

THE WEST COAST REGIONAL COUNCIL

MINUTES OF THE MEETING OF THE COUNCIL HELD ON 13 DECEMBER 2011, AT THE OFFICES OF THE WEST COAST REGIONAL COUNCIL, 388 MAIN SOUTH ROAD, GREYMOUTH, COMMENCING AT 10.56 A.M.

PRESENT:

R. Scarlett (Chairman), B. Chinn, A. Robb, T. Archer, D. Davidson, A. Birchfield, I. Cummings

IN ATTENDANCE:

C. Ingle (Chief Executive Officer), R. Mallinson (Corporate Services Manager), C. Dall (Consents & Compliance Manager), T. Jellyman (Minutes Clerk)

1. APOLOGIES:

There were no apologies.

2. PUBLIC FORUM

There was no public forum.

3. CONFIRMATION OF MINUTES

Moved (Davidson / Robb) *that the minutes of the Council Meeting dated 7 November 2011, be confirmed as correct.*

Carried

Matters arising

There were no matters arising.

REPORTS:

4.1 ENGINEERING OPERATIONS REPORT

C. Ingle spoke to his report advising that the works in the Whataroa rating district has been completed and works in the Waitangitaona rating district have been tendered out.

C. Ingle reported that during the flood event on 21 November an aerial inspection was done to ascertain where damage was occurring particularly in terms of rating district infrastructure and also from a general hazards point of view. C. Ingle advised that survey work is being done in the Coal Creek rating district to establish the flood levels on Coal Creek to Greymouth section of the Grey River. C. Ingle reported that members of the Coal Creek rating district have not wanted to do any work but this recent flood event may change this. Cr Davidson asked if there are any critical areas of concern that need protection works in the future that were revealed during the aerial inspection. C. Ingle responded that there was nothing that anyone was surprised about and his concerns were about road links and advising people early enough that certain regions of road would go under water. C. Ingle some of these issues are for the Police to deal with such as the woman and baby who was trapped when flood waters were over both sides of the road. C. Ingle feels that these types of problems can be worked through with the Police and district councils. C. Ingle advised that these types of problems were on noted during the Queensland floods, where the greatest chance of loss of life is when people attempt to cross a road where it is underwater and they get swept away. He advised that guider posts could be put in where people can see the level of water or to make sure that roads are closed early enough so that people don't get isolated.

C. Ingle reported that he was initially informed that demand for rock in council quarries had slowed but since the flood there has been a renewed demand in the Grey Valley area. He advised that there is blasting underway at Blackball and Kiwi quarries now but the rest of the region rock demand is under control and there are adequate supplies to meet demand. C. Ingle advised that tenders have been sent out for quarry work for drilling and blasting. He stated that the successful tenderer would be awarded with a two year contract for work in the four main quarries based on a price per tonne. Cr Davidson stated that it is important that there are adequate supplies of rock over the Christmas period.

Moved (Archer / Robb) *that this report be received.*

Carried

4.1.2 ADOPTION OF MINUTES FROM THE RATING DISTRICT ANNUAL MEETINGS

C. Ingle spoke to this report. Cr Archer stated that he noted in some cases some of the recommendations from the rating committees to council for adoption; do not necessarily support the staff recommendations. Cr Archer wondered if there were any matters in the individual rating district minutes where there is a difference in the staff recommendation compared to the resolution that is a concern to staff that needs to be brought to council's attention. C. Ingle responded that the ones he is aware of are at the minor end of the scale. He advised that the Southside Hokitika rating district is an example where they get 50% funding from NZTA, they have a stockpile of rock handy and were asked to strike a rate of \$5,000 but the rating district agreed to \$2,000. Cr Archer stated that this is not a large sum of money and some instances some of the decisions on rate strikes are greater than the initial recommendation. C. Ingle stated that this happened with the Karamea rating district. C. Ingle advised that from the meetings he attended and reports from staff he does not have any concerns regarding under funding other than Coal Creek. Cr Archer asked if there were concerns would council expect to hear about them prior to setting the rate and adopting the minutes. C. Ingle responded that there will be a workshop after today's meeting and it will be about receiving minutes and then setting rates and what happens in between. C. Ingle advised that at the moment the minutes are being received and setting of rates is not being done at the moment.

