



Waitaki

DISTRICT COUNCIL

TE KAUNIHERA Ā ROHE O WAITAKI

Date: Tuesday, 14 December 2021
Time: 9.00am
Location: Council Chamber, Third Floor
Office of the Waitaki District Council
20 Thames Street, Oamaru

Supplementary Agenda

Late Report

Additional Council Meeting

14 December 2021

Alex Parmley
Chief Executive

Agenda Items

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	L.1 Creation of Extraordinary Vacancy on Waitaki District Council	3

NOTE:

To be taken as **“Agenda Item L – Urgent Business”**

“Agenda Item L.1 Creation of Extraordinary Vacancy on Waitaki District Council”

as the first item in section 6 Decision Reports in the public part of the meeting:

Additional Officer Recommendation for consideration in the Public section of the meeting relating to this **Late Agenda Item L.1: Creation of Extraordinary Vacancy on Waitaki District Council**

RECOMMENDATIONS

L.1 That Council, pursuant to s.46A (7) of the Local Government Official Information and Meetings Act 1987 and Clause 9.12 of the Waitaki District Council Standing Orders, agrees to accept the Late Urgent Business Item as Agenda Item L.1 between Agenda items 5.1 and 6.1 in the Decision Reports section of the main agenda for the reasons stated below:

- (a) The item was not able to be included in the final agenda papers because the relevant information had not been available from all sources at the time the agenda went to production; and
- (b) The item cannot be delayed until a subsequent meeting because Council has indicated a preference to decide on the reallocation of responsibilities and remunerations at next week’s Additional Council Meeting and a Council decision on whether to fill the extraordinary vacancy or not to fill it needs to be taken first at this meeting.

L URGENT BUSINESS

L.1 CREATION OF EXTRAORDINARY VACANCY ON WAITAKI DISTRICT COUNCIL

Author: Ainslee Hooper, Governance and Policy Advisor

Authoriser: Lisa Baillie, People and Culture Group Manager

RECOMMENDATIONS

That Council:

1. Receives and notes the formal advice of the creation of an extraordinary vacancy on the Waitaki District Council following the death of Cr Ross McRobie on 29 November 2021, as required under section 117(2) of the Local Electoral Act 2001; and
2. Decides whether to fill or not to fill the extraordinary vacancy at this meeting; and
3. If a decision to not fill the extraordinary vacancy is made under point 2 above; then
 - i. Notes that the decision will be publicly notified immediately after the meeting in accordance with legislative requirements; and
 - ii. Instructs officers to include a decision report to the 21 December 2021 Additional Council Meeting relating to the reallocation of responsibilities and remuneration, and then to prepare – for the Mayor’s signature and subsequent submission to the Remuneration Authority before Christmas 2021 – a request for an amended determination for the Waitaki District Council elected member remuneration pool for its consideration at the earliest opportunity.

DECISION OBJECTIVE

To formally receive advice, as required under section 117(2) of the Local Electoral Act 2001, of the creation of an Extraordinary Vacancy on the Waitaki District Council following the death of a sitting Waitaki District Councillor on 29 November 2021 and to note the matters to be discussed at next week’s Council Meeting as a result of that Extraordinary Vacancy.

SUMMARY

Ahuriri Ward Councillor Ross McRobie passed away after a brief illness on 29 November 2021. Under the Local Government Act section 5(1)(a), this creates an Extraordinary Vacancy on the Waitaki District Council. Sections 117 to 120 of the Local Electoral Act (LEA) apply to extraordinary vacancies. Council needs to decide whether it will fill that vacancy or leave it vacant until the next Local Election. If the decision is not to fill the vacancy, then there are decisions for Council to make relating to the reallocation of responsibilities and remuneration. A decision report on those reallocations and the options for Council will be included in the agenda for the Additional Council Meeting to be held on Tuesday 21 December 2021.

DECISION-MAKING EXPECTATIONS

Governance Decision-Making:	Receive formal advice of Extraordinary Vacancy on Council and note that next week’s Council Meeting will include a decision report on matters related to that Extraordinary Vacancy
Operational Decision-Making:	Nil

Communications	Media Releases – contributed to by officers and Elected Members
	Media/public enquiries regarding governance decision-making topics above can be addressed by governance
	Media/public enquiries regarding operational decision-making topics above can be addressed by officers

SUMMARY OF DECISION-MAKING CRITERIA

	No/Moderate/Key		No/Moderate/Key
Policy/Plan	No	Environmental Considerations	No
Legal	Key	Cultural Considerations	No
Significance	Moderate	Social Considerations	Moderate
Financial Criteria	Moderate	Economic Considerations	No
Community Views	No	Community Board Views	Moderate
Consultation	No	Publicity and Communication	Moderate

BACKGROUND

When a sitting elected member of a local authority dies in office, the vacancy created on that local authority is an “extraordinary vacancy” under section 5(1)(a) of the Local Government Act (LGA) 2002. Section 5 in the LGA 2002 also states that sections 117 to 120 of the Local Electoral Act 2001 (LEA 2001) apply to extraordinary vacancies.

Section 117 of the LEA 2001 focuses on the timing of the creation of the extraordinary vacancy in relation to the date of the next triennial general election and the actions that Council must take if it occurs more than 12 months before that election date or less than 12 months before that election date.

