

Ordinary Meeting Of Kaipara District Council In The Council Chambers, Station Road,  
Dargaville On Tuesday 18 December 2012 Commencing 10am

Unconfirmed Minutes

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## 1 Opening

### 1.1 Present

Commissioners J Robertson (Chair), R Booth, C Dale, P Winder

### 1.2 In Attendance

Chief Executive, Corporate Services Manager, General Manager Operations,  
General Manager Policy and Governance, PA to Chief Executive (Minutetaker)

### 1.3 Apologies

No apologies were received.

### 1.4 Public Deputation

Nil

### 1.5 Call for Late Items

There were no late items.

### 1.6 Declaration of Conflicts of Interest

General Manager Policy and Governance 1902.0

Nil

## 2 Minutes

### 2.1 Ordinary Council Meeting : 27 November 2012

Corporate Services Manager 1601.17 Nov

A copy of the minutes was circulated.

**Page 6 Item 4.1 Heading:** Mangawhai Community Wastewater Scheme (MCWWS)  
Irrigation Extension

Secretarial Note: Commissioner Booth referred to the following resolution passed at the  
27 November 2012 Council Meeting:

*"Delegates to Commissioner Booth and Commissioner Robertson the authority to  
consider and determine whether to approve the release of \$150,000 of the funding  
approved in Kaipara's 2012/2022 Long Term Plan in order to implement a 6 hectare*

*extension to the Irrigation system at Council's Lincoln Downs Farm on Brown Road, Mangawhai;"*

Commissioner Booth noted that following discussion with the Northland Regional Council it has been agreed that, subject to Council updating its Management Plan and committing to reviewing its wastewater disposal options, an extension of the disposal capacity can be delayed in the short term.

Moved Robertson/Dale

***That** the minutes of the Ordinary Meeting of Council 27 November 2012 as circulated, be confirmed as a true and correct record.*

**Carried**

## 2.2 Special Council Meeting : 12 November 2012

Corporate Services Manager 1601.17 Nov

A copy of the minutes was circulated.

Moved Robertson/Booth

***That** the minutes of the Special Meeting of Council 12 November 2012 as circulated, be confirmed as a true and correct record.*

**Carried**

## 3 Policy

### 3.1 Forecast One: 2012/2013

General Manager Policy and Governance 2302.16

A report by the General Manager Policy and Governance dated 10 December 2012 was circulated. The starting point for 2012/2013 forecast was the first year projections in the 2012/2022 Long Term Plan (LTP).

The LTP committed to progressively moving towards a more prudent and sustainable long term financial management position, in particular to funding current operating costs out of current income immediately and to reducing debt and increasing financial resilience over time. In addition there was a commitment to improving the way we deliver our services. For 2012/2013 the Local Government Cost Index (LGCI) of 3.79 per cent was absorbed within budgets.

The first forecast for 2012/2013 built on these commitments. It incorporated the actual results of the 2011/2012 Annual Report and after reviewing all budgets and incorporating updated information, the revised forecast showed a surplus of \$6.13 million at an operating level compared with a budgeted surplus of \$6.54 million, an unfavourable variance of \$407,000. The comparative figures after capital expenditure were forecast surplus of \$44,000 and original projected deficit of \$4,000, a favourable variance of \$48,000. As the variances incorporate non-cash items forecast debt remains in the order of the original projection of \$78.7 million.

Key movements within the budgets are increased costs for governance, rectifying past rating irregularities, improving financial reporting capability and additional staff that were offset by internal efficiencies and increased rates due to database maintenance. In addition there was increased revenue and associated costs for the forestry harvest.

There were a number of risks that Council was facing which were yet to be fully quantified. Some contingency was being held for managing the financial impact of these risks should they be realised. The extent of the risks that Council faces will be reviewed when the second forecast is completed.

The results of the first forecast will inform the draft Annual Plan process for 2013/2014.

Moved Booth/Dale

***That the Kaipara District Council:***

- 1 *Receives the report from the General Manager Policy and Governance, titled 'Forecast One: 2012/2013' dated 10 December 2012; and*
- 2 *Believes it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provisions of section 79 of the Act determines that it does not require further information prior to making a decision on this matter; and*
- 3 *Notes that the revised forecast shows a surplus of \$6.13 million at an operating level compared with a budgeted surplus of \$6.54 million, an unfavourable variance of \$407,000 and the forecast surplus after capital expenditure is \$44,000 compared with the original projected deficit of \$4,000, a favourable variance of \$48,000; and*
- 4 *Notes that forecast debt is currently projected to remain in the order \$78.7 million as originally projected for the year ended 30 June 2013; and*
- 5 *Notes that there remains a risk around debt increasing above these projected levels due to the fact that some property owners are not paying their rates.*
- 6 *Notes the Commissioners' views that debt needs to be held at projected levels or below those levels.*

7 *Requests that the Chief Executive find further cash savings of approximately \$1 million through a combination of deferring capital works projects and securing operational efficiency gains.*

8 *Notes that a second forecast is planned for the second half of the fiscal year.*

**Carried**

Reason for the decision

Council has a duty to monitor and update financial projections as new information comes to hand and to manage or take remedial action as required.

Sections 76 to 82 of the Local Government Act set out the decision-making requirements. The resolution recognises that the decision-making is appropriate to the need.

3.2 Kaipara District Council Delegations Review

Chief Executive 1202.01

A report by the Policy and Planning Manager dated 28 November 2012 was circulated to enable Council to consider updated Delegations from Council to staff. The report explained the need for an effective set of delegations in order for the Council organisation to operate effectively and efficiently, and described the changes which have been made to bring the existing delegations up to date.

Delegations were adopted by Council to ensure that day to day business can be undertaken efficiently and effectively while ensuring that appropriate accountability was maintained. An updated Delegations Policy was circulated for Council's approval.

Moved Booth/Dale

***That** the Kaipara District Council defers consideration of the 'Kaipara District Council Delegations Review' item to a subsequent meeting.*

**Carried**

Reason for the decision

The delegations require further work prior to adoption.

### 3.3 Mangawhai Lands Freehold: Pomfrett

General Manager Operations 5015.08

A report by the Commercial Manager dated 27 November 2012 was circulated. R and L Pomfrett, lessees of 28 Wood Street, Mangawhai, had provided Council with a request, using the provisions of the Mangawhai Lands Empowering Act 1966 (The Act), to freehold their lease.

Under the Mangawhai Lands Empowering Act 1966 the Kaipara District Council (Council) had been vested with harbour endowment land which the legislation permits to be freeholded at unimproved value. Mangawhai leases were granted pursuant to the Public Bodies Leases Act 1969 (PBLA). These leases were subject to the renew provisions of the PBLA, which meant that it was a perpetually renewable ground lease to a private individual.

Moved Robertson/Winder

**That** the Kaipara District Council:

- 1 *Receives the Commercial Manager's report 'Mangawhai Lands Freehold: Pomfrett' dated 27 November 2012; and*
- 2 *Believes it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provision of section 79 of the Act determines that it does not require further information prior to making a decision on this matter; and*
- 3 *Sells 28 Wood Street, Mangawhai Heads (Lot 23 DP 39205) to Rodney and Leanne Pomfrett for the current market value of the unimproved value of the land, that being \$275,000. This is according to the provisions set out in the Mangawhai Lands Empowering Act 1966; and*
- 4 *Sells the fee simple of 28 Wood Street, Mangawhai Heads (Lot 23 DP 39205) to Rodney and Leanne Pomfrett for the cash price according to the provisions set out in the Mangawhai Lands Empowering Act 1966 Clause (1).*

**Carried**

Reason for the decision

The Mangawhai Lands Empowering Act 1966 provides the leaseholder with the right to acquire the freehold of the land.

