

Notice of Meeting:

I hereby give notice that an ordinary Meeting of the Council will be held on:

Date: Thursday 24 October 2019
Time: 9.30am
Meeting Room: Reception Lounge and Council Chamber
Venue: Municipal Building, Garden Place, Hamilton

Richard Briggs
Chief Executive

Inaugural Council Meeting OPEN AGENDA

Membership

Chairperson	Mayor P Southgate
Members	Cr M Bunting
	Cr M Forsyth
	Cr M Gallagher
	Cr R Hamilton
	Cr D Macpherson
	Cr K Naidoo-Rauf
	Cr A O'Leary
	Cr R Pascoe
	Cr G Taylor
	Cr S Thomson
	Cr M van Oosten
	Cr E Wilson

Quorum: A majority of members (including vacancies)

Meeting Frequency: Monthly – or as required

Becca Brooke
Governance Lead

18 October 2019

Telephone: 07 838 6439
Becca.Brooke@hcc.govt.nz
www.hamilton.govt.nz

SWEARING IN CEREMONY *(Programme will be available at the meeting)*

Entry of Official Party and Elected Members

Whakatau (Welcome and Blessing) by Hamilton City Council Kaumatua Tame Pokaia

Inaugural Council Meeting Opened by Chief Executive Richard Briggs

Installation of Mayor Paula Southgate

The Mayor Paula Southgate will read and sign the Statutory Declaration required by the Local Government Act 2002, which will be witnessed by the Chief Executive

- Ceremonial passing of the Mayoral Chains
- Following her declaration, the Mayor will have an opportunity to address the Meeting

Installation of the Councillors

The Councillors will read and sign the Statutory Declaration required by the Local Government Act 2002, which will be witnessed by Mayor Paula Southgate

- Following their declarations, the Elected Members will have an opportunity to address the Meeting

Singing of the National Anthem

Official Party and Elected Members to depart

The Meeting will adjourn for light refreshments in the Council Chamber Foyer

Meeting will reconvene in the Council Chamber between 1.00pm and 1.30pm

ITEM	TABLE OF CONTENTS	PAGE
1	Apologies	4
2	Confirmation of Agenda	4
3	Declarations of Interest	4
4	Public Forum	4
5	Inaugural and First Meeting Requirements	5
6	Explanation of Statutory Matters Affecting Elected Members	7

1 Apologies

2 Confirmation of Agenda

The Council to confirm the agenda.

3 Declaration of Interest

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

4 Public Forum*(not required)*

Council Report

Item 6

Committee: Council

Date: 24 October 2019

Author: Becca Brooke

Authoriser: David Bryant

Position: Governance Lead

Position: General Manager Corporate

Report Name: Inaugural and First Meeting Requirements

Report Status	Open
----------------------	------

Requirements at an Inaugural Council Meeting

1. Clause 21 of Schedule 7 to the Local Government Act 2002 (**LGA**) sets out the requirements for the Inaugural Council meeting of a local authority following a triennial general election of its members. Subclause (5) provides that the business that must be conducted at the Inaugural Council meeting must include:
 - a. the making and attesting of declarations required of the Mayor and members, as has been carried out earlier today;
 - b. a general explanation of particular legislation;
 - c. the fixing of the date and time of the first meeting of the local authority or the adoption of a schedule of meetings; and
 - d. the election of the Deputy Mayor in accordance with cl 17 of the LGA (only applicable in certain circumstances).
2. This report addresses the requirements at [1(c)] and [1(d)] above. It then deals with other matters not required by cl 21, namely arrangements for setting the 2019-2022 Governance Structure and Appointments.

First Council Meeting

3. At this meeting, the Council must either fix the date and time of its first Council meeting or to adopt a schedule of meetings.
4. It is proposed that the first Council meeting take place on Thursday, 28 November 2019, starting at 9.30am.
5. A schedule of meetings for 2020 will be recommended at the 28 November 2019 Council meeting.

