



Ordinary Council

Hui a te Kaunihera

Thursday, 6 November 2025
Tāite, 6 Whiringa-ā-rangi 2025

Tōtara Room, Whakatāne District Council
14 Commerce Street, Whakatāne
Commencing at 12:30 pm



Chief Executive: Steven Perdia | Publication Date: 31 October 2025

whakatane.govt.nz



Live Streaming the Meeting - *Ka whakapāho mataora te hui***Live Streaming the Meeting - *Ka whakapāho mataora te hui*****PLEASE NOTE**

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A Membership - *Mematanga*

A Membership - *Mematanga*

Mayor Nandor Tánczos

Councillor Toni Boynton

Councillor Gavin Dennis

Councillor Carolyn Hamill

Councillor Andrew Iles

Councillor Lesley Immink

Councillor Wilson James

Councillor Julie Jukes

Councillor Jesse Morgan-Ranui

Councillor Tu O'Brien

Councillor Malcolm Whitaker

B Powers of the Council - *Te mana o te Kaunihera***B Powers of the Council - *Te mana o te Kaunihera***

The Council meet to make decisions on all matters that cannot be delegated, that it has not delegated or that it has had referred to it by staff or a committee. Extraordinary Council meetings may be called when required.

The powers that cannot be delegated by the Council are:

- a. the power to make a rate
- b. the power to make a bylaw
- c. the power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan
- d. the power to adopt a Long-term plan, Annual plan or Annual report
- e. the power to appoint a Chief executive
- f. the power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the Local Governance Statement
- g. the power to adopt a remuneration and employment policy

The powers that can be delegated but which the Council retains:

- a. Approve the Council's recommendation to the Remuneration Authority for the remuneration of additional positions of responsibility for elected members and elected members expenses rules
- b. Approve the Local Governance Statement (called "A Guide to the Whakatāne District Council") produced following the triennial election of members
- c. Resolve those decisions required to be made by a local authority under the Local Electoral Act 2001 including the appointment of electoral officer.
- d. Determine whether or how to fill any extraordinary Council vacancies within 12 months of an election
- e. Review and make decisions on Council membership and the basis for elections through representation reviews
- f. Set the direction for the Long-Term Plan
- g. Hearing of submissions on the Long-Term Plan and, if required, the Annual Plan
- h. Appoint and discharge trustees, directors or office holders to Council's Council-Controlled organisations and to other external bodies
- i. Agree the final Statement of Intent for Council's Council-Controlled organisations
- j. Adopt the Half Yearly and Full Year Annual Report of the Whakatāne Airport
- k. Approve the purchase, sale and disposal of Council property
- l. Approve a proposed plan or a change to a District Plan under Clause 17 of the First Schedule of Resource Management Act 1991 (RMA); A1827586 April 2021 Page 14 of 37.
- m. Approve changes to the status or revoke the status of a reserve as defined in the Reserves Act 1977
- n. Authority to name or rename a reserve in accordance with the Reserves Management Plan;

B Powers of the Council - *Te mana o te Kaunihera* (Cont.)

- o. Authorise any unbudgeted expenditure that exceeds the delegation levels provided to officers, committees or other subordinate decision-making bodies of Council
- p. Approve recommendations from relevant Committees for new fees and charges for services provided, outside of the Annual Plan or Long Term Plan process.

Procedural matters exercised by Council:

- a. Receive minutes and recommendations, and make decisions on any recommendations from Council Committees.
- b. Consider any matters referred to it from any of the Committees, the Mayor, or Chief Executive.

TABLE OF CONTENTS

1	Prayer - <i>Karakia</i>	8
2	Meeting Notices - <i>Ngā Pānui o te hui</i>	8
3	Apologies - <i>Te hunga kāore i tae</i>	8
4	Conflicts of Interest - <i>Ngākau kōnatunatu</i>	9
5	Final Declaration of Election Results 2025	10
5.1	Appendix A - Official Declaration of results of election and poll for WDC	14
6	Declarations of Office	18
6.1	Declaration by Mayor Elect N Tánczos	18
6.2	Declarations by Members	20
7	Reports - <i>Ngā Pūrongo</i>	22
7.1	Appointment of Deputy Mayor 2025-2028	22
7.2	Fixing the date and time of the first meeting	24
7.3	Legislative Advice to incoming Council 2025-2028	26
7.4	Resolution of thanks to Retiring Elected Members	39

1 Prayer - *Karakia*

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2 Meeting Notices - *Ngā Pānui o te hui*

1. Live Streaming

The Whakatāne District Council livestreams Council and Standing Committee meetings held in Tōtara Room, within the Council building. The webcast will live stream directly to Council's YouTube channel in real time. The purpose of streaming meetings live is to encourage transparency of Council meetings.

