

First Meeting Following Triennial General Election

Memorandum to: His Worship the Mayor and Councillors, Horowhenua District Council

Notice is hereby given that an ordinary meeting of the Horowhenua District Council will be held on:

Date: Wednesday 30 October 2019
Time: 7.00 pm
Meeting Room: Council Chambers
Venue: 126-148 Oxford St
Levin

Business will be in accordance with the following Agenda.

David Clapperton
Chief Executive

AGENDA

1. WELCOME BY CHIEF EXECUTIVE – PRESIDING
2. APOLOGIES
3. DECLARATION BY HIS WORSHIP THE MAYOR

His Worship the Mayor, Bernard Wanden, to make his Declaration of Office before the Chief Executive.

4. DECLARATION BY COUNCILLORS

All Councillors to individually make their Declaration of Office before His Worship the Mayor. This will be done in alphabetical order.

5. LEGISLATION AFFECTING MEMBERS OF COUNCIL

The Chief Executive to give a general explanation of the following legislation and how it affects members of Council and the Foxton Community Board, and staff:

- (i) The Local Government Official Information and Meetings Act 1987
- (ii) The Privacy Act 1993
- (iii) The Local Authorities (Members Interest) Act 1968
- (iv) Sections 99, 105 and 105A of the Crimes Act 1961
- (v) The Secret Commissions Act 1910
- (vi) The Financial Markets Conduct Act 2013

- (vii) Health & Safety at Work Act 2015
- (viii) Public Records Act 2005

A summary of the scope and application of each of the above Acts is **appended**. Each Councillor is independently and directly responsible for understanding and complying with the requirements of each Act.

6. APPOINTMENT OF DEPUTY MAYOR

The Mayor to appoint His Deputy Mayor pursuant to Section 41A of the Local Government Act 2002 Amendment Act 2013.

7. FIXING OF DATE AND TIME FOR FIRST ORDINARY MEETING OF COUNCIL

Chief Executive recommending that the first ordinary meeting of Council be held on Wednesday, 13 November 2019 commencing at 4.00 pm.

8. CLOSE OF MEETING - MAYOR

This meeting will be immediately followed by the First Meeting Following Triennial General Elections of the Foxton Community Board.

The Local Government Official Information and Meetings Act 1987

This Act makes official information held by local authorities more freely available, providing for proper access by each person to official information relating to that person which is held by local authorities, to provide for the admission of the public to meetings of local authorities, to protect official information held by local authorities and the deliberations of local authorities to the extent consistent with the public interest and preservation of personal privacy, and to establish procedures for the achievement of these purposes.

Official Information (Parts I to VI of the Act)

This Act regulates access by the public to official information held by the Council. There is a general principle that official information will be made available unless there is “good reason” for withholding the information (section 5).

The Act sets out what constitutes “good reason” for withholding information and this is contained in sections 6, 7, 17, 17A and 17B. If information is withheld the reason for doing so must be given (section 18).

Decisions on official information requests must be made within 20 working days of receipt of the request (section 13).

In some cases, the provisions of the Act must be read in conjunction with the Privacy Act 1993, which protects personal information. The Privacy Act also contains special rules relating to the release of information from public registers. The rate records, valuation roll and electoral roll are public registers for the purposes of the Privacy Act (Part VII of the Privacy Act 1993).

Local Authority Meetings (Part VII of the Act)

In addition to providing for official information requests, The Local Government Official Information and Meetings Act provides for the public notification of Council meetings (section 46), the availability of agendas and reports associated with the meetings (section 46A), and the admission of the public to meetings of the Council (Section 47)

Part VII is generally concerned with access to and information arising from local authority meetings. More specific provisions for the conduct of local authority meetings are found in Schedule 7 of the Local Government Act 2002 and in Council’s adopted Standing Orders (NZS 9202:2001).

The Privacy Act 1993

This Act also has relevance as it applies, and LGOIMA will not, to some requests for information i.e. those where, in broad terms, the issue is one of personal privacy affecting the individual who is making the request.

The purpose of the Act is to protect the privacy of individuals and in particular:

- To limit the extent to which personal information about one person may be disclosed to others; and
- To enable individuals to have access to information about themselves (and to correct such information if it proves to be wrong in any detail).

The Act also imposes restrictions on the collection of personal information and the uses to which such information may be put.

Local Authorities (Members' Interests) Act 1968

This Act regulates the involvement of members in Council business in which they have a conflict of interest. It deals with two types of interest:

- Disqualifying interests in contracts with the Council (section 3); and
- Pecuniary interests in matters discussed by the Council (section 6).

Disqualifying Interest

A member will be disqualified from being a member of the Council if that member is "concerned or interested" in a contract with the Council exceeding \$25,000 in any financial year. "Concerned or interested" does not necessarily require a pecuniary interest in the contract, and can extend to situations where a spouse is "concerned or interested" in the contract.

There are exceptions to the general rule set out in section 3(3) of the Act. One of the exceptions is if Audit Office approval is obtained.

It is an offence against the Act to do anything as a member of a local authority while incapacitated pursuant to section 3 (see section 5). Where a member becomes incapacitated under section 3 an extraordinary vacancy is created.

