

SOUTH WAIRARAPA DISTRICT COUNCIL

20 FEBRUARY 2019

AGENDA ITEM C7

EXTRAORDINARY VACANCY

Purpose of Report

To report to Council on options created by the resignation of a councillor.

Recommendations

Officers recommend that the Council:

1. *Receive the Extraordinary Vacancy Report*
2. **Notes** that an extraordinary vacancy has been created through the resignation of Councillor Paora Ammunson which was notified on 17 December 2018.
3. *Resolves that:*
Either:
 - a. *The extraordinary vacancy will be left unfilled for the remainder of the 2016-2019 triennium.**or:*
 - b. *That the vacancy will be filled by the appointment of, and the process and criteria by whichwas selected for appointment are*
4. **Notes** that the decision of the Council will be publicly notified in accordance with the requirements of the Local Electoral Act 2001.
5. *Notes this decision is not significant in terms of Council Significance and Engagement Policy*

1. Executive Summary

On 17 December 2018 the Chief Executive received a notice of resignation from Councillor Paora Ammunson.

The resignation, which took effect on the 17 December 2018, creates an extraordinary vacancy on the Council.

The vacancy has occurred less than 12 months before the date of the next triennial election (12 October 2019).

Accordingly, the Local Electoral Act 2001 provides that the Council has the option to either leave the vacancy unfilled, or appoint a suitably qualified person from the community to fill the vacancy until the October 2019 election.

Holding a by-election is not an option under the Act.

Relevant extracts from the Local Government Act and the Local Electoral Act are attached as Appendix 1 to this report.

2. Options Available to Council

2.1 Vacancy left unfilled

If the Council decides to leave the extraordinary vacancy unfilled it must immediately give public notice of its decision.

It should be noted that Schedule 7 of the Local Government Act provides that an act or proceeding of the Council or of a committee is not invalidated by a vacancy in the membership of the Council at the time of that act or proceeding.

2.2 Vacancy filled by appointment

If the Council determines that the vacancy is to be filled by appointment, the Council must give public notice of its resolution and the process or criteria by which the person named in the resolution was selected for appointment.

Please note that as set out in section 117(4) of the Act 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.

2.2.1. Qualification to be an elected member

The Council is only entitled to appoint a person who is qualified to be an *elected member*. *Section 25 of the Local Electoral Act 2001 provides that:*

"every parliamentary elector is qualified to be a candidate at every election held under this Act, if that person is a New Zealand citizen unless they are prohibited in terms of section 58 of the Act"

Section 58 prohibits a person from being both a district Councillor and a regional Councillor within the same region.

This means that the Council can appoint any New Zealand citizen who is a parliamentary elector, unless they are already a member of the Greater Wellington Regional Council.

2.2.2. Public notification of resolution and confirmation of candidate

Following this meeting, the resolution and reasons for the appointment must be publicly notified (this could occur in the Wairarapa Times Age on Saturday 23 February 2019).

No later than 30 days after the date of the public notification (i.e. by Monday 25th March 2019) the Council would be required to meet and by resolution, confirm the appointment of the person, who is then declared as 'elected' to the Council from this date.

The new member would then receive appropriate training for their role.

2.3 Significance

This matter does not come under Councils Significance and Engagement policy threshold.

3. Appendices

Appendix 1 – Extracts from Local Government Act 2002, & Local Electoral Act 2001

Contact Officer: Paul Crimp, Chief Executive Officer

Appendix 1 – Extracts from Local Government Act 2002, & Local Electoral Act 2001

Extracts from relevant legislation

Local Government Act 2002, Schedule 7

4 Member's right to resign

- (1) A member of a local authority may resign office by notice in writing addressed and delivered to the chief executive of the local authority.
- (2) The notice takes effect on the day on which it is delivered to the chief executive of the local authority.

5 Extraordinary vacancies

- (1) The office of a member of a local authority becomes vacant, and the vacancy that is created is an extraordinary vacancy, if the member—
 - (a) dies; or
 - (b) becomes subject to a property order made under section 31 of the Protection of Personal and Property Rights Act 1988; or
 - (c) is disqualified from, or is ousted from, office; or
 - (d) is absent without leave of the local authority from 4 consecutive meetings (other than extraordinary meetings) of the local authority; or
 - (e) resigns under clause 4.
- (2) Sections 117 to 120 of the Local Electoral Act 2001 apply to extraordinary vacancies. [...]

29 Proceedings not invalidated by vacancies, irregularities, etc

An act or proceeding of a local authority or committee, or of a person acting as a member of a local authority or committee, is not invalidated by—

- (a) a vacancy in the membership of the local authority or committee at the time of that act or proceeding; or
- (b) the subsequent discovery—
 - (i) of some defect in the election or appointment of the person acting as a member of the local authority or committee; or
 - (ii) that that person was or is incapable of being a member.

Local Electoral Act 2001

58 Candidacy for both regional council and constituent authority prohibited

- (1) In this section,—

constituent authority, in relation to any region, means—

 - (a) a territorial authority having jurisdiction over a constituent district; or
 - (aa) a local board for a local board area that is wholly or partly within the region; or
 - (b) a community board for a community that is wholly or partly within the region

member, in relation to a constituent authority, includes a mayor.

- (2) No person may, at the same time, be both a candidate for election to a regional council for a region and a candidate for election to a constituent authority of that region.
- (3) No member of a constituent authority of a region may be a candidate for election to the regional council for the region.
- (4) No member of a regional council for a region may be a candidate for election to a constituent authority of that region.
- (5) Subsections (3) and (4) do not apply if a general election of members of the regional council of a region is to be held concurrently with a general election of members of a constituent authority of that region.

117 Extraordinary vacancy in local authority or [local board or] community board

- (1) 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 more than 12 months before the next triennial general election, the vacancy must be filled by an election under this Act.
- (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 the local authority concerned must notify the local authority or local board or community board 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.
- (5) Despite subsection (3), if the vacancy is for the office of Mayor, the vacancy must not be left unfilled but must be filled by appointment of 1 of the other members of the local authority as Mayor.
- (6) If any member is appointed or elected to fill a vacancy in the office of Mayor,—
 - (a) the person is to be treated as having vacated the office of a member; and
 - (b) the vacancy in the office of a member is an extraordinary vacancy and this section and sections 118 to 120 apply.

[...]

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.
- (2) 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.
- (3) 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).
- (4) 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.

119 Notice of intention to leave vacancy unfilled

If, under section 117(3)(b), a local authority or [local board or] community board resolves not to fill a vacancy, it must immediately give public notice of its decision.