



**The Initial Meeting of the
Kawerau District Council will be
held on Tuesday 25 October 2022
at Rautahi Marae
commencing at 10.00am**

**(and then adjourning to the Council Chamber
Following the swearing in)**

A G E N D A

GUIDELINES FOR PUBLIC FORUM AT MEETINGS

1. A period of thirty minutes is set aside for a public forum at the start of each Ordinary Council or Standing Committee meeting, which is open to the public. This period may be extended on by a vote by members.
2. Speakers may address meetings on any subject. However, issues raised must not include those subject to legal consideration, or be issues, which are confidential, personal, or the subject of a formal hearing.
3. Each speaker during the public forum is permitted to speak for a maximum of three minutes. However, the Chairperson has the discretion to extend the speaking time.
4. Standing Orders are suspended for the duration of the public forum.
5. Council and Committees, at the conclusion of the public forum, may decide to take appropriate action on any of the issues raised.
6. With the permission of the Chairperson, members may ask questions of speakers during the period reserved for public forum. Questions by members are to be confined to obtaining information or clarification on matters raised by the speaker.

The Initial Meeting of the
Kawerau District Council will be
held on Tuesday 25 October 2022
at Rautahi Marae
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AGENDA

Powhiri

Apologies

1 Declaration of Election Results – District of Kawerau (Chief Executive Officer) (101285)

Pgs. 1

The final result of the Triennial Elections for the positions of Mayor and eight Councillors were announced and publicly notified on Councils website on Friday 14 October 2022.

2 Declaration by the Mayor and Councillors (Chief Executive) (101285)

Pgs. 3 - 7

Her Worship the Mayor and Councillors are to complete a Statutory Declaration pursuant to clause 14, Schedule 7 of the Local Government Act 2002.

Declaration by Mayor or Member

"I [*first name, surname*], declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of District of Kawerau, the powers, authorities, and duties vested in, or imposed upon, me as [*Mayor or Member*] of the Kawerau District Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act."

Morning Tea

MEETING TO BE CONTINUED IN THE COUNCIL CHAMBER

3 Appointment of Deputy Mayor (Chief Executive Officer) (101285)

Clause 17 (1), Schedule 7 of the Local Government Act 2002 requires Council to appoint a Deputy Mayor. Section 41A (3) of the Local Government Act 2002 allows the Mayor to appoint the Deputy Mayor from one of the members.

Recommendation

That Council notes that Councillor [] is appointed to the position of Deputy Mayor in accordance with the provisions of section 41A (3) of the Local Government Act 2002.

4 Council Structure / Meetings (Chief Executive Officer) (101100)

Pgs. 9 - 18

Attached for consideration is a report dealing with Council Structure and Meetings.

Recommendations

1. *That the report "Council Structure / Meetings" be received.*
2. *That the timetable for ordinary meetings of Council and meetings of the Regulatory and Services Committee as set out in Schedule A be adopted.*
3. *That Council notes:*
 - 1.1 *That a Regulatory and Services Committee with full delegation is established to meet on a monthly basis.*
 - 1.2 *That all Councillors are members of the Regulatory and Services Committee.*
 - 1.3 *That Councillor Ion is appointed to the position of Chairperson of the Regulatory and Services Committee.*
 - 1.4 *That Councillor Julian is appointed the position of Deputy Chairperson of the Regulatory and Services Committee.*
 - 1.5 *That an Audit and Risk Committee is established.*
 - 1.6 *That Her Worship the Mayor and Councillors Ion, Julian and Rangihika are appointed to the Audit and Risk Committee as well as an external appointee.*
 - 1.7 *That the Audit and Risk Committee appoint a Chairperson from its membership.*
 - 1.8 *That a Community Awards Committee is established.*
 - 1.9 *That Her Worship the Mayor and Councillors Rangihika and Ross are appointed to the Community Awards Committee as well as a community representative.*
 - 1.10 *That Councillor Rangihika is appointed to the position of Chairperson of the Community Awards Committee.*

- 1.11 *That Her Worship the Mayor is appointed to the position of Deputy Chairperson of the Community Awards Committee.*
- 1.12 *That the Community Awards Committee appoint a community representative.*
- 1.13 *That a Community Grants Committee is established.*
- 1.14 *That Councillors Brooking, Julian, Rangihika, Ross and Savage are appointed to the Community Grants Committee.*
- 1.15 *That Councillor Julian is appointed the position of Chairperson of the Community Grants Committee.*
- 1.16 *That Councillor Rangihika is appointed the position of Deputy Chairperson of the Community Grants Committee.*
- 1.17 *That a Hearings Committee is established.*
- 1.18 *That Her Worship the Mayor and Councillors Ion and Rangihika are appointed to the Hearings Committee.*
- 1.19 *That Councillor Ion is appointed the position of Chairperson of the Hearings Committee.*
- 1.20 *That Her Worship the Mayor is appointed the position of Deputy Chairperson of the Hearings Committee.*
- 1.21 *That appointments to Committees will be reviewed after 12 months.*

5 Council Appointments to Various Organisations and Committees (Chief Executive Officer) (109000)

Pgs. 19 - 23

Attached for consideration is a report dealing with Council appointments to various Organisation and Committees.

Recommendations

Organisation/Committee	Appointee/s (Alternate)
Iwi Liaison	Her Worship the Mayor Cr. Rangihika
Mentors to Kawerau Youth Council	Cr. Godfery Cr. Julian Cr. Ross
Class 4 Gambling (Pokie) Trust Liaison	Her Worship the Mayor Cr. Ion Cr. Rangihika
Creative Communities Assessment Committee	Her Worship the Mayor Cr. Brooking
Crime Reduction Forum	Cr. Rangihika (Chair) Cr. Godfery Cr. Kingi (Deputy Chair)

Organisation/Committee	Appointee/s (Alternate)
Kawerau Accessibility Group	Councillor Godfery (Chair) Councillor Brooking (Deputy Chair)
Kawerau Neighbourhood Support	Cr. Kingi Cr. Godfery (Alternate)
Eastern BOP Joint Committee	Her Worship the Mayor Cr. Rangihika
Eastern Bay of Plenty Road Safety Advisory Committee	Cr. Julian Cr. Ross (Alternate)
Regional Transport Committee	Her Worship the Mayor Cr. Julian (Alternate)
BOP Emergency Management Group	Her Worship the Mayor Deputy Mayor (Alternate)

1. That Council appoints Her Worship the Mayor, Chairperson of the Creative Communities Assessment Committee.
2. That Council appoints Cr. Rangihika, Chairperson of the Crime Reduction Forum.
3. That Council appoints Cr. Kingi Deputy Chairperson of the Crime Reduction Forum.
4. That Council appoints Cr. Godfery, Chairperson of the Kawerau Accessibility Group.
5. That Council appoints Cr. Brooking, Deputy Chairperson of the Kawerau Accessibility Group
6. That Council's representatives on the Creative Communities Assessment Committee be delegated authority to appoint the Community representatives (the Community Arts Council and Local Iwi will nominate their own representatives).

6 Explanation of Legislation Affecting Elected Members (Chief Executive Officer) (103000)

Pgs. 25 - 36

Attached is a report explaining the main items of legislation, which effect elected members.

Recommendation

That the report "Explanation of legislation affecting Elected Members" be received.

7 Standing Orders (Chief Executive Officer) (101105)

Pgs. 37 - 159

Attached for consideration is a report requesting Council adopt a set of Standing Orders for the 2022 – 2025 triennium.

Circulated separately with the agenda is a copy of the Standing Orders.

Recommendation

1. *That the report "Standing Orders 2022 - 2025" be received.*
2. *That the Standing Orders as proposed are adopted as the Council's Standing Orders for the 2022 to 2025 triennium and shall apply to all meetings of the Council, its committees and subcommittees.*
3. *That Council confirm the options recommended in the standing orders relating to:*
 - a) *The chair having a casting vote*
 - b) *That option A is selected for speaking and moving options with the chair being permitted to move Options B or C at the beginning of a meeting*
 - c) *That members have the right to attend by audio or audio-visual link*
 - d) *That staff/officials have up to 5 working days to prepare advice to enable a decision by members*
4. *That a period of up to 30 minutes be provided for a public forum at the commencement of each Council and Regulatory and Services Committee meeting. That each speaker is limited to 5 minutes (however this may be extended with the discretion of the Chair). Members are permitted to ask questions of the speakers on matters of clarification only. At the conclusion of the public forum, Council or the Regulatory and Services Committee will determine the appropriate action on the issues raised.*

8 Elected Members' Remuneration – Following Elections to 30 June 2023 (Chief Executive Officer) (101310)

Pgs. 161 - 167

Attached for consideration is a report informing members of the remuneration pool available for Councillors and options for remuneration to 30 June 2023.

Recommendation

1. *That the report 'Elected Members' Remuneration – Following Elections to 30/6/2023" be received.*
 2. *That elected members confirm the two positions of additional responsibility (Deputy Mayor & Chair of the Regulatory & Services Committee and recommend the following proposed remuneration to the Remuneration Authority:*
 - *Deputy Mayor \$42,235*
 - *Chair of Regulatory & Services Committee \$37,755*
 - *Councillor \$30,203*
- OR**
3. *That elected members recommend alternative salaries for Councillors and the positions of additional responsibility that totals \$261,260*
 4. *That elected members approve the elected members' allowances (as listed) for approval by the Remuneration Authority.*

R B George
Chief Executive Officer

DECLARATION OF RESULTS OF ELECTION

for the Kawerau District Council 2022 elections

I hereby declare the results of the elections held on 8 October 2022 for the following offices:

COUNCIL (<i>eight vacancies</i>)	Votes Received
BROOKING, Rowena Te Rangi	1374
GODFERY, Warwick	1364
HIWARAU, Louise Kaihau	659
ION, Carolyn	1407
JULIAN, Berice	1367
KINGI, Sela	1428
MCLEAN, Craig Kenneth	718
RANGIHIKA, Aaron	1203
ROSS, Justin	1444
SAVAGE, Rex	1256
WILSON, Vivienne Puti	797
WORRELL-KURTH, Vannessa	679

Informal votes received: 4

Blank votes received: 5

I therefore declare Rowena BROOKING, Warwick GODFERY, Carolyn ION, Berice JULIAN, Sela KINGI, Aaron RANGIHIKA, Justin ROSS, and Rex SAVAGE to be elected.

Mayor (*one vacancy*)

Elected unopposed when nominations closed was Faylene TUNUI.

Dated Kawerau, 14 October 2022

Dale Ofsoske, Electoral Officer

Kawerau District Council

2 Ranfurly Court, Kawerau

Phone: 0800 922 822



DISTRICT OF KAWERAU

DECLARATION PURSUANT TO SCHEDULE 7 SECTION 14 OF THE LOCAL GOVERNMENT ACT 2002

I, FAYLENE KAREN NGARETA TUNUI declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of the District of Kawerau, the powers, authorities and duties vested in or imposed upon me as Mayor of the Kawerau District Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987 and any other Act.

DATED at Kawerau this **25th** day of **October** 2022.

Signature

In the presence of:

Russell George
CHIEF EXECUTIVE OFFICER



DISTRICT OF KAWERAU

DECLARATION PURSUANT TO SCHEDULE 7 SECTION 14 OF THE LOCAL GOVERNMENT ACT 2002

I, (first name surname) declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of the District of Kawerau, the powers, authorities and duties vested in or imposed upon me as Member of the Kawerau District Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987 and any other Act.

DATED at Kawerau this **25th** day of **October** 2022.

Signature

In the presence of:

Faylene Tunui
MAYOR

Local Government Act
Schedule 7 Part 1 Section 14 (3) Declaration

E whakapono ana ahau, (first name, surname),
kia mau oku oati i runga i oku pukenga,
ki te whai, me te mahi nga mahi o te kaunihera-a-rohe o
Kawerau,
me te whakatakoto i nga wawata o te haponi,
kua uhia nei ki runga ki ahau,
kia ai hoki ki te Ture Kāwanatanga-ā-Taiao rua mano ma
rua (2002),
ki te Ture Kāwanatanga-ā-Taiao Whakapae me te Hui,
kotahi mano, iwa rau, waru tekau ma whitu (1987),
me ētahi Ture anō rānei.

He mea whakaū tēnei i Kawerau i tēnei rā rua tekau mā rima
(25) o Whiringa-ā-nuku (October) i te tau rua mano rua
tekau mā rua (2022).

Waitohu: _____

Waitohu mai ki mua i a: _____

Meeting: Initial Council
Meeting Date: 25 October 2022
Subject: Council Structure / Meetings
File No.: 101100

1 Purpose

The purpose of this report is to determine a committee structure, appoint a chairperson and set the meeting dates for both Council and the committee(s).

2 Background

The Local Government Act 2002 (LGA) requires that, at its first meeting following the triennial election, a local authority must undertake a number of tasks.

One of these tasks is to fix a date and time for the first ordinary meeting of the local authority or to adopt a schedule of ordinary meetings.

The LGA also provides that a local authority:

1. Must hold meetings that are necessary for the good government of its district.
2. May appoint committees, subcommittees and other subordinate decision making bodies that it considers appropriate.
3. May delegate to a committee or other subordinate decision making body, any of its responsibilities, duties or powers except specific matters such as the power to make a rate.

It follows therefore, that a local authority needs to decide its structure for the new triennium before it can effectively set its meeting dates.

3 Committees

3.1 Regulatory and Services Committee

In the past triennium, Council set up the Regulatory and Services Committee, which all councillors were members, with maximum delegation under the Act. In fact, it has been Council's policy that, except in very exceptional circumstances, matters, which are the responsibility of the committee, should not be dealt with by Council.

The Local Government Act 2002 permits Council to delegate powers and duties to a committee for the purposes of effectiveness and efficiency, except for:

- (a) The power to make a rate; or
- (b) The power to make a bylaw; or

- (c) The power to borrow money, purchase or dispose of assets (other than in accordance with the Long term Plan); or
The power to adopt a Long Term Plan, an Annual Plan or an Annual Report; or
- (d) The power to appoint a Chief Executive; or
- (e) The power to adopt policies required to be adopted in association with the Long term Plan or developed for the purposes of the Local Governance Statement;
or
- (f) The power to adopt a remuneration and employment policy.

The Regulatory & Services Committee meet on a monthly basis except for the month of January. Council itself has met monthly except for the month of January.

3.2 Audit & Risk Committee

Council established an Audit & Risk Committee in 2014. The primary objective of the Committee is to assist the Council in fulfilling its overall responsibilities relating to risk management, financial systems and reporting, external audit, treasury, and compliance.

