



## AGENDA

### **FIRST MEETING OF THE ELEVENTH TRIENNIUM OF THE HAURAKI DISTRICT COUNCIL**

**Wednesday, 30 October 2019, 9.00am**

Council Chambers  
Council Office  
William Street  
Paeroa



# Membership

## Mayor

D A Adams

## Councillors

Cr P G Anderson  
Cr R D T Broad  
Cr P D Buckthought  
Cr C A Daley  
Cr R G E Garrett  
Cr B J Gentil  
Cr R Harris  
Cr S Howell  
Cr P A Milner  
Cr D Smeaton  
Cr A M Spicer  
Cr J R Tilsley  
Cr R L Wilkinson

## Executive Leadership

L D Cavers  
D Peddie  
A de Laborde  
P Thom  
S Fabish

## Public Distribution

Paeroa Office/Library  
Plains Area Office  
Waihi Area Office/Library

## Chief Executive

L D Cavers

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### ***Ngà Karakia Timatanga (opening)***

(1)

Kia tau te rangimarie  
Kia whakapapa pounamu te moana  
Hei huarahi ma tatou i te rangi nei  
Aroha atu, aroha mai  
Tatou i a tatou katoa  
Hui e! Taiki e!

*May peace be widespread  
May the sea be like greenstone  
A pathway for us all this day  
Let us show respect for each other  
For one another  
Bind us all together!*

(2)

Whakataka te hau ki te uru,  
Whakataka te hau ki te tonga.  
Kia mākinakina ki uta,  
Kia mātaratara ki tai.  
E hī ake ana te atākura he tio,  
he huka, he hauhunga.  
Haumi e! Hui e! Tāiki e!

*Get ready for the westerly  
and be prepared for the southerly.  
It will be icy cold inland,  
and icy cold on the shore.  
May the dawn rise red-tipped on ice,  
on snow, on frost.  
Join! Gather! Intertwine!*

### ***Karakia Whakamutunga (closing)***

Kia whakai-ria te tapu  
Kia wātea ai te ara  
Kia turuki whakataha ai  
Haumi e. Hui e. Tāiki e!

*Restrictions are moved aside  
So the pathways is clear  
To return to everyday activities  
Join Gather Intertwine!*

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**A pōwhiri for the new Mayor, Councillors and guests will be held in the Council Chambers starting at 8.15am**

## **INAUGURAL MEETING OF THE THE ELEVENTH TRIENNIUM OF THE HAURAKI DISTRICT COUNCIL**

### **AGENDA**

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**Wednesday, 30 October 2019 – 9.00am**

**Council Chambers, Council Office, William Street, Paeroa**

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#### **Order of Business**

**Pages**

##### **Item**

1. Call to Order by the Chief Executive

2. Karakia

3. Apologies

4. Declaration of Mayor

The making and attesting of the declaration by the Mayor in accordance with cl. 14 Schedule 7 of the Local Government Act 2002.

Mayor will assume the Chair.

5. Declarations of Elected Members

The making and attesting of the declarations by elected members in accordance with cl. 14 Schedule 7 of the Local Government Act 2002.

#### **Meeting to adjourn for morning tea with invited guests.**

6. Appointment of Deputy Mayor

Election of Deputy Mayor in accordance with Section (41A) (3) of the Local Government Act 2002.

7. Setting the date and time of the first Ordinary Meeting of Council

The date and time of the first ordinary meeting of the newly elected Hauraki District Council needs to be fixed in accordance with Section 21(5) (d) of Schedule 7 of the Local Government Act 2002.

It is recommended that the first Ordinary meeting of Council be held on Wednesday, 13 November 2019 at 9.30am.

8. Explanation of Specific Acts (2661168)

**6**

In accordance with Schedule 7 Section 21(5c) of the Local Government Act 2002 the Chief Executive will give a general explanation of the following Acts:

- The Local Government Official Information and Meetings Act 1987
- 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

Relevant extracts from these Acts that are of importance to elected representatives are attached for the member's information

9. Draft 2018-19 Annual Report

**24**

(Draft Annual Report is included under separate cover in Content Locker)

The draft 2018/19 Annual Report for its consideration and adoption, as required by Section 98 of the Local Government Act 2002 (LGA).

**EXTRACTS FROM**  
**THE LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987**

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4 Purpose of the Act

The 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.

Part 1 - Access to local authority information

5 Principle of availability

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.

6 Conclusive reasons for withholding official information

Good reason for withholding official information exists, for the purpose of section 5, if the making available of that information would be likely—

- (a) To prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- (b) To endanger the safety of any person.

7 Other reasons for withholding official information

- (1) Where this section applies, good reason for withholding official information exists, for the purpose of section 5, unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.

- (2) Subject to sections 6, 8, and 17, this section applies if, and only if, the withholding of the information is necessary to—
  - (a) Protect the privacy of natural persons, including that of deceased natural persons; or
  - (b) Protect information where the making available of the information—
    - (i) Would disclose a trade secret; or
    - (ii) Would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; or
  - (ba) In the case only of an application for a resource consent, or water conservation order, or a requirement for a designation or heritage order, under the Resource Management Act 1991, to avoid serious offence to tikanga Maori, or to avoid the disclosure of the location of waahi tapu; or
  - (c) Protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information—
    - (i) Would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or
    - (ii) Would be likely otherwise to damage the public interest; or
  - (d) Avoid prejudice to measures protecting the health or safety of members of the public; or
  - (e) Avoid prejudice to measures that prevent or mitigate material loss to members of the public; or
  - (f) Maintain the effective conduct of public affairs through—
    - (i) The free and frank expression of opinions by or between or to members or officers or employees of any local authority, or any persons to whom section 2(5) applies, in the course of their duty; or
    - (ii) The protection of such members, officers, employees, and persons from improper pressure or harassment; or
  - (g) Maintain legal professional privilege; or
  - (h) Enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities; or
  - (i) Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
  - (j) Prevent the disclosure or use of official information for improper gain or improper advantage.

8 Information concerning existence of certain information

Where a request under this Act relates to information to which section 6 or section 7(2)(b) applies, or would, if it existed, apply, the local authority dealing with the request may, if it is satisfied that the interest protected by section 6 or section 7(2)(b) would be likely to be prejudiced by the disclosure of the existence or non-existence of such information, give notice in writing to the applicant that it neither confirms nor denies the existence or non-existence of that information.

9 Exclusion of public interest immunity

(1) Subject to subsection (2), the rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest shall not apply in respect of—

- (a) An investigation by or proceedings before an Ombudsman in relation to any decision under this Act; or
- (b) Any application under section 4(1) of the Judicature Amendment Act 1972 for the review of any decision under this Act;—

but not so as to give any party any information that that party would not, apart from this section, be entitled to.

(2) Nothing in subsection (1) of this section affects—

- (a) Section 31; or
- (b) Section 20(1) of the Ombudsmen Act 1975.



## EXTRACT FROM THE LOCAL AUTHORITIES (MEMBERS INTERESTS) