



21 October 2016

Order Paper for the Inaugural Meeting of the Hutt City Council
for the 2016-2019 triennium
to be held in the
Little Theatre, 2 Queens Drive, Lower Hutt,
on:

Thursday 27 October 2016 commencing at 6.00pm

Tony Stallinger
CHIEF EXECUTIVE

HUTT CITY COUNCIL

Inaugural Meeting of the Hutt City Council for the 2016-2019 triennium
to be held in the Little Theatre, 2 Queens Drive, Lower Hutt on
Thursday 27 October 2016 commencing at 6.00pm.

ORDER PAPER

PUBLIC BUSINESS

1. APOLOGIES

Cr MJ Cousins

2. STATUTORY DECLARATION BY HIS WORSHIP THE MAYOR
(16/1131)

3. STATUTORY DECLARATIONS BY COUNCILLORS (16/1132)

4. ADDRESS BY HIS WORSHIP THE MAYOR (16/1133)

5. STATUTORY BRIEFING (16/1135)

Report No. HCC2016/5/235 by the Solicitor

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MAYOR'S RECOMMENDATION:

"That Council notes the legislative provisions affecting members."

6. APPOINTMENT OF DEPUTY MAYOR (16/1134)

MAYOR'S RECOMMENDATION:

"That Council:

- (i) notes that under section 41A of the Local Government Act 2002, Mayor Wallace has the formal power to appoint a Deputy Mayor; and
- (ii) endorses Mayor Wallace's decision to appoint Councillor Bassett as Deputy Mayor of Hutt City Council for the 2016-2019 triennium."

7. FIXING OF DATE AND TIME FOR FIRST ORDINARY MEETING OF COUNCIL (16/1136)

MAYOR'S RECOMMENDATION:

"That an ordinary meeting of the Hutt City Council be held in the Council Chambers, 30 Laings Road, Lower Hutt on Tuesday 22 November 2016 commencing at 6.00pm."

10 October 2016

File: (16/1135)

Report no: HCC2016/5/235

Statutory Briefing

Purpose of Report

1. The purpose of this report is to provide members with a general explanation of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987 and other laws affecting members.

Recommendations

It is recommended that the Council notes the legislative provisions affecting members.

Background

- 2.1 It is a requirement of clause 21 of Schedule 7 of the Local Government Act 2002 that the business to be conducted at the first meeting following a triennial general election contain a general explanation of laws affecting members.
- 2.2 Legislation of particular relevance to members includes:
 - 2.2.1 Local Government Act 2002;
 - 2.2.2 Local Government Official Information and Meetings Act 1987;
 - 2.2.3 Local Authorities (Members' Interests) Act 1968;
 - 2.2.4 Sections 99, 105 and 105A of the Crimes Act 1961;
 - 2.2.5 Secret Commissions Act 1910;
 - 2.2.6 Financial Markets Conduct Act 2013;
 - 2.2.7 Public Audit Act 2001.

Local Government Act 2002

- 2.3 The Local Government Act 2002 is the primary piece of legislation governing local authorities and how they carry out their functions.
- 2.4 The Act contains specific provisions in relation to the functions carried out and services offered by local authorities and the powers that local authorities have.

- 2.5 It also sets out key generally applicable provisions in relation to decision making and governance by local authorities. These general provisions are discussed below.

Purpose of the Act

- 2.6 The purpose of the Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities. The Act:
- 2.6.1 states the purpose of local government;
 - 2.6.2 provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them;
 - 2.6.3 promotes the accountability of local authorities to their communities; and
 - 2.6.4 provides for local authorities to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.
- 2.7 The Act also sets out principles and requirements for local authorities that are intended to facilitate participation by Maori in local authority decision making processes. This is to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Maori to contribute to local government decision making processes.

Purpose of Local Government

- 2.8 The purpose of local government is:
- 2.8.1 to enable democratic local decision making and action by, and on behalf of, communities; and
 - 2.8.2 to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.
- 2.9 A local authority must exercise its powers wholly or principally for the benefit of its district.
- 2.10 In performing its role, a local authority must act in accordance with the following principles:
- 2.10.1 conduct its business in an open, transparent and democratically accountable manner;
 - 2.10.2 give effect to its identified priorities and desired outcomes in an efficient and effective manner;
 - 2.10.3 make itself aware of, and should have regard to, the views of all of its communities; and when making a decision, take account of:
 - the diversity of the community;
 - the community's interests, within its district or region;
 - the interests of future as well as current communities; and
 - the likely impact of any decision on these interests;

- 2.10.4 provide opportunities for Maori to contribute to its decision making processes;
- 2.10.5 collaborate and cooperate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources;
- 2.10.6 undertake any commercial transactions in accordance with sound business practices;
- 2.10.8 ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region; and
- 2.10.9 in taking a sustainable development approach, a local authority should take into account:
 - the social, economic, and cultural interests of people and communities;
 - the need to maintain and enhance the quality of the environment; and
 - the reasonably foreseeable needs of future generations.

Governance principles

- 2.11 A local authority must act in accordance with the following principles in relation to its governance:
 - 2.11.1 ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community;
 - 2.11.2 ensure that the governance structures and processes are effective, open and transparent;
 - 2.11.3 ensure that, so far as is practicable, responsibility and processes for decision making in relation to regulatory responsibilities is separated from responsibility and processes for decision making for non-regulatory responsibilities;
 - 2.11.4 be a good employer; and
 - 2.11.5 ensure that the relationship between elected members and management of the local authority is effective and understood.

Appointment of Chief Executive

- 2.12 The Act requires the local authority to appoint a Chief Executive who has specific responsibilities set out in the Act. In particular the Chief Executive's role is to implement the local authority's decisions, the management of the local authority and the employment of staff.

Liability of Members

- 2.13 Local authority members (and committee, community board or other subordinate decision making bodies of that local authority) are generally covered for any claims against them in their role as local authority members. This does not cover directors of council controlled organisations carrying out that role.
- 2.14 The Act sets up protections for the local authority's assets by making members liable for a loss by the local authority (i.e. when the local authority's money is unlawfully spent or an asset is unlawfully sold). However, there are a number of defences to this: for example, that the

member did not know or did not agree to the actions or that they voted against the actions or relied on reports and/or financial data.

Community Boards

- 2.15 The Act provides for the establishment and governance of community boards.
- 2.16 A community board, is an unincorporated body, and is not a local authority or a committee of the relevant territorial authority.
- 2.17 The role of a community board is to:
- 2.17.1 represent, and act as an advocate for, the interests of its community;
 - 2.17.2 consider and report on all matters referred to it by the territorial authority, or any matter of interest or concern to the community board;
 - 2.17.3 maintain an overview of services provided by the territorial authority within the community;
 - 2.17.4 prepare an annual submission to the territorial authority for expenditure within the community;
 - 2.17.5 communicate with community organisations and special interest groups within the community; and
 - 2.17.6 undertake any other responsibilities that are delegated to it by the territorial authority.

Planning, decision making and accountability

- 2.18 Part 6 of the Act sets out provisions relating to planning, decision making, and accountability. The key elements are:
- 2.18.1 understanding options;
 - 2.18.2 community views and the principles that apply to local authorities,
 - 2.18.3 the processes that allow for opportunities and the encouragement of Maori participation;
 - 2.18.4 the local authority must inform itself in a way that is appropriate to the significance of the issue before making any decision on it; and
 - 2.18.5 the more significant the issue the more thorough the level of analysis required.

Consultation

- 2.19 The Act sets out principles of consultation and when the special consultative procedure is to be used. As noted above, the local authority must inform itself in a way that is appropriate to the significance of the issue. The Act sets out specific decisions that require the use of the special consultative procedure. These include the Long Term Plan (LTP) and the making of bylaws.

Community Outcomes

- 2.20 The Act contains extensive planning, decision-making and consultation requirements intended to achieve the purpose of engaging the community in the local authority's decision-making. Local authorities are now required to facilitate a process every six years where the community

identifies community outcomes. These are desired results and represent the community's view.

Planning

- 2.21 Councils must produce an annual plan and an annual report. In the years a local authority is not required to produce a LTP it must produce an Annual Plan.
- 2.22 The Annual Plan links the LTP to the annual budgeting process (including the setting of rates). The Annual Plan must include:
- 2.22.1 a proposed annual budget;
 - 2.22.2 a funding impact statement for the year;
 - 2.22.3 forecast financial statements for the year;
 - 2.22.4 service levels and performance measures; and
 - 2.22.5 details of any changes to the LTP.
- 2.23 The Annual Report must include amongst other things:
- 2.23.1 the results of any monitoring of community outcomes done during the year (this must be done at least once every three years); and
 - 2.23.2 details of the financial and nonfinancial performance of the local authority.
- 2.24 The Act also sets out requirements around council financial requirements. A Council is required to maintain a balanced budget and to have in place a number of specific financial policies.

Local Government Official Information and Meetings Act 1987

- 2.25 The Local Government Official Information and Meetings Act 1987:
- 2.25.1 makes official information held by local authorities more freely available;
 - 2.25.2 provides for proper access by each person to official information relating to that person which is held by local authorities;
 - 2.25.3 provides for the admission of the public to meetings of local authorities;
 - 2.25.4 protects official information held by local authorities and the deliberations of local authorities to the extent consistent with the public interest and the preservation of personal privacy; and
 - 2.25.5 establishes procedures to achieve the above purposes.