The roles and responsibilities of the Audit and Risk Committee are to:

- Oversee Council's internal and external audit functions;
- Review external audit engagement letters and management reports;
- Monitor progress toward achieving recommendations in the Audit management report;
- Review and monitor Council's performance monitoring framework (financial and non-financial) and make recommendations to Council;
- Receive Treasury Reports and monitor performance of the Treasury function
- Review Council's draft Annual Report prior to Council's adoption;
- Review the internal audit programme and procedures;
- Approve, review and monitor the risk framework and policy;
- Review the risk register.

Appended to this report are the Audit & Risk Committee Terms of Reference.

3.3 Community Awards Committee

In 2015, Council adopted a community awards policy that included the establishment of a Community Awards Committee. The purpose of the Committee is to receive and assess nominations for community awards and to select recipients of community awards.

The Committee is comprised of three members.

3.4 Community Grants Committee

In 2014, Council established a Community Grants Committee. For this Triennium, the committee will comprise of five elected members. The role of the committee is to:

- Review the criteria for community grants;
- Consider/approve all applications for community grants; and
- Receive accountability reports from organisations that receive a community grant.

3.5 Hearings Subcommittee

From time to time, matters arise under various legislation requiring that Council conduct hearings in a quasi-judicial manner.

These may include but are not limited to:

- Resource consent applications under the Resource Management Act 1991
- Objections under Dog Control Act 1996

In 2014, Council established a Hearings Subcommittee to conduct hearings required under local government legislation excluding those involving the making of bylaws or submissions relating to the preparation of a District Plan or change or variation thereto. The Hearings Subcommittee is a subcommittee of the Regulatory and Services Committee, and has delegated authority to determine any matters heard.

In order to meet the specific requirements of the Resource Management Act 1991, hearings of resource consent applications are undertaken by independent accredited commissioners appointed as required with delegated authority to determine any matters heard. The Manager, Planning, Compliance and Capability has delegated authority to select and engage commissioners for resource consent hearings.

4 Options Considered - Meeting Dates/Times

The Council and its Committee(s) can meet as often as they wish. In the past, this Council has met on a monthly cycle basis. Some councils have a 6-weekly meeting cycle. Obviously, there are many variations on these arrangements available.

Meetings are generally held during normal working hours (9:00 am for Council and the Regulatory and Services Committee, and 1:00 pm for the Audit and Risk Committee). Council could decide to hold meetings at different times.

The advantages of the monthly cycle include relatively speedy decision-making and simplicity. The disadvantage of a longer cycle is more meeting time is required on the part of both elected members and staff.

Council and Regulatory & Services Committee meetings have been held on Tuesdays. It is proposed by the Mayor that the February 2023 and future Council and Regulatory & Services Committee meetings are held on Wednesdays.

5 Policy and Legal Considerations

The Local Government Act 2002, section 41A empowers the Mayor to determine the Committee structure for Council and appoint the Chairperson(s) to the Committee(s). In the event that the Mayor does not exercise this power, the Council may determine the Committee structure and appoint the Chairperson(s) in accordance with the provisions in Clauses 25 and 30 Schedule 7 of the Local Government Act 2002 which are included in the standing orders.

Also the powers given to the Mayor by section 41A of Local Government Act 2002, does not prohibit Council from removing the Deputy Mayor, Committee Chair and

discharging a Committee at a future date in accordance with Clauses 18 and 30 of Schedule 7 Local Government Act 2002.

Council can delegate whatever powers it wishes to a Committee apart from those specified in Clause 32 Schedule 7 of the Local Government Act 2002 (set out in section 3.1 of this report).

Secondly, Council is required to fix a date and time for the first ordinary meeting of the Council or to adopt a schedule of ordinary meetings. This council has always adopted a schedule of ordinary meetings for each year.

6 Consideration of Community Views

Council is required by law to decide on its structure and meeting arrangements at its Initial Meeting. These decisions can be made without consideration of the community's views. In the past, the council/committee structure and the monthly meeting cycle arrangements appear to have the support of the community.

7 Financial Considerations

There are no significant financial considerations. The 2022/23 Annual Plan was prepared on the basis of continuing the status quo.

8 Summary

Initially the decision on the committee structure and the appointment of the chairperson(s) is the Mayor's. If the Mayor decides not to exercise this power then Council may determine the committee structure and the chairperson(s).

The continuation of the previous council structure and meetings is the option preferred by the Mayor.

Council is also required to fix a date for the next ordinary meeting of the Council or adopt a schedule of meetings.

A proposed schedule of meetings for Council and a Regulatory and Services Committee is included at the end of this report.

9 RECOMMENDATIONS

1. That the report "Council Structure / Meetings" be received.
2. That the timetable for ordinary meetings of Council and meetings of the Regulatory and Services Committee as set out in Schedule A be adopted.

3. That Council notes:
 - 3.1 That a Regulatory and Services Committee with full delegation is established to meet on a monthly basis.
 - 3.2 That all Councillors are members of the Regulatory and Services Committee.
 - 3.3 That Councillor Ion is appointed to the position of Chairperson of the Regulatory and Services Committee.
 - 3.4 That Councillor Julian is appointed the position of Deputy Chairperson of the Regulatory and Services Committee.
 - 3.5 That an Audit and Risk Committee is established.
 - 3.6 That Her Worship the Mayor and Councillors Ion, Julian and Rangihika are appointed to the Audit and Risk Committee as well as an external appointee.
 - 3.7 That the Audit and Risk Committee appoint a Chairperson from its membership.
 - 3.8 That a Community Awards Committee is established.
 - 3.9 That Her Worship the Mayor and Councillors Rangihika and Ross are appointed to the Community Awards Committee as well as a community representative.
 - 3.10 That Councillor Rangihika is appointed to the position of Chairperson of the Community Awards Committee.
 - 3.11 That Her Worship the Mayor is appointed to the position of Deputy Chairperson of the Community Awards Committee.
 - 3.12 That the Community Awards Committee appoint a community representative.
 - 3.13 That a Community Grants Committee is established.
 - 3.14 That Councillors Brooking, Julian, Rangihika, Ross and Savage are appointed to the Community Grants Committee.
 - 3.15 That Councillor Julian is appointed the position of Chairperson of the Community Grants Committee.
 - 3.16 That Councillor Rangihika is appointed the position of Deputy Chairperson of the Community Grants Committee.
 - 3.17 That a Hearings Committee is established.
 - 3.18 That Her Worship the Mayor and Councillors Ion and Rangihika are appointed to the Hearings Committee.

- 3.19 That Councillor Ion is appointed the position of Chairperson of the Hearings Committee.
- 3.20 That Her Worship the Mayor is appointed the position of Deputy Chairperson of the Hearings Committee.
- 3.21 That appointments to Committees will be reviewed after 12 months.



R B George, CA, MBA
Chief Executive Officer

SCHEDULE A

MEETING DATES FOR 2022/23

	Regulatory & Services Committee	Council	Audit & Risk
	Tuesday 9:00AM	Tuesday 9:00AM	Wednesday 1:00PM
November 2022	15	29	
December 2022	13	13	

	Regulatory & Services Committee	Council	Audit & Risk
	Wednesday 9:00AM	Wednesday 9:00AM	Wednesday 1:00PM
January 2023	No Meetings for the month of January		
February 2023	8	22	1
March 2023	15	29	
April 2023	12	26	5
May 2023	17	31	
June 2023	14	28	7
July 2023	12	19*	
August 2023	16	30	9
September 2023	13	27	
October 2023	11	25	4
November 2023	15	29	
December 2023	13	13	6

* The 2023 Local Government NZ Conference will be held 26 – 28 July 2023

APPENDIX A

Audit and Risk Committee Terms of Reference

Reporting to - Council

Meeting frequency - The Committee will hold at least four regular meetings per year, and such additional meetings as the Chairperson shall decide in order to fulfil its duties. A special meeting may be held to review Council's annual report.

