

Agenda for the Inaugural Waikato District Council meeting to be held in the Council Chambers, District Office, 15 Galileo Street, Ngaruawahia on **WEDNESDAY 30 OCTOBER 2019** commencing at **11.00am**.

*The Chief Executive will chair the meeting until the Mayor has made and attested the declaration required under the Local Government Act 2002.*

**1. DECLARATION BY HIS WORSHIP THE MAYOR ALLAN SANSON**

*His Worship the Mayor will read and sign the declaration required under clause 14, Schedule 7 of the Local Government Act 2002.*

**2. DECLARATION BY COUNCILLORS**

*Each Councillor will read and sign the declaration required under clause 14, Schedule 7 of the Local Government Act 2002.*

**3. APOLOGIES**

**4. CONFIRMATION OF AGENDA**

**5. DECLARATIONS OF INTEREST**

**6. APPOINTMENT OF DEPUTY MAYOR 2**

**7. EXPLANATION OF STATUTORY MATTERS AFFECTING ELECTED MEMBERS 3**

**8. COUNCIL MEETING SCHEDULE FOR 2019 9**

GJ Ion  
**CHIEF EXECUTIVE**

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### **Open Meeting**

<b>To</b>	Waikato District Council
<b>From</b>	Allan Sanson His Worship the Mayor
<b>Date</b>	22 October 2019
<b>Reference #</b>	GOV1301
<b>Report Title</b>	Appointment of Deputy Mayor

## **1. EXECUTIVE SUMMARY**

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Under section 41A of the Local Government Act 2002, the Mayor has the discretionary power to appoint a Deputy Mayor.

His Worship the Mayor will speak to this report at the Inaugural Council Meeting.

## **2. RECOMMENDATION**

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**THAT** the report from His Worship the Mayor be received;

**AND THAT** Council notes His Worship the Mayor has appointed Councillor Bech as Waikato District Council's Deputy Mayor in accordance with section 41A (3)(a) of the Local Government Act 2002.

## **3. ATTACHMENTS**

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Nil

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**Open Meeting**

<b>To</b>	Waikato District Council
<b>From</b>	Gavin Ion Chief Executive
<b>Date</b>	21 October 2019
<b>Prepared by</b>	Brendan Stringer Democracy Manager
<b>Chief Executive Approved</b>	Y
<b>Reference #</b>	GOV1301/ 2380220
<b>Report Title</b>	Explanation of Statutory Matters affecting Elected Members

## **1. EXECUTIVE SUMMARY**

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As required by clause 21(5) of Schedule 7 of the Local Government Act 2002, the Chief Executive is to provide or arrange a general explanation of the Local Government Official Information and Meetings Act 1987 and other legislation affecting members.

A summary of relevant legislation is set out in the attachment to this report.

## **2. RECOMMENDATION**

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**THAT the report from the Chief Executive be received.**

## **3. ATTACHMENTS**

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Explanation of legislation affecting elected members.

## Attachment – Explanation of Legislation

### Local Government Official Information and Meetings Act 1987 ('LGOIMA')

#### *Access to Local Authority Information*

LGOIMA makes available to the public official information held by the Council and promotes the open and public transaction of business at Council meetings.

The guiding principle of LGOIMA is that the Council must make all information available to the public unless there is a good reason for withholding it. The Act sets out an exhaustive list of grounds for withholding information.

Any person may request that specified official information be made available. The Council is required to make a decision on the request no later than 20 working days after the day on which the request was received. All responses by the Council are reviewable by the Office of the Ombudsmen.

Any information provided in good faith and in accordance with the Council's duties does not give rise to legal remedies.

#### *Local Authority Meetings*

LGOIMA requires Council meetings to be publicly notified and open to the public. Any agendas, reports or minutes associated with a Council meeting, or circulated to elected members, must be made available to the public – unless there is good reason to withhold that information. Council has the right to exclude the public from the whole or any part of a meeting for any of the reasons specified in section 48 of the LGOIMA.

Minutes of the meetings may be inspected and copies requested by the public. The publication of defamatory matter contained in publicly available agendas or minutes is privileged, unless it can be proven that the Council was predominantly motivated by ill will or took improper advantage of the occasion of publication.

Confidential information given to elected members by the Council must remain confidential and must not be disclosed in public.