Welcome to members of the public who have joined online and to those within the public gallery.

By remaining in the public gallery, it is understood your consent has been given if your presence is inadvertently broadcast. Please be aware the microphones in Totara Room are sensitive to noise, so please remain quiet throughout the meeting unless asked to speak.

2. Health and Safety

In case of an emergency, please follow the building wardens or make your way to the nearest exit. The meeting point is located at Peace Park on Boon Street.

Bathroom facilities are located opposite the Chambers Foyer entrance (the entrance off Margaret Mahy Court).

3. Other

3 Apologies - *Te hunga kāore i tae*

No apologies were recorded at the time of compiling the agenda.

4 Conflicts of Interest - *Ngākau kōnatunatu***4 Conflicts of Interest - *Ngākau kōnatunatu***

Members are reminded of the need to stand aside from decision making when a conflict arises between their role as an elected member and any private or other external interests they might have. Elected Members are also reminded to update their register of interests when changes occur.

1. Financial Conflict

- Members present must declare any direct or indirect financial interest that they hold in any matter being discussed at the meeting, other than an interest that they hold in common with the public.
- Members cannot take part in the discussion, nor can they vote on any matter in which they have a direct or indirect financial interest, unless with an approved exception.
- Members with a financial interest should physically withdraw themselves from the table. If the meeting is public excluded, members should leave the room.

2. Non-Financial Conflict

- If a member considers that they have a non-financial conflict of interest in a matter they must not take part in the discussions about that matter or any subsequent vote.
- Members with a non-financial interest must leave the table when the matter is considered but are not required to leave the room.

5 Final Declaration of Election Results 2025**5 Final Declaration of Election Results 2025**To: **Whakatāne District Council**Date: **Thursday, 14 November 2025**Author: **C Viljoen / Governance Services Manager & Deputy Electoral Officer**Authoriser: **E Hatch / General Manager People and Partnerships**Reference: **A2991055****1. Reason for the report - *Te Take mō tēnei rīpoata***

To present the final declaration of results of the election of Mayor, Councillors and Community Board members to the Whakatāne District Council.

2. Recommendation - *Tohutohu akiaki*

THAT the Final Declaration of Election Results 2025 report be **received**.

3. Background - *He tirohanga whakamuri*

Attached is the final declaration of election results of the election of Mayor, Councillors and Community Board members to the Whakatāne District Council.

The official result was publicly notified on Council's website on Friday, 17 October 2025.

4. Final declaration of results of election to the Whakatāne District Council**4.1. Mayor of Whakatāne District Council**

MAYOR (<i>one vacancy</i>)	Votes Received	Rank
ILES, Andrew	1559	
INMAN, Mark	1698	
JACOBS, Philip	1317	
JAMES, Wilson	834	
LUCA, Victor	3569	
TÁNCZOS, Nándor	3713	1

5 Final Declaration of Election Results 2025(Cont.)

<i>Informal</i>	15	
<i>Blank</i>	119	

Nándor Tanczos was declared elected as the Mayor of the Whakatāne District Council.

4.2. Whakatāne District Council Māori Wards**4.2.1. Kāpū-te-rangi Māori Ward (one vacancy)**

Kāpū-te-rangi Māori Ward (one vacancy)	Votes Received	Rank
BOYNTON, Toni	779	1
WALLACE, Hiria	228	
<i>Informal</i>	0	
<i>Blank</i>	23	

Toni Boynton was declared elected as the Māori Ward Councillor of the Kāpū-te-rangi Māori Ward.

4.2.2. Rangitāiki Māori Ward (one vacancy)

Rangitāiki Māori Ward (one vacancy)	Votes Received	Rank
O'BRIEN, Tu	660	1
VERCOE, Rihi	385	
<i>Informal</i>	2	
<i>Blank</i>	31	

Tu O'Brien was declared elected as the Māori Ward Councillor of the Rangitāiki Māori Ward.