Moved (Birchfield / Cummings) *that minutes be received and adopted.*

Carried

4.2 CORPORATE SERVICES MANAGER'S REPORT

R. Mallinson spoke to this report and advised that the investment portfolio has bounced back from its substantial loss in the first quarter with a much smaller loss in the three months to the end of October. R. Mallinson advised that Council's Fund Managers have since reduced our exposure to global equities due to the ongoing European debt crisis. He advised that there are positive budget variances amounting to \$61,000 in general rate funded activities. R. Mallinson reported that the overall surplus was over \$500,000 for the first four months of the year. Cr Scarlett asked R. Mallinson if council advisers feel that council should be moving into more fixed interest rather than equities. R. Mallinson advised that although the Fund Managers have reduced our weighting in equities they believe that the equity fundamental is very sound and they do not wish to jump ship completely from equities.

Moved (Archer / Birchfield) *that this report be received.*

Carried

4.2.2 AUDIT MANAGEMENT REPORT FOR YEAR TO 30 JUNE 2011

R. Mallinson advised that Mr John Mackey from Audit NZ was unable to attend today's meeting, he would answer any questions Councillors might have.

Moved (Birchfield / Cummings) *that this report be received.*

Carried

4.2.3 FOUR MONTH REVIEW – 1 JULY 2011 - 31 OCTOBER 2011

R. Mallinson spoke to this report and took it as read. He stated that there has been a very solid performance across the board. Cr Archer stated that this is a very good report and management and staff should be congratulated.

Moved (Robb / Archer) *that this report be received.*

Carried

5.0 MEETING WITH THE AUDITOR GENERAL

Cr Scarlett stated that this is the report that he put to council last month but it was carried over as people wanted to have a further think about it. Cr Scarlett stated that this report is borne out of the fact that the Auditor General (AG) has made recommendations that most councils have followed them. Cr Scarlett stated that the report is self explanatory and he invited discussion on the report. Cr Cummings asked how many councils have followed these recommendations. Cr Scarlett responded that Waikato Regional Council is the latest council to consider this because they had a policy where Councillors made the decision and they have opted for a committee of staff that makes a decision on a prosecution through the CEO and report back to the council. Cr Scarlett stated this change is in the interest of the general public. He stated that it is about perception that if an elected member is a farmer or a miner or whatever industry they are involved in and a prosecution comes up then it could be considered bias and by elected members not making prosecution decisions then it is a completely transparent and fair process. Cr Cummings stated that this is the same as the hospital where they put all the people in charge who don't know anything about a hospital so they can make a really good and informed decision. Cr Scarlett responded that it is a bit like a company, the Board of Directors are there to set policy and the Board don't employ people, apart from the CEO and they don't discipline people. Cr Scarlett advised that this is similar situation at council where councilors are policy setter and they don't prosecute people, as this is a staff function.

Cr Davidson stated prosecutions are a recommendation from staff and council consider all the facts then make a decision. Cr Davidson feels that by councilors looking at prosecutions this is a safety net and is another way of looking at the accused persons position to see if they are a recidivist offender and council can then make a decision. Cr Davidson stated that he does not like going against a recommendation from staff, as they are the people on the ground. Cr Davidson stated that councilors might look at prosecutions from a more compassionate viewpoint in some cases. Cr Davidson would like the status quo to remain and would like Council to review this again in 12 months time.

Cr Robb stated that he believes that councilors are elected to govern and he sees prosecution decisions as a day to day management role. Cr Robb stated that councilors are there to ensure that their role as governance is done properly and if policy isn't being adhered to then it is up to council to do something about it. Cr Robb stated he is comfortable with the recommendation.

Cr Chinn stated that this is the Auditor General's view regarding prosecutions decisions and Cr Chinn's view is that he agrees with Cr Davidson. Cr Chinn stated that when the recommendation from staff for prosecutions is considered by Councillors, this gives another tier to look at the issue; and staff come and staff go and he feels with council making the final decision this is the safest way and fairest way. Cr Chinn stated that councilors are elected by the majority of people to make sound decisions, he does not go along the Auditor General's report. Cr Chinn stated that he would be voting against the recommendation.

Cr Archer stated that he is disappointed that the reason for deferment of this item last month appeared to be as a result of a threat by a councilor. Cr Archer stated that this concerns him greatly as he understood that the supposed reasoning to defer the matter was to enable further research but as yet councilors have not been provided with any research results other than vague opposition to the proposal. Cr Archer referred to recommendation number eight from the Auditor General's report which is based on decision making for prosecutions to be free from perceived political bias. Cr Archer stated that most of the prosecutions that have come before council relate to water quality or possible effects on water quality. Cr Archer stated that all councilors received a copy of the document produced by the Auditor General and in the document there are very clear explanations on the meaning of bias and predetermination. Cr Archer stated that based on case law with the document, the question that needs to be determined is "would a fair minded observer reasonably think that a member of the decision making body might not bring an impartial mind to the decision in the sense that he or she might unfairly

regard with favour or disfavour the case of the party". Cr Archer stated that document goes on to say that statements or conduct indicate that you have predetermined the matter before hearing all relevant information, that is you have a closed mind. Cr Archer stated that the document also spells out that predetermination can be that your position is so fixed that you are unwilling to fairly consider the views of others or that you are not prepared to be persuaded by further evidence or argument. Cr Archer stated it is not necessary for actual bias to occur but the issue is one of a perception of bias by others. Cr Archer stated that over the last four years there has been much discussion and deliberation on recommendations made by council management for prosecutions. Cr Archer stated that almost all of this discussion has been made during the public excluded part of council meetings and as such this discussion that occurred is confidential. Cr Archer stated that there have been some viewpoints aired in open meetings such as one Councilor in particular being and stating, "I am not in favour of prosecutions". Cr Archer stated that another incident during a workshop he was alarmed to hear from another councilor that in his view he could see no reason why dairy farmers could not discharge their effluent to water or miners could not release their sediment ponds as they used to do. Cr Archer stated that whether we like it or not, councilors are elected to protect the environment, the environmental values which exist. Cr Archer stated that comments such as this smack of bias and predetermination and a refusal to have an open mind to apply all the legislative tools which the law provides. Cr Archer stated that council has heard from some councilors that prosecutions should only be applied as a last resort yet when questioned some councilors do not know under what circumstances a last resort has been reached. Cr Archer stated that in his view a last resort situation arises when visits and inspections have been undertaken, where there is written infringement notices issued, abatement notice issued and not complied with. Cr Archer stated that this situation justifies prosecutions because there is nowhere else to go. Cr Archer noted that recently council has adopted the Alternative Environmental Justice Policy, which is another tool to undertake and meet council's enforcement role. Cr Archer stated that there has been some discussions on concerns about rescinding the policy if the delegation made by the Chief Executive do not reflect council's views. Cr Archer added that any delegations could be rescinded by a report from the Chief Executive or Chair or a Notice of Motion of a majority of Councillors. Cr Archer stated that his preferred position would be to delegate the authority outlined to both the Chief Executive and the respective second tier manager, requiring the decision to be unanimous and to be recorded in writing. Cr Archer summarised his comments by saying that he supports the recommendation made by the Auditor General, and now before council is the Chairman's Report and recommendation. Cr Archer stated that he intends to move an amendment to the recommendations requiring a unanimous decision of the Chief Executive and the second tier manager by way of delegation. Cr Archer stated that it is his regrettable opinion that there are some councilors who at least portray some degree of bias, have predetermined outcomes and do not have an open mind in undertaking these matters. Cr Archer stated that on this basis there seems to be no other option than to delegate the authority to competent, professional and high skilled managers to make such decisions on councilors behalf as Cr Archer sees councilor's role as setting policy matters in this regard. Cr Archer supports the recommendations, as amended.

