

COUNCIL MEETING

ORDER PAPER

THURSDAY, 24 OCTOBER 2019, 7.30PM

**COUNCIL CHAMBER, RANGITĪKEI DISTRICT COUNCIL
46 HIGH STREET, MARTON**

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Chair - His Worship the Mayor, Andy Watson

Deputy Chair - TBC

Membership

Councillors Cath Ash, Nigel Belsham, Brian Carter, Fiona Dalgety, Gill Duncan, Jane Dunn, Angus Gordon, Tracey Hiroa, Richard Lambert, Waru Panapa and Dave Wilson.

Please Note: Items in this agenda may be subject to amendments or withdrawal at the meeting. It is recommended therefore that items not be reported upon until after adoption by the Council. Reporters who do not attend the meeting are requested to seek confirmation of the agenda material or proceedings of the meeting from the Chief Executive prior to any media reports being filed.

Making this place home.





Rangitikei District Council

Inaugural Council Meeting

Agenda – Thursday 24 October 2019 – 7:30 p.m.

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1 Council Prayer

2 Welcome and introduction from the Chief Executive

(In the Chair)

3 Apologies/Leave of Absence

4 Mayor's declaration and installation

I, Andy WATSON, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of the Rangitikei District, the powers, authorities, and duties vested or imposed upon me as the Mayor of the Rangitikei District Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Ko ahau, ko Andy WATSON, e oati ana ka whai ahau i te pono me te tōkeke, i runga hoki i te mutunga kē mai nei o āku pūkenga, o āku whakatau hoki kia whakatutuki, kia mahi anō hoki i te mana whakahaere, te mana whakatau me ngā momo mahi kua ūhia ki runga i a ahau kia whiwhi painga mō te takiwā o Rangitikei hei Koromatua o te Kaunihera-ā-rohe o Rangitikei, e ai hoki ki te Ture Kāwanatanga-ā-Taiao 2002, ki te Ture Kāwanatanga-ā-Taiao Whakapae me te Hui 1987, me ētahi Ture anō rānei.

I tohungia i Tutaenui (Rangitikei) i te 24 o ngā rā, Whiringa-ā-nuku 2019.

The Mayor takes the Chair.

5 Declaration by Councillors

I,, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of the Rangitikei District, the powers, authorities, and duties vested or imposed upon me as a Member of the Rangitikei District Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Ko ahau, ko....., e oati ana ka whai ahau i te pono me te tōkeke, i runga hoki i te mutunga kē mai nei o āku pūkenga, o āku whakatau hoki kia whakatutuki, kia mahi anō hoki i te mana whakahaere, te mana whakatau me ngā momo mahi kua ūhia ki runga i a ahau kia whiwhi painga mō te takiwā o Rangitikei hei Kai-kaunihera o te Kaunihera-ā-rohe o Rangitikei, e ai hoki ki te Ture Kāwanatanga-ā-Taiao 2002, ki te Ture Kāwanatanga-ā-Taiao Whakapae me te Hui 1987, me ētahi Ture anō rānei.

I tohungia i Tutaenui (Rangitikei) i te 24 o ngā rā, Whiringa-ā-nuku 2019.

6 Address from the Mayor

This address will be included in the minutes of the meeting.

7 Appointment of the Deputy Mayor

Section 41A(3) of the Local Government Act 2002 empowers the Mayor to appoint the Deputy Mayor. No resolution is required to confirm that appointment, although Council may make one. Use of section 41A(3) does not limit or prevent the Council at any time from removing, in accordance with clause 18 of Schedule 7, a Deputy Mayor so appointed.

Note:

If the Mayor decides not to make an appointment of the Deputy Mayor under section 41A(3), clause 17(1) of Schedule 7 of the Act requires Council at this meeting to elect one of its members to be the Deputy Mayor using the provisions of clause 25, Schedule 7 of the Local Government Act. In that case, two resolutions of Council are required – first to select the system of voting prescribed in clause 25; second to make the appointment.

8 Legislation requiring general explanation at the first meeting

There is a statutory requirement that a general explanation of some relevant legislation is given at the first meeting following a triennial general election.

Recommendation:

That the report on “Legislation requiring general explanation at the first Council meeting for the 2019-22 triennium” be received and the information noted.

9 First meeting

The inaugural meeting of Council is required to fix the time and date of the first meeting of Council. The Council has traditionally met on the last Thursday of the month. A draft schedule of future meetings will be included on the agenda of the first meeting of Council.

Recommendation:

That the first meeting of Council be held on Thursday 31 October 2019, commencing at 1.00pm.