4.2.3. Toi ki Uta Māori Ward (one vacancy)

Toi ki Uta Māori Ward (one vacancy)	Votes Received	Rank
MCGAHAN, Glenn	269	
MORGAN-RANUI, Jesse Wayne	807	1
<i>Informal</i>	0	
<i>Blank</i>	60	

5 Final Declaration of Election Results 2025(Cont.)

Jesse Wayne Morgan-Ranui was declared elected as the Māori Ward Councillor of the Toi Ki Uta Māori Ward.

4.3. Whakatāne District Council General Wards**4.3.1. Whakatāne-Ōhope Ward (four vacancies)**

Whakatāne-Ōhope General Ward (four vacancies)	Votes Received	Rank
BARNARD, Chris	2084	
HAMILL, Carolyn Louise	4211	1
HORAN, Brendan	2413	
IMMINK, Lesley	3225	2
JUKES, Julie Claire	3033	3
STEWART, Dave	1994	
WHITAKER, Malcolm	2575	4
<i>Informal</i>	<i>15</i>	
<i>Blank</i>	<i>153</i>	

Carolyn Hamill, Lesley Immink, Julie Clare Jukes and Malcolm Whitaker were declared elected as the General Ward Councillors of the Whakatāne/Ōhope General Ward.

4.3.2. Te Urewera General Ward (one vacancy)

The number of candidates did not exceed the number of vacancies; therefore, Andrew ILES was declared as the General Ward Councillor of the Te Urewera General Ward.

4.3.3. Rangitāiki General Ward (two vacancies)

The number of candidates did not exceed the number of vacancies; therefore, Gavin DENNIS and Wilson JAMES were declared as the elected members of the Rangitāiki General Ward.

4.4. COMMUNITY BOARDS**4.4.1. Whakatāne-Ōhope Community Board (six vacancies)**

Whakatāne-Ōhope Community Board (six vacancies)	Votes Received	Rank
BONNE, Linda	3534	3
CESSFORD, Sasha Victoria	3199	6
HOWARD, Christopher	3580	2

5 Final Declaration of Election Results 2025(Cont.)

KINGI, Quin	2867	
MCLEAN, Douglas	3529	4
PROOT, Tim	1932	
SLOMAN, Rosemary Jan	3479	5
WHALE, Sue	3654	1
<i>Informal</i>	<i>11</i>	
<i>Blank</i>	<i>403</i>	

Linda BONNE, Sasha Victoria CESSFORD, Christopher HOWARD, Douglas MCLEAN, Rosemary Jan SLOMAN and Sue WHALE were declared elected as the members of the Whakatāne/Ōhope Community Board.

4.4.2. Rangitāiki Community Board (six vacancies)

Rangitāiki Community Board (six vacancies)	Votes Received	Rank
BONNER, Stephanie	1421	4
BROWN, Heemi	1360	6
CLARK, Bill	2037	2
EVANS, Bruce	1366	5
FLOWERDAY, Peter	1320	
HALE, Storm	2128	1
MCHARDY, Stu	1842	3
<i>Informal</i>	<i>2</i>	
<i>Blank</i>	<i>100</i>	

Stephanie BONNER, Heemi BROWN, Bill CLARK, Bruce EVANS, Storm HALE and Stu MCHARDY were declared elected as the members of the Rangitāiki Community Board.

4.4.3. Murupara Community Board***Murupara Subdivision (3 vacancies)***

The number of candidates did not exceed the number of vacancies; therefore, Weku KEREOPA, Irma PRENTICE and Karito PAUL were elected unopposed as members of the Murupara Community Board.

5.1 Appendix A - Official Declaration of results of election and poll for WDC***Murupara Te Urewera Subdivision (1 vacancy)***

The number of candidates did not exceed the number of vacancies; therefore, Mere HONEYCOMBE was elected unopposed as an elected member of the Murupara Community Board.

Galatea-Waiōhau Subdivision (two vacancies)

Elected unopposed as members of the Murupara Community Board when nominations closed were Alison SILCOCK and Jess Wayne MORGAN-RANUI.

As Jesse Wayne MORGAN-RANUI was declared elected to the Toi ki Uta Māori Ward, their name was withdrawn which will result in a by-election for the Galatea-Waiōhau subdivision.

4.4.4. *Tāneatua Community Board (six vacancies)*

The number of candidates did not exceed the number of vacancies; therefore Vinoop XAVIOUR, Talei BRYANT and Shane PAGE are duly declared elected members of the Tāneatua Community Board. A by-election is required for the remaining two vacancies.