Cr Birchfield stated that he would be voting against the recommendations. He stated that when people vote for councilors they expect that they will be involved in the running of the council. Cr Birchfield stated that the money councilors are paid is to run the council, not to stand back and for the staff to do the hard decisions.

Cr Cummings stated that staff change from time to time and today he would be quite comfortable with letting the CEO have a go at doing this sort of thing, Cr Cummings stated that he has seen other managers and CEO's here and he wouldn't delegate them to do much at all. Cr Cummings stated that council is very fortunate at the moment, but staff do come and go.

Cr Davidson responded to Cr Archer's comments and stated that Judges do not make decisions on perception, it is facts, and he looks at it objectively. Cr Davidson stated that he votes on how he sees the facts and he feels that you cannot make a decision on perception; you have got to have the facts.

Cr Archer responded that he would have thought that Cr Davidson would have been well aware given his experience on resource management matters in the past that it in many cases there are perceived conflicts of interest whereby Commissioners' actually stand down because there is a perception of bias. Cr Archer believes that the same thing applies here. Cr Archer stated that in the four years that he has been involved with Council, every single prosecution that has gone before the courts has been upheld by the courts and he feels that this is a pretty justifiable reason for matters going to court. Cr Archer stated that he would invite those councilors who voted against those decisions to have a look in the mirror and reflect back on their views and reasons on why they choose to vote the way they did. Cr Scarlett stated that if a prosecution comes before this council, it is recommended by staff that the prosecution proceed which cites a dairy farmer and there are dairy farmers sitting on this council and they decide, with good and just reasons, decide not to go ahead with prosecution then it is possible that the public will say "of

course council would do that because it is stacked with dairy farmers". Cr Scarlett stated that the same could be said if it were a miner that was to be prosecuted. Cr Scarlett said this is all about perception from the public and this is what the Auditor General is saying, that perception is very important in terms of justice and in terms of how the council is viewed in the eyes of the public. Cr Scarlett stated that in his view if prosecution decisions are made by independent persons such as a CEO and a second tier manager then there is not the kind of bias that the public might see in the council. Cr Birchfield asked why not. Cr Scarlett responded that management are probably not in the industry that is being prosecuted. Cr Birchfield stated that everyone is subject to some sort of bias. Cr Scarlett did not agree with Cr Birchfield.

Cr Robb stated that Councilors make policy and they employ the people that carry out the policy and he is comfortable with his own ability, and he has faith in all the people here that we have the ability to choose the right top person to employ the next level of people to carry out the policy. Cr Robb stated that Councilors biggest role is to make sure all the policies are carried out and that work is done according to the policies that Council sets. Cr Robb stated that council has a more than capable Chief Executive at the moment who has a very a good management team around him and if this was to change then council is responsible for employing the Chief Executive and they have to make sure that they get that right as it is key to councilors position. Cr Cummings stated that the district council have been in the position where they have employed the wrong people and it has cost a lot of money to get out of it. Cr Scarlett stated that if you went through life contemplating making the wrong decision you would be paralysed and do nothing. Cr Scarlett stated that you have to back yourself and that Cr Robb is right, it is about a council appointing someone who is competent. Cr Cummings stated how do you know if someone is competent. Cr Scarlett stated that a good council does make good decisions and there are remedies available if a wrong decision is made. Cr Cummings suggested disbanding the council and let the Chief Executive run the council and save money. Cr Scarlett explained to Cr Cummings that this is not how democracy works and this would be a dictatorship that people would not accept. Cr Birchfield agrees with Cr Cummings as he feels that they are paid to run the council and they are giving away their responsibilities. Cr Birchfield stated that he couldn't think of any other job where you are paid this amount of money to do a job and then delegate responsibilities away. Cr Birchfield stated that when people vote for you they expect you to be actively involved in running the council. Cr Birchfield stated that the Auditor General is an unelected career bureaucrat and she will be gone next year or the year after. He stated that a previous Auditor General went to jail for fraud so we shouldn't be letting these people dictate to take away our democratic role. Cr Scarlett stated that Crown Law also supports the Auditor General. Cr Birchfield stated that he does not care about this; he stated that councilors are elected to run the council and people expect councilors to run the council. He stated that councilors can be trusted to make prosecution decisions in spite of what people will say, councilors are good honest people and are quite able to make an unbiased decision and this role should not be given away.

