



Agenda Council Meeting

Tuesday 31 October 2019

4.00pm

**Council Chambers
Queen Street
TE KUITI**



NOTICE OF MEETING

THE INAUGURAL MEETING OF THE WAITOMO DISTRICT COUNCIL FOR THE 2019-2021 TRIENNIUM IS TO BE HELD IN THE COUNCIL CHAMBERS, QUEEN STREET, TE KUITI ON THURSDAY 31 OCTOBER 2019 COMMENCING AT **4.00PM**

COUNCIL MEMBERS

Mayor John Robertson
Cr Lisa Marshall
Cr Guy Whitaker

Cr Phil Brodie
Cr Janene New

Cr Allan Goddard
Cr Sue Smith



CHRIS RYAN
CHIEF EXECUTIVE

ORDER PAPER

Note

The Chief Executive will open and chair this meeting until the Mayor has made and attested a Declaration pursuant to Section 14, Schedule 7 of the Local Government Act 2002

Items of Business	Page No.
1. Council Prayer	
<i>God Grant us the serenity to accept the things we cannot change The courage to change the things we can And the wisdom to know the difference These things we ask in the name of Our Lord Jesus Christ Amen</i>	
2. Apologies	
3. Making and Attesting of Declarations	3 – 4
4. Appointment of Deputy Mayor	5 – 8
5. General Legal Issues Facing Members of the Council	9 – 13
6. Setting Date and Time of the first Council Business Meeting	14

PLEASE NOTE

The business papers attached to this Order Paper set out recommendations and suggested resolutions only. Those recommendations and suggested resolutions **DO NOT** represent Council policy until such time as they might be adopted by Council resolution.

Document No: A451971

Report To: Council



Meeting Date: 31 October 2019

Subject: Making and Attesting of Declarations

Purpose of Report

- 1.1 The purpose of this business paper is to inform Members of the legislative requirement to make and attest a declaration as an elected member of the Waitomo District Council pursuant to Section 14, Schedule 7 of the Local Government Act 2002, before being able to act as a member of the Council.

Commentary

- 2.1 Section 14, Schedule 7 of the Local Government Act 2002 requires that a person may not act as a member of a local authority until that person has made an oral declaration and a written version of the declaration has been attested.

- 2.2 Section 14 reads as follows:

"14. Declaration by member—

- (1) A person may not act as a member of a local authority until—
- (a) that person has, at a meeting of the local authority following the election of that person, made an oral declaration in the form set out in subclause (3); and
 - (b) a written version of the declaration has been attested as provided under subclause (2).
- (2) The written declaration must be signed by the member and witnessed by—
- (a) the chairperson; or
 - (b) the mayor; or
 - (c) a member of the local authority; or
 - (d) the chief executive of the local authority; or
 - (e) in the absence of the chief executive, some other officer appointed by the chief executive.
- (3) The form of the declaration must consist of the following elements:

Declaration by mayor or chairperson or member

"I, AB, 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 [region or district], the powers, authorities, and duties vested in, or imposed upon, me as [mayor or chairperson or member] of the [local authority] by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Dated at [place] this [number] day of [month] [year]

Signature:

Signed in the presence of:

CD, [mayor or chairperson or member or chief executive of local authority]"

- 2.3 The Mayor will complete his Declaration first, witnessed by the Chief Executive. Council Members will then complete their Declarations, witnessed by the Mayor.



MICHELLE HIGGIE
MANAGER – GOVERNANCE SUPPORT

Document No: A451973

Report To: Council



Meeting Date: 31 October 2019

Subject: Appointment of Deputy Mayor

Purpose of Report

- 1.1 The purpose of this business paper is to inform Council of the Local Government Act 2002 requirements for the appointment of a Deputy Mayor.

Commentary

- 2.1 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:

17 Election of deputy mayor or deputy chairperson

- (1) *A territorial authority must elect 1 of its members to be its deputy mayor in accordance with clause 25.*
- (2) *A regional council must elect 1 of its members to be its deputy chairperson in accordance with clause 25.*
- (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.*

Note: Clause 17(1) does not apply unless the Mayor declines to exercise the power in subsection 41A (3)(a).

2.2 Section 41A(3)(a) of the Local Government Act 2002 (LGA) provides the Mayor the power to appoint the Deputy Mayor.

2.3 However, if the Council does not support the Mayor's appointment, the Council has the power, under Section 41A(4)(a), to remove a Deputy Mayor appointed by the Mayor.

2.4 Section 41A of the LGA reads as follows:

41A Role and powers of mayors

- (1) *The role of a mayor is to provide leadership to—*
 - (a) *the other members of the territorial authority; and*
 - (b) *the people in the district of the territorial authority.*
- (2) *Without limiting subsection (1), it is the role of a mayor to lead the Development of the territorial authority's plans (including the long-term plan and the annual plan), policies, and budgets for consideration by the members of the territorial authority.*
- (3) *For the purposes of subsections (1) and (2), a mayor has the following powers:*
 - (a) *to appoint the deputy mayor:*
 - (b) *to establish committees of the territorial authority:*
 - (c) *to appoint the chairperson of each committee established under paragraph (b), and, for that purpose, a mayor—*
 - (i) *may make the appointment before the other members of the committee are determined; and*
 - (ii) *may appoint himself or herself.*
- (4) *However, nothing in subsection (3) limits or prevents a territorial authority from—*
 - (a) *removing, in accordance with clause 18 of Schedule 7, a deputy mayor appointed by the mayor under subsection (3)(a); or*
 - (b) *discharging or reconstituting, in accordance with clause 30 of Schedule 7, a committee established by the mayor under subsection (3)(b); or*
 - (c) *appointing, in accordance with clause 30 of Schedule 7, 1 or more committees in addition to any established by the mayor under subsection (3)(b); or*
 - (d) *discharging, in accordance with clause 31 of Schedule 7, a chairperson appointed by the mayor under subsection (3)(c).*
- (5) *A mayor is a member of each committee of a territorial authority.*
- (6) *To avoid doubt, a mayor must not delegate any of his or her powers under subsection (3).*
- (7) *To avoid doubt,—*
 - (a) *clause 17(1) of Schedule 7 does not apply to the election of a deputy mayor of a territorial authority unless the mayor of the territorial authority declines to exercise the power in subsection (3)(a):*
 - (b) *clauses 25 and 26(3) of Schedule 7 do not apply to the appointment of the chairperson of a committee of a territorial authority established under subsection (3)(b) unless the mayor of the territorial authority declines to exercise the power in subsection (3)(c) in respect of that committee.*

- 2.5 Should the Mayor decline to exercise the power in subsection 41A (3)(a), then the Council must “elect” one of its members to be its deputy mayor in accordance with Clause 25 of Schedule 7 which states as follows:

25 Voting systems for certain appointments

- (1) *This clause applies to—*
- (a) *the election or appointment of the chairperson and deputy chairperson of a regional council; and*
 - (b) *the election or appointment of the deputy mayor; and*
 - (c) *the election or appointment of the chairperson and deputy chairperson of a committee; and*
 - (d) *the election or appointment of a representative of a local authority.*
- (2) *If this clause applies, a local authority or a committee (if the local authority has so directed) must determine by resolution that a person be elected or appointed by using one of the following systems of voting:*
- (a) *the voting system in subclause (3) (system A):*
 - (b) *the voting system in subclause (4) (system B).*
- (3) *System A—*
- (a) *requires that a person is elected or appointed if he or she receives the votes of a majority of the members of the local authority or committee present and voting; and*
 - (b) *has the following characteristics:*
 - (i) *there is a first round of voting for all candidates; and*
 - (ii) *if no candidate is successful in that round there is a second round of voting from which the candidate with the fewest votes in the first round is excluded; and*
 - (iii) *if no candidate is successful in the second round there is a third, and if necessary subsequent, round of voting from which, each time, the candidate with the fewest votes in the previous round is excluded; and*
 - (iv) *in any round of voting, if 2 or more candidates tie for the lowest number of votes, the person excluded from the next round is resolved by lot.*
- (4) *System B—*
- (a) *requires that a person is elected or appointed if he or she receives more votes than any other candidate; and*
 - (b) *has the following characteristics:*
 - (i) *there is only 1 round of voting; and*
 - (ii) *if 2 or more candidates tie for the most votes, the tie is resolved by lot.*

Summary

3.1 The options for appointment of a Deputy Mayor are –

Option One

In accordance with Section 17 of Schedule 7 of the LGA, Council elect one of its members to be its deputy mayor.

Option Two

The Mayor exercises the powers of Section 41A(3)(a) and appoints a Deputy Mayor. If the Council supports the Mayor's appointment, Council acknowledge the appointment.

Note: If the Mayor declines to exercise the powers of Section 41A(3)(a), or should the Council disagree with any appointment made by the Mayor and choose to remove that appointee in accordance with Section 41A(4)(a), then Option One becomes the default appointment method.

Suggested Resolutions

- 1 The Business Paper on Appointment of Deputy Mayor be received.
- 2 Member ... be appointed Deputy Mayor.



MICHELLE HIGGIE
MANAGER – GOVERNANCE SUPPORT

Document No: A451972

Report To: Council



Meeting Date: 31 October 2019

Subject: General Legal Issues Facing Members of the Council

Purpose of Report

- 1.1 The purpose of this business paper is to advise Members that the Chief Executive will provide a general explanation, as required under Section 21 of Schedule 7 the Local Government Act 2002.

Commentary

- 2.1 Section 21 of Schedule 7 the Local Government Act 2002 states as follows:

21 First meeting of local authority following triennial general election of members

- (1) *The first meeting of a local authority following a triennial general election of members must be called by the chief executive as soon as practicable after the results of the election are known.*
- (2) *The chief executive must give the persons elected to the local authority not less than 7 days' notice of the meeting.*
- (3) *Despite subclause (2), if an emergency exists, the chief executive may give notice of the meeting as soon as practicable.*
- (4) *The chief executive (or, in the absence of the chief executive, a nominee of that officer) must chair the meeting until the mayor or chairperson has made and attested the declaration required under clause 14.*
- (5) *The business that must be conducted at the meeting must include—*
 - (a) *the making and attesting of the declarations required of the mayor (if any) and members under clause 14; and*
 - (b) *the election of the chairperson (if any) and the making and attesting of the declaration required of the chairperson under clause 14; and*
 - (c) *a general explanation, given or arranged by the chief executive, of—*
 - (i) *the Local Government Official Information and Meetings Act 1987; and*
 - (ii) *other laws affecting members, including—*
 - (A) *the appropriate provisions of the Local Authorities (Members' Interests) Act 1968; and*
 - (B) *sections 99, 105, and 105A of the Crimes Act 1961; and*
 - (C) *the Secret Commissions Act 1910; and*
 - (D) *the Financial Markets Conduct Act 2013; and*

- (d) *the fixing of the date and time of the first meeting of the local authority, or the adoption of a schedule of meetings; and*
- (e) *the election of the deputy mayor or deputy chairperson in accordance with clause 17.*

2.2 Attached to and forming part of this business paper is a copy of a brief on the above laws. Any Member requiring guidance on these pieces of legislation should not hesitate to discuss the matter further with the Chief Executive.

Suggested Resolution

The business paper on General Legal Issues Facing Members of the Council be received.



MICHELLE HIGGIE
MANAGER – GOVERNANCE SUPPORT

October 2019

BRIEF ON LAWS AFFECTING MEMBERS

(Pursuant to Clause 21(5)(C) of Schedule 7 the Local Government Act 2002)

1.0 LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

1.1 The formal procedures by which members of the public may obtain access to information from local authorities are set out primarily in the Local Government Act and the Local Government Official Information and Meetings Act. The principle of the Local Government Official Information and Meetings Act is that official information must be made available unless there is good reason for withholding it. The valid reasons under Section 13 to withhold information are set out in Sections 6, 7, 8 and 17 of the Act and are summarised below:

- Providing the information would contravene legal requirements, including breaching legal privilege, or prejudice the maintenance of the law, or endanger the health or safety of any person
- The need to protect the privacy of natural persons
- To prevent material loss to members of the public or improper commercial exploitation of information held whether related to the authority's activities or those of another party
- To protect the public interest
- To enable a local authority to conduct its affairs effectively without improper pressure or harassment
- The information required is not available or is trivial
- Substantial collation or research would be required to provide the information.

1.2 When a local authority refuses a request to provide official information or proposes to charge a fee for providing it, then the reasons for doing so must be stated. In addition the Applicants' right to complain to the Ombudsman and request an investigation and review of the refusal must be stated.

1.3 Upon completion of any investigation, the Ombudsman may make recommendations to the local authority. The local authority has a public duty to observe the Ombudsman's recommendations unless it resolves, within 20 days from receipt of those recommendations, not to do so. Any such resolution must be recorded in writing.

2.0 LOCAL AUTHORITIES (MEMBERS INTERESTS) ACT 1968

2.1 The Local Authorities (Members Interests) Act 1968 has two underlying purposes:

- Section 3(1) provides that a member of a local authority is disqualified from office who is concerned or interested in contracts with the authority under which the total payments made, or to be made, by or on behalf of the authority exceed \$25,000 in any financial year, unless approval has been obtained from the Auditor-General.

If the disqualification applies, it is an offence to continue to act as a member of the local authority.

- Section 6(1) provides that members must not vote or take part in the discussion of any matter before the local authority in which they have a pecuniary interest (other than one in common with the public), unless any of the statutory exceptions apply.

Breach of s 6(1) constitutes an offence, and a conviction results in vacation of office. The Act requires a member to declare any pecuniary interest at relevant meetings and for the minutes to record that declaration of interest.

3.0 CRIMES ACT 1961 (Sections 99, 105 and 105A)

99. Interpretation –

In this Part, unless the context otherwise requires,—

bribe means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect

judicial officer means a Judge of any court, or a District Court Judge, Coroner, Justice of the Peace, or Community Magistrate, or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath

law enforcement officer means any constable, or any person employed in the detection or prosecution or punishment of offenders

official means any person in the service of the Sovereign in right of New Zealand (whether that service is honorary or not, and whether it is within or outside New Zealand), or any member or employee of any local authority or public body, or any person employed in the education service within the meaning of the State Sector Act 1988.

105. Corruption and bribery of official –

- (1) 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.
- (2) Every one 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.

[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.

4.0 SECRET COMMISSIONS ACT 1910

- 4.1 This Act makes it an offence for any agent of a principal to accept or attempt to obtain for themselves or any other person, any gift, or inducement or reward for doing or not doing any act in relation to the principal's business.
- 4.2 A number of actions by agents are made offences including having a pecuniary interest in a contract made on behalf of a principal. Presenting false receipts to a principal, and other acts such as advising any person to enter a contract with a third person and receiving a gift or inducement without the person advised knowing.
- 4.3 For the purposes of this Act, every officer or member of a local authority board, council or committee or any other body of persons having public functions under a statute, shall be deemed to be an agent of that local authority.
- 4.4 Persons convict of an offence against this Act are liable to imprisonment for a maximum of 7 years or a fine not exceeding \$1,000 and any corporation to a fine not exceeding \$2,000.

5.0 FINANCIAL MARKETS CONDUCT ACT 2013

- 5.1 Under the Financial Markets Conduct Act 2013, elected members are in a similar position to company directors if the Council were to issue financial products, such as equity or debt securities, under its borrowing powers.
- 5.2 Elected members may therefore be personally liable if product disclosure statements to investors contain untrue information, and may be liable for civil action or criminal prosecution if the requirements of the Act, such as keeping an audited register of financial products issued, are not met.
- 5.3 The Act also prohibits any Member who has information about a listed company that is not generally available to the market, from trading in that company's shares or from disclosing that information.
- 5.4 The penalties for certain offences under this Act (false or misleading statements in disclosure documents - 10 years; or insider trading - 5 years) are such that if a Member were convicted, that conviction would result in ousted from office.

Should any member find themselves in a situation where they have concerns in respect to any of the above legislation, they should contact the Chief Executive to discuss those concerns at their earliest convenience.

Document No: A451970

Report To: Council



Meeting Date: 31 October 2019

Subject: **Setting Date and Time of the first Council Business Meeting**

Type: Decision Required

Purpose of Report

- 1.1 The purpose of this business paper is for Council to formally fix the date and time of the first ordinary business meeting of the Council in accordance with Schedule 7, Section 21(5)(d) of the Local Government Act 2002.

Commentary

- 2.1 Schedule 7, Section 21(5) of the Local Government Act 2002 states as follows:

21 First meeting of local authority following triennial general election of members

- (5) *The business that must be conducted at the meeting must include—*
 (d) *the fixing of the date and time of the first meeting of the local authority, or the adoption of a schedule of meetings; and*

Recommendation

- 3.1 It is recommended that the first ordinary business meeting of the Council be scheduled for Tuesday 26 November 2019 at 9.00am in the Council Chambers, Queen Street, Te Kuiti and that a Meeting Schedule for the 2020 Calendar Year be presented for consideration at that meeting.

Suggested Resolutions

- 1 The business paper on Setting Date and Time of the first Council Business Meeting following the Triennial Elections be received.
- 2 The first ordinary business meeting of the Council following the 2019 Triennial Elections be scheduled for **Tuesday 26 November 2019 at 9.00am** in the Council Chambers, Queen Street, Te Kuiti.
- 3 A Meeting Schedule for the 2020 Calendar Year be presented for consideration at that meeting.

A handwritten signature in blue ink, appearing to read "Michelle Higgie".

MICHELLE HIGGIE
MANAGER – GOVERNANCE SUPPORT