### 3.4 Mangawhai Park: Steering Group Concept Plan

General Manager Operations 4702.13.06

A report by the General Manager Operations dated 03 December 2012 was circulated, to update the Commissioners on the progress towards a Mangawhai Park Plan, and to obtain formal support for continued Officer engagement in the Steering Group.

Mangawhai Park was Pt Lot 3 DP 108638; a 37 hectare piece of land situated on the main road from Mangawhai Village to Mangawhai Heads. It had been purchased in the 1980s together with the land of the Mangawhai Golf Course, and was held in fee simple and zoned as "Rural" with a harbour overlay in the Operative District Plan. An aerial photograph with existing uses marked was circulated to the report.

Council had planned to develop a Management Plan for the Park, but the budget for this was cut to achieve savings required for a balanced budget.

In June 2012 the Mayor and Chief Executive were contacted by a local resident, Jim Wintle, offering to lead a group representing users of the Park to complete a concept plan for the area, in the light of some community disagreement of how the land should be used, and specifically whether it was suitable as a location for St John's Ambulance facilities. The Mayor and Chief Executive agreed that this initiative should be supported on the condition that it was led by the community and Council played a more minor facilitative role only.

A Steering Group of current users was formed, and an architect (David Wingate from Wingate Farquhar) with local property volunteered his and his firm's services pro bono in doing the design work. Since then, the Mangawhai Residents and Ratepayers Association had chosen to have representatives attend meetings of the Steering Group.

It was now time for the Steering Group to agree their recommendations to Council for how they see the Park being used and developed in the future, taking into account the feedback received from the wider community.

Moved Dale/Winder

***That the Kaipara District Council:***

- 1 *Receives the General Manager Operation's report "Mangawhai Park Steering Group Concept Plan" dated 03 December 2012; and*
- 2 *Believes it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provisions of Section 79 of the Act determines that it does not require further information, further assessment of options or further analysis of the costs and benefits of different options prior to making a decision on this matter; and*

1601.17/Dec

- 3 *Congratulates Jim Wintle and members of the Steering Group for their initiative and giving of their time voluntarily to develop a Plan for Mangawhai Park; and*
- 4 *Agrees to officers continuing to work with the Steering Group to give Council assistance to developing a Plan determining the future uses and character of the Park; and*
- 5 *Appoints Commissioner Dale to act as the contact for the Mangawhai Park Steering Group; and*
- 6 *Looks forward to receiving the recommendations of the Steering Group in the form of this Plan in due course.*

**Carried**

Reason for the decision

In the past decisions on the future uses of Mangawhai Park have been made by Council in a rather ad hoc manner. In response to criticism of this approach Council agreed to do a Management Plan. This work was not possible when savings were required to balance the budget. The Mangawhai community has taken the initiative to volunteer their time to develop a Plan for the future of Mangawhai Park and, as part of this, resolve the conflicting opinions from the local community on its future uses and development. Such initiatives are extremely valuable for community development and deserve Council's formal support. Council's role, if the maximum community development opportunities are to be realised, is to take a supportive and facilitative role and leave the decision-making and leadership to the community.

3.5 Creative Communities Local Funding Allocation Committee : Appointment of Member to fill a Community Representative Vacancy

Corporate Services Manager 2109.06.02

A report by the Corporate Services Manager dated 30 November 2012 was circulated, regarding a nomination received by Council for the vacancy on the Creative Communities Local Funding Allocation Committee. The person nominated had the appropriate experience and expertise sought by Council and his appointment would complete the membership of the Committee.

Creative New Zealand was a public funding agency set up under the New Zealand Arts Council. Funding was devolved to territorial local authorities for distributing to the Arts. The funding scheme aimed to increase participation in the arts, increase the range and diversity of the arts available to communities and enhance and strengthen the local arts sector.

Motion 1 Dale/Winder

**That Council:**

- 1 *Receives the report of the Corporate Services Manager titled 'Creative Communities Local Funding Allocation Committee: Appointment of Member to fill a Community Representative Vacancy' dated 30 November 2012; and*
- 2 *Believes it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provision of section 79 of the Act determines that it does not require further information prior to making a decision on this matter; and*
- 3 *That the Terms of Reference for the Creative Communities Local Funding Allocation Committee be amended to enable Council to appoint four Community Members.*

**Carried**

Reason for Decision 1

The Creative Communities Local funding Allocation Committee has always had four community representatives on it and it is appropriate that this number be retained.

Motion 2 Dale/Winder

**That** *the Kaipara District Council appoints the one nominee, Allan Mortensen, to the Creative Communities Local Funding Allocation Committee from 18 December 2012 until the next triennial election of the Kaipara District Council.*

Reason for Decision 2

There is a vacancy on the Creative Communities Local funding Allocation Committee and it is appropriate that Council take steps to appoint a member to that Committee.

3.6 Kaipara District Council Ordinary Meeting and Audit and Risk Committee Schedule to December 2013

Corporate Services Manager 1203.01; 1601.0; 1610.0

A report by the Corporate Services Manager dated 27 November 2012 was circulated.

Council had adopted a schedule of meetings up to and including the meeting to be held on 18 December 2012. It gave consideration to what it did for the next twelve month period.

Setting the meeting dates required for the Ordinary Meetings of Council and the meetings of the Audit and Risk Committee for the next twelve month period provided

1601.17/Dec

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transparency and clarity as to when Council will conduct its business in 2013.

Moved Robertson/Winder

***That the Kaipara District Council:***

- 1 *Receives the Corporate Services Manger's report 'Kaipara District Council Ordinary Meeting and Audit and Risk Committee Schedule to December 2013' dated 27 November 2012; and*
- 2 *Believes it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provision of section 79 of the Act determines that it does not require further information prior to making a decision on this matter; and*
- 3 *Holds its Ordinary Meetings of Council on a Tuesday at 10.00am, as follows:*

<i>29 January 2013</i>	<i>26 February 2013</i>
<i>26 March 2013</i>	<i>23 April 2013</i>
<i>28 May 2013</i>	<i>25 June 2013</i>
<i>23 July 2013</i>	<i>27 August 2013</i>
<i>24 September 2013</i>	<i>22 October 2013</i>
<i>26 November 2013</i>	<i>17 December 2013</i>
- 4 *Holds its meetings of the Audit and Risk Committee at 2.00pm in the Council Chambers, Station Road, Dargaville as follows:*

<i>Tuesday 19 March 2013</i>	<i>Tuesday 18 June 2013</i>
<i>Tuesday 17 September 2013</i>	<i>Monday 16 December 2013</i>

*; and*
- 5 *Asks the Chief Executive to bring a recommendation back to the 29 January 2013 Council meeting accommodating an aspiration by Commissioners to hold every second Council meeting outside Dargaville.*

**Carried**

Reason for the decision

For reasons of best practice and to provide clarity around when Council will conduct its business for the next twelve months.

### 3.7 Addressing Historical Rating Irregularities: Local Bill

Chief Executive 2306.17

A report by the Chief Executive dated 10 December 2012 was circulated, to enable Commissioners to decide on the method to be used to address the rates irregularity issues that had been identified through the reviews of Council's rating processes.

Kaipara District Council had a regrettable history of both procedural and substantive irregularities in setting rates. These irregularities had been confirmed by Simpson Grierson, Council's lawyers, who had carried out two reviews of rates (and associated documentation) that had been set by Council over the period 2006/2007 to 2011/2012.

The findings from the two Simpson Grierson reviews of Council's rating practices were summarised in the Chief Executive's report 04 December 2012.