Cr Chinn stated that if a recommendation came from staff to prosecute a district council, perhaps the Grey District Council, the staff are ratepayers of the grey district council and so it would be the same as being a dairy farmer. Cr Scarlett advised that these types of matters would be addressed in the Delegations Manual. Cr Scarlett stated that Cr Chinn is stretching a fairly long bow with this argument as it is so rare and can be solved as the prosecutions that council deal with are usually dairy farmers, miners and the odd beekeeper. Cr Cummings mentioned the leachate that was going into the creek where this was putrid and there was no prosecution. Cr Archer called a Point of Order as the matter that Cr Cummings is talking about was in the public excluded part of the meeting and it is not appropriate that it be raised in an open meeting.

Cr Scarlett stated that everyone has read the Auditor General's report and would understand where she is coming from. Cr Scarlett stated that if all of the discussion is finished it is time to make a decision.

Cr Archer moved an amendment to the recommendation, seconded by Cr Robb:

1. *"That Council delegates to the Chief Executive and the respective second tier manager, the power to initiate or withdraw a prosecution for an offence, under Section 338 of the Resource Management Act, provided that the Chief Executive reports the exercise of this delegation to Council. Such decisions shall be unanimous and recorded in writing".*
2. *That Council requests a report from the Chief Executive that applies the self-assessment audit tool in respect of this Council's policies, processes and activities.*

Cr Scarlett put the motion. The motion was lost. Cr's Robb, Archer and Scarlett were in favour. Cr's Chinn, Birchfield, Davidson and Cummings were against.

Cr Archer moved the second recommendation.

Moved (Archer / Scarlett)

That Council requests a report from the Chief Executive that applies the self-assessment audit tool in respect of this Council's policies, processes and activities.

Cr Scarlett put the motion. The motion was lost. Cr's Robb, Archer and Scarlett were in favour. Cr's Chinn, Birchfield, Davidson and Cummings were against.

Carried

6.0 CHIEF EXECUTIVES REPORT

C. Ingle spoke to his report and stated that this month's report is fairly short.

C. Ingle reported that he has been approached by MAF to assist with Biosecurity emergencies in the event of a Foot and Mouth disease outbreak or an outbreak like the one, which affected kiwifruit in the North Island. C. Ingle advised that MAF have requested that three field staff, one supervisor and a vehicle be available to them should the need arise. C. Ingle advised that the staff would be paid for by MAF and this will be a similar arrangement to the one with Maritime NZ for staff involved with the Rena recovery.

C. Ingle advised that he has been busy with Long Term Plan work as he and managers are trying to get through as much of this as possible prior to Christmas.

Moved (Scarlett / Archer) *that this report be received.*

Carried

7.0 CHAIRMANS REPORT (VERBAL)

Cr Scarlett reported that he attended the Regional Sector Group on the 18th of November and the Mayors and Chairs Forum on the 22nd of November. Cr Scarlett reported that now that the new government is in place and with the Greens being reasonably prominent he feels that water matters will come to the fore. Cr Scarlett feels that there will be a lot of emphasis on water. Cr Scarlett stated that he dealt with normal constituency matters as well during the reporting period.

Moved (Scarlett / Chinn) *that this report be received.*

Carried

GENERAL BUSINESS

There was no general business.

The meeting closed at 11. 40 a.m.

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Chairman

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Date