4.5. By-elections

By-Elections will be held for both the Murupara Community Board (Galatea-Waiōhau subdivision) and the Tāneatua Community board vacancies. By-Election Day is Tuesday, 3 March 2026.

4.6. Māori Wards Poll

Māori Wards Poll Option	Votes Received
I vote to KEEP Māori wards	7484
I vote to REMOVE Māori wards	4877
<i>Informal</i>	3
<i>Blank</i>	460

The option to KEEP Māori wards for Whakatāne District Council, effective for the 2028 and 2031 triennial elections, was declared as passed.

Attached to this report:

- Appendix A - Official Declaration of results of election and poll for the Whakatāne District Council

5.1 Appendix A - Official Declaration of results of election and poll for WDC

5.1 Appendix A - Official Declaration of results of election and poll for WDC(Cont.)**DECLARATION OF RESULTS OF ELECTION AND POLL**

Pursuant to section 86 of the Local Electoral Act 2001, I declare the results of the election and Māori wards poll held on 11 October 2025 to be as follows:

MAYOR (*one vacancy*)

Name	Affiliation	Votes Received
ILES, Andrew		1559
INMAN, Mark		1698
JACOBS, Philip		1317
JAMES, Wilson		834
LUCA, Victor		3569
TANCZOS, Nandor		3713
Informal		15
Blank		119

I therefore declare Nandor TANCZOS to be elected.

COUNCIL**Kāpū-te-rangi Māori Ward** (*one vacancy*)

Name	Affiliation	Votes Received
BOYNTON, Toni		779
WALLACE, Hiria		228
Informal		0
Blank		23

I therefore declare Toni BOYNTON to be elected.

Rangitāiki Māori Ward (*one vacancy*)

Name	Affiliation	Votes Received
O'BRIEN, Tu		660
VERCOE, Rihi		385
Informal		2
Blank		31

Ordinary Council - AGENDA

5.1 Appendix A - Official Declaration of results of election and poll for WDC(Cont.)

I therefore declare Tu O'BRIEN to be elected.

Toi ki Uta Māori Ward *(one vacancy)*

Name	Affiliation	Votes Received
MCGAHAN, Glenn	Independent	269
MORGAN-RANUI, Jesse Wayne		807
Informal		0
Blank		60

I therefore declare Jesse Wayne MORGAN-RANUI to be elected.

Whakatāne-Ōhope General Ward *(four vacancies)*

Name	Affiliation	Votes Received
BARNARD, Chris	Independent	2084
HAMILL, Carolyn Louise		4211
HORAN, Brendan	Independent	2413
IMMINK, Lesley		3225
JUKES, Julie Claire		3033
STEWART, Dave		1994
WHITAKER, Malcolm		2575
Informal		15
Blank		153

I therefore declare Carolyn Louise HAMILL, Lesley IMMINK, Julie Clare JUKES and Malcolm WHITAKER to be elected.

COMMUNITY BOARDS

Rangitāiki Community Board *(six vacancies)*

Name	Affiliation	Votes Received
BONNER, Stephanie		1421
BROWN, Heemi		1360
CLARK, Bill		2037
EVANS, Bruce		1366
FLOWERDAY, Peter	Independent	1320
HALE, Storm		2128
MCHARDY, Stu		1842
Informal		2
Blank		100

Ordinary Council - AGENDA

5.1 Appendix A - Official Declaration of results of election and poll for WDC(Cont.)

I therefore declare Stephanie BONNER, Heemi BROWN, Bill CLARK, Bruce EVANS, Storm HALE and Stu MCHARDY to be elected.

Whakatāne-Ōhope Community Board *(six vacancies)*

Name	Affiliation	Votes Received
BONNE, Linda		3534
CESSFORD, Sasha Victoria		3199
HOWARD, Christopher		3580
KINGI, Quin		2867
MCLEAN, Douglas		3529
PROOT, Tim	Independent	1932
SLOMAN, Rosemary Jan		3479
WHALE, Sue		3654
Informal		11
Blank		403

I therefore declare Linda BONNE, Sasha Victoria CEESFORD, Christopher HOWARD, Douglas MCLEAN, Rosemary Jan SLOMAN and Sue WHALE to be elected.

Māori Wards Poll

Option	Affiliation	Votes Received
I vote to KEEP Māori wards		7484
I vote to REMOVE Māori wards		4877
Informal		3
Blank		460

I therefore declare the option to KEEP Māori wards for Whakatāne District Council effective for the 2028 and 2031 triennial elections, is passed.

Dated at Whakatāne, 17 October 2025

Dale Ofoske, Electoral Officer

Whakatāne District Council

14 Commerce Street, Whakatāne

Phone: 0800 922 822

6 Declarations of Office

6 Declarations of Office

6.1 Declaration by Mayor Elect N Tánczos

Mayor Elect Nandor Tánczos will make the oral declaration required under Clause 14, Schedule 7 of the Local Government Act 2002. The written declaration will then be signed and witnessed by the Chief Executive, in accordance with the Act.

The Mayor will then chair the remainder of the meeting.



WHAKAPUAKANGA A TE KOROMATUA

Ko ahau ko,
Nándor Steven Tánczos

tēnei e whakapuaki nei, e ngākau pono nei, e tōkeke nei hoki, otirā, e ai ki ōku mōhiotanga katoa, me ōku mana whakawātanga katoa, e mahia ai e au ngā mahi katoa, hei painga taumata mā Te Kaunihera ā-rohe o Whakatāne, i raro i ngā mana, i ngā ihi, me ngā wehi, kua whakareia mai nei ki a au, kua Koromatuatia ki Te Kaunihera ā-rohe o Whakatāne, i raro hoki i ngā ture Kāwanatanga ā-Takiwā o te tau 2002, te Ture Kāwanatanga ā-Takiwā mō ngā Pārongo Ōkawa me ngā Huihuinga o te tau 1987, i raro rānei i ētahi ture kē atu.

I TĒNEI RĀ, TE TUAONO O NOEMA I TE TAU RUA MANO
RUA TEKAU MĀ RIMA

HAINA: _____

KUA HAINATIA
I MUA I A: _____
(Haina) (Haina)

(Teitara/Turanga)



DECLARATION BY MAYOR

I, Nándor Steven Tánczos

declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of the District of Whakatāne, the powers, authorities, and duties vested in, or imposed upon, me as Mayor of the Whakatāne 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 WHAKATĀNE THIS 6TH DAY OF NOVEMBER 2025

SIGNATURE: _____

SIGNED IN THE
PRESENCE OF: _____
(Signature)

(Title/Position)



6.2 Declarations by Members(Cont.)

6.2 Declarations by Members

Alphabetically by surname, Members will make their declaration in the presence of, and witnessed by, Mayor Tánczos:

Councillor Toni Boynton

Councillor Gavin Dennis

Councillor Carolyn Hamill

Councillor Andrew Iles

Councillor Lesley Immink

Councillor Wilson James

Councillor Julie Jukes

Councillor Jesse Morgan-Ranui

Councillor Tu O'Brien

Councillor Malcolm Whitaker



WHAKAPUAKANGA A TE MEMA

Ko ahau ko,
(Ingoa)

tēnei e whakapuaki nei, e ngākau pono nei, e tōkeke nei hoki, otirā, e ai ki ōku mōhiotanga katoa, me ōku mana whakawātanga katoa, e mahia ai e au ngā mahi katoa, hei painga taumata mā Te Kaunihera ā-rohe o Whakatāne, i raro i ngā mana, i ngā ihi, me ngā wehi, kua whakareia mai nei ki a au, kua mema au ki Te Kaunihera ā-rohe o Whakatāne, i raro hoki i ngā ture Kāwanatanga ā-Takiwā o te tau 2002, te Ture Kāwanatanga ā-Takiwā mā ngā Pārongo Ōkawa me ngā Huihuinga o te tau 1987, i raro rānei i ētahi ture kē atu.

I TĒNEI RĀ, TE TUAONO O NOEMA I TE TAU RUA MANO
RUA TEKAU MĀ RIMA

HAINA: _____

KUA HAINATIA
I MUA I A: _____

(Haina)

(Titihono/Tōrangā)



DECLARATION BY MEMBER

I, (Name)

declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of the District of Whakatāne, the powers, authorities, and duties vested in, or imposed upon, me as a Member of the Whakatāne 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 WHAKATĀNE THIS 6TH DAY OF NOVEMBER 2025

SIGNATURE: _____

SIGNED IN THE
PRESENCE OF: _____

(Signature)

(Title/Position)



7 Reports - Ngā Pūrongo**7 Reports - Ngā Pūrongo****7.1 Appointment of Deputy Mayor 2025-2028**To: **Whakatāne District Council**Date: **Thursday, 6 November 2025**Author: **Mayor Nándor Tánczos**Reference: **A2991058****1. Reason for the report - *Te Take mō tēnei rīpoata***

The purpose of this report is to inform the Council that the Mayor has appointed the Deputy Mayor for the 2025-2028 triennium under Section 41A Role and Powers of Mayor, Local Government Act 2002.

This report concludes by recommending that the Council receives the report and acknowledges the appointment, by the Mayor, of the Whakatāne District Council Deputy Mayor for the 2025-2028 triennium.

2. Background - *He tirohanga whakamuri*

The appointment, or the election, of the Deputy Mayor is required to be undertaken at the inaugural meeting of a local authority.

Under section 41A (3) of the Local Government Act 2002 (LGA) I will be taking up the option to appoint the Deputy Mayor, and I will announce the appointment at the meeting.

Section 41A (4) of the LGA does provide for the Council to overturn the appointment of the Deputy Mayor appointed by the Mayor; however, the Council must follow a process set out under Clause 18 of Schedule 7.

The Deputy Mayor must perform all the responsibilities and duties, and may exercise all the powers of the Mayor in accordance with Section 17 of Schedule 7 of the LGA, which reads as follows:

- (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.

7.1 Appointment of Deputy Mayor 2025-2028(Cont.)

3. Recommendations - *Tohutohu akiaki*

1. THAT the Appointment of Deputy Mayor 2025-2028 report be **received**; and
2. THAT the Council **acknowledges** the appointment of Councillor _____ as the Deputy Mayor of the Whakatāne District Council for the 2025-2028 triennium.

7.2 Fixing the date and time of the first meeting**7.2 Fixing the date and time of the first meeting**To: **Whakatāne District Council**Date: **Thursday, 6 November 2025**Author: **S Perdia / Chief Executive**Reference: **A2991059****1. Reason for the report - *Te Take mō tēnei rīpoata***

The Local Government Act 2002 (Schedule 7, Section 21(5)(d)) requires the Council at the Inaugural Meeting to fix a date and time for the first meeting of the Council in a new triennium, or to adopt a schedule of meetings.

2. Recommendations - *Tohutohu akiaki*

1. THAT the Fixing of Date and Time of the First Meeting report be **received**; and
2. THAT Whakatāne District Council **confirms** that its first meeting will be held on 19 November 2025 commencing at 9:00 am in the Tōtara Meeting Room (Council Chambers) located at Whakatāne District Council, 14 Commerce Street, Whakatāne.

3. Subject – *Kaupapa*

It is proposed that the first meeting of the Whakatāne District Council is to be held on Wednesday, 19 November 2025, starting at 9:00 am in the Tōtara Meeting Room (Council Chambers) at the Whakatāne District Council, 14 Commerce Street, Whakatāne.

At this meeting Council will consider the following reports:

- Governance structure and Committee appointments
- Elected Members Remuneration Pool Allocation
- Annual Report adoption

A meetings schedule would then be developed for the remainder of 2025, and for 2026.

4. Significance and Engagement Assessment - *Aromatawai Pāhekoheko***4.1. Assessment of Significance**

The decisions and matters of this report are assessed to be of low significance, in accordance with the Council's Significance and Engagement Policy.

7.2 Fixing the date and time of the first meeting(Cont.)

4.2. Engagement and community views

Not required.

5. Considerations - *Whai Whakaaro*

5.1. Financial/budget considerations

There are no unbudgeted financial implications of this decision, and future costs of Council and Committee meetings are provided for in the governance budget.

5.2. Strategic alignment

There are no inconsistencies with any of the Council's policies or plans.

5.3. Climate change assessment

The decision is assessed to have low climate change implications and considerations, in accordance with the Council's Climate Change Principles.

5.4. Risks

There are no known risks associated with the matters of this report.

6. Next Steps

The confirmed meeting date will be advertised, and an agenda will be made publicly available.

7.3 Legislative Advice to incoming Council 2025-2028**7.3 Legislative Advice to incoming Council 2025-2028**

To: Whakatāne District Council**Date: Thursday, 6 November 2025****Author: S Perdia / Chief Executive****Reference: A2982030**

1. Reason for the report - *Te Take mō tēnei rīpoata*

The purpose of this report is to provide the Council with an overview of certain legal provisions that Members must be aware of to properly fulfil their role and avoid the risk of prosecution and/or disqualification from office. There is 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 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
- Financial Markets Conduct Act 2013
- Protected Disclosures Act 2000
- Health and Safety at Work Act 2015.

2. Background - *He tirohanga whakamuri*

There are a number of key pieces of legislation that Elected Members will need to be aware of, and have an understanding of, in their role as an Elected Member of the Whakatāne District Council. This report does not highlight all of this legislation. For example, it does not provide an overview of the Resource Management Act 1991, even though this is a key piece of legislation that is currently under review. The report specifically deals with legislation that Members must be aware of to avoid behaviour or activities that are illegal or improper and carry a risk of disqualification from office.

An induction pack has been compiled to support Elected Members' orientation into their role. It includes information about the Whakatāne District Council organisation, the role as an elected representative, guidance for commencement of the new triennium, and practical resources for day-to-day reference.

Training sessions will also cover in detail the roles and responsibilities of Elected Members, the Code of Conduct, and decision-making and consultation processes under the Local Government Act 2002.

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)

This training, combined with the LGNZ newly elected members training course on Monday 3 November 2025, will set the legislative framework within which the Council works and enhance your understanding of the roles and responsibilities of an Elected Member.

3. Recommendation - *Tohutohu akiaki*

THAT the report 'Legislative Advice to the Incoming Council 2025-2028' report be **received**.

4. Issue/subject - *Kaupapa***4.1. Local Government Act 2002 (LGA)**

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."

However, the Local Government (System Improvements) Amendment Bill proposes changes to the LGA that would remove all references to the 4 aspects of community well-being and amend the purpose of local government to focus on the cost-effective provision of good quality local infrastructure and public services. The Bill is currently before the Governance and Administration Select Committee and due for report back to Parliament by 18 November 2025.

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

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)

- 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 risks
- 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 sections 76 to 81 of the LGA. A higher standard of compliance with the decision-making process is required when the Council is making a significant decision. "Significance" is defined in the LGA and in the Council's Policy on Significance and Engagement.

For more detailed information on decision-making processes, please refer to the Council's Code of Conduct.

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 2025-2025-2028.

The Whakatāne District Council delivers more than 30 services, under 19 activity groups, and manages approximately \$1.6 billion worth of community assets. In Year 2 of the Long-Term Plan 2024-2034, the total annual cost of delivering these activities is approximately \$120M in operating costs and approximately \$65M in capital costs. Council activities make an important contribution to our lifestyles, providing essential services and recreational opportunities that are used by the community every day.

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.

4.1.1. *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:

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;

costs arising from any successfully defended criminal action relating to acts or omissions in their capacity as an Elected Member.

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)

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 Whakatāne 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.

4.1.2. 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:

- i. Access to local authority information; and
- ii. Local authority meeting procedures.

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

4.1.2.1. 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).

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)

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 in the LGOIMA 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 General 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.

4.1.2.2. 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) 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 or for one of its committees to meet with the public excluded.

LGOIMA also enables the Mayor (or Chairperson in the case of committees and community boards) 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.

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)

Agendas for Council and Committee meetings have to be made available to the public two clear working days before the day of the meeting. The agendas are published on the Council website www.Whakatane.govt.nz and available electronically to Councillors.

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. This includes community boards. 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. However, in recent years the Ombudsman has been critical of councils that routinely conduct forums or workshops that are closed to the public unless specified reasons can be satisfied for excluding them. As a consequence the default position has become that forums or workshops are open to the public, unless there is good reason for excluding them.

4.1.2.3. 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.

4.1.2.4. 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

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)

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 to 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. 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 pro-active advice and members are personally liable for compliance with the provisions of this Act.

4.1.2.5. 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:

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)

- 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.

The booklet 'Managing conflicts of interest: A guide for the public sector', produced by the Office of the Auditor General, provides some excellent advice and information on this issue. A hardcopy will be made available to you in your induction pack or alternatively it is available online at <https://oag.parliament.nz/2020/conflicts>.

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 discuss the issue with your lawyer (at no cost to the Council), 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.

4.1.2.6. *Pecuniary Interests Amendment*

A 2022 amendment to the LGA now contained in sections 54A to 54I requires Council to keep a register of the pecuniary interests of all members of Council and community board members. 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 that are detailed in section 54E, 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 under section 242 (2) LGA carrying a penalty of a fine up to \$5000.