It was agreed by Council in July 2012 that a Community Focus Group be set up to consider options for addressing the rates irregularities. This is no longer recommended. Time and financial constraints and the need to "fix" the problems once and for all time; make a Local Bill the recommended solution.

Legal opinion had confirmed that late adoption of the Long Term Plan for 2012/2022 did not invalidate the setting of rates for 2012/2013.

Moved Winder/Booth

***That the Kaipara District Council:***

1. *Receives the Chief Executive's report 'Local Bill: Addressing Historical Rating Irregularities' dated 10 December 2012; and*
2. *Believes it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provisions of Section 79 of the Act determines that it does not require further information, further assessment of options or further analysis of the costs and benefits of different options prior to making a decision on this matter; and*
3. *Determines that of the three options (set out in the Chief Executive's report dated 04 December 2012) that could be used to address the rates irregularities identified to date, and given the merits of each of these options, a Local Bill is the best option for addressing historical rating irregularities; and*
4. *Requests the Chief Executive to work with Council's lawyers, the Department of Internal Affairs, the Parliamentary Counsel Office and the Clerk of the House to draft such a Local Bill for consideration at the February 2013 meeting of Council; and*

5. *Agrees that for historic rating irregularities of a procedural or technical nature, where the ratepayer has received the services that were intended to be funded from the rates, the draft Bill should seek to validate the historic rates as invoiced; and*
6. *Agrees that the Local Bill include a redress mechanism for inequities created in the past imposition of the Mangawhai Targeted Rate; and*
7. *Agrees that the Local Bill should not validate the decisions of the past administration to substantially increase the size of the Mangawhai Community Wastewater Scheme; and*
8. *Notes that work is still in progress for understanding all the irregularities and associated matters and new issues may be identified; and*
9. *Notes also, that further issues may be identified through the Office of the Auditor General's inquiry into matters in relation to the Mangawhai Community Wastewater Scheme; and*
10. *Rescinds the following resolutions which were passed by Council at its meeting on 16 July 2012:*  
*"Reconfirms its commitment to work with the community in identifying and assessing the options that might exist for addressing the rates irregularities that have been identified to date and in that regard agrees to form a Focus Group to review the options available for addressing the historical rating irregularities prior to any wider community consultation process being undertaken; and*  
*Asks staff to develop Terms of Reference for the proposed focus group and that these be presented to Council at the time that the report outlining options for addressing the historical rating irregularities is presented."*

### **Carried**

#### Reason for the decision

The Commissioners through their Terms of Reference have the task of addressing the irregularities identified in relation to the processes that Council has followed to set rates in the past. The use of a Local Bill to assist with this process is seen as an appropriate method by which this could be achieved. It should be noted that the rates collected, even if irregularly set, have paid for services of benefit to those who paid these rates. The use of a Local Bill is not unusual to validate incorrectly set and collected rates; examples of which include the current Tasman District Council (Validation and Recovery of Certain Rates) Bill.

### 3.8 Former Chief Executive Deed of Settlement

Chief Executive 2205.05.01

A report by the Chief Executive dated 11 December 2012 was circulated.

The Chief Executive was required to consider requests for information in accordance with the provisions of the Local Government Official Information and Meetings Act 1987 (LGOIMA). While the Chief Executive had in the past declined a number of requests for information relating to the departure of the previous Chief Executive, each new request needed to be considered based upon the facts/information available at the time that the decision was made.

The Chief Executive had received information which suggested that the non-disclosure of information included in the Deed of Settlement with the former Chief Executive was affecting the ability of the Commissioners to effectively engage with the public in addressing the strategic issues affecting the Council. The Chief Executive sought information from the Commissioners about whether this was a concern so that he can process the current requests in a timely manner.