10 Meeting closed

Attachment 1

REPORT

SUBJECT: Legislation requiring general explanation at the first Council meeting for the 2019-2022 triennium

TO: Council

FROM: Peter Beggs, Chief Executive

DATE: 15 October 2019

FILE: 3-OR-3-5

1 Background

Schedule 7 Clause 21 of the Local Government Act 2002 requires that, at the first meeting of the Council following the triennial general election, the Chief Executive give or arrange a general explanation of the Local Government Official Information and Meetings Act 1987 and other laws affecting members, including —

- the appropriate provisions of the Local Authorities (Members' Interests) Act 1968;
- sections 99, 105 and 105A of the Crimes Act 1961;
- the Secret Commissions Act 1910;
- the Financial Markets Conduct Act 2013; and
- The Public Records Act.

This report provides this general explanation.

2 Local Government Official Information and Meetings Act 1987

2.1 General Principle

The main focus of LGOIMA is the retention and release of official information held by Council and the conduct of Council meetings; the latter being evidenced by Standing Orders.

The stated purposes of this Act are:

(a) to increase progressively the availability to the public of official information held by local authorities, and to promote the open and public transaction of business at meetings of local authorities, in order—

- (i) to enable more effective participation by the public in the actions and decisions of local authorities; and
- (ii) to promote the accountability of local authority members and officials,—

and thereby to enhance respect for the law and to promote good local government in New Zealand:

(b) to provide for proper access by each person to official information relating to that person:

(c) to protect official information and the deliberations of local authorities to the extent consistent with the public interest and the preservation of personal privacy.

The heart of the Act is the ‘principle of availability’ set out in Section 5:

“The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it”.

2.2 Requests

Anyone can make a request for official information – and not necessarily in writing.

If the Council does not hold the information sought, or a Council officer believes the request to be more closely connected with another organisation, then the officer must (within 10 working days of the request being received) transfer the request.

Section 13 provides that when the Council holds the information a decision on whether to release the information must be made within 20 working days of receiving the request. Charges may be made for supplying the information.

When the information sought is voluminous or consultations that are necessary for a proper response are needed, section 14 allows the 20 working day time limit to be extended for a ‘reasonable period’. The requester must be told the period of extension, the reasons for the extension and the fact that the extension can be referred to the Ombudsman.

Every request must be dealt with on its merits and a decision whether to refuse is made on the circumstances of each case. There is no time specified for providing information but the Ombudsman is empowered to investigate cases of ‘undue delay’ on the basis that this constitutes refusal.

2.3 Refusals

The Act places the responsibility for deciding to accept or refuse a request with the Chief Executive or an officer he authorises. The Act does not prevent the authorised officer from consulting the Council or any other person. The Act sets out both ‘conclusive reasons’ (section 6) and ‘other good reasons’ (section 7)

why the provision of official information can be refused. If the grounds for refusal do not fall within one of these specified reasons, the information **must** be released. This includes requests for access to Council documents containing policies, principles, rules or guidelines which affect Council's decision-making.

'Conclusive reasons' are prejudicing the maintenance of the law (including the prevention, investigation, and detection of offences, and the right to a fair trial) or endangering the safety of any person

'Other good reasons' include:

- protecting the privacy of natural persons;
- maintaining the effective conduct of public affairs through free and frank expressions of opinions by or between elected members and officers;
- enabling a local authority to carry out, without prejudice or disadvantage, commercial activities;
- enabling a local authority to carry out, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations);
- avoiding serious offences to tikanga Māori or avoiding disclosure of waahi tapu¹;
- avoiding prejudice to measures protecting the health or safety of members of the community; and
- maintaining professional legal privilege.

All of these 'other good reasons' are subject to a 'public interest' test, i.e. even if the information sought falls within one of the refusal categories it must be released where the reason for the withholding of the information is outweighed by other considerations rendering it desirable in the public interest that the information be released.

The Act also contains a number of administrative grounds for refusing a request. These include instances where:

- the information is or will soon be publicly available;
- it would be illegal or in contempt of a court or Parliament to provide the information;
- the document alleged to contain the requested information does not exist or cannot be found despite reasonable efforts to locate it;
- the information requested cannot be made available without substantial collation and research; and
- the request is frivolous or vexatious or the information requested is trivial.

However, before making such a refusal, the Council is required to consider

¹ Confined to applications made under the Resource Management Act for a resource consent, or water conservation order, or a requirement for a designation or heritage order.

- whether consulting with the person who made the request would assist that person to make the request in a form that would remove the reason for the refusal; and
- whether making a charge or extending the time limit would allow the substantial research work to be done to satisfy the request.

If a request is refused, section 18 requires the Council to give the requestor:

- the reason for its refusal;
- the grounds in support of that refusal;
- advice as to the right to apply to the Ombudsman to seek a review of the refusal.

