

Whangarei District Council

Notice of Meeting

A meeting of the Whangarei District Council will be held in the Exhibition Hall, Forum North, Whangarei on:

**Tuesday
25 October 2016
5.30pm**

Committee

Her Worship the Mayor (Chairperson)
Cr S J Bell
Cr C B Christie
Cr V P D Cocurullo
Cr P A Cutforth
Cr S J Deeming
Cr S M Glen
Cr J A Golightly
Cr P R Halse
Cr C M Hermon
Cr G C Innes
Cr G M Martin
Cr S L Morgan
Cr A H Murphy

**OPEN MEETING
APOLOGIES
CONFLICTS OF INTEREST**

Members are reminded to indicate any items in which they might have a conflict of interest.

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Local Government Act 2002 Amendment Act 2012

Full consideration has been given to the provisions of the Local Government Act 2002 Amendment Act 2012 in relation to decision making and in particular 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. Consideration has also been given to social, economic and cultural interests and the need to maintain and enhance the quality of the environment in taking a sustainable development approach.

**Recommendations contained in the Council agenda may not be the final decision of Council
Please refer to Council minutes for final resolution**

1 Statutory Declaration by Members

Reporting officer: R Forlong (Chief Executive)
Date of meeting: 25 October 2016

1 Purpose

To allow the in-coming Mayor and Councillors to make their statutory declarations.

2 Declarations

The in-coming Mayor and members will be called upon to make and attest a statutory declaration in accordance with the Local Government Act (2002).

The meeting will be chaired by the Chief Executive until the Mayor has made their statutory declaration.

Statutory declaration - In-coming Mayor

The in-coming Mayor will make an oral declaration and sign a written declaration which will be attested by the Chief Executive.

Statutory declarations – In-coming Councillors

Each In-coming councillor will make an oral declaration and sign a written declaration, which will be attested by the Mayor.

The meeting will adjourn once all Councillors have made their statutory declarations and will reconvene on Wednesday 26 October 2016, at 9.00am in the Council Chambers, Forum North.

2 Maiden Speeches

Reporting officer: S L Mai (Mayor)
Date of meeting: 25 October 2016

1 Purpose

New members are invited to give a short maiden speech (up to 5 minutes duration).

3 General Explanation of Laws Affecting Elected Members

Reporting officer: R Forlong (Chief Executive)

Date of meeting: 25 October 2016

1 Purpose

To provide a general explanation of the laws affecting Elected Members.

2 Recommendations

That Council:

- a) note the general explanation of the laws affecting Elected Members;
- b) note that an in depth workshop regarding the laws affecting Elected Members is scheduled for Tuesday 8 November 2016

3 Background

The Local Government Act 2002 requires that an explanation of certain legislation be given to Elected Members at the first meeting of Council,

The attachment to this report provides a general explanation of the laws affecting Elected Members.

There is a workshop scheduled on Tuesday 8 November 2016, held in conjunction with the Northland Regional Council (NRC), to explain these legal issues in depth.

4 Significance and engagement

The decisions or matters of this report do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via Agenda publication on the website.

5 Attachment

1. Laws affecting Elected Members (16/82009)

LAWS AFFECTING MEMBERS

Attachment 1

As an Elected Member of Council you are required to be aware of a range of legislation that may directly affect your actions as an Elected Member. On Tuesday 8 November 2016 you will be given a legal briefing which will provide you with an overview of the most relevant legislation that affects you as an Elected Member. That briefing will also cover conduct of meetings and your relationships with each other and Council staff which is through Standing Orders, delegations and the Elected Member Code of Conduct.

The following information is what is required to be explained to you at the first meeting of Council following the triennial election.

Local Government Act 2002

The Local Government Act 2002 sets out local government's purpose, its general powers, its specific by-law making powers and the principles and processes that councils must abide by when making decisions.

The Local Government Act 2002 is based on the principle of general competency, which enables a council to do whatever is necessary to fulfil its role. Within this framework, there is a considerable degree of flexibility in deciding what activities are undertaken and how they are carried out.

The purpose of local government is defined in section 10 of the Act and states

"The purpose of local government is:

- (a) To enable democratic local decision-making and action by, and on behalf of, communities; and*
- (b) 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.*

In this Act good-quality, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are –

- (a) efficient; and*
- (b) effective; and*
- (c) appropriate to present and anticipated future circumstances."*

As elected Council representatives you are responsible for making key policy decisions that guide our activities and provide the direction for our District's future. The Whangarei District Council carries out a number of functions, responsibilities and activities which include:

- Constructing, managing and maintaining local infrastructure – roads, water supply, sewage disposal, refuse collection and disposal and stormwater drainage.
- Providing and maintaining community facilities – parks and gardens, libraries, community halls, museums, cemeteries, swimming pools, public conveniences, airport and harbours
- Planning the future needs of the District.
- Managing the environment for present and future residents.

- Undertaking a regulatory role to ensure that residents have a safe, desirable and healthy environment in which to live.
- Advocacy on behalf of the local community with central government, other local authorities and other agencies.
- Promoting and facilitating development of the District.

The Local Government Official Information and Meetings Act 1987 (LGOIMA)

LGOIMA provides for all local government activities to take place in an open and transparent environment. It is based on the principle of availability which is that information shall be made available to the public unless there is a good reason, under LGOIMA, for withholding it.

The purpose of LGOIMA is to enable more effective participation by the public in the actions and decisions of local authorities and to promote the accountability of local authority members and officials with a view to enhancing respect for the law and to promote good local government in New Zealand.

LGOIMA addresses two specific matters:

- Access to local authority information; and
- Local authority meetings.

Access to local authority information:

Generally all official information held by the local authority in any form should be available to the public and anyone can make a request to Council for official information held by it. However there are restrictions in the Act where certain material is not considered to be “official information” and it also sets out certain circumstances where official information can be withheld from the public.

Those circumstances include, but are not limited to, protection of privacy, commercial sensitivity, obligations of confidentiality, to protect public health and safety, legal professional privilege etc as long as there is no public interest that outweighs withholding the information.

There are also conclusive reasons for withholding information where the making available of that information would be likely to prejudice the maintenance of the law or endanger the safety of any person. And also for such reasons as the information would soon be in the public arena, or if the request is frivolous or vexatious etc.

LGOIMA also provides that should a request for information be refused for one of these reasons in the Act then the requestor has the right to have that decision reviewed by an Ombudsman.

LGOIMA specifically provides that there will be no liability against the local authority or any other person for any information released in good faith under the Act.

Local Authority Meetings:

LGOIMA also sets out the requirements for the public notification of Council meetings, the availability of meeting agendas and when Council or Committee meetings can be held with the public excluded.

- All meetings of Council which require a decision of Council, including Committees, shall be open to the public unless certain specified reasons can be satisfied for excluding them. The reasons are generally the same as for withholding information and are set out within section 48 of LGOIMA. It is

necessary for the meeting to be satisfied that any one or more of these reasons exist before the public is excluded. Staff will provide guidance and suggestions where it may be considered appropriate for the Council or Committee to meet with the public excluded.

- Agendas for Council and Committee meetings have to be made public at least two clear working days before the day of the meeting. The agendas are published on the Council website and copies are available from Council offices and public libraries.
- Other provisions of LGOIMA include public notification of meetings, how matters that weren't on the agenda are dealt with at a meeting, how order is maintained at a meeting, and the privileged status of defamatory statements in agendas or made orally at a meeting.

Member's Interests

The Local Authorities (Members' Interests) Act 1968 deals with financial conflicts of interest – it applies to situations where your personal interests impinge, or could be seen as impinging, on your duties as an Elected Member.

There are two key rules:

- You will be disqualified from office as an Elected Member if you are concerned or interested in contracts under which payments made by or on behalf of the council exceed \$25,000 in any financial year.
- As an Elected Member, you are also prohibited from participating in any council discussion or voting on any matter where you have a direct or indirect financial interest, other than an interest in common with the general public. (When describing financial interests, the Act uses the term “pecuniary” interest.)

The same rules can apply where your spouse, partner, company (depending on shareholding levels or your position in the company) and possibly family trust, is concerned or interested in a contract.

As an Elected Member you may contact the Audit Office for guidance on whether you have a financial interest and, if so, may seek an exemption to participate or vote on a particular issue in which you may have a financial interest. (This must be done before discussion or vote.) The Chief Executive must also seek approval from the Audit Office for contractual payments to members, their spouses, partners or others (as outlined above) that exceed the \$25,000 annual limit.

Failure to observe these requirements could leave you open to prosecution and you could also be disqualified from office.

The Office of the Controller and Auditor General has published a document called “Guidance for Members of Local Authorities about the Local Authorities (Members' Interests) Act 1968” which will be available to Elected Members. Council's Legal Counsel can assist if further information is required.

Non-pecuniary interest (Natural Justice)

Members of a local authority should also be aware of the risks of having a non-pecuniary interest in a matter before Council. A common term for this is “bias”. Rules about bias operate to not only ensure that there is no actual bias, but also so

there is no appearance or possibility of bias. The principle is that justice should not only be done, but it should be seen to be done. Bias may be exhibited where:

- By their statements or conduct a member may indicate that they have predetermined a matter before hearing or considering all the relevant information on it; or
- The member has a close relationship with an individual or organisation affected by the matter before Council.

If a member feels that they have such an interest they should declare it and withdraw from the debate. The risk if there is bias is to the validity of the decision of Council.

Council requires each member to make a written declaration of their personal and financial interests that may at times conflict with their role as an Elected Member. This information is kept in a "Register of Interests" and is available to the public upon request. It is up to members to ensure that the Register is kept up to date at all times.

Crimes of Bribery and Corruption

The Crimes Act 1961 (Section 105) makes it an offence for you to corruptly seek or accept a bribe or reward for doing, or not doing, something in your official capacity as an Elected Member. This includes gifts, money, a job, or anything else that benefits you directly or indirectly. (Section 99)

It is also an offence to obtain any advantage or financial gain from information that you receive in your role as an Elected Member. (Section 105A).

If convicted, you could be imprisoned for up to seven years. You would also be disqualified from office.

Secret Commissions

The Secret Commissions Act 1910 makes it an offence for you to take bribes, or use your position as an Elected Member for improper gain (either for you, or someone else). For example, you cannot:

- accept a gift or something valuable for doing, or not doing, something that affects the council's business;
- interfere with council business, in the hope of getting some reward (e.g. a gift or something valuable); or
- help someone else commit an offence under the Act.

It is also an offence under the Secret Commissions Act not to disclose if you have a direct or indirect financial interest in a council contract.

If convicted, you could be imprisoned for up to seven years. You would also be disqualified from office.

Financial Markets Conduct

Under the Financial Markets Conduct Act 2013, Elected Members are in a similar position to company directors if Council were to issue financial products, such as equity or debt securities, in its own right. 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. At this time Council does not issue any such financial products in its own right as all funding is sourced from the Local Government Funding Agency and trading banks.

While not relevant for Council at this time, if any Council debt securities are listed on a registered stock exchange or any derivatives are traded, an Elected Member cannot use (or benefit from) any information that is not generally available to the public.

Personal Liability of Elected Members

Generally speaking, you are indemnified in respect of your actions as a member of Council. This indemnity (by Council) covers the following matters:

- costs and damages for any civil liability if you are acting in good faith and carrying out the responsibilities or powers of Council; and
- costs arising from any successfully defended criminal action relating to acts or omissions in your capacity as Elected Members.