Moved Robertson/Dale

***That the Kaipara District Council:***

1. *Receives the Chief Executive's report 'Former Chief Executive Deed of Settlement' dated 11 December 2012; and*
2. *Determines that it believes it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provisions of Section 79 of the Act determines that it does not require further information, further assessment of options or further analysis of the costs and benefits of different options prior to making a decision on this matter; and*
3. *Determines that in their view it is critical for Council to be able to build a relationship with the community that is based on trust and confidence and in which there is a high level of transparency as to the business of Council including the reasons for the key decisions that Council has made in the past; and*
4. *Commissioners note that it is important, if Council is to be able to develop a relationship based on trust and confidence, that information relating to the decision of the previous Council to enter into the Deed of Settlement with the former Chief Executive dated 02 August 2011 be made public given the significance and serious nature of the challenges facing Council today; and*
5. *Commissioners request the Chief Executive, when processing the current requests for the information contained in the Deed of Settlement, consider their*

*concerns that the non-release of the Deed of Settlement between the Council and the former Chief Executive dated 02 August 2011 is hindering their ability to address the major issues affecting Council and rebuild a strong relationship with the community.*

**Carried**

Reason for the decision

To ensure that the Chief Executive can process the current information requests in a timely and informed manner and in accordance with the provisions of the Local Government Official Information and Meetings Act 1987.

## 4 Reports

### 4.1 Chief Executive's Report: December 2012

Chief Executive 2002.02.13

The December report will be combined with the January 2013 report and come before Council on Tuesday 29 January 2013.

### 4.1 Chairman's Report: December 2012

Chair 1203.01.04

The Chair's report was tabled at the meeting.

Moved Robertson/Winder

***That the Chairman's report for December 2012 be received.***

**Carried**

### 4.2 Financial and Treasury Monthly Report 13 December 2012

General Manager Policy and Governance 2311.03

The General Manager Policy and Governance tabled the monthly financials for the period ended 30 November 2012.

Moved Dale/Booth

***That the Financial and Treasury Monthly Report dated 13 December 2012 be received.***

## 5 Public Excluded Council Items 18 December 2012

**The meeting went into Public Excluded session at 11.39am**

Moved Robertson/Booth

***That*** the public be excluded from the following part of the proceedings of this meeting, namely

- Chief Executive's Performance Review Committee Minutes 26 November 2012

The general subject matter of each matter to be considered while the public is excluded, the reasons for passing this resolution in relation to each matter and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act, 1987 for the passing of this resolution are as follows:

<b>General subject of each matter to be considered:</b>	<b>Reason for passing this resolution</b>	<b>Ground(s) under Section 48 (1) for the passing this resolution:</b>
Chief Executive's Performance Review Committee Minutes 26 November 2012	<p><b>Section 7(2)(a)</b> Protect the privacy of natural person, including that of deceased natural persons</p> <p><b>Section 7(2)(b)(ii)</b> would be unreasonable to prejudice the commercial position of the person who supplied or who is the subject of the information</p> <p><b>Section 7(2)(i)</b> Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)</p>	Section 48 (1)(a) That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

Open Council Meeting: 18 December 2012

**The meeting went into Open session at 11.46am**

Moved Robertson/Dale

***That** the resolutions made whilst in Public Excluded, be confirmed.*

- 5.1 Chief Executive’s Performance Review Committee Minutes 26/27 November 2012

Commissioner Dale 1205.0

Moved Robertson/Dale

***That** the Kaipara District Council notes the Chief Executive’s Performance Review Committee’s Unconfirmed Minutes for 26/27 November 2012, as circulated, and endorses Part 2 and 4 of the Committee’s resolution to Item 2.1 ‘Chief Executive’s Contract Performance Review’, being:*

- “2 That** there be no changes to the Terms, Conditions and Remuneration to the Chief Executive’s contract; and*
- 4 That** the Chief Executive Stephen Ruru be thanked for his significant efforts and professionalism during the difficult circumstances of the past 12 months.”.*

**The meeting closed at 11.49am**

Closure

Confirmed ..... 2013

Chair .....