Appointment of a Deputy Mayor

6. Section 41A LGA provides the Mayor may appoint a Deputy Mayor. Clause 17 of Schedule 7 to the LGA provides the Council with the power to appoint the Deputy Mayor, but the clause is only applicable where the Mayor has declined to exercise their power to make the appointment under s 41A of the LGA.

7. It is expected that the Mayor will advise the Council of her decision to appoint a Deputy mayor at (or before) the Inaugural Council meeting. In the event that the appointment has not yet been finalised at the time of the Inaugural Council meeting, then it will be announced once confirmed.
8. For completeness, it is noted that 21(5) of Schedule 7 to the LGA requires the Council to elect a Deputy Mayor at its Inaugural Council meeting in accordance with cl 17. This requirement only applies where the Mayor has declined to exercise their power to appoint the Deputy Mayor under s 41A of the LGA. In the event the Mayor has not appointed a Deputy Mayor as at the time of the Inaugural Council meeting, this does not mean the Mayor has declined to exercise the power – it simply has not been exercised yet. Accordingly the requirement for the Council to elect a Deputy Mayor at the Inaugural Council Meeting would not apply in such circumstances.

Other business: Governance Structure and Appointments

9. Section 41A of the LGA provides the Mayor may establish committees of Council and appoint a Chairperson to each committee established. At the 28 November 2019 Council meeting, the Mayor will present the 2019-2022 Governance Structure and Appointments, which is in the process of being prepared.

Recommendation

12. That the Council:
 - a) receives the report;
 - b) notes that the first Council meeting will take place at 9:30am on Thursday, 28 November 2019;
 - c) either:
 - i. notes the Mayor's appointment of a Deputy Mayor; or
 - ii. notes the Mayor will announce her appointment of a Deputy Mayor at a later date; and
 - d) notes that the Mayor will present her Governance Structure to the Council at its 28 November 2019 meeting.

Attachments

There are no attachments for this report.

Council Report

Item 6

Committee: Council
Author: Mothla Majeed
Position: Legal Services Manager
Report Name: Explanation of Statutory Matters Affecting Elected Members

Date: 24 October 2019
Authoriser: Richard Briggs
Position: Chief Executive

Report Status	<i>Open</i>
----------------------	-------------

1. As required by clause 21(5) of Schedule 7 to 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.
2. A letter from Tompkins Wake, attached to this report, provides a summary of the relevant key legislation.
3. The Legal Services Manager will provide a verbal explanation of the attached legislation.

Staff Recommendation

4. That the Council receives the report.

Attachments

Attachment 1 - Tompkins Wake Letter dated 17 October 2019- General Explanation of Laws Affecting Elected Members

TOMPKINS | WAKE

Westpac House
 430 Victoria Street
 PO Box 258
 DX GP 20031
 Hamilton 3240
 New Zealand
 Ph: (07) 839 4771
 Fax: (07) 839 4913
 DDI: (07) 838 6032
 Mobile: 021 765 522
 megan.crocket@tompkinswake.co.nz

17 October 2019

Hamilton City Council
 Private Bag 3010
 Waikato Mail Centre
 Hamilton 3240

Partner: J A MacGillivray

File Ref: 348176-850

For: Richard Briggs

Dear Richard

General explanation of laws affecting elected members

1. We understand that you propose calling the first meeting of Hamilton City Council ('Council') on Thursday, 24 October 2019 following the triennial general election of members on 12 October 2019.
2. As you are aware, clause 21(5)(c) of Schedule 7 of the Local Government Act 2002 ('LGA') requires you to provide an explanation of certain laws affecting Council's elected members at that first meeting of the Council:

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...

- (5) The business that must be conducted at the meeting must include...

- (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.

3. A general explanation of these laws is set out in this letter to assist you in the first meeting of Council.

Local Government Official Information and Meetings Act 1987

4. The Local Government Official Information and Meetings Act 1987 ('LGOIMA') makes official information held by Council accessible to the public and promotes the open and public transaction of business at Council meetings.
5. The guiding principle of LGOIMA is that Council must make information available if it is requested, unless there is good reason for withholding it. The grounds for withholding information are set out in sections 6 and 7 of LGOIMA.
6. 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.
7. 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 the information.
8. Council has the right to exclude the public from the whole or any part of a meeting for the reasons specified in section 48 of LGOIMA.

Local Authorities (Members' Interests) Act 1968

9. The Act helps protect the integrity of Council's decision-making by ensuring that members are not affected by personal motives when they participate in Council decision-making and cannot use their position to obtain preferential access to contracts.
10. The Act regulates the actions of individual members and applies to members of committees of Council (regardless of whether a committee member is also a member of the Council).
11. The two specific rules in the Act are that members cannot:
 - (a) enter into contracts with the Council worth more than \$25,000 in a financial year (the 'contracting rule'); or
 - (b) 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').
12. A pecuniary interest is an interest that involves money.

Contracting rule (section 3)

13. The contracting rule says that a member will be automatically disqualified from office if they are 'concerned or interested' in contracts with Council and the total payments made, or to be made, by or on behalf of the Council exceed \$25,000 in any financial year.
14. The \$25,000 limit relates to the value of all payments made for all contracts (including sub-contracts) in which a member is interested during the financial year.

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

Directly and indirectly concerned or interested in contract

16. A member is directly concerned or interested in a contract if they are a party to the contract.
17. A member may be indirectly concerned or interested if the contract is between the Council and another person and the member has a personal connection with that person or could personally benefit from that contract. A member can be indirectly concerned or interested in a contract in other ways as well, for example, where the member's family trust has a contract with the Council and the member is a beneficiary of that trust.

Concerned or interested in contract through spouse or partner

18. If a member's spouse, civil union partner, or de facto partner is concerned or interested in a contract, the Act says that the member is deemed to be concerned or interested, unless:
 - (a) the member and their spouse or partner are living apart; or
 - (b) the member did not know, and had no reasonable opportunity of knowing, that their spouse or partner was concerned or interested in the contract.

Concerned or interested in contract through company

19. If a contract is between the Council and a company in which the member or their spouse or partner has some interest or involvement, the contracting rule applies only if:
 - (a) the member or their spouse or partner, individually or together, own 10% or more of the shares in that company or another company that controls it; or
 - (b) either the member or their spouse or partner is a shareholder of the company, or another company that controls it and either of them is the managing director or general manager of the company or the controlling company; or
 - (c) either the member or their spouse or partner is the managing director or general manager of the company and either of them is a shareholder of another company that controls that company.

Exceptions

20. A member will not be disqualified by a contract that exceeds the \$25,000 a year limit if:
 - (a) the contract was entered into by a committee of the Council or a Council officer acting under delegation; and
 - (b) 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.
21. Not all contracts are subject to the Act e.g. a lease granted to the Council.

Offences and disqualification

22. A member can be disqualified if they breach the contracting rule. Disqualification means that a member cannot hold office as a member of Council or any Council committee and is disqualified from being elected as member or appointed to a committee until the next general election or opportunity for appointment.
23. It is a criminal offence, punishable on conviction of a fine of up to \$200, for a person to act as a member of the Council (or a Council committee) while disqualified.

Discussing and voting rule (section 6)

24. The discussing and voting rule says that 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.

Test for a pecuniary interest

25. 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.
26. For the rule to apply, the interest has to be actually affected by the particular decision that is to be made by the Council or committee.
27. When considering whether a member has an interest in common with the public, the following factors are relevant:
 - (a) 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);
 - (b) the size of the group of people who are also affected; and
 - (c) whether or not the member's interests and the group's interests are affected in a similar way.
28. The question of whether a group of people should be treated as 'the public' is often a matter of degree e.g. as a ratepayer, the mere fact that a member may be affected slightly differently by the adoption of an overall rate because of the value of their property does not generally prevent the member from having an interest which is in common with the public.