The next triennial general election for local government is scheduled to take place on Saturday, 8 October 2022. Therefore, this extraordinary vacancy for the Waitaki District Council has been created less than 12 months from the next election date. This means that an election to fill the vacancy (which would be governed by s.117(1) and thereafter by the process set out in s.120) is not required. Instead, s.117(2), (3) and (4) of the LEA apply, as follows:

Under section 117 of the LEA 2001:

117 Extraordinary Vacancy in local authority or local board or community board

(2) *If a vacancy occurs in the office of a member of a local authority or in the office of an elected member of a local board or community board 12 months or less than 12 months before the next triennial general election, the chief executive of a local authority concerned must notify the local authority of the vacancy immediately.*

(3) *On receiving notice under subsection (2), the local authority or local board or community board must, at its next meeting (other than an extraordinary meeting) or, if that is not practicable, at its next subsequent meeting (other than an extraordinary meeting), determine by resolution –*

- a) *That the vacancy will be filled by the appointment by the local authority or local board or community board of a person named in the resolution who is qualified to be elected as a member; or*
- b) *That the vacancy is not to be filled.*

(4) If for any reason the person specified in the resolution is unavailable, or otherwise unable to be notified of the appointment, a further vacancy occurs in that office.”

If Council were to choose s.117(3)(a) above, then section 118 of the LEA 2001 applies. This sets out a process to be followed to fill that extraordinary vacancy by appointment, as follows:

118 Notice of intention to fill vacancy by appointment

(1) If, under section 117(3)(a) or section 117A, a local authority or local board or community board resolves that a vacancy will be filled by the appointment of a person by the local authority or local board or community board, it must immediately, unless the vacancy is for the office of mayor, give public notice of –

(a) the resolution; and

(b) the process or criteria by which the person named in the resolution was selected for appointment.

The local authority or local board or community board must, at a meeting held not later than the expiry of the prescribed period, by resolution confirm the appointment described in the resolution under subsection (1); and the person appointed is for all purposes to be treated as having been elected to fill the vacancy on the date on which that resolution is made.

For the purposes of subsection (2), the expiry of the prescribed period is 30 days after the date of notification of the resolution under subsection (1).

If for any reason the person specified in the resolution is unavailable or otherwise unable to be confirmed in the appointment, a further vacancy occurs in that office.

If Council were to choose s.117(3)(b) above, then section 119 of the LEA 2001 applies, which states that “Council must immediately give public notice of its decision” [ie to leave the vacancy unfilled]. If this option is chosen at this meeting, then a certified Minute to that effect could be issued after the meeting and published in the local newspapers and on Council’s website.

If the decision was taken to leave the vacancy unfilled, then Council will need to consider the reassignment of responsibilities that were undertaken by the late Councillor, and it must (a requirement of the Remuneration Authority) reallocate the remuneration paid to that Councillor amongst those remaining (excluding the Mayor). A formal request to the Remuneration Authority must then be made to amend the elected member remuneration pool for Waitaki District Council. The Authority is scheduled to meet in February and again in March 2022 to consider amendment determinations.

The Mayor has already made temporary appointments of Cr Colin Wollstein and Cr Bill Kingan to be ‘buddy’ Councillors to the Ahuriri Community Board, to provide a link from Council to that Board for advice and support. He is also working with Councillors on the reallocation of other responsibilities that were originally undertaken by the late Cr McRobie. A decision paper that addresses the reallocation of responsibilities and remuneration could be included in the agenda for the Additional Council Meeting to be held on Tuesday, 21 December 2021. That would allow a request for an amended Remuneration Determination for Waitaki District Council to be submitted to the Remuneration Authority before Christmas, and for the Authority to consider it at its amended determination meetings in either February or March 2022.

SUMMARY OF OPTIONS CONSIDERED

Option 1 – To choose to leave the vacancy unfilled (recommended)

Option 2 – To choose to fill the vacancy

Option 3 – To choose to defer the decision on whether to fill or not to fill the vacancy until the first Council meeting in February 2022

ASSESSMENT OF PREFERRED OPTION

Option 1 is the preferred option. It will enable Council to finalise the reallocation of responsibilities and remuneration amongst other councillors and for a request for an amendment to the elected member remuneration pool to be submitted to the Remuneration Authority for its amendment determination meeting scheduled for February or March 2022.

Option 2 is not recommended because it would require that Council has considered other potential candidates to be appointed to the vacancy and to have that information available for inclusion in the recommendation to the decision-making meeting. Given the tragic nature of the late Cr McRobie's sudden passing, such a selection process has not been able to be carried out to date. Therefore, a decision report to consider an appointment of another person to Council would need to be an agenda item for the first Council Meeting of the 2022 year, in February.

Option 3 could be chosen by Council if it was felt that this was not the time to be making a decision whether to fill or not fill the extraordinary vacancy. However, it would mean that the current temporary arrangement would need to be continued until a formal Council meeting could be convened (in February 2022 at the earliest) to enable Council to make the decision by resolution, as required by the LEA. The appointment process would then unfold in accordance with whatever choice Council made, and then it may be March or April 2022 before an appointee could be seated at the Council table.

CONCLUSION

The tragic and very sad passing of the late Cr McRobie has created an extraordinary vacancy on the Waitaki District Council. There are specific decisions that Council has to make in relation to that vacancy – whether to fill or not fill it, and importantly, when. Temporary arrangements have been put in place to ensure that important work can continue, and support and guidance is available for those who may need it during this busy time of government and local government reforms. A decision at this meeting to choose not to fill the vacancy and to reallocate responsibilities and remuneration, as required by legislation, would enable Council elected members to rally around each other and the community to ensure that the contributions made by the late Cr McRobie during his time on Council are able to be progressed by his fellow elected members in his honour.

ADDITIONAL DECISION-MAKING CONSIDERATIONS

Outcomes

We keep our district affordable

We enable opportunities for new and existing business

We provide and enable services and facilities, so people want to stay and move here

We understand the diverse needs of our community

Waitaki's distinctive environment is valued and protected

We maintain the safest community we can

Publicity and Community Considerations

A media release about the decision made at this meeting is recommended.