Objective - The primary objective of the Audit and Risk Committee (Committee) is to assist Council in fulfilling its overall responsibilities relating to risk management, financial systems and reporting, external audit, treasury, and compliance.

Key areas of focus:

1. Financial reporting and control systems.
2. External audit reporting and relationship.
3. Risk management framework.

1 Composition and Tenure

- 1.1 The Committee will be a committee of four Elected Members plus one external appointee.
- 1.2 The Chairperson may be an external appointment with skills and experience to provide value for the Council.
- 1.3 The Committee membership may be reviewed by Council but otherwise will be appointed for the term of Council.

2 Meetings

- 2.1 The Chief Executive Officer and the Manager, Finance and Corporate Services will normally attend committee meetings, but the Committee may meet as it determines with council's auditors without management being present.
- 2.2 The Committee may also ask other council employees, or other suitably qualified persons with interest or expertise in special topics, to attend committee meetings or participate for certain agenda items.
- 2.3 A quorum shall consist of half of the members.

3 Roles and Responsibilities

- 3.1 The Committee is directly responsible and accountable to Council for the exercise of its responsibilities. In carrying out its responsibilities, the Committee must at all times recognise that primary responsibility for management of Council rests with the Chief Executive Officer.
- 3.2 The responsibilities of the Committee may be revised or expanded in consultation with, or as requested by Council from time to time.

3.3 The purpose of the Audit and Risk Committee is to:

- Oversee Council's internal and external audit functions;
- Review external audit engagement letters and management reports;
- Monitor progress toward achieving recommendations in the audit management report;
- Review and monitor Council's performance monitoring framework (financial and non-financial) and make recommendations to Council;
- Receive treasury reports and monitor performance of the treasury function
- Review the internal audit programme and procedures;
- Approve, review and monitor the risk framework and policy;
- Review the risk register.

3.4 The Committee has the authority to appoint one outside person who can assist the Committee to meet its obligations and responsibilities. This appointment is determined on the recommendation of the Mayor and Deputy Mayor and the remuneration is negotiated and approved by the Mayor and Deputy Mayor.

APPENDIX B

Kawerau Community Awards Committee Terms of Reference

1 Purpose

- 1.1 The Kawerau District Council (Council) has established the Kawerau Community Awards Committee ("the Committee") under its Community Awards Policy.
- 1.2 The purpose of the Committee is to receive and assess nominations for Community Awards and to select recipients of Community Awards.

2 Structure

- 2.1 The Committee is comprised of four members.
- 2.2 The Mayor is a member of the Committee ex-officio.
- 2.3 Council will appoint two Councillors to the Committee at the start of each triennium.
- 2.4 The fourth Committee member is a Community Representative from Kawerau who has been endorsed by the other members of the Committee.
- 2.5 The term of office of the Community Representative is the same as that of the two Councillor members of the Committee.
- 2.6 Council will provide administrative support for the Forum.

3 Meetings

- 3.1 The Committee will meet at least twice per year to receive and assess nominations for Community Awards and to select recipients of Community Awards.
- 3.2 Committee members may agree to hold additional meetings to make decisions or arrangements about other aspects of the Community Awards such as calling for nominations, Award design, the Awards function and publicity.
- 3.3 Committee decisions will be made by consensus wherever possible.

4 Review

- 4.1 The Terms of Reference will be reviewed following each review of the Community Awards Policy.
- 4.2 Interim amendments may be made if requested by the Committee.

Meeting: Initial Council

Meeting Date: 25 October 2022

Subject: Council Appointments to Various Organisations and Committees

File No: 109000

1 Purpose

The purpose of this report is to facilitate Council appointments to the various organisations and committees that require Council representation.

2 Background

Council representation is sought on the following:

2.1 Council Internal Groups

- Iwi Liaison
- Mentors to Kawerau Youth Council
- Class 4 Gambling (Pokie) Trust Liaison

2.2 Council Administered Committees

- Creative Communities Assessment Committee
- Crime Reduction Forum
- Kawerau Accessibility Group

2.3 Community Organisations

- Kawerau Neighbourhood Support

2.4 Eastern Bay of Plenty Committees

- Eastern BOP Joint Committee
- Eastern BOP Road Safety Advisory Committee

2.5 Bay of Plenty Committees

- Regional Transport Committee
- BOP Emergency Management Group

3 Organisations and Committees

Council appointments are sought as follows:

3.1 Iwi Liaison Representatives (4 members)

In 2014, Council resolved to establish an Iwi Liaison Committee. It is proposed that for the new Triennium Her Worship the Mayor and the Deputy Mayor be appointed

as Iwi Liaison representatives to meet as required with Tuwharetoa ki Kawerau representatives to foster relationships between Council and Tuwharetoa ki Kawerau and to further develop Maori capacity to contribute to Council's decision-making processes.

3.2 Mentors to Kawerau Youth Council (3 members)

The Kawerau Youth Council was established in 2009 to facilitate the objectives set out in Council's Youth Policy. As part of the governance of the group, Council appoints mentors to provide guidance to Youth Council members and represent youth matters to Council. The mentors also contribute to the success of the Youth Council through leadership, close involvement with the group's activities and association with youth outside Youth Council activities.

3.3 Class 4 Gambling (Pokie) Trust Liaison (3 members)

In 2019, Council raised concerns with the two largest Pokie Trusts operating in Kawerau (the Lion Foundation and the NZ Community Trust) that led to an agreement to have a greater degree of liaison. Four Elected Members are appointed as liaison representatives to meet every six months with the Trusts.

3.4 Creative Communities Assessment Committee (2 members)

Council operates the Kawerau Assessment Committee for the Creative Committees New Zealand Funding Scheme. The prime function of this Committee is to distribute funds received from Creative New Zealand. The agreement we have with Creative New Zealand requires that membership of the Committee be made up as follows:

- Council – two representatives being no more than 50% of the members of the CCAC
- Community Arts Council – one representative (should they so choose)
- Community – unspecified number
- Local Iwi – at least one representative

It is recommended that the Council representatives on the Committee be delegated authority to appoint the Community representatives (The Community Arts Council and Local Iwi nominate their own representatives).

A person may serve a maximum of three consecutive years as Chair.

3.5 Crime Reduction Forum (3 members)

In 2015, Council established a Crime Reduction Forum with representatives from the Police, community crime reduction organisations and Council to foster good working relationships, share information and work collaboratively on matters of shared interest or concern. The Forum is chaired by an Elected Member.

3.6 Kawerau Accessibility Group (2 members)

In 2020, Council established the Kawerau Accessibility Group with community members who either work in the disability sector or experience accessibility issues in their own lives to identify and prioritise areas for action and recommend possible solutions to Council.

3.7 Kawerau Neighbourhood Support (1 member + an alternate)

Neighbourhood Support works closely with the Police and many other organisations in our community to reduce crime, improve safety and prepare to deal with emergencies and natural disasters. The aim of Neighbourhood Support is to make our homes, streets, neighbourhoods and communities safer and more caring places in which to live.