Interest through spouse or partner

29. If a member's spouse, civil union partner, or de facto partner has a pecuniary interest in a matter before the Council or committee, the member is deemed for the purposes of the Act to have the same interest.

Interest in a company through spouse or partner

30. If either the member or their spouse or partner is involved in a company that has a pecuniary interest in a matter before the Council or committee, the member is deemed for the purposes of the Act to have the same interest only if:
- (a) the member or their spouse or partner, individually or together, own 10% or more of the shares in the company or another company that owns it;
 - (b) either the member or their spouse or partner is a shareholder of the company, or another company that controls it; and either of them is the managing director or general manager of the company or the controlling company; or
 - (c) either the member or their spouse or partner is the managing director or general manager of the company, and either of them is a shareholder of another company that controls that company.

Member's obligation

31. If a matter comes before the Council or committee in which a member has a pecuniary interest, the Act says that the member must:
- (a) declare to the meeting the existence of a pecuniary interest;
 - (b) abstain from discussion and voting; and
 - (c) ensure that the disclosure and abstention are recorded in the meeting minutes.

When rule doesn't apply

32. Despite the fact that the member may have a pecuniary interest, the Act sets out a number of situations where the participation rule does not apply e.g. if a member is elected by, or appointed to represent, a particular activity, industry, business, organisation, or group of persons, and the member's pecuniary interest in a matter is no different from the interest of the activity, business et cetera that the member represents.

Exemptions and declarations

33. If a member thinks that their pecuniary interest is not in common with the public, they may be able to participate in the discussion or voting if the OAG:
- (a) grants an exemption (on the basis that the pecuniary interest is remote or insignificant); or
 - (b) makes a declaration allowing the member to participate.

Offence

34. It is a criminal offence, punishable on conviction of a fine of up to \$100, if a member breaches the discussing and voting rule. Once convicted, the member becomes incapable of continuing to hold office and their office is deemed to be vacated.

Crimes Act 1961

35. Under sections 105 and 105A of the Crimes Act, it is a crime for any elected member (as an 'official') to:
- (a) Corruptly accept, obtain or offer to accept any bribe for the member (or for anyone else) for acting, or not acting, in that member's official capacity;
 - (b) Use or disclose information acquired in that member's official capacity, to obtain (directly or indirectly) an advantage or a pecuniary gain for himself or herself or any other person.
36. A bribe is defined in the Act to include 'money, valuable consideration, office, or employment, or any benefit, whether direct or indirect'.
37. These offences carry a maximum sentence of seven years' imprisonment. If a member is convicted and sentenced to a term of two or more years of imprisonment, the elected member's office as member of the Council is vacated under clause 1(1)(b) of Schedule 7 to the LGA.

Secret Commissions Act 1910

38. For the purposes of this Act, an elected member of Council is Council's agent. As Council's agent, it is unlawful for an elected member to give or receive, or solicit, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do anything, or to show favour or disfavour to any person, in relation to Council's affairs or business.
39. Any gift or other consideration given or offered or agreed to be given to an elected member's close relatives or associates or any other person nominated by an elected member, is deemed to have been given or offered or agreed to be given to the elected member (as Council's agent).
40. It is also an offence for an agent to present false or misleading receipts, invoices or accounts to the Council.
41. If convicted of any offence against the Act, an elected member can be imprisoned for up to seven years. If a member is convicted and sentenced to a term of two or more years of imprisonment, the elected member's office as member of the Council is vacated under clause 1(1)(b) of Schedule 7 to the LGA.

Financial Markets Conduct Act 2013

42. The Financial Markets Conduct Act 2013 regulates the offer, issue and re-sale of financial products, which includes shares, debt securities and derivatives.

43. Council is unable to issue shares, but has the ability to issue debt securities and derivatives, and may from time to time sell financial products. In the event that Council does issue financial products or, in certain cases, sells financial products that it holds, members will be potentially subject to personal liability for breaches of the offer and other provisions of the Act.

Yours faithfully
TOMPKINS WAKE

J A MacGillivray/M S Crocket
Partner/Senior Associate