However, as an Elected Member, you can be made personally liable for Council decisions where Council:

- unlawfully spends money;
- unlawfully sells or disposes of an asset;
- unlawfully incurs a liability; or
- intentionally or negligently fails to enforce the collection of money it is lawfully entitled to receive.

If one of these situations occurs, then the Auditor-General may investigate and decide that the situation has resulted in a “loss”. If that occurs, the resulting “loss” is treated as a debt, and the debt must be paid back to Council from each Elected Member involved in the decision (the debt is recoverable jointly and severally). As an Elected Member, you have a defence (i.e. you will be indemnified) if you can show that the act or failure which led to the loss occurred:

- without your knowledge
- with your knowledge but against your protest made at or before the time when the loss occurred;
- contrary to the manner in which you voted on the issue at a council meeting; or
- in circumstances where you acted in good faith and relied on information or professional/expert advice given by a council officer or professional advisor on matters which you reasonably believed were within that person’s competency.

4 Appointment of Deputy Mayor

Reporting officer: R Forlong (Chief Executive)
Date of meeting: 25 October 2016

1 Purpose

To advise the appointment of the Deputy Mayor.

2 Recommendation/s

That Council:

- a) notes the appointment by the Mayor of Councillor S L Morgan as Deputy Mayor.

3 Background

The Local Government Act (2002) requires that the Deputy Mayor be appointed at the first meeting of the local authority.

The Mayor has the authority to appoint the Deputy Mayor and has appointed Councillor S L Morgan as the Deputy Mayor.

This report informs the council and public of this appointment

4 Significance and engagement

The decisions or matters of this report do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via Agenda publication on the website.

5 First Ordinary Meeting of Council

Reporting officer: C Brindle (Senior Meeting Co ordinator)
Date of meeting: 25 October 2016

1 Purpose

To schedule the next meeting of Council.

2 Recommendation/s

That Council;

- a) Set the first Ordinary Meeting for 9.00am on Thursday 24 November 2016, in the Whangarei District Council chamber

3 Background

Council is required by the Local Government Act (2002) to fix the date and time of the first ordinary meeting or adopt a Schedule of Ordinary Meetings at its inaugural meeting. This report sets the first ordinary meeting. The committee structure, membership and the tri-annum meeting schedule will be presented to the 24 November meeting, if approved.

4 Significance and engagement

The decisions or matters of this report do not trigger the significance criteria outline in Council's Significance and Engagement Policy and the public will be informed via Agenda publication on the website.

RESOLUTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following parts of proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

1.	The making available of information would be likely to unreasonably prejudice the commercial position of persons who are the subject of the information. {Section 7(2)(c)}
2.	To enable the council (the committee) to carry on without prejudice or disadvantage commercial negotiations. {(Section 7(2)(i))}.
3.	To protect the privacy of natural persons. {Section 7(2)(a)}.
4.	Publicity prior to successful prosecution of the individuals named would be contrary to the laws of natural justice and may constitute contempt of court. {Section 48(1)(b)}.
5.	To protect information which is the subject to an obligation of confidence, the publication of such information would be likely to prejudice the supply of information from the same source and it is in the public interest that such information should continue to be supplied. {Section7(2)(c)(i)}.
6.	In order to maintain legal professional privilege. {Section 2(g)}.
7.	To enable the council to carry on without prejudice or disadvantage, negotiations {Section 7(2)(i)}.

Resolution to allow members of the public to remain

If the council/committee wishes members of the public to remain during discussion of confidential items the following additional recommendation will need to be passed:

Move/Second

"That _____ be permitted to remain at this meeting, after the public has been excluded, because of his/her/their knowledge of Item _____.

This knowledge, which will be of assistance in relation to the matter to be discussed, is relevant to that matter because _____.

Note:

Every resolution to exclude the public shall be put at a time when the meeting is open to the public.