2.4 Ombudsmen’s investigation

The Ombudsmen may investigate any refusal by the Council to provide information and can investigate the charges made by the Council.

If the matter cannot be resolved during the investigation, the Ombudsmen may make a recommendation to the Council. Section 32 imposes a public duty on the Council to observe that recommendation unless it resolves not to accept it within 21 working days of receiving the recommendation.

A decision not to accept an Ombudsmen’s recommendation must be notified to the applicant and the Ombudsmen and published in the New Zealand Gazette together with the Council’s reasons for the decision. The applicant may apply to the High Court for a review of the Council’s decision. Whatever the result of the High Court hearing, the applicant’s costs must be paid by the Council unless the Court is satisfied the application was not reasonably or properly brought.

2.5 Access to Meetings

Section 47 of the Act provides the public and media have a right of access to all meetings of the Council, committees, sub-committees (with power to act) and community boards unless the meeting resolves to exclude the public.

Section 48 specifies that the grounds for excluding the public and the media from a meeting may only be those provided in the Act and essentially are the same grounds as for withholding official information (although notably **not** including “free and frank expressions of opinions by or between elected members and officers”). A motion to exclude the public must state the subject matter of the ‘non-public’ matter and the specific reason provided in the Act.

Even where a meeting has resolved to exclude the public a person can request a copy of the minutes of the meeting. Such a request must be treated in the same way as a request for official information and is subject to review by an Ombudsman.

2.6 Order Papers

Order papers (i.e. agendas and reports) for meetings must be publicly available at least two working days before the meeting. Supplementary reports may not be dealt with unless agreed to by the meeting and unless the Chair explains why the report was not in the Order Papers and why the subject cannot wait until the next meeting.

Minutes of all meetings (except public excluded meetings) must be available for inspection by the public and media.

2.7 Qualified Privilege

Sections 52 and 53 of the Act provide that written or oral statements on any matter being considered at a meeting of the Council, committee, sub-committees or community board is privileged unless the statement is proved to be made with malice. This is known as qualified privilege.

Qualified privilege is a protection afforded by the law on certain occasions to a person acting in good faith and without any improper motive who makes a statement defamatory about another person.

It is established law that meetings of local authorities are privileged occasions (this includes community boards). The reason given by the Courts is that those who represent local government electors should be able to speak freely on any matter they believe affects the interests of their residents.

If malice can be established then the privilege is lost. With the question of malice, motive can be crucial. If it is established that the person making the statement had some other dominant and improper motive then malice will be established.

Generally speaking, for qualified privilege to apply, there should be a positive belief in the truth of what is said, and that there is no suggestion of personal spite or ill-will by the person making the statement.

3 Local Authorities (Members' Interests) Act 1968

The Act is overseen by the Auditor-General. It is a small but significant part of the legal framework for local democracy by ensuring that elected members are not affected by personal financial motives when carrying out their role. This Act contains provisions relating to contracts between elected members and the Council, and provisions relating to elected members voting on matters where they have a pecuniary interest.

The Auditor-General does not have the same statutory role for non-financial conflicts of interest – only the courts can determine whether the law has been breached in any particular instance and what the consequence should be.

3.1 Contract

The Act provides that no person may be an elected member if the total of all contract payments made or to be made by the Council in which that person is 'concerned or interested' exceeds \$25,000 in any financial year. Contracts include sub-contracts.

There are provisions regarding contracts between the Council and a company in which an elected member or spouse has an interest. Generally a person will be concerned or interested in a contract where that person or spouse holds 10% of the issued capital of the company or a controlling company, or the member or spouse is a shareholder and is either a managing director or general manager.

Certain exclusions are provided for, such as where the member and spouse are living apart, or the member did not know and had no reasonable opportunity of knowing the spouse was a shareholder and managing director/ general manager.

The limit of \$25,000 may be extended by the Office of the Auditor-General in special cases. Such approval can be given retrospectively. Provision is made for contracts entered into by the Council before an election, and for continuing contracts.

If a person breaches the \$25,000 limit that person is disqualified from holding office and an extraordinary vacancy occurs. The disqualification remains until the next triennial election.

3.2 Pecuniary Interest

The Act provides that no elected member shall vote on or take part in the discussion of any matter in which that person has, directly or indirectly, any 'pecuniary interest' other than an interest in common with the public.

The prohibition applies where the member's spouse has a pecuniary interest and where the member or spouse holds 10% or more of the shares in a company or a controlling company, which has a pecuniary interest, or either person is a shareholder and is managing director or general manager.

Members who are prohibited under the Act from voting on or discussing a matter are under a duty to declare to the meeting their pecuniary interest and their abstention from discussion or voting must be recorded in the minutes.