Comment

The Act regulates the activities of members of authorities, not the actions of the authorities themselves. Members, not authorities, may be prosecuted for breaches of the Act. Consequently as a member, you are responsible for ensuring that you comply with the Act - from the time you consider election or appointment to the conclusion of your term of office.

Pecuniary Interest

A member must not vote on or take part in the discussion of any matter before the Council in which he/she has, directly or indirectly, any pecuniary interest, other than an interest in common with the public (section 6(1)). The member must declare his or her interest when the matter is raised, and the declaration and the abstention from discussion and voting will be recorded in the minutes (section 6(5)).

The Act sets out certain situations where a member will be deemed to have a pecuniary interest (section 6(2), (2A)), and some exceptions to the rule (section 6(1A), (2B), (3)).

The Audit Office has the power to declare that the general rule shall not apply to either a specified matter or a specified class of matter (section 6(4)).

It is an offence against the Act for a member to discuss or vote on a matter in which he or she has a pecuniary interest. On conviction the member will be deemed to have been granted leave of absence, and that leave of absence may result in the member's office on the council being vacated (section 7).

Some examples of conflict of interest are:

- A local authority is planning a roading improvement project. A member of the local authority has a close relative who owns a property that is in the way of the project.
- A community organisation approaches a local authority for financial support. A member of the authority is a member or unpaid office holder of the community organisation.
- A member of an authority is also an employee of a company that has a large contract with the local authority. The local authority is considering whether the contract should be renewed.

Crimes Act 1961

ss 99, 105 and 105A Bribery and Corruption

A member of a local authority is an “official” for the purposes of sections 105 and 105A of the Crimes Act relating to bribery and corruption.

A member will be liable to imprisonment for a term not exceeding 7 years if he/she corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe in respect of any act done or omitted to be done by him or her in his or her official capacity (see section 105).

A member will be liable to imprisonment for a term not exceeding 7 years if he/she corruptly uses or discloses any information, acquired by him/her in his/her official capacity, to obtain, directly or indirectly, an advantage or pecuniary gain for him/herself or any other person (see section 105A and 105B).

Secret Commissions Act 1910

Every officer or member of a local authority is deemed to be an “agent” of the local authority for the purposes of this Act (section 16).

It is an offence for an agent to receive a gift or other consideration as a reward or other inducement for doing or forbearing to do any act in relation to the principal’s affairs or business (whether such act is within the scope of the agent’s authority or the course of his/her employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal’s affairs or business (section 4).

It is an offence for an agent not to disclose to the principal his or her pecuniary interest in any contract when making a contract on behalf of the principal (section 5). This provision has some parallels with the requirements of the Local Authorities (Members’ Interests) Act relating to the disclosure of interests.

The Financial Markets Conduct Act 2013

The Financial Markets Conduct Act 2013 essentially places elected members in the same position as company directors should the Council offer financial products in the retail market (such as an issue of debt or equity securities). Elected members may be personally liable if documents that are registered under the Act, such as a product disclosure statement, contain false or misleading statements. Elected members may also be liable if the requirements of the Act are not met in relation to offers of financial products.

The Health & Safety at Work Act 2015

On 4 April 2016, the Health and Safety at Work Act 2015 came into force. The HSWA provides a significant change to New Zealand's current health and safety legislation and is a response to the scrutiny placed on New Zealand's health and safety practices following the Pike River tragedy.

The Act allocates duties to those people who are in the best position to control risks to health and safety as appropriate to their role in the workplace, and for the person conducting a business or undertaking (PCBU) (i.e. the Council) to ensure, as far as is reasonably practicable, the safety of workers and others who may be impacted by the work the business undertakes.

One of the significant changes is the introduction of "Officers", who is any person occupying a position in relation to the business or undertaking, that allows the person to exercise significant influence over the management of the business or undertaking.

For the purposes of the HSWA, elected Council members (which include the Mayor and Councillors but excludes Community Board members) and the Chief Executive are by default identified as "Officers". Officers have obligations of due diligence, which are:

- (a) to acquire, and keep up-to-date, knowledge of work health and safety matters; and
- (b) to gain an understanding of the nature of the operations of the business or undertaking of the PCBU, and generally of the hazards and risks associated with those operations; and
- (c) to ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- (d) to ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and
- (e) to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
- (f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

The duties of the Officers and of the PCBU are independent of each other. This means if a PCBU has failed to meet its duty but the Officers exercised due diligence then they would not be personally liable for the health and safety failings.

The Public Records Act 2005

The Public Records Act's purpose is to provide a framework to keep central and local government organisations accountable by ensuring records are full and accurate, well maintained and accessible. The Public Records Act 2005 provides for the continuity of the National Archives and the role of the Chief Archivist. The Act enables accountability by ensuring that full and accurate records of the affairs of local government are created and maintained. It also provides a framework within which local authorities create and maintain their records and has a role in enhancing public confidence in the integrity of local authority records.

The definition of a record includes information, whether in its original form or otherwise, and is not limited to just written information. The definition also includes (but is not limited to) a signature, a seal, text, images, sound, speech, or data in any medium and recorded or stored by any electronic device or process.

In the conduct of their affairs elected members may receive information directly, for example from constituents. Members will need to consider whether that information meets the definition of a local authority record and if so will need to ensure it is included in the Council's records.