3.8 Eastern BOP Joint Committee (2 members)

The Eastern Bay of Plenty Joint Committee is a committee of the Kawerau, Opotiki and Whakatane District Councils and the Bay of Plenty Regional Council. The purpose of the Joint Committee is to form, explore and make recommendations for strategic collaborative initiatives between the partner councils to respond to subregional issues.

The role of Chairperson is rotated between member Councils and 2022 will be the Regional Council's turn. The Mayor is a member ex-officio and Council appoints one other member.

3.9 Eastern Bay of Plenty Road Safety Advisory Committee (1 member + an alternate)

This Committee is a joint committee of the Bay of Plenty Regional Council and the Kawerau, Opotiki and Whakatane District Councils. Its purpose is to provide strategic direction, oversight and leadership to ensure Eastern Bay roads are increasingly free of death and serious injury.

3.10 Regional Transport Committee (1 member + an alternate)

This is a committee of Bay of Plenty Regional Council, to which Kawerau District Council has the right to appoint one member plus an alternate. Committee tasks include developing regional land transport strategies for all forms of transport, prioritising roading capital projects, passenger transport for the region and all regional road safety.

3.11 BOP Civil Defence Emergency Management Group (1 member + an alternate)

The Bay of Plenty Civil Defence Emergency Management Group is a joint committee of the Bay of Plenty Councils constituted under the Civil Defence Emergency Management Act 2002. It is responsible for the strategic and operational planning to manage hazards and risk over the region and preparing for responses and recovery in the event of an emergency.

Under the Act, His Worship the Mayor or his appointee is Council's representative to the Group. The Mayor will be Council's representative for this triennium but Council needs to appoint an alternate, should she be unable to attend.

4 Policy and Plan Considerations

There are no Council policies or plans that impede Council's ability to make these appointments. In terms of Council's Significance and Engagement Policy, it is considered that the proposed appointments do not have a high degree of significance. Council is therefore not required to conduct a community engagement process in relation to the proposed appointments.

5 Financial Considerations

Meeting costs for Council representation on the above groups and committees is included in Council's Annual Plan Estimates.

6 RECOMMENDATIONS

1. That the report "Council Appointments to Organisations and Committees" be received.
2. That Council makes appointments as listed in the table below:

Organisation/Committee	Appointee/s (Alternate)
Iwi Liaison	Her Worship the Mayor Cr. Rangihika
Mentors to Kawerau Youth Council	Cr. Godfery Cr. Julian Cr. Ross
Class 4 Gambling (Pokie) Trust Liaison	Her Worship the Mayor Cr. Ion Cr. Rangihika
Creative Communities Assessment Committee	Her Worship the Mayor Cr. Brooking
Crime Reduction Forum	Cr. Rangihika (Chair) Cr. Godfery Cr. Kingi (Deputy Chair)
Kawerau Accessibility Group	Councillor Godfery (Chair) Councillor Brooking (Deputy Chair)
Kawerau Neighbourhood Support	Cr. Kingi Cr. Godfery (Alternate)
Eastern BOP Joint Committee	Her Worship the Mayor Cr. Rangihika
Eastern Bay of Plenty Road Safety Advisory Committee	Cr. Julian Cr. Ross (Alternate)
Regional Transport Committee	Her Worship the Mayor Cr. Julian (Alternate)
BOP Emergency Management Group	Her Worship the Mayor Deputy Mayor (Alternate)

3. That Council appoints Her Worship the Mayor, Chairperson of the Creative Communities Assessment Committee.
4. That Council appoints Cr. Rangihika, Chairperson of the Crime Reduction Forum.

5. That Council appoints Cr. Kingi Deputy Chairperson of the Crime Reduction Forum.
6. That Council appoints Cr. Godfery, Chairperson of the Kawerau Accessibility Group.
7. That Council appoints Cr. Brooking, Deputy Chairperson of the Kawerau Accessibility Group
8. That Council's representatives on the Creative Communities Assessment Committee be delegated authority to appoint the Community representatives (the Community Arts Council and Local Iwi will nominate their own representatives).



Russell George, CA, MBA
Chief Executive Officer

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Meeting: Initial Council
Meeting Date: 25 October 2022
Subject: Explanation of Legislation affecting Elected Members
File No.: 103000

1 Purpose

The purpose of this report is to provide elected members with a high-level general explanation on the laws affecting Elected Members.

The Local Government Act requires that the first meeting of a local authority following a triennial general election must include a general explanation of:

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

A general explanation of other key legislation affecting Elected Members is also included.

- The Health and Safety at Work Act 2015;
- The Privacy Act 2020; and

2 Local Government Act 2002

The Local Government Act 2002 (LGA) defines local government's purpose, its general powers, its specific bylaw making powers and the principles and processes that councils must abide by when making decisions.

The LGA is based on the principle of general competency, which enables a Council to do whatever is necessary to fulfil its role. Within this framework, there is a considerable degree of flexibility in deciding what activities are undertaken and how they are carried out.

The LGA was amended in 2019 to reinstate the four well-beings (social, economic, cultural, and environmental). The purpose of local government is defined in section 10 of the Act, which states:

1. "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.”

In addition to its general power under the LGA, the Council has many specific statutory powers in more than 30 statutes, which provide councils with regulatory powers. Councils also have specific bylaw making powers, which are separate from their general power, and which may be contained in either the LGA or other legislation.

The LGA sets out high-level principles and requires the Council to act in accordance with these when exercising its powers. These can be summarised as the Council must:

- Act with transparency and openness and be democratically accountable
- Give effect to identified priorities efficiently and effectively
- Have regard to the views of all of its communities
- When making decisions, consider the diversity of the community and the interests of future as well as current communities, and the likely impact of any decision on these interests
- Provide opportunities for Māori to contribute to its decision-making processes
- Collaborate and co-operate with other local authorities
- Act in accordance with sound business practices
- Periodically review the returns from investing in or undertaking commercial activities satisfy itself that the expected returns outweigh the
- Ensure prudent stewardship and the efficient and effective use of resources in the interests of the district including planning for the future management of its assets
- In taking a sustainable development approach, take into account the social, economic, and cultural interests of the people and communities, the need to maintain and enhance the quality of the environment and the needs of future generations.

If any of the principles or any aspects of well-being are in conflict, the Council must resolve that conflict in an open, transparent, and democratically accountable manner. These principles are helpful in determining the governance structure, as they are indicative of the spirit and intent of the LGA and govern the way in which the Council undertakes decision-making. A Council that is seen to act in conflict with these principles can be subject to judicial review.

Every decision made by the Council, including a decision not to take any action, must be made in accordance with the decision-making framework in the LGA. A higher standard of compliance with the decision-making process is required when the Council is making a significant decision. The definition of “significance” is defined in the LGA and in Council’s Significance and Engagement Policy.

Another requirement of the Act is that Council must publish a document outlining its functions and 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 triennial election. The Local Governance Statement is publicly available on the Council’s website, but it will need to be updated following the Council’s decision on its governance structure for 2022-2025.

Personal Liability of Elected Members

Elected Members are indemnified in respect of their actions as a member of the Council. Section 43 of the LGA provides for this indemnity (by the Council) in relation to:

- a) civil liability (both for costs and damages) bought by a third party 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 their capacity as an Elected Member.

However, the LGA provides that an Elected Member may have personal exposure in certain circumstances if the Council has incurred an unrecovered loss by its actions or omissions (section 44). The loss must arise out of one of the following situations:

- the Council unlawfully spends money;
- the Council unlawfully sells or disposes of an asset;
- the Council unlawfully incurs a liability;
- 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 from each Elected Member jointly and severally. However, as a Member of the District Council, you have a defence (section 46 LGA) 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 professional or expert competency.