The prohibition against discussing or voting on a matter does not apply in certain situation, such as:

- Members' remuneration where the maximum rate has already been fixed;
- Election or appointment of any member to a Council or community board office, notwithstanding that remuneration is payable;
- The preparation, approval, or review of a district scheme or district plan unless the matter relates to any variation or change or departure from a district scheme or district plan or to the conditional use of land, in which a member has a pecuniary interest.

The Office of the Auditor-General has the power to declare that the prohibition shall not apply in respect to any particular matter if the Office is satisfied the prohibition would impede the business of the Council or that it is in the interest of the electors that the prohibition not apply.

A member convicted of contravening the prohibition vacates office and an extraordinary vacancy is created.

4 Crimes Act 1961 – Sections 99, 105, 105A

- 4.1 Section 99 defines, for the purposes of the Crimes Act 1961, an “official” as any member or employee of any local authority. Member includes community board member.
- 4.2 Section 105 provides that it is an offence punishable by up to seven years imprisonment for an “official” to corruptly accept or obtain, or to attempt to obtain, any bribe or reward in respect of anything done or omitted to be done by the official in an official capacity.
- 4.3 Section 105A provides that every official is liable to up to seven years imprisonment who corruptly uses any information acquired in an official capacity, to obtain, directly or indirectly, an advantage or pecuniary gain for the official or any other person.

5 Secret Commissions Act 1910

- 5.1 The principle behind this Act is that a person holding a position of trust should not make a profit through their office.
- 5.2 The Act provides that elected members and officers are “agents” of the Council and that every agent commits an offence who corruptly accepts or obtains or solicits, for themselves or any other person, any gift or consideration as an inducement or reward for doing or not doing any act in relation to the Council's affairs, or for having shown favour or disfavour to any person in relation to the Council's affairs.
- 5.3 Any agent who diverts, obstructs, or interferes with the proper course of the Council's business, or fails to use due diligence in the prosecution of such

business with intent to obtain for themselves or any other person any gift or other consideration shall be deemed to have corruptly solicited a consideration.

- 5.4 Whilst “gift” is not defined, “consideration” is. It includes discounts, commissions, rebates, bonuses, deductions, percentages, employment, and money (including loans). Generally trade practices or customary gifts do not constitute a defence to a charge under the Act.
- 5.5 Section 5 of the Act provides that an agent who makes a contract on behalf of the Council must disclose to the Council any pecuniary interest in the contract (other than shareholding, where there are at least twenty members of the company). This provision is similar to that contained in the Local Authorities (Members’ Interests) Act 1968.
- 5.6 It is an offence to advise the Council with intent to induce it to enter into a contract with a third person, and receive any gift or consideration from the third person without disclosing to the Council the fact of payment. Upon conviction for any offence under the Act an agent is liable to a maximum fine of \$2,000 or two years imprisonment and would vacate their office.

6 Financial Markets Conduct Act 2013

- 6.1 This Act has replaced the requirement in the repealed Securities Act 1978 on entities that solicit funds from the public to prepare, register and distribute a prospectus and an accompanying investment statement. Instead, a short product disclosure statement may be made. Where there is defective disclosure, an investor must be treated as suffering loss unless the decline in the value of the investment is shown to have been caused by a matter other than the defect.
- 6.2 Section 122 provides that if a local authority is the issuer (or otherwise named with its consent) in a disclosure document, that document (unless the Crown has otherwise give an express guarantee under the Public Finance Act 1989) must contain a statement that the financial products being offered under the disclosure document are not guaranteed by the Crown.

7 Public Records Act 2005

- 7.1 Council has a statutory duty to comply with the provisions of the Public Records Act 2005. The Act applies to Council staff in the course of conducting Council business and also to Councillors, in particular to their text messages and emails. It is the content of the communication that determines whether the communication is a public record.
- 7.2 If the message records a decision you are taking relating to a project or function delegated to you, then it is potentially of longer-term value and may need to be

retained. In such instances, elected members should transfer the information to staff responsible for providing recordkeeping support.

- 7.3 However, most text messages and emails, even if relating to Council matters, will have short-term value only and are not required for evidential or legal purposes. These records are created through routine administrative and business processes common to all local authorities in the course of performing the council's primary core business functions, duties and responsibilities. For example, if the message relates to a complaint sent on to the Chief Executive, the record does not need to be kept.

8 Summary

- 8.1 The intention of this brief overview is to bring to the attention of the elected members the main features of key legislation that impacts on local governance. If, at any time, you are in doubt on any of these matters, or are unsure as to whether they may affect you in your capacity as an elected member, please contact the Chief Executive so that appropriate guidance is provided to you.

9 Recommendation

- 9.1 That the report on "Legislation requiring general explanation at the first Council meeting for the 2019-22 triennium" be received and the information noted.

Peter Beggs
Chief Executive