### Local Authorities (Members' Interests) Act 1968 ('LAMIA')

LAMIA helps protect the integrity of Council's decision-making by ensuring that people are not affected by personal motives when they participate in Council decision-making and cannot use their position to obtain preferential access to contracts.

LAMIA regulates the actions of individual elected members, and also applies to Council committee members (regardless of whether a committee member is also an elected member).

The Act has two main requirements – members cannot:

- i. enter into contract with the Council worth more than \$25,000 (incl GST) in a financial year ('the contracting rule'); or

- ii. participate in matters before the Council in which they have a pecuniary interest, other than an interest in common with the public (the 'discussing and voting rule').

A pecuniary interest is an interest that involves money.

#### *The contracting rule (section 3)*

A member will be automatically disqualified from office if he/she is 'concerned or interested' in contracts with the Council, and the total payments made (or to be made) by the Council exceed \$25,000 (incl GST) in any financial year.

The \$25,000 limit relates to the total value of all payments made under all contracts in which a member is interested during a financial year.

A member can have an indirect interest if the contract is between the Council and another person to whom the member has a personal connection. By way of example only, a spouse/partner, a company in which the member (or their spouse/partner) owns 10% or more of shares, a family trust for which the member (or their spouse/partner) is a beneficiary).

The Office of the Auditor-General ('OAG') can give members prior approval and, in limited cases, retrospective approval for contracts that would otherwise disqualify that member under the Act.

The contracting rule does not apply if:

- i. the contract was entered into by a Council committee or a Council officer acting under delegation; and
- ii. the member is not a member of that committee and did not know, and had no reasonable opportunity of knowing, about the contract at the time it was made.

Not all contracts are subject to the contracting rule (e.g. a lease granted to the Council).

If a member breaches the contracting rule, the member will be disqualified from holding office as a member of the Council (or any committee) and is disqualified from being elected as a member (or appointed to a committee) until the next election. It is a criminal offence for a person to act as a member of the Council (or committee) while disqualified.

#### *Discussing and voting rule (section 6)*

Members are not allowed to participate in discussion or voting on any matter before the Council or Council committee in which they have a direct or indirect pecuniary interest, other than an interest in common with the public.

The test used by the OAG is:

*Whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned.*

The following factors are relevant when considering whether a member has an interest in common with the public:

- i. the nature of the member's interest (such as the kind of interest, its size or extent, and whether it is a direct or indirect interest);
- ii. the size of the group of people who are also affected; and

- iii. whether or not the member's interests and the group's interests are affected in a similar way.

This is often a matter of degree and will always be decided in the circumstances in each situation.

The same requirements around a member having an indirect interest, as noted above in the contracting rule, apply for the discussing and voting rule.

If a member has a pecuniary interest in a matter that is before the Council, or a committee, that member **must**:

- i. declare the existence of a pecuniary interest; and
- ii. abstain from discussion and voting on the matter.

The disclosure and abstention are recorded in the minutes.

There are a number of situations where the discussing and voting rules does not apply (e.g. a member is appointed by the Council to represent a particular activity or organisation, and the member's pecuniary interest is no different from the interest of that activity or organisation).

Again, the OAG can grant an exemption to a member to enable him/her to participate in the discussion or voting within specified parameters.

It is a criminal offence if a member breaches this rule. If convicted, the member becomes incapable of continuing to hold office and a vacancy is created.

### **Crimes Act 1961**

Under sections 105 and 105A of the Crimes Act, it is a crime for any elected member – as an 'official' – to:

- i. corruptly accept, obtain or offer to accept any bribe for the member (or anyone else) for acting, or not acting, in that member's official capacity;
- ii. use or disclose information acquired in that member's official capacity, to obtain (directly or indirectly) an advantage of a pecuniary gain for himself or herself or any other person.

A bribe has a wide definition in the Act, including money, employment or any benefit (whether direct or indirect).

These offences carry a maximum sentence of seven years' imprisonment. If convicted and sentenced to two or more years, the member's office is vacated.

### **Secret Commissions Act 1910**

This legislation brings to members' attention that it is an offence to give or receive gifts, rewards, or other consideration during the course of conducting the affairs of Council.

Any gift or other consideration given, or offered or agreed to be given, to an elected member's close relatives or associates, or anyone chosen by an elected member, is regarded as being given or offered to the elected member (as the Council's agent).

It is also an offence for an elected member to present false or misleading receipts, invoices or accounts to the Council.

If convicted of any offence against the Act, an elected member can be imprisoned for up to seven years. If convicted and sentenced to two or more years, the member's office is vacated.

### **Local Government Act 2002**

Sections 44 to 47 of the Local Government Act 2002 relates to financial loss incurred by local authorities, as a result of unlawful expenditure of money, the unlawful sale of an asset, a liability having been unlawfully incurred, or intentional or negligent failure to collect money the local authority is lawfully entitled to receive.

If the Auditor-General is satisfied that a loss has been incurred, the loss is recoverable as a debt due to the Crown from each member of the local authority jointly and severally.

### **Health and Safety in Work Act 2015**

Under the Act, the Council (as a Person conducting a Business or Undertaking, or 'PCBU') must ensure, so far as reasonably practicable, the health and safety of all workers who work for the Council, and must, so far as is reasonably practicable, provide and maintain a work environment that is without risk to health and safety.

The duties of a PCBU also include the provision of information, training and supervision necessary to keep all persons safe, and to monitor the health of workers and conditions of the workplace for the purpose of preventing injury and illness.

The Act places a specific duty on those holding governance, or senior management. These persons are "officers" under the Act and are in a position to exercise significant influence in relation to the management of business. For the purposes of the Act, the Mayor, councillors and the Executive Leadership Team are officers.

Officers have to keep up to date with health and safety matters, gain an understanding of the risks and hazards associated with Council business, ensure that the PCBU has and uses appropriate resources to eliminate and minimise risks, and ensure that the PCBU has and implements processes for complying with duties under the Act.

Unlike the Executive Leadership Team, Elected Members are not required to be directly involved in the day-to-day day management of health and safety. They are, however, still required to take reasonable steps to understand Council's operations and health and safety risks, and to ensure that they are managed so that the organisation meets its legal obligations under the Act.

### **Financial Markets Conduct Act 2013**

This Act governs how financial products are created, promoted and sold, and the ongoing responsibilities of those who offer and trade them. It also regulates the provision of some financial services.

The Act controls offers of financial products (debt, equity, managed investments products), and is likely to affect Council should it choose to go direct to the market with an offer of its own debt securities, such as bonds. The Act sets out the disclosure requirements for offers of financial products.

The Act also provides for fair dealing in relation to financial products and prohibits misleading or deceptive conduct and false, misleading or unsubstantiated representations.

Elected members are in a similar position as company directors, i.e. they could be personally liable for breaches of provisions under this Act.

### **Bylaws**

Over the past few years the Council has been working to rationalise the number of bylaws. The current bylaws can be accessed on the Council's website [here](#).



### **Open Meeting**

<b>To</b>	Waikato District Council
<b>From</b>	Gavin Ion Chief Executive
<b>Date</b>	18 October 2019
<b>Prepared by</b>	Lynette Wainwright Committee Secretary
<b>Chief Executive Approved</b>	Y
<b>Reference #</b>	GOV1301
<b>Report Title</b>	Council Meeting Schedule for 2019

## **I. EXECUTIVE SUMMARY**

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It is a requirement under Schedule 21(d) of the Local Government Act 2002, that Council fixes a date and time of the first meeting of the local authority or the adoption of a schedule of meetings.

The Council's governance structure and proposed meeting schedule for 2020 will be presented to the first meeting of the Council on 12 November 2019 for approval. Until then, it is proposed that the following Council meetings for 2019 are confirmed:

- Tuesday, 12 November 2019 commencing at 9:30am; and
- Monday, 9 December 2019 commencing at 1:00pm.

## **2. RECOMMENDATION**

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**THAT** the report from the Chief Executive be received;

**AND THAT** the Council approve the following Council meeting dates and times for the balance of the 2019 year:

- Tuesday, 12 November 2019 commencing at 9:30am; and
- Monday, 9 December 2019 commencing at 1:00pm;

**AND FURTHER THAT** the Council notes that a schedule of meetings for 2020 will be presented for approval at the meeting on 12 November 2019.

## **3. ATTACHMENTS**

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Nil