4.1.2.7. *Code of Conduct*

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

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)

Its purpose is to:

- Enhance the effectiveness of the Whakatāne 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 Whakatāne District Council to its communities; and
- Develop a culture of mutual trust, respect, and tolerance between the elected members of the Whakatāne 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, as well as the members of any community boards 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 Whakatāne District Council to give effect to its statutory responsibilities.

The Code of Conduct was adopted by Council on 15 December 2016 and amended on 29 June 2022. An overarching review of the Code of Conduct (for both Council and Community Boards) will take place as part of Council's new triennium actions.

4.1.2.8. Draft standard Code of Conduct

The Local Government Commission has recently consulted on a new standard Code of Conduct (CoC). Feedback on the new CoC closed on 26 September 2025. The Commission must report back to the Minister of Local Government by 20 December 2025. It is likely that after the new standard CoC is finalised, new provisions will be introduced to the current Whakatāne CoC which Elected Members will need to comply with.

4.1.2.9. 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 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.

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)**4.1.2.10. Section 105 and 105A provide:**

Section 105. 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 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.
- 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.

Section 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 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).

4.1.2.11. 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 (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.

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

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)

- 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.

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

4.1.2.13. *Protected Disclosures (Protection of Whistleblowers) Act 2022*

The Council has updated their Protected Disclosures Policy to ensure it complies with the requirements of the Protected Disclosures (Protection of Whistleblowers) Act 2022 (the Whistleblowers Act). The Whistleblowers Act promotes the public interest of facilitating the disclosure of serious wrongdoing and protecting employees and Elected Members who make disclosures. There are internal procedures that guide those who receive protected disclosures and address the process. The Ombudsman has a role to play under the Act in ensuring its requirements are met.

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

Under the Whistleblowers 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 be 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.

4.1.2.14. *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 HSWA 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.

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)

The HSWA 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 (which include the Mayor and Councillors but excludes Community Board members) and the Chief Executive are by default identified as “Officers.” The previous Council resolved that the General Managers are also to be identified as “Officers.”

Officers have obligations of due diligence (s.44), which are:

1. to acquire, and keep up-to-date, knowledge of work health and safety matters; and
2. 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
3. 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
4. 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
5. to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
6. 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. In any case, pursuant to section 52 of the Act, elected members, and local and community board members, do not commit an offence for failure to comply with the duty imposed on them by section 44.

The Council has implemented a Due Diligence programme to help ensure its Officers meet their obligations under the Act, involving regular inspections by the Executive Team of work areas. The results of the inspections are reported back to the Risk and Assurance Committee as part of a general health and safety management.

5. Options analysis - *Ngā Kōwhiringa*

This report is a legal requirement; no options are identified.

6. Significance and Engagement Assessment - *Aromatawai Pāhekoheko*

The decisions and matters of this report are assessed to be of low significance, in accordance with the Council’s Significance and Engagement Policy.

7.3 Legislative Advice to incoming Council 2025-2028(Cont.)

6.1. Engagement and community views

This is a procedural report required by the LGA. Engagement or community views are not required.

7. Considerations - *Whai Whakaaro*

7.1. Financial/budget considerations

There are no budget considerations associated with the recommendations in this report.

7.2. Strategic alignment

This report meets the requirements of the LGA.¹

7.3. Climate change assessment

The decision and matters of this report are assessed to have low climate change implications and considerations, in accordance with the Council's Climate Change Principles.

7.4. Risks

There are no known risks associated with the matters of this report.

7.4 Resolution of thanks to Retiring Elected Members**7.4 Resolution of thanks to Retiring Elected Members**

The current Elected Members wish to thank the previous triennium members for their time and service to the Council, the district, and their communities.

Recommendation

THAT the following retiring Elected Members from the 2022-2025 triennium be **thanked**:

Mayor 2022-2025	Dr Victor Luca
Councillor Whakatane Ōhope General Ward	John Pullar
Councillor Toi ki Uta Māori Ward	Ngapera Rangiaho

Murupara Community Board	Sheena Jones Jesse Morgan-Ranui (<i>elected Councillor 2025-2028</i>)
Rangitāiki Community Board	Leeann Waaka (Chairperson) Ross Gardiner (Deputy Chairperson) Peter Falwasser Peter Flowerday Clive McIndoe
Tāneatua Community Board	Natasha George Leonardus Ruiterman Moana Stensness (Chairperson) Honey Thrupp Michael Tuwairua
Whakatane-Ōhope Community Board	Carolyn Hamill (Chairperson / <i>elected Councillor 2025-2028</i>) Mark Inman Ozgur Jahn