3 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. At the heart of LGOIMA is the principle of availability, which states that the information should be made available unless there is good reason for withholding it. 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. However, 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.

It also sets out certain reasons that a Council might rely on to withhold particular information, such as the protection of personal privacy, commercial advantage, protection of negotiations, and the like (these are set out in the Council's Standing Orders and in section 7 of LGOIMA).

LGOIMA provides for anyone to have the right to request information held by the Council. If any such request is refused the applicant has the right to complain 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, the Ombudsman 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.

LGOIMA specifically provides that there will be no liability on Elected Members for any information released in good faith under the legislation pursuant to a request for official or personal information. It should be noted however that the Privacy Act 2020 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. The indemnity does not extend to the release of information in response to a request for a land information memorandum (LIM) under Part 6 of LGOIMA.

Under LGOIMA the authority to make decisions regarding whether information should be released is deemed to be that of the Chief Executive, and the Chief Executive has power to authorise another officer or employee of Council to make those decisions. However, if there is a complaint to the Ombudsman arising from such a decision, the consideration of any recommendation made by the Ombudsman for the release of that information is a matter for Council.

As a general rule, any information contained in the open section of any agenda 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 the Chief Executive or to the Group Manager responsible for the report. If an Elected Member releases confidential information and the Council suffers any loss as a result, the member may become personally liable for that loss if it can be shown that they were not acting in good faith.

Local Authority Meetings

LGOIMA provides that all meetings of Council and its committees, and the meetings of community boards and their committees, shall be open to the public unless certain specified reasons can be satisfied for excluding them.

These reasons are basically the same as for withholding information (except for the provision that allows information to be withheld to protect the free and frank expression of opinions). 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 or for one of its committees to meet with the public excluded.

LGOIMA also enables the Mayor (or Chairperson in the case of committees) to introduce and deal with 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 LGA. LGOIMA states that in terms of minor matters that are not on the agenda, 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 rather 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.

Other provisions of LGOIMA require meetings to be publicly notified and provide that any matter including defamatory matter published in any agenda, or oral statements made at any meeting are privileged unless proven to have been made with malice. This type of privilege is known as qualified privilege. It is a protection afforded by the law on certain occasions to a person acting in good faith and without any improper motive who makes a statement defamatory of another person. It is established in law that meetings of local authorities are privileged occasions. The reason given by the Courts is that those who represent local government electors should be able to speak freely on any matter they believe affects the interests of their residents. The situation regarding statements made outside a formal meeting is not so clear and the statutory protections afforded by sections 52 and 53 do not extend to published matters outside of agendas or minutes, or to statements made outside of a meeting. What is required for qualified privilege to apply is a positive belief in the truth of what is said, and that there is no suggestion of personal spite or ill-will by the maker.

The Chairperson at a meeting can require a member of the public to leave a meeting if the behaviour of the person concerned is likely to prejudice the orderly conduct of the meeting. If an Elected Member's conduct prevents the orderly conduct of the meeting, that member can also be asked to leave by the Chairperson under the Council's Standing Orders.

The Council can hold forums or workshops that are not open to the public. This is because forums or workshops are not treated as formal Council meetings (as long as no decisions are made) and so they are not subject to Part 7 of LGOIMA, which applies only to local authority meetings.

4 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 one form of “interest” known as pecuniary interest. Other forms of non-pecuniary interest are dealt with outside of the Act under the common law.

Pecuniary interest

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

1. 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
2. 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 or a financial benefit or impact. 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 they comply with the Act’s requirements at all times.

The Act generally provides that no person shall be capable of being a member of Council if that person is concerned or interested in any contracts with the Council where the total payments made by the Council in respect of such contracts exceed \$25,000 in any one financial year. The Act also provides that an “interest” exists where a member’s spouse is involved and/or where a member or their spouse is a major shareholder or has control or management of a company which contracts with Council or where the company has a pecuniary interest in the decision. It may also apply where a member’s family trust has a contract with the Council. The Act does provide that on application to it, the Office of the Auditor General may give specific approval to a member being concerned or interested in a particular contract, in which case the provisions of the Act will not disqualify the Councillor from remaining in office. The approval needs be gained before the contract concerned is entered into.

The Act also 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 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 has the responsibility and power to institute proceedings against any member. The Act does not define pecuniary interest; however, 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 “Local Authorities (Members’ Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest” which has been provided to Elected Members

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 likelihood 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 an Elected Member 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.

Pecuniary Interests Register

A recent amendment to the LGA (contained in the Local Government (Pecuniary Interests Register) Amendment Act 2022) requires Council to keep a register of the pecuniary interests of all members of Council. The purpose of the register is to record members’ interests so as to provide transparency and to strengthen public trust and

confidence in local government processes and decision-making. All members must make a pecuniary interest return within 3 months of taking office, and annually by the end of February in subsequent years. The pecuniary interest return must contain a range of information relating to the member's business interests, and activities such as sponsored travel overseas, gifts worth more than \$500. The information provided must be accurate, and there is a duty on a member to correct any errors as they become aware of them. Completion of the register is not a substitution for compliance with the Local Authorities (Members' Interests) Act, and a pecuniary interest declared for the purposes of the register is not necessarily an interest for the purposes of that Act. Failure to comply with these requirements is an offence carrying a penalty of a fine up to \$5000.

Code of Conduct

The Council is required to have a Code of Conduct, which applies to all Elected Members of the Council. Its purpose is to:

- Enhance the effectiveness of the Kawerau District Council and the provision of good local government of the community or district;
- Promote effective decision-making and community engagement;
- Enhance the credibility and accountability of the Kawerau District Council to its communities; and
- Develop a culture of mutual trust, respect, and tolerance between the elected members of the Kawerau District Council and between the elected members and management.

This purpose is given effect through the values, roles, responsibilities, and specific behaviours agreed in the Code. The Code applies to all members that have agreed to adopt it. The Code is designed to deal with the behaviour of members towards each other, the Chief Executive and staff, the media, and the general public. It is also concerned with the disclosure of information that members receive in their capacity as elected members and information, which affects the ability of the Kawerau District Council to give effect to its statutory responsibilities.

A separate report on the Code of Conduct is included in this agenda.

5 Crimes Act 1961

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 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" broaden this definition considerably. For example, 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:

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 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 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.

As Elected Members are deemed to be “officials” for the purposes of this Act they are therefore subject to these penalties if found to be in breach of them. Such a conviction would also have the consequence of loss of office in terms 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).

6 Secret Commissions Act 1910

This Act basically states that you must not use your office for improper gain. It specifically establishes offences relating to the giving, receiving, or soliciting of gifts or other consideration as an inducement or reward for doing or not doing 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. 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) 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.

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 the person giving that advice 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.

In summary, it is an offence for an agent to:

- Receive a secret commission
- Accept a bribe (a gift for doing or not doing something)
- Aid and abet (encourage or refuse to act)

Prosecutions made for offences under this Act require the approval of the Attorney-General and carry a penalty of up to seven years imprisonment. 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.

7 The Financial Markets Conduct Act 2013

The Financial Markets Conduct Act 2013 (FMC Act) replaced the Securities Act 1978. The purpose of the FMC Act is 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. The FMC Act works to reform the regulation of financial conduct and governs the way financial products are offered, promoted, issued, and sold. This includes the on-going responsibilities of those who offer, issue, manage, supervise, deal in and trade financial products. The FMC Act also regulates the provision of certain financial services.

