- (3) *For the purposes of subsections (1) and (2), a mayor has the following powers:*
- (a) *to appoint the deputy mayor:*

Clause 4 of section 41A does provide for the Council to overturn the appointment of the Deputy Mayor appointed by the Mayor, however the Council must follow a process in accordance with the Local Government Act 2002.

Following discussions with Councillors I have chosen to appoint Councillor Shona Browne as the Deputy Mayor. I seek council endorsement to congratulate Councillor Shona Browne and wish her all the best in her role as Deputy Mayor.

RECOMMENDATIONS:

- 1. That the report titled "Appointment of Deputy Mayor" be received.**
- 2. That the Council endorses the appointment by the Mayor of Councillor Shona Browne as Deputy Mayor.**

Lyn Riesterer

HER WORSHIP THE MAYOR

REPORT

Date : 21 October 2019

To : Inaugural Council and Coast Community Board Meeting, 31 October 2019

From : Chief Executive Officer, Aileen Lawrie

Subject : **ELECTION OF COAST COMMUNITY BOARD CHAIRPERSON AND DEPUTY CHAIRPERSON**

File : A180562

EXECUTIVE SUMMARY

Clause 21(5)(b) of Schedule 7 of the Local Government Act 2002 applies to the election of a Chairperson of a Community Board.

PURPOSE

To elect a Coast Community Board member to the position of Chairperson and also to elect a Deputy Chairperson.

BACKGROUND

The Coast Community Board has existed since its creation by the Local Government Commission in a determination in April 2004. The determination followed a review, and appeal under the Electoral Act. In the determination the LGC reduced the number of elected members of Council from 11 to 7, and put in place the Coast Community Board.

The direction of the LGC was:

- (4) *There shall be a Coast Community Board for the area of the Coast Ward.*
- (5) *The Coast Community Board shall comprise four elected members and one member of the Council representing the Coast Ward.*

The board has operated ever since with practice being that the Coast Ward member become the Chair of the Board. In 2012 the Board was given an annual budget and over time this budget has grown to \$50k per annum with changes in the Ward boundary (when it took in Tōrere) and for inflation increases.

Criteria for funding have evolved and the Board receives and decides on funding applications as well as being capable of deciding and funding local projects. A financial update is given by staff at each meeting and the current balance of funds is \$170k.

Council staff service the committee and the lead Manager appointed to support the committee is Ari Erickson, our Engineering and Services Group Manager. In the New Year a dedicated committee will commence in support of the Coast Community Board.

Past practice has been to appoint a Chairperson at the inaugural meeting of Council and Coast Community Board and this year it is recommended that the appointment of a Deputy Chairperson also be considered.

PROCEDURE

Prior to electing a Chairperson and Deputy Chairperson, the Community Board must resolve which voting system it will use (A or B) as outlined below:

Clause 25 - Voting systems for certain appointments

- (1) *This clause applies to—*
 - (a) ...
 - (b) ...
 - (c) *the election or appointment of the Chairperson and Deputy Chairperson of a Committee*
 - (d) ...
- (2) *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 2 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 1 round of voting; and*
 - (ii) *if 2 or more candidates tie for the most votes, the tie is resolved by lot.*

RECOMMENDATIONS:

- 1. That the report titled “Election of Coast Community Board Chairperson” be received.**
- 2. That the Coast Community Board resolve to use System ___ to determine the appointment of the Chairperson.**
- 3. That Coast Community Board member _____ be elected to the position of Coast Community Board Chairperson.**
- 4. That Coast Community Board member _____ be elected to the position of Coast Community Board Deputy Chairperson.**

Aileen Lawrie

CHIEF EXECUTIVE OFFICER

REPORT

Date : 21 October 2019

To : Inaugural Council and Coast Community Board Meeting, 31 October 2019

From : Her Worship the Mayor, Lyn Riesterer

Subject : **PROPOSAL TO APPOINT CULTURAL AMBASSADOR**

File ID : A180605

EXECUTIVE SUMMARY

Refreshing the role of Opotiki District Council Cultural Ambassador is proposed for the new Triennium to be filled by Councillor Louis Rāpihana in recognition of the importance of Māori and iwi within our district and to acknowledge the mana brought by Councillor Rāpihana to the Council.

PURPOSE

To seek Council's support to appoint Councillor Rāpihana to the role of Cultural Ambassador.

BACKGROUND

The Opotiki district has a high proportion of Māori at 57% of the district's population. Cultural practice or tikanga is an important aspect of the everyday lives of the majority of our community. In recognition of this it is proposed that we appoint the role of Cultural Ambassador for the coming triennium. The role would provide:

- Leadership of Council in relation to any matter pertaining to Māori/iwi;
- Leading and hosting delegations to the district and away from the district; and
- Advising Council on the appropriate representations in terms of mana whenua for events.

Councillor Rāpihana brings mana to the Council through his whakapapa and knowledge of tikanga Maori. With affiliations to all iwi in our district, as Mayor I feel it appropriate to acknowledge Councillor

Rāpihana's value to Council by appointing him to the role of Cultural Ambassador. This role existed in the previous triennium and was valuable on a number of occasions to ensure Council acted in a culturally appropriate way at marae and at various events.

LEGISLATIVE PROVISIONS

Under S41A of the Local Government Act 2002 a Mayor has the power to appoint a number of formal positions. In this case I am seeking Council support for the proposed appointment.

RECOMMENDATIONS:

- 1. That the report titled "Proposal to Appoint Cultural Ambassador" be received.**
- 2. That Council appoint Councillor Louis Rāpihana to the role of Ōpōtiki District Council Cultural Ambassador.**

Lyn Riesterer

HER WORSHIP THE MAYOR

REPORT

Date : 21 October 2019

To : Inaugural Council and Coast Community Board Meeting, 31 October 2016

From : Her Worship the Mayor, Lyn Riesterer

Subject : **RISK AND ASSURANCE COMMITTEE AND APPOINTMENT OF CHAIR AND MEMBER**

File ID: A180225

EXECUTIVE SUMMARY

Council has operated an Audit and Risk Committee for the last three trienniums, chaired by previous Councillor Arihia Tuoro. Using the Mayoral powers of S41A of the Local Government Act 2002 I seek Council's endorsement for confirmation of the Committee, the appointment of the Chair to continue in an independent capacity, and for the existing independent member to be reappointed.

REASON FOR THE REPORT

The reason for this report is to consider the continuation of the Audit and Risk Committee under the new name of Risk and Assurance Committee and the appointment of Independent Chair Arihia Tuoro and Independent Member David Love.

ESTABLISHING A RISK AND ASSURANCE COMMITTEE

Council formed an Audit and Risk Committee in 2011 and it met infrequently, on an as needed basis, considering items referred to it by Council. In 2013 the terms of reference were strengthened and it was scheduled to meet quarterly. An independent member was appointed who has been providing an invaluable independent perspective as well as raising appropriate issues.

Guidance from the OAG is:

Audit committees have a valuable contribution to make in improving the governance, and so the performance and accountability, of public entities. They can play an important role in examining an organisation's policies, processes, systems, and controls. An effective audit committee shows that an organisation is committed to a culture of openness and continuous improvement.

An audit committee does not displace or change proper accountability arrangements. Accountability for good governance rests with the public entity's governing body.

Effective audit committees can provide objective advice and insights into the public entity's strategic and organisational risk management framework. In doing so, they can identify potential improvements to governance, risk management, and control practices.

It is proposed that the Committee continue and its terms of reference be further strengthened to give it autonomous obligations. This is consistent with the recommendations of Audit NZ and the Guidelines of the office of the Auditor General. Extensive guidance from the OAG is available for Elected Members. A useful summary of the matters that need considering are:

- **independence** – most of the members of an Audit Committee need to be independent of the management team to provide objective and impartial advice;
- **clarity of purpose** – an Audit Committee needs to be clear about its mandate, purpose, and role in the organisation and within the governance structure as a whole; and
- **competence** – Audit Committee members need to have relevant experience and expertise to bring valuable insights and perspectives to the areas of Audit Committee interest;
- **open and effective relationships** – the Audit Committee needs to encourage open and transparent communication and effective ways of working with stakeholders.
- **Making it real and keeping the principles in balance** – the committee needs to get the balance right on the principles set out above.

Over the last triennium the practice has evolved that the Committee has focussed on the following:

- Adopting, reviewing and maintaining a risk framework and register
- Detailed reviews of the Draft Annual Reports as they are adopted for Audit purposes
- A living audit Action sheet showing progress towards meeting items raised in our audit processes
- A range of ad hoc risk management items, and detailed financial matters, e.g. submissions to Government processes
- Input into the terms of reference for the annual fraud review and receiving the review
- Consideration of Health and Safety reporting
- CEO Performance process

Depending on the work load the committee meets between five and seven times per year.

CHAIR

There is a growing trend in the Local Government sector to appoint independent Chairs to Audit and Risk Committees. Advice from the OAG is:

An independent chairperson is often the best option to promote free and frank debate during committee meetings. It also gives governors confidence knowing that they are receiving independent advice and assurance.

Councillor Arihia Tuoro was appointed to the role of Audit and Risk Committee Chair in 2013 and has taken the Committee from strength to strength. Following discussions with Councillors I have decided to appoint Arihia Tuoro as the Independent Chair of the Risk and Assurance Committee for the 2019-2022 triennium. This will provide the assurance of having an independent in the Chair, continuity with the previous triennium and make the most of Council's investment in training for this role.

ADDITIONAL INDEPENDENT MEMBER

Over the last triennium council has had an independent member in David Love. David has a background in strategy in the RAF and worked for a time with the UN in a range of security and peace keeping roles in Europe. He is also a Regional Councillor. David brings excellent independent views and is heavily committed to the wellbeing of the district. I propose we also appoint David for another triennium.

LEGISLATIVE PROVISIONS

Clause 3 of section 41A of the Local Government Act 2002 which came into force on 12 October 2013 states:

(3) *For the purposes of subsections (1) and (2), a mayor has the following powers:*

(b) to establish committees of the territorial authority:

(c) to appoint the chairperson of each committee established under paragraph (b), and, for that purpose, a mayor—

(i) may make the appointment before the other members of the committee are determined;

Clause 4 of the new section 41A does provide for the Council to discharge any committee or an appointment by the Mayor however the Council must follow a process in accordance with the Local Government Act 2002.

RECOMMENDATIONS:

- 1. That the report titled "Risk and Assurance Committee and Appointment of Chair" be received.**
- 2. That the Council endorses the decision to continue the committee and adopts the attached terms of reference.**

3. **That Council endorse the appointment of Arihia Tuoro as the independent Chair for a three year term.**
4. **That Council endorse the appointment of David Love as an independent member for the three year term.**

Lyn Riesterer

HER WORSHIP THE MAYOR

RISK AND ASSURANCE COMMITTEE TERMS OF REFERENCE

1. The Risk and Assurance Committee is a Committee of the Ōpōtiki District Council.
2. **Objective**

The objective of the Committee is to assist the Council in carrying out its duties in regard to financial reporting and legal compliance.
3. **Membership**

Chairperson: Independent Chair Arihia Tuoro
Member: Councillor Nelson
Ex-Officio: Mayor Riesterer
Independent Member: David Love
4. **Meetings**
 - 4.1 A quorum is two members.
 - 4.2 The Committee shall meet as needed but in any event, at least annually.
 - 4.3 Notice of meetings shall be in accordance with the requirements set out in the Local Government Act 2002.
5. **Terms of Reference**

The Risk and Assurance Committee will:

 1. *Review Council's annual financial statements with Council management and the Auditors prior to their approval by Council.*
 2. *Oversee statutory compliance in terms of financial disclosure.*
 3. *Monitor corporate risk assessment and internal risk mitigation measures and oversee:*
 - *Council's risk management framework*
 - *internal control environment*
 - *legislative and regulatory compliance*
 - *internal audit and assurance*
 - *oversee risk identification on significant projects*
 - *compliance to Treasury Risk Management Policies.*
 4. *Review the effectiveness of Council's external accountability reporting (including non-financial performance).*
 5. *Conduct the process for the Chief Executive's Performance, for report to Council.*

6. *Draw to the attention of Council any matters that are appropriate.*

7. *Investigate and report on any matters referred to the Committee by Council. The circumstances the Council may refer matters to the Audit and Risk Committees include:*
 - a. *Any significant issues arising from the financial management of councils affairs.*
 - b. *Any complaints against elected members or alleged breaches of the Council's Code of Conduct.*
 - c. *Any significant issues arising from Audit New Zealand processes.*
 - d. *Due Diligence on strategic asset acquisition or disposal.*
 - e. *Setting up of Council Controlled Organisations.*
 - f. *Development of a Council risk assessment and mitigation strategies.*

6. **Authority**

- 6.1 The Committee is authorised to investigate any activity referred to it by Council resolution. It is authorised to seek any reasonable information it requires from Council staff.
- 6.2 The Committee is authorised by the Council to obtain outside legal or other independent professional advice and to arrange for the attendance at meetings of outside parties with relevant experience and expertise if it considers this necessary.

REPORT

Date : 21 October 2019

To : Inaugural Council and Coast Community Board Meeting, 31 October 2019

From : Her Worship the Mayor, Lyn Riesterer

Subject : **CONFIRMATION OF COUNCIL AND JOINT COMMITTEES AND EXTERNAL ORGANISATION APPOINTMENTS**

File ID : A180231

EXECUTIVE SUMMARY

As per clause 30(7), schedule 7 of the Local Government Act 2002 all Council Committees are deemed to be discharged on the coming into office of the newly elected members. However in a report to Council on the 4th of September a resolution was made not to discharge any of the Council Committees. This was done as there were a number of scheduled meetings between the date of the elections and this Inaugural meeting of Council. It is now prudent to reconfirm our committees and memberships.