Requests for Information

- 2.26 The main principle of the Local Government Official Information and Meetings Act 1987 (LGOIMA) is that information must be made available unless there is good reason for withholding it. Valid reasons for withholding information are set out in sections 6, 7, 8 and 17 of the LGOIMA, and include:
- 2.26.1 providing the information would prejudice the maintenance of the law or endanger the safety of any person;
 - 2.26.2 protecting the privacy of individuals;
 - 2.26.3 preventing the disclosure of a trade secret or prejudice to the commercial position of the supplier or subject of the information;
 - 2.26.4 enabling the local authority to conduct its affairs without improper pressure or harassment;

- 2.26.5 providing the information requested cannot be achieved without substantial collation or research; and
 - 2.26.6 the request is frivolous or vexatious or the information requested is trivial.
- 2.27 A local authority is entitled to charge a fee for providing official information.
- 2.28 If an applicant's request for information is refused they are entitled to complain to the Ombudsman and seek an investigation and review of the refusal.

Attendance of Public at Meetings

- 2.29 Members of the public are entitled to attend meetings of the local authority.
- 2.30 The LGOIMA sets out provisions regarding the public notification of meetings and the rights of members of the public to inspect agendas and associated reports.
- 2.31 Local authorities are entitled to exclude the public from part or all of a meeting provided the reasons for doing so are explained. Valid reasons for excluding the public under section 48 of the LGOIMA include:
- 2.31.1 good reason for withholding information in terms of sections 6 or 7 exist (Note: Section 7(2)(f)(i) is not included);
 - 2.31.2 disclosure would be contrary to another enactment;
 - 2.31.3 meeting is considering a recommendation from the Ombudsman; and
 - 2.31.4 right of appeal lies to any Court or Tribunal.
- 2.32 In addition to the provisions of the LGOIMA, Council is also required by clause 27 of Schedule 7 of the Local Government Act 2002 to adopt a set of Standing Orders for the conduct of meetings. Council in 2003 adopted Standing Orders that reflect the provisions of the New Zealand Standard Model Standing Orders, customised to meet the particular requirements of Hutt City Council. Copies of the adopted Standing Orders have been provided to all elected members. Clause 16 of Schedule 7 of the Local Government Act requires that members of local authorities abide by the Standing Orders adopted. Members may be excluded from a meeting pursuant to a ruling under Standing Orders.
- 2.33 Sections 52 and 53 of the LGOIMA provide that written or oral statements on any matter before a meeting of the Council, committee or community board are privileged unless the statement is proved to be motivated by ill will. This type of privilege is known as "qualified privilege". Qualified privilege is a protection afforded to persons acting in good faith and without any improper motive in making statements. For qualified privilege to apply, members must have a positive belief in the truth of what is said, and there should also be no suggestion of personal spite or ill will by the maker of the statement. The statutory protection of sections 52 and 53 would not necessarily extend outside a meeting.

Local Authorities (Members' Interests) Act 1968

- 2.34 The Local Authorities (Members' Interests) Act 1968 (the "Members' Interests Act") outlines circumstances in which members may be

disqualified from holding office because of their involvement in contracts and outlines circumstances when a pecuniary interest will prevent members from voting on or discussing particular issues.

Contracts

- 2.35 The Members' Interests Act disqualifies a person from being a member, or being elected or appointed a member of a local authority or any committee of a local authority, if they are concerned or interested in contracts or subcontracts with the local authority and total payment for such contracts exceeds \$25,000 in any financial year.
- 2.36 It is an offence to act as a member while disqualified, punishable by a fine not exceeding \$200.
- 2.37 The Members' Interests Act defines "concerned or interested in a contract" widely to include involvement of a member or their spouse in a company that contracts or sub-contracts with the local authority.
- 2.38 The term "contract" does not include any contract for the employment of staff by a local authority.
- 2.39 Where a member has an interest in a contract by virtue of a shareholding in an incorporated company the Members' Interests Act may apply.
- 2.40 The prior approval of the Audit Office may be sought in special cases to allow payment without disqualification under a contract that would otherwise be a disqualifying contract.
- 2.41 If a member becomes disqualified an extraordinary vacancy is created and the person is precluded from being elected or appointed to the local authority until the next triennial general election.
- 2.42 Members are urged to take the following steps as protection:
- 2.42.1 advise the Chief Executive of any organisations with whom dealings should be restricted because of a potential conflict of interest; and
 - 2.42.2 advise the management of any such organisations to keep the member informed if they are likely to become involved in dealings with the local authority.
- 2.43 Officers will shortly be circulating a publication on the Members' Interests Act produced by the Audit Office and forms for elected members to declare their interests. This publication also contains guidelines about situations where members may have a non-monetary interest in a matter and guidelines around avoiding situations where an allegation of bias in decision making could arise. Such situations could cause a decision of the local authority to be called into question. It is important that members should seek legal advice where they are concerned that a potential conflict of interest of any kind may exist in relation to a matter before the council.