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

8 Protected Disclosures (Protection of Whistle-blowers) Act 2022

The Protected Disclosures (Protection of Whistle-blowers) Act 2022 (The Act) promotes the public interest of facilitating the disclosure of serious wrongdoing and protecting employees and Elected Members who make disclosures.

Council is a public sector organisation subject to the provisions of the Act.

Under the Act, an employee or Elected Member who makes a protected disclosure is protected from retaliation or less favourable treatment, victimisation, and any civil, criminal or disciplinary proceedings that might arise from such a disclosure. They are also entitled to identity confidentiality as far as possible, and to be consulted before any identifying information is released where it is necessary to do so. A protected disclosure occurs where the discloser believes on reasonable grounds that there has been serious wrongdoing under the Act and discloses that information in accordance

with the Act. Serious wrongdoing includes an act or omission by Council that is an offence, a serious risk to public or individual health or safety, a serious risk to the environment or the maintenance of law, an unlawful, corrupt or irregular use of funds or resources, or oppressive, unlawfully discriminatory, or grossly negligent activity.

9 Health and Safety at Work Act 2015

The Health and Safety at Work Act 2015 (HSWA) is New Zealand's primary workplace health and safety legislation. The Act requires that workers and others be given the highest level of protection from workplace health and safety risks, as far as is reasonably practicable. This includes workplace risks to both physical and mental health.

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

Under the HSWA, an "Officer" is any person occupying a position in relation to the business or undertaking, that allows the person to exercise significant influence over the management of the business or undertaking. Elected Council members and the Chief Executive are by default identified as "Officers."

Officers have obligations of due diligence, which are:

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

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

While the due diligence requirements fully apply, members of a territorial authority are expressly excluded from liability for offences under 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.

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

10 **RECOMMENDATION**

That the report “Explanation of legislation affecting Elected Members” be received.



R B George, CA, MBA

Chief Executive Officer

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Meeting: Initial Council
Meeting Date: 25 October 2022
Subject: Standing Orders 2022 - 2025
File No.: 101105

1 Purpose

The purpose of this report is to provide Council with a set of Standing Orders (updated) for adoption.

2 Background

The Local Government Act 2002 requires Council to adopt standing orders. Local Government New Zealand recently reviewed and updated the model standing orders. The main reason for this was to recognise the changes that have resulted from technology and to have a consistent meeting process for councils across the country. A 75% majority vote is required to amend Standing Orders.

Following the 2019 elections, Council adopted the Model Standing Orders as produced by Standards New Zealand with the following amendments:

- Mayor and Chairperson are permitted to have a casting vote in the case of an equality of votes.
- Council also provided for a public forum at the commencement of Council and the Regulatory and Services Committee meetings

Council had previously amended the Standing Orders following the 2013 elections to incorporate the provisions relating to the amended powers of the Mayor to appoint the deputy Mayor, establish committees for Council and appoint the chairperson(s) of the committee(s).

Attached to this report are the new/updated Model Standing Orders as provided by Local Government New Zealand.

3 Changes to Updated Standing Orders

The updated model standing orders are mostly the same as Council's previous standing orders apart from a small number of changes, which reflect changes in legislation and feedback from local authority staff.

4 Policy and Plan Considerations

The Standing Orders are not in conflict with any Council policy or plan.

5 Optional Provisions of the Updated Standing Orders

The new standing orders has included decisions on some options that Council can decide to change. These include:

- Giving the chair a casting vote when there is an equality of votes (Council has previously adopted this option)
- Allowing members to participate by audio or audio/visual (although they are not part of the quorum)
- The standing orders provide for 5 days for staff to prepare advice, although members may feel that this may not always be sufficient
- Speaking and moving options. The recommendation in the standing orders is option A but permits the chair at the beginning of a meeting to resolve either options (B) or (C) – option A is the default process if neither of the other 2 options is resolved.

Options for speaking and moving amendments (clauses 22.2 to 22.4)

- Option A (formal): Strict rules around who can move/second amendments and speak to amendments.
- Option B (less formal)
- Option C (informal): no restrictions on moving amendments and speaking to them

Previous standing orders required members to decide which option to adopt at the beginning of the triennium. Council adopted option B following the 2019 elections. However, the model standing orders recommend option A with the chair having the choice of moving to option B or C at the beginning of the meeting.

6 Significance and Engagement

Community views have not been sought on this matter, nor is it considered necessary.

7 Financial Considerations

There are no financial implications from the adoption of Standing Orders.

8 Legal Considerations

The Local Government Act requires Council to adopt Standing Orders, and a 75% majority is required to amend Standing Orders.

9 Conclusion

The enclosed Standing Orders reflects the legislation contained in the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987. It is recommended that the Standing Orders be adopted.

10 RECOMMENDATIONS

1. That the report "Standing Orders 2022 - 2025" be received.
2. That the Standing Orders as proposed are adopted as the Council's Standing Orders for the 2022 to 2025 triennium and shall apply to all meetings of the Council, its committees and subcommittees.
3. That Council confirm the options recommended in the standing orders relating to:
 - a) The chair having a casting vote
 - b) That option A is selected for speaking and moving options with the chair being permitted to move Options B or C at the beginning of a meeting
 - c) That members have the right to attend by audio or audio-visual link
 - d) That staff/officials have up to 5 working days to prepare advice to enable a decision by members
4. That a period of up to 30 minutes be provided for a public forum at the commencement of each Council and Regulatory and Services Committee meeting. That each speaker is limited to 5 minutes (however this may be extended with the discretion of the Chair). Members are permitted to ask questions of the speakers on matters of clarification only. At the conclusion of the public forum, Council or the Regulatory and Services Committee will determine the appropriate action on the issues raised.



R B George, CA, MBA
Chief Executive Officer

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Meeting: Initial Council

Meeting Date: 25 October 2022

Subject: Elected Members' Remuneration – Following Elections to 30/6/2023

File No.: 101310

1 Purpose

The purpose of this report is to inform elected members of the remuneration pool available (as determined by the Remuneration Authority) and recommend the proposed remuneration for elected members for the period following the elections to 30 June 2023.

2 Background

The features of elected member remuneration as determined by the Remuneration Authority are:

- The Remuneration Authority sets the base salaries for elected members.
- These base salaries including the Mayor's salary have been determined by a "size index" which is based on the size and complexity for each council.
- The Remuneration Authority has also determined a remuneration "pool" for the deputy mayor and councillors' salaries and all this pool is to be used (in total) for elected members remuneration
- Meeting fees are not an option for remunerating members.

The following remuneration (annual) was paid to elected members for the period 1 July 2022 up to the elections (official declaration):

<u>Office</u>	<u>Salary (annualised)</u>
Mayor	\$94,809 (before deduction for vehicle)
Councillors	\$26,216
Deputy Mayor	\$36,702
Committee Chair	\$32,770

The remuneration for the new council commences the day following the official results. The official result will be announced on Friday 14 October 2022.

Therefore, members of the previous Council will be paid the above salaries up to this date.

3 Interim Remuneration for Mayor and Councillors – 15/10/2022

Elected members will be paid the following interim salary until the Remuneration Authority has agreed a new determination following recommendations by Council. Members will then be back paid to 15 October.

The Remuneration Authority has determined the following interim salaries for the Mayor and councillors:

<u>Office</u>	<u>Salary (annualised)</u>
Mayor	\$107,246 (before deduction for vehicle)
Councillors	\$20,965

4 Remuneration Options for Councillors Including Positions of Additional Responsibility

The Remuneration Authority has determined the remuneration pool for Kawerau Council following the elections:

<u>Office</u>	<u>Salary (annualised)</u>
Mayor	\$107,246 (before deduction for vehicle)
Remuneration Pool	\$261,260 for councillors including positions of additional responsibility

The Remuneration Authority has stated that councils must use all the funds in the pool to remunerate elected members. The salary for the Mayor following the election will increase by 13.1% on what was paid prior to the elections and the salaries for the deputy mayor and other elected members increases by 15.2%.

Council in the past has recognised two positions of additional responsibility, which were:

- Deputy Mayor (1.4 times councillors' salary) and
- Chair of Regulatory and Services Committee (1.25 times councillors' salary)

If Council were to continue with the previous committee structure and retain same salary relativity, then the annual salaries would be:

<u>Office</u>	<u>Salary (annualised)</u>
Mayor	\$107,246 (before deduction for vehicle)
Councillors	\$30,203
Deputy Mayor (1.4 times)	\$42,285
Committee Chair (1.25 times)	\$37,755

Alternatively, Council could decide on a different committee structure and have additional positions of “responsibility”, or determine different relativities for the positions of additional responsibility.

However, Council will need to get Remuneration Authority approval prior to introducing the new pay structure.

5 Elected Members Allowances

The Remuneration Authority also determines allowances for elected members, which are currently (2022/23):

- Vehicle mileage allowance is \$0.83 per kilometre for eligible travel for the first 14,000 km and \$0.31 per kilometer after 14,000 kms (\$0.10 for electric vehicles)
- Travel time allowance of \$40.00 per hour (after the first hour) is payable for time spent travelling on council business (as long as it is the quickest and most direct route). The mayor is not eligible for this payment.
- Hearing fees are payable when: conducting a hearing, formally deliberating, participating in a site inspection and preparing for a hearing (NB KDC appoints commissioners for hearings)
- A communications allowance (if Council decides not to provide the required communication devices) and reimburses elected members the following:
 - \$400 pa for PC, Laptop or tablet
 - \$50 pa for printer
 - \$700 pa for mobile phone and service
 - \$800 pa for internet service(To be eligible for these allowances, elected members must have these devices/services and they are available for council business)

It is expected that the Remuneration Authority will issue a further determination for elected member allowances in June 2023.

6 Reimbursement of Expenses

Council will reimburse elected members all reasonable expenses incurred when on council business as long as a receipt is provided.

7 Appendix

Appended to this report is the Remuneration Authority Determination 2022/23

8 RECOMMENDATIONS

1. That the report ‘Elected Members’ Remuneration – Following Elections to 30/6/2023’ be received.

2. That elected members confirm the two positions of additional responsibility (Deputy Mayor & Chair of the Regulatory & Services Committee and recommend the following proposed remuneration to the Remuneration Authority:

- Deputy Mayor \$42,235
- Chair of Regulatory & Services Committee \$37,755
- Councillor \$30,203

OR

3. That elected members recommend alternative salaries for councillors and the positions of additional responsibility that totals \$261,260
4. That elected members approve the elected members' allowances (as listed) for approval by the Remuneration Authority.



Peter Christophers, BBS, ACA

Group Manager, Finance & Corporate Services

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Appendix

Office		Annual remuneration (\$)
Chairperson		16,580
Member		8,290
<i>Wainuiomata Community Board</i>		
Office		Annual remuneration (\$)
Chairperson		17,465
Member		8,732
Invercargill City Council		
Office		Annual remuneration (\$)
Mayor		149,291
Councillor (Minimum Allowable Remuneration)		38,642
<i>Bluff Community Board</i>		
Office		Annual remuneration (\$)
Chairperson		8,842
Member		4,421
Kaikōura District Council		
Office		Annual remuneration (\$)
Mayor		86,000
Councillor (Minimum Allowable Remuneration)		19,580
Kaipara District Council		
Office		Annual remuneration (\$)
Mayor		133,501
Councillor (Minimum Allowable Remuneration)		34,531
Kapiti Coast District Council		
Office		Annual remuneration (\$)
Mayor		145,588
Councillor (Minimum Allowable Remuneration)		38,964
<i>Ōtaki Community Board</i>		
Office		Annual remuneration (\$)
Chairperson		14,963
Member		7,481
<i>Paekākāriki Community Board</i>		
Office		Annual remuneration (\$)
Chairperson		7,924
Member		3,962
<i>Paraparaumu Community Board</i>		
Office		Annual remuneration (\$)
Chairperson		19,100
Member		9,550
<i>Raumati Community Board</i>		
Office		Annual remuneration (\$)
Chairperson		14,554
Member		7,277
<i>Waikanae Community Board</i>		
Office		Annual remuneration (\$)
Chairperson		17,373
Member		8,686
Kawerau District Council		
Office		Annual remuneration (\$)
Mayor		107,246
Councillor (Minimum Allowable Remuneration)		20,965

Mackenzie District Council

Territorial authority	Governance remuneration pool (\$)
Wairoa District Council	246,615
Waitaki District Council	341,467
Waitomo District Council	218,160
Wellington City Council	1,607,344
Western Bay of Plenty District Council	493,230
Westland District Council	226,766
Whakatane District Council	474,260
Whanganui District Council	531,171
Whangarei District Council	834,739

Governance remuneration pools: table 2

This table sets out the local government governance remuneration pools that will apply on and after the day after the date on which the official result of the 2022 local election of members for an individual council is declared. From this date, the new size indices apply for the next council triennium.

Part 1

Remuneration pools for councillors of regional councils

Council	Governance remuneration pool (\$)
Bay of Plenty Regional Council	869,154
Canterbury Regional Council	977,558
Hawke's Bay Regional Council	644,302
Manawatū–Whanganui Regional Council	690,226
Northland Regional Council	580,951
Otago Regional Council	734,869
Southland Regional Council	555,828
Taranaki Regional Council	473,595
Waikato Regional Council	933,748
Wellington Regional Council	947,216
West Coast Regional Council	330,000

Part 2

Remuneration pools for councillors of territorial authorities

Territorial authority	Governance remuneration pool (\$)
Ashburton District Council	450,195
Auckland Council	2,592,269
Buller District Council	324,306
Carterton District Council	226,766
Central Hawke's Bay District Council	350,559
Central Otago District Council	362,213
Chatham Islands Council	151,796
Christchurch City Council	1,900,000
Clutha District Council	390,404
Dunedin City Council	1,191,826
Far North District Council	890,157
Gisborne District Council	700,000
Gore District Council	296,638
Grey District Council	293,506
Hamilton City Council	1,286,366
Hastings District Council	871,295
Hauraki District Council	422,618
Horowhenua District Council	514,833
Hurunui District Council	305,015
Hutt City Council	901,594
Invercargill City Council	573,463
Kaikōura District Council	204,089
Kaipara District Council	413,071
Kapiti Coast District Council	545,969
Kawerau District Council	261,262
Mackenzie District Council	207,000
Manawatu District Council	445,578
Marlborough District Council	609,333
Masterton District Council	456,435
Matamata-Piako District Council	463,877
Napier City Council	802,034
Nelson City Council	609,333
New Plymouth District Council	869,359
Ōpōtiki District Council	312,896
Ōtorohanga District Council	262,886
Palmerston North City Council	865,016
Porirua City Council	593,234