Clause 30(1) and (2) of Schedule 7 of the Local Government Act 2002 states that a local authority may appoint – the committees, subcommittees, and other subordinate decision-making bodies that it considers appropriate...”.

PURPOSE

To seek Council endorsement to reconfirm Council committees and joint committees and to confirm appointments to these and to external organisations.

BACKGROUND

The Local Government Act 2002 automatically discharges any committee of Council on the coming in to office of members of the local authority at or following a general election of the Local Authority unless a Local Authority makes a resolution to keep the current committees in place. In this instance our Council did make this resolution.

30 Power to appoint committees, subcommittees, other subordinate decision-making bodies, and joint committees

(7) *A committee, subcommittee, or other subordinate decision-making body is, unless the local authority resolves otherwise, deemed to be discharged on the coming into office of the members of the local authority elected or appointed at, or following, the triennial general election of members next after the appointment of the committee, subcommittee, or other subordinate decision-making body*

The following Council Committees and Joint Committee were in place over the last triennium and are currently still in place:

Council Committees

- Risk and Assurance
- Hearings Committee – Regulatory Appeals Committee

Joint Committee

- Eastern Bay of Plenty Joint Committee

The two Council committees deal with relatively specific parts of the Council business. The Risk and Assurance Committee ensures a focus on the financial stewardship and risk side of the Council and having such a committee is identified as good practice supported by Council's Auditors, Audit New Zealand. That was subject of a previous report, but in this report requires additional membership.

The Regulatory Appeals Committee focuses on a very specific and specialised part of Council operations which is governed by its own legislation. A number of regulatory Acts provide an appeal capability from decisions made at staff level to be escalated to an elected member level. For example the Dog Control Act includes provisions, among other things, to classify dogs as menacing or dangerous under certain circumstances. The owner has the right of objection and also has the right to be heard in support of their objection. This committee would hear and decide such an appeal. Likewise the Litter Act and Resource Management Act have similar provisions for decisions made under delegated authority. An intermediary step before any court processes is useful for efficiency purposes, as costs to all parties increase dramatically for court appeals.

The Eastern Bay of Plenty Joint Committee was established two trienniums ago with a view to pursue integrated thinking and activities across the wider Eastern Bay. Outcomes sought by this joint

committee include a strong unified approach to sub regional cohesion and collaboration. The committee has been made up of representatives from the Ōpōtiki District Council, Kawerau District Council, Whakatāne District Council and the Bay of Plenty Regional Council. In the coming year the responsibility for administration of the committee will sit with the Ōpōtiki District Council and by rotation the Chair will be the Mayor of Ōpōtiki.

Other joint committees created by statute are the Regional Transport Committee and the Civil Defence Emergency Management Group Joint Committee. Both of these fall to the Mayor by statute.

The Eastern Bay Road Safety Committee is a long standing committee that includes Local Government and emergency services, leveraging NZTA funding.

The relevant terms of reference and delegations for most of the suggested committees and joint committees are attached to this report for Council's information and endorsement.

Council has also traditionally had representation on a range of external organisations. Representation on such organisations provides for effective advocacy and representation of the interests of Ōpōtiki residents and ratepayers. A list of proposed appointments is attached. Note that these are non-statutory.

SIGNIFICANCE ASSESSMENT

The proposal to re-confirm Council Committees and Joint Committees and external organisation membership is not considered to be significant in terms of Council's policy on determining significance.

OPTIONS

The option exists to not re-confirm the committees as suggested, or to amend them.

Council does have the option of not having appointments to external organisations, however the benefits associated with the representation are considered to outweigh any associated costs.

FINANCIAL IMPLICATIONS

Cost to operate the committees are funded from the general rate and include the writing of staff reports, agenda compilation, advertising of meetings, printing of papers and staff and councillor time in meetings. Costs are budgeted and staff are appointed for the express purposes of administering

committees. The creation of additional committees would have cost implications beyond those budgeted.

CONCLUSION

As per clause 30(7), schedule 7 of the Local Government Act 2002 Council's committee structure was resolved to be retained through the 2019 triennial elections. It is my recommendation that Council re-confirm the memberships of each of the Council Committees and Joint Committees that were in place prior to the 2016 Local Government Elections following any suggested additions and removals. The terms of reference and delegations to suggested committees are attached for Council's information and endorsement. It is also necessary for appropriate appointments (including the appointment of a chairperson where required) to be made.

Council has traditionally had representation on a range of external organisations. Representation on such organisations provides for effective advocacy and representation of the interests of Ōpōtiki residents and ratepayers.

RECOMMENDATIONS:

- 1. That the report titled "Confirmation of Council and Joint Committees and External Organisation Appointments" be received.**
- 2. That Council endorse the confirmation of the following committees for the 2019-2022 Triennium:**
 - A) Risk and Assurance Committee (refer separate report).**
 - B) Regulatory Appeals Committee.**
 - C) Eastern Bay of Plenty Joint Committee.**
 - D) Eastern Bay of Plenty Road Safety Committee.**
 - E) Regional Transport Committee.**
 - F) Civil Defence Emergency Management Group Joint Committee.**
- 3. That the Council approve the Terms of Reference and any associated delegations for the committees as attached to this report.**
- 4. That Council appoints/reconfirms the following members (and chairpersons) to the Council and Joint Committees as below.**
- 5. That Council appoints/reconfirms the following members to external organisations as below.**

6. That the Council delegate to the Regulatory Appeals Committee the authority to hear, consider and determine objections under the Dog Control Act 1996 in respect of:
- Classification as a probationary owner (s22)
- Classification as a disqualified owner (s26)
- Classification as a dangerous dog (s31)
- Classification as a menacing dog (s33b and 33d).
7. That Council delegates to the Regulatory Appeals Committee the authority to hear, consider and determine objections under the Litter Act 1979 in respect of:
- A notice issued under Section 10 of this Act requiring an occupier of private land to clear litter from it.
8. That Council delegates to the Regulatory Appeals Committee the authority to hear objections against certain decisions as set out in Section 357 of the Resource Management Act 1991.

Council Committees	2019-2022 Triennium
Risk and Assurance	Chair: Independent Chair Arihia Tuoro Member 2: Cr Steve Nelson Mayor Riesterer Ex Officio External member David Love

Council Committees	2019-2022 Triennium
Hearings Committee – Regulatory Appeals	Member 1: Cr Howe Member 2: Cr Rāpihana Member 3: Cr Hocart Committee to elect Chairperson at first meeting

Joint Committees	2019-2022 Triennium
Eastern Bay of Plenty Joint Committee	Mayor Riesterer Cr Nelson
Regional Transport Committee	Mayor Riesterer Reserve: Cr Moore

Civil Defence Emergency Management Group Joint Committee	Mayor Riesterer Reserve: Cr Browne
Eastern Bay Road Safety Committee	Cr Moore

Non-Statutory Internal Working Parties/Groups	2016-2022 Triennium Representatives
CBD/Town Revitalisation Project	Mayor Riesterer Crs Howe, Browne, Nelson
Youth initiative (details to be confirmed following consultation) e.g. Future leaders, Tuia	TBC
Property Working Party	Cr Browne Independent Member Ken Young
Library Fundraising Working Party	Mayor Riesterer Cr Browne Cr Rāpihana

External Organisation	2019-2021 Triennium Representative
Creative Communities New Zealand (Two required)	Cr Hocart Mayor Riesterer ex officio
Waioeka-Otara Flood Scheme Liaison Group (Two Required)	Cr Nelson Cr Moore
Ōhiwa Harbour Implementation Forum (One required)	Mayor Riesterer Reserve: Cr Hocart
Ōpōtiki Marine Advisory Group (OMAG) (Two required)	Mayor Riesterer Cr Howe Cr Browne
Ōpōtiki Theatre Trust	Cr Hocart
Sport NZ Rural Travel Fund	Cr Howe

Lyn Riesterer

HER WORSHIP THE MAYOR

Terms of Reference

8 July 2013

A. Purpose

1. Eastern Bay of Plenty Joint Committee ("EBOPJC") is a collaboration between Bay of Plenty Regional Council ("BOPRC"), Kawerau District Council ("KDC"), Ōpōtiki District Council ("ODC") and Whakatāne District Council ("WDC") for responding to and managing a range of Eastern Bay of Plenty issues.
2. The purpose of EBOPJC is to form, explore and make recommendations for strategic collaborative initiatives between the partner councils.
3. EBOPJC will be guided by this Terms of Reference and the EBOPJC Memorandum of Understanding (MOU) as agreed by the partner councils.
4. For the purposes of this Term of Reference, "Eastern Bay of Plenty" is defined as the Territorial Authority areas of KDC, ODC and WDC.

B. Membership

5. Members of the EBOPJC will be:
 - 5.1 Two elected members as appointed by, and representing, BOPRC.
 - 5.2 Two elected members as appointed by, and representing, KDC.
 - 5.3 Two elected members as appointed by, and representing, ODC.
 - 5.4 Two elected members as appointed by, and representing, WDC.
6. The members of EBOPJC will act in accordance with the Memorandum of Understanding.

C. Delegations

7. EBOPJC is a joint committee of councils that will make recommendations to constituent councils.
8. EBOPJC can make recommendations on the following:
 - 8.1 Opportunities for joint collaboration on initiatives that support the needs of Eastern Bay of Plenty communities;
 - 8.2 Coordination of and encouragement of beneficial interrelationships and connections between activities/services across the Eastern Bay of Plenty;
 - 8.3 Mitigation of adverse cross boundary effects of decisions, planning and activities on other regions, cities and districts;

- 8.4 Resolution of differences and conflicts, and ensuring no surprises, where activities in one district may affect another;
 - 8.5 Sharing of information, expertise, databases and research where there is a mutual interest and benefit;
 - 8.6 Encouraging integration and consistency of planning across the Eastern Bay of Plenty;
 - 8.7 Developing agreed positions as appropriate on matters of importance and major government initiatives and, through each respective council, communicate these positions to central government and relevant national organisations;
 - 8.8 Investigating opportunities for achieving cost efficiencies by sharing responsibilities and services.
- 9. Where appropriate and applicable, recommendations must be supported by cost-benefit analyses.
 - 10. Each Council participating in a joint initiative will fund its own proportion of that joint initiative as determined by EBOPJC.

D. Meetings

- 11. EBOPJC meetings will be held in accordance with the requirements of Schedule 7 of the Local Government Act 2002 and the requirements of the Local Government Official Information and Meetings Act 1987.
- 12. A meeting is duly constituted if a quorum is present, whether or not all of the members are voting or entitled to vote.
- 13. Business may not be transacted at any meeting unless at least a quorum of members is present during the whole of the time at which the business is transacted.
- 14. The quorum at a meeting of EBOPJC is half of the members if the number of members (including vacancies) is even, or a majority of members if the number of members (including vacancies) is odd.
- 15. The members of EBOPJC will engage with their respective councils on strategic issues under discussion and all councils will maintain their own operational inter-council relationships as normal.
- 16. The Chief Executive, or the Chief Executive's representative, of each partner council shall attend meetings and will act as advisors to the EBOPJC.
- 17. Meetings will be coordinated and recorded by staff from the partner council as scheduled by EBOPJC.
- 18. Meetings may be attended by further staff support as considered appropriate by their Chief Executive.
- 19. External speakers and participants, including mayors from territorial authorities who are not parties to EBOPJC, with specific interests in the items under discussion, may be invited to attend meetings.
- 20. Meetings will be held at times and in places set out in an agreed schedule.
- 21. Any formal public communications from meetings will be approved by EBOPJC prior to release.
- 22. The Chairpersons of EBOPJC shall be determined, on an annual basis, by the process as set out at clause 25 of Schedule 7 of the Local Government Act 2002.
- 23. Each Chairperson will have a term of one year.
- 24. A member cannot be appointed as the Chairperson, if either of the previous two Chairpersons were representatives of that member's constituent council.
- 25. Decisions on recommendations of the Committee shall be made in accordance with Clause 24 of Schedule 7 of the Local Government Act 2002 – by vote of majority of members that are present and voting.

26. The Chairperson will have a deliberative vote.
27. In the case of equality of votes, the Chairperson of EBOPJC does not have a casting vote and the status quo is preserved.
28. A Deputy Chairperson shall be determined by the process as set out at clause 25 of Schedule 7 of the Local Government Act 2002.
29. The Deputy Chairperson shall act in the absence of the Chairperson.
30. If a Chairperson resigns from their position before the end of their term, the Deputy Chairperson shall take their place and will serve out the remainder of the term as Chairperson.
31. If a Chairperson resigns and the Deputy Chairperson becomes Chairperson, clause 24 does not apply.
32. Nothing in this Terms of Reference precludes EBOPJC from appointing an independent chairperson.
33. If an independent chairperson is appointed they will also be appointed as a member and will continue to be a member until the end of their term.

E. *Establishment Provisions*

34. For the initial period of establishment (until the first meeting of the next triennium – late 2013) an interim chairperson shall be appointed.
35. The interim chairperson's term shall end at the next meeting of EBOPJC after elected members have been sworn in (October 2013).
36. The interim chairperson shall be determined by EBOPJC at its first meeting in accordance with clause 25 of Schedule 7 of the Local Government Act 2002.
37. If the interim chairperson is appointed, clause 24 of this Terms of Reference does not apply.

Regional Transport Committee - Terms of Reference

1 Delegated Function

Section 105(1) of the Land Transport Management Act 2003 requires every regional council to establish a Regional Transport Committee for its region.

2 Membership

Each regional council must appoint to its regional transport committee:

- Two persons to represent the regional council;
- One person from each territorial authority in the region to represent that territorial authority; and
- One person to represent the New Zealand Transport Agency.

Each regional council must appoint from its representatives the chair and deputy chair of the committee.

At any meeting of a regional transport committee, the chair, or any other person presiding the meeting:

- Has a deliberative vote; and
- In the case of an equality of votes, does not have a casting vote (and therefore the act or question is defeated and the status quo is preserved).

3 Quorum

In accordance with Council standing order 2.4.3, the quorum at a meeting of the committee is five, consisting of the majority of the number of members.

4 Term of the Committee

Under section 105(1) of the Land Transport Management Act 2003, every regional council must establish a regional transport committee as soon as practicable after each triennial election.

5 Specific Responsibilities and Delegated Authority

- 1 To prepare a regional land transport plan, or any variation to the plan, for the approval of the Regional Council.
- 2 To adopt a policy that determines significance in respect of:
 - a) variations made to regional land transport plans under section 18D of the Land Transport Management Act 2003; and
 - b) the activities that are included in the regional land transport plan under section 16 of the Land Transport Management Act 2003.
- 3 To provide the Regional Council with any advice and assistance the Regional Council may request in relation to its transport responsibilities.
- 4 To approve submissions to central government, local authorities and other agencies on Regional Transport Committee matters.
- 5 To approve the regional Road Safety Action Plan.

6 Procedure of the Committee

The Regional Transport Committee may appoint external advisors to assist it in the exercise of its specific responsibilities and delegated authority. For the purposes of clarity, external advisors may be given full speaking rights at the discretion of the Committee, but are not entitled to vote on Committee matters.

The provisions of the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987 concerning the meetings of committees of regional councils, so far as they are applicable and with the necessary modifications, apply in respect of meetings of the regional transport committees.

Note:

- *The Regional Transport Committee does not have any financial delegation.*
- *Under the Local Government Act 2002 the Regional Transport Committee is not defined as a joint committee.*
- *The Regional Transport Committee reports directly to the Regional Council.*

Civil Defence Emergency Management Group – Terms of Reference

1 Delegated Function

This Joint Committee, required under section 12(1) of the Civil Defence Emergency Management Act 2002, is governed by the Group's Constitution (dated July 2013).

2 Membership

Seven councils in the Bay of Plenty make up the Bay of Plenty Civil Defence Emergency Management Group:

- Bay of Plenty Regional Council
- Kawerau District Council
- Opotiki District Council
- Rotorua District Council
- Tauranga City Council
- Western Bay of Plenty District Council
- Whakatane District Council

3 Term of the Committee

Pursuant to section 12(2) of the Civil Defence Emergency Management Act 2002 this committee is a permanent committee and is not disestablished as a consequence of a local government election.

4 Specific Responsibilities and Delegated Authority

The Civil Defence Emergency Management Group has a constitution and this specifies the functions and powers of the group.

Note:

The Civil Defence Emergency Management Group reports directly to the Regional Council.



EASTERN BAY ROAD SAFETY COMMITTEE

Terms of Reference

Objective	To provide strategic direction, oversight and leadership to ensure Eastern Bay roads are increasingly free of death and serious injury.
Aims	<p><i>Safer Journeys</i>, the New Zealand Road Safety Strategy, highlights the need to work across all elements of the road system (roads, speeds, vehicles and road use) and advocates that everyone has a responsibility for road safety.</p> <p>The aim of the Eastern Bay Road Safety Committee (EBRSC) is to support, monitor and advocate for road safety in the Eastern Bay. It will do this through coordinating the work of all the Eastern Bay agencies that have a road safety function to ensure the <i>Safer Journey's</i> 'safe systems' approach is achieved.</p> <p>The Committee will support road safety in the Eastern Bay by:</p> <ul style="list-style-type: none"> ▪ Ensuring that all funders and stakeholders maintain an agreed vision and purpose; ▪ Providing leadership in planning and development of road safety programmes, plans and initiatives; ▪ Supporting each of the key actions within the Road Safety Implementation and Action Plans; ▪ Contributing to the preparation of local, regional or national strategies and plans as appropriate; ▪ Overseeing the implementation of the Road Safety Action Plan by monitoring progress, evaluating and providing feedback and direction to member agencies; ▪ Raising the profile of road safety initiatives within member organisations and within the wider community; ▪ Providing networking and information sharing opportunities, with regular reporting by member organisations to the Committee on projects and priorities; ▪ Supporting community led road safety initiatives if they can be demonstrated to contribute to Eastern Bay road safety objectives;
Principles	<p>The Committee will work to:</p> <ul style="list-style-type: none"> ▪ enhance mutual benefit and create a common purpose; ▪ commit appropriate resources including time, skill and expertise; ▪ encourage participation of all members; ▪ think strategically and innovatively; and ▪ provide leadership and oversight.

	<p>While it is recognised that each member brings a particular perspective, members will be expected to act in the best interests of road safety and all people in the Eastern Bay of Plenty region in achieving the above aims.</p> <p>All members must agree to support the terms of reference.</p>
Chairperson	<p>The Chairperson and Deputy Chairperson of the Committee will be appointed by the EBRSC at the first meeting of the new three year planning term for a term of three years.</p>
Membership	<p>The EBRSC will be composed of no more than 10 core members. Members of the EBRSC will be selected by the individual organisations. Members will be eligible for reappointment, which will coincide with the local government election cycle. Each appointment will be for a term of approximately three years.</p> <p>Committee membership will be made up of representatives from the following organisations:</p> <ul style="list-style-type: none"> • Whakatāne District Council (1 elected member) • Kawerau District Council (1 elected member) • Ōpōtiki District Council (1 elected member) • Bay of Plenty Regional Council (1 elected member) • NZTA (1 representative) • New Zealand Police (1 representative) • Road Transport Association NZ (1 representative) • ACC (1 representative) <p>Other members can be co-opted to the group for specific periods to assist the work of the EBRSC as necessary but will not have voting rights</p> <p>The members may nominate an alternate person from their organisation to attend Committee meetings, either on a permanent or temporary basis.</p>
Parameters	<p>The EBRSC provides support, leadership and oversight for road safety in the Eastern Bay of Plenty.</p> <p>The Committee must be aware of, and monitor the progress of the objectives of the road safety programmes, plans and initiatives.</p>
Accountability	<p>The Committee and its members are accountable for the successful outcomes of the Eastern Bay Road Safety activity.</p>
Relationships	<p>Whakatāne District Council is responsible for the day to day management and coordination of the Eastern Bay Road Safety activity.</p>

	<p>Whakatāne District Council will service the working of the EBRSC, including the provision of administrative support, preparation of agendas, reports and minutes in conjunction with the Chairperson.</p>
<p>Scope</p>	<p>The scope of the EBRSC covers all roads in the Whakatāne, Ōpōtiki and Kawerau Districts, including State Highways. It includes all road safety activities carried out in the Eastern Bay including education and promotion, enforcement activities and engineering programmes. It coordinates these programmes and activities with regional and national road safety programmes and initiatives.</p> <p>EBRSC will seek to give effect to the New Zealand road safety strategy, <i>Safer Journeys</i>, and the Eastern Bay Road Safety Implementation Plan when determining its local focus and priorities.</p> <p>EBRSC's role is essentially to provide an interagency response to local, regional and national road safety strategies, and in particular, will seek to achieve the Eastern Bay's road safety objective.</p>
<p>Meetings and Process</p>	<p>The Committee will meet at least quarterly. Meetings will be held at times and in places set out in an agreed schedule.</p> <p>The Committee may need to hold additional workshops, information sessions involving group members or other interested parties.</p> <p>The Chief Executive, or the Chief Executive's representative, of each partner council shall attend meetings and will act as advisors to the EBRSC.</p> <p>Meetings may be attended by further staff support as considered appropriate by their Chief Executive.</p> <p>The quorum at a meeting of EBRSC is half of the members if the number of members (including vacancies) is even, or a majority of members if the number of members (including vacancies) is odd</p> <p>The Chairperson will have a deliberative vote. In the case of equality of votes, the Chairperson of EBRSC does not have a casting vote and the status quo is preserved.</p> <p>The EBRSC has the ability to set up sub-committees to carry out specific directions of the Committee.</p>

Performance	These terms of reference are in force until amended in writing by the partner Councils. Consultation with all Committee member organisations will precede any amendments to the Terms of Reference.
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REPORT

Date : 21 October 2019

To : Inaugural Council and Coast Community Board Meeting, 31 October 2019

From : Chief Executive Officer, Aileen Lawrie

Subject : **LEGISLATIVE ADVICE FOR THE INCOMING COUNCIL**

File ID: 180235

EXECUTIVE SUMMARY

This report provides legislative advice and an overview of key legislation for the incoming Council to understand the role of a District Councillor.

PURPOSE

The purpose of this report is to provide the Council with an overview of key legislation that you need to be aware of and have an understanding of in your role as a District Councillor. This report will highlight some of the key aspects of the following legislation:

- Local Government Act 2002
- Local Government Official Information and Meetings Act 1987
- Local Authority (Members' Interests) Act 1968
- Crimes Act 1961 – Sections 99, 105 and 105A
- Secret Commissions Act 1910
- The Financial Markets Conduct Act 2013
- Health and Safety at Work Act 2015

BACKGROUND

There are certain legal provisions which Members must be aware of to avoid a risk of disqualification from office. There is also a requirement to have these brought to your attention at the Inaugural meeting of the Council under Clause 21 (5) of Schedule 7 of the Local Government Act 2002. This report only serves as an overview and training opportunities are available as is advice from staff as

matters arise. Local Government operates within a very complex framework of many different statutes, policies, practices and community expectations.

LOCAL GOVERNMENT ACT 2002

The Local Government Act 2002 spells out local government's purpose, its general powers, its specific by-law making powers and the principles and processes that councils must abide by when making decisions.

The Local Government Act 2002 is based on the principle of general competency, which enables a Council to do whatever is necessary to fulfil its role. Within this framework, and subject to funding constraints, there is flexibility in deciding what activities are undertaken and how they are carried out. It states that the overall role of the Council is to ensure democratic local decision-making and action by, and on behalf of, communities.

The purpose of local government is defined in section 10 of the LGA 2002 and states

The purpose of local government is—

- (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 for the future*

As elected Council representatives you are responsible for making key policy decisions that guide our activities and provide the direction for our district's future. The Opotiki District Council carries out a number of functions, responsibilities and activities which include:

- Constructing, managing and maintaining local infrastructure on behalf of the community. This infrastructure includes: roads, water supply, sewage disposal, refuse collection and disposal, and stormwater drainage.
- Providing and maintaining community facilities and assets which include: parks and gardens, library, community halls, cemeteries, public conveniences, airport and harbours.
- Planning for the future needs of the district.
- Managing the environment for present and future residents.
- Undertaking a regulatory role to ensure that residents have a safe, desirable and healthy environment in which to live.
- Advocacy on behalf of the local community with central government, other local authorities and other agencies.

- Promoting and facilitating development of the district that will benefit residents, and providing a comprehensive information service.

Activities of Council are consulted on through the Long Term Plan (LTP) that sets a three-yearly blueprint for annual work plans. We are audited for financial performance, policy adherence and against the commitments made in LTPs. Major changes to directions can only be taken through Long Term Plans, and smaller changes through Annual Plans.

LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987 (LGOIMA)

LGOIMA provides for all local government activities to take place in an open and transparent environment. It also specifies that, generally, all information held by a local authority in any form should be available to the public. The purpose of LGOIMA is to enable more effective participation by the public in the actions and decisions of local authorities and to promote the accountability of local authority members and officials with a view to enhancing respect for the law and promote good local government in New Zealand.

There are two aspects to this Act:

- Access to Local Authority Information; and
- Local Authority meetings

A brief overview of these provisions is provided in the following paragraphs.

Access to Local Authority Information

Generally, all information held by a local authority in any form should be available to the public. Information held on Councillors' emails account and P's can be considered Council information. This triennium the introduction of IPADs and an ODC email account will help manage risks around what is public information and personal information.

LGOIMA does provide that certain material does not constitute "information" for the purposes of the Act. This includes library or museum material, information acquired solely for reference or exhibition purposes, information held by the Council as agent for the purpose of safe custody and correspondence with the Ombudsman relating to a matter under investigation by that office.

Council is only obliged to supply information, and not opinion. Often information requests seek information and then some sort of opinion. Unless there is a policy position, Council staff will refrain from expressing an opinion.

It also sets out certain reasons that a Council might rely on to withhold particular information, such as the protection of privacy, commercial advantage, protection of negotiations, and the like.

LGOIMA provides for anyone to have the right to request information held by the Council and that if any such request is refused the applicant has the right of appeal to the Ombudsman. The Ombudsman will then consider the request; the nature and content of the information concerned and the grounds relied on for refusing to provide it. If the Ombudsman believes that some or all of the information should be released, they will recommend a course of action to the Council. It is then up to the Council to decide what to do. The Council's decision is reviewable by the High Court.

Another requirement of the Act is that Council publish a document outlining its functions and giving a general description of the information held by it. This material is published through the Local Governance Statement which is required to be updated within six months following each election. The Local Governance Statement is publicly available on the Council's website however it will need to be updated following the Council's decision on its governance structure for 2013-16.

LGOIMA specifically provides that there will be no liability on Councillors for any information released in good faith under the legislation. It should be noted however that the Privacy Act places strict limitations on Council in respect of the release of information relating to private individuals and this must be seen as curtailing the general rule.

Under LGOIMA the authority to make decisions regarding whether information should be released is delegated to the Chief Executive. Because of the risks associated with information releases council has a robust process around dealing with formal requests and reports these six-weekly through to Council.

As a general rule, any information contained in the open section of any agenda (e.g. the white pages that are not headed "public excluded", or in committee) is already in the public domain. Any information marked "public excluded" or "confidential" should not be released or discussed outside the meeting concerned. If, as an elected member, you are asked to provide any such information to a third party you should refer the request to either myself. Should an elected member release

confidential information and should the Council suffer any loss as a result, the member may become personally liable for the Council's loss if it can be shown that the member was not acting in good faith.

Local Authority Meetings

LGOIMA provides that all meetings of Council, which includes meetings of its committees and community boards, shall be open to the public unless certain specified reasons are met for excluding them. These reasons are basically the same as for withholding information and are set out within Section 48 of the Act. It is necessary for the meeting to be satisfied that any one or more of these reasons exist before the public is excluded. Staff will provide guidance and suggestions where it may be considered to be appropriate for the Council to meet with the public excluded.

LGOIMA also enables the Mayor (or Chairperson in the case of committees and Community Boards) to introduce an item that is not on the agenda as long as there is a clear reason why the item is not on the agenda and why it cannot wait until the next meeting. A formal resolution, including reasons must then be passed to receive and consider the item. This relates to major and urgent matters only. The Council is still subject to the requirements of the decision making processes as set out in the Local Government Act 2002. LGOIMA states that in terms of minor matters, no resolution, decision or recommendation may be made in respect of that item except to refer it to a subsequent meeting of the local authority for further discussion. This requirement is not intended to make the decision making process any more difficult or protracted than necessary but to ensure transparency.

Agendas for Council and Committee meetings have to be made available to the public two clear working days before the day of the meeting. Copies of agendas are also available from the Council offices and public libraries.

LOCAL AUTHORITY (MEMBERS' INTERESTS) ACT 1968

The Local Authority (Members' Interests) Act 1968 helps to protect the integrity of local authority decision-making by ensuring that Councillors are not affected by personal motives when they participate in Council decision-making and cannot use their position to obtain preferential access to contracts.

This Act deals with two forms of "interest", pecuniary interest and non-pecuniary interest.

Pecuniary interest

The two specific rules in the Act are that members cannot:

- Enter into contracts with their local authority worth more than \$25,000 (including GST) in a financial year unless the Auditor-General approves the contracts (referred to as the contracting rule). Breach of this rule results in automatic disqualification from office; and
- Participate in matters before the Council in which they have a pecuniary interest, other than an interest in common with the public (referred to as the participation rule). Breach of this rule is a criminal offence and conviction results in automatic disqualification from office.

A pecuniary interest is one that involves money. This could be direct or indirect. It is sometimes difficult to decide whether an interest in a particular matter is pecuniary or some other kind. It is always the responsibility of elected members to make this decision, to declare any interest when appropriate and to ensure that as an elected member you comply with the Act's requirements at all times. Council has sought guidance from the Office of the Auditor-General on the threshold definition for a pecuniary interest. That has been the subject of several reports to the Audit and Risk Committee over the last triennium. This matter should continue to be considered on a decision by decision basis.

The Act requires that a member shall not vote or take part in the discussion of any matter in which he/she has any pecuniary interest, other than an interest in common with the public. Though not an absolute requirement of the Act, the Council's Standing Orders for the 2013-2016 triennium require that, where a member declares an interest in the issue being debated, the member must withdraw from the Council Chambers. This interest is required to be declared by the member and is noted in the minutes.

The Office of the Auditor-General is the agency, which oversees this legislation and it also has the responsibility and power to institute proceedings against any member. The Office of the Auditor-General uses the following test:

"Whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned."

In deciding whether you have a pecuniary interest you should consider the following factors:

- What is the nature of the decision being made?
- Do I have a financial interest in that decision – do I have a reasonable expectation of gain or loss of money as a result of making that decision?
- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the Act apply to me?
- Could I apply to the Auditor-General for approval to participate?

Further guidance is provided in the booklet "Guidance For Members of Local Authorities about the Local Authorities (Members' Interests) Act 1968" which has been provided to elected members. It is important that you pay particular attention to the contents of this booklet as this is one of the few areas of the Council's business where staff do not set out to provide proactive advice and members are personally liable for compliance with the provisions of this Act.

Non-pecuniary interest

Non-pecuniary interest is any interest the member may have in an issue that does not involve money. A common term for this is "bias". Rules about bias operate not only to ensure that there is no actual bias, but also so there is no appearance or possibility of bias. The principle is that justice should not only be done, but it should be seen to be done. Bias may be exhibited where:-

By their statements or conduct a member may indicate that they have predetermined the matter before hearing or considering all of the relevant information on it (including the Council's debate); or the member has a close relationship with an individual or organisation affected by the matter.

Non-pecuniary interest is a difficult issue as it often involves matters of perception and degree. The question you need to consider, drawn from case law, is:

"Is there, to a reasonable, fair-minded and informed observer, a real indication of bias on the part of a member of the decision making body, in the sense that they might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?"

If there is, the member should declare their interest and withdraw from the debate. The law about bias does not put you at risk of personal liability. Instead, the validity of the Council's decision could be at risk. The need for public confidence in the decision-making process is paramount and perception can be an important factor.

Again the booklet provided by Office of the Auditor-General provides some excellent advice and information on this issue. Practically I would suggest that if you feel that you may have an "interest" in any matter before the Council or a Committee of which you are a member then you should seek independent advice or talk to the Mayor, the Committee Chair or me before the meeting. While this will not relieve you of your obligations under the Act it will provide you with some independent guidance.

The Council has adopted the recommendation of the Office of the Controller and Auditor General and has asked all elected members to make a written declaration of their personal and financial interests that may at times conflict with their role as an elected member. This information will be kept in a "Register of Interests". The Register of Interests is a document that is made available for public inspection upon request. Members are responsible for keeping their written declarations up to date **at all times**. In addition Members will be reminded on an annual basis to update their declaration.

CRIMES ACT 1961: SECTIONS 99, 105 & 105A

Under this Act it is unlawful for an elected member (or officer) to:

- Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of the Council
- Use information gained in the course of their duties for their, or another person's monetary gain or advantage.

Section 99 of the Crimes Act 1961 defines a member or employee of a local authority as an official. For the avoidance of doubt and for the purposes of this Act this means that each elected member of the Council is considered to be an official of the Council. Section 99 also defines a "bribe" as being "any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect". The words "or indirect" open this definition considerably, e.g. an offer of employment to a son or a daughter could be construed as amounting to being a bribe so members need to be aware of their exposure under this Act through other family members.

Section 105 and 105A provide:-

"Corruption and bribery of official—

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 any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.

Everyone is liable to imprisonment for a term not exceeding [7 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 in his 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 in his official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or any other person."

The Act will include a clause that makes these provisions gender neutral. As elected members are deemed to be "officials" for the purposes of this Act and you are therefore subject to these penalties if you are found to be in breach of them. Such a conviction would also have the consequences of loss of office in terms of Clause 1 of Schedule 7 of the Local Government Act 2002 (which disqualifies a Member who is convicted of an offence punishable by a term of imprisonment of two years or more).

SECRET COMMISSIONS ACT 1910

This Act basically establishes offences relating to the giving, receiving or soliciting of gifts or other consideration as an inducement or reward for doing or forbearing to do something in relation to the affairs of the Council, or showing or having shown favour or disfavour to any person in relation to the Council's affairs or business (section 4(1)). It applies to elected members and covers any such gifts given, received or solicited by *"any parent, husband, wife, or child of any agent, or to his partner, clerk, or servant, or (at the agent's request or suggestion) to any other person"*.

The Act makes it an offence for any agent (for the purposes of the Act an elected member is deemed to be an "Agent" of the Council) (section 16(1)(b)) to accept gifts without the consent of the principal (the Council), not to disclose a pecuniary interest in any contract which the agent makes on behalf of the principal, or who knowingly delivers to their principal a false receipt, invoice, account or other document in relation to the principal's business. It is an offence to divert, obstruct, or interfere with the proper course of the affairs or business of the Council, or to fail to use due diligence in the prosecution of its affairs or business, with intent to obtain any gift or other consideration from any person interested in the affairs or business of the Council (section 4(2)).

It also provides that it is an offence for any person to advise a party to enter into a contract with a third party and to receive gifts or consideration from that third party as reward for procuring the contract, unless that person is known by the party to be the agent of that third party. It further provides that the act of aiding or abetting or in any way facilitating an offence against the Act is itself an offence.

Prosecutions made for offences under this Act require the approval of the Attorney-General who has the power to decide whether any such prosecution shall be dealt with as an indictable offence or as one punishable on summary conviction. If any such offence is treated as an indictable offence penalties for individuals include up to two years imprisonment or a fine of up to \$100,000. Such a conviction would also have the consequences of loss of office in terms of Clause 1 of Schedule 7 of the Local Government Act 2002. For a summary offence the penalties include a period of up to 3 months imprisonment or a fine of up to \$100,000.

THE FINANCIAL MARKETS CONDUCT ACT 2013

This legislation governs the raising of money by the offer to the public of opportunity to invest through shares in an enterprise or to lend money to an organisation. Its application to Council would arise if the Council wished to borrow money by public stock issues. It effectively places elected members in the same position as company directors in that they may be personally liable for the content of documents issued under that act. The Ōpōtiki District Council currently borrows from trading banks and has all the statutory and legal requirements in place for it to do so.

PUBLIC RECORDS ACT 2005

The Public Records Act's purpose is to provide a framework to keep central and local government organisations accountable by ensuring records are full and accurate, well maintained and accessible. The Public Records Act 2005 provides for the continuity of the National Archives and the role of the Chief Archivist. The Act 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, text, 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, for example from 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.

PERSONAL LIABILITY OF ELECTED MEMBERS

Elected Members are indemnified in respect of their actions as a member of the Council. Section 43 of the Local Government Act 2002 provides for this indemnity (by 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.

The Local Government Act provides for a theoretical personal exposure on the part of elected members in certain circumstances if the Council has incurred loss due to actions of the Council. 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, as a Member of the Opotiki District Council, you have a defence if you can prove that the act or failure which led to the loss occurred:

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

HEALTH AND SAFETY AT WORK

The Health and Safety at Work Act 2015 provides that elected members have due diligence responsibilities. This is a declaratory duty in that s52 provides that elected members do not commit an offence in relation to the duty imposed on officers (See s44). The Council as a PCBU has a primary duty of care (S36) and other officers of the PCBU, such as the Chief Executive have an unqualified duty of due diligence to the PCBU. While Councillors do not have the same legal liability as Council Officers,

they can be effective in demonstrating a health and safety leadership role that, in turn, may help to mitigate potential reputational damage.

Elected members must have general health and safety knowledge, understand the risks of the organisation, and be satisfied that appropriate resourcing is provided for the organisation. In addition they must be assured that quality monitoring is occurring and that auditing of the health and safety systems of the organisation takes place. Health and Safety considerations permeate every aspect of Council business and we have a range of policies in place such as a Drug and Alcohol Policy and a Pre-qualification requirement for contractors.

Staff report six monthly to the Risk and Assurance Committee on Health and Safety matters.

CONCLUSION

This report provides a brief summary of some of the key pieces of legislation that are of importance to elected representatives. Both external and in-house training and briefings are proposed over the next few months to ensure that Councillors are familiar with and understand their roles and responsibilities and the legislative framework within which they operate.

RECOMMENDATION:

- 1. That the report titled "Legislative Advice for the Incoming Council" be received.**

Aileen Lawrie

CHIEF EXECUTIVE OFFICER



REPORT

Date : 21 October 2019

To : Inaugural Council and Coast Community Board Meeting, 31 October 2019

From : Chief Executive Officer, Aileen Lawrie

Subject : **FIXING OF DATE AND TIME OF FIRST ORDINARY COUNCIL MEETING**

File : A180538

EXECUTIVE SUMMARY

Clause 21(5)(d) of Schedule 7 of the Local Government Act 2002 states the Inaugural Meeting must include “the fixing of the date and time of the first ordinary meeting of the local authority, or the adoption of a schedule of ordinary meetings”.

PURPOSE

To confirm the date and time of the first Ordinary Council meeting for the 2019-2022 triennium.

BACKGROUND

Historically, Council has met on a six weekly basis with ordinary Council meetings being held on a Tuesday and commencing at 9.00am.

DATE AND TIME OF FIRST MEETING

A date for the first ordinary meeting of the Opotiki District Council is proposed for Tuesday, 12 November 2019 commencing at 9.00am in the Council Chambers, 108 St John Street, Opotiki.

In addition to the formal Council and Committee meetings there will be a number of workshops and ongoing training.

A schedule of meetings for 2020 will be provided to a later Council meeting for adoption.

RECOMMENDATIONS:

1. That the report titled "Fixing of Date and Time of First Ordinary Council Meeting" be received.
2. That the first Ordinary meeting of the Ōpōtiki District Council be held on Tuesday, 12 November 2019, commencing at 9.00am in the Council Chambers, 108 St John Street, Ōpōtiki.

Aileen Lawrie

CHIEF EXECUTIVE OFFICER