Voting and discussion on matters where there is a pecuniary interest

- 2.44 The Members' Interests Act prohibits a member from voting or taking part in the discussion of any matter in which the member has, directly or indirectly, any pecuniary interest, other than an interest in common with the public.

- 2.45 A member has a pecuniary interest in a matter if it would, if dealt with in a particular way, give rise to an expectation of a gain or loss of money by that member.
- 2.46 A member who is prohibited from voting on or taking part in the discussion on any matter must, when the matter is raised, declare the pecuniary interest and abstain from the discussion. The disclosure and abstention from discussion and voting is recorded in the minutes. (Note: Hutt City Council Standing Orders also suggest that members should consider leaving the meeting room for the full duration of discussion on such matters.)
- 2.47 If a member votes or speaks on a matter when having a pecuniary interest they are liable on summary conviction to a fine not exceeding \$100. A conviction results in the member being granted leave of absence until the time for lodging an appeal against conviction has expired or, if an appeal is lodged, until the determination of that appeal. When the leave of absence has expired and the conviction has not been quashed or set aside, the office of the member is vacated and dealt with as an extraordinary vacancy.
- 2.48 Only the Audit Office may institute proceedings for an offence against the Members' Interests Act. The onus of not breaching the Act rests on the member concerned.

Sections 99, 105 and 105A of the Crimes Act 1961

- 2.49 Clause 21(5)(c) of Schedule 7 of the Local Government Act requires that members be briefed on sections 99, 105 and 105A of the Crimes Act 1961. These provisions fall under Part 6 of the Crimes Act, which relates to crimes affecting the administration of law and justice.
- 2.50 Section 99 sets out the definition of a bribe as any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect.
- 2.51 Sections 105 and 105A provide that it is an offence for any official (which includes a member of a local authority) to corruptly:
- 2.51.1 accept or obtain or agree or offer to accept or attempt 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 their official capacity. The penalty for this is a maximum of seven years imprisonment;
 - 2.51.2 give or offer or agree to give any bribe to any person with intent to influence any official in respect of any act or omission by that officer in their official capacity. The penalty for this is a maximum of seven years imprisonment; and
 - 2.51.3 use or disclose information acquired in their official capacity, to directly or indirectly obtain an advantage or pecuniary gain, for themselves or any other person. The penalty for this is a maximum of seven years imprisonment.

Secret Commissions Act 1910

- 2.52 The Secret Commissions Act 1910 prohibits secret commissions. The principle behind the Act is that persons holding positions of trust (i.e. elected members) should not profit through holding that position. It is an

offence for any agent of a principal to accept, or attempt to obtain, any gift, inducement or reward for doing or not doing any act by virtue of the office they hold. Every member of a local authority is deemed to be an agent of the local authority.

- 2.53 The maximum penalty on indictment is a \$1,000 fine or two years imprisonment for an individual or a \$2,000 fine for a corporation.

Financial Markets Conduct Act 2013

- 1.54 The Financial Markets Conduct Act 2013 imposes on Members the same responsibilities as company directors whenever Council offers securities (debt or equity) to the public. Members may be personally liable if investment documents such as a disclosure statement contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.
- 1.55 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.
- 1.56 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 ouster from office.

Public Audit Act 2001

- 2.57 Although not mentioned in Clause 21(5)(c) of Schedule 7, it is worth noting the Public Audit Act 2001. This Act has the primary purposes of establishing the Controller and Auditor-General and the Deputy Controller and Auditor General as officers of Parliament and restating the law relating to the audit of public sector organisations and public entities (which includes local authorities). Sections 24 and 25 of the Public Audit Act set out information gathering powers relevant to elected members as members of the governing body of a public entity. Members must comply with requests from the Controller and Auditor General for documents and information or explanations about information provided.

Consultation

2. Particular legal requirements may require members to consult with the Office of the Controllers and Auditor General.

Legal Considerations

3. The statutory briefing information contained in this report is of a general nature only and is not exhaustive. If members have particular concerns they should seek appropriate legal advice.
4. Breach of relevant legislation can result in serious consequences such as disqualification from office or imprisonment.
5. The onus on complying with the relevant legislation falls with each individual member, not the Chief Executive.

Financial Considerations

6. There are no financial considerations arising from this report. (Note: there may be financial considerations for individual members in relation to the Members' Interests Act and pecuniary interests).

Other Considerations

7. There are no publicity considerations.
8. Additional information will be provided to members by officers as required. Councillors, Community Board members and members of Council Committees are subject to various laws in their capacity as local authority members. Members need to ensure that they understand and comply with these obligations. However, there is a range of laws that affect the processes and practices of local authorities which should also be taken into account. Implications arising from these obligations will be raised in relevant briefings and reports on issues as they arise.

Appendices

There are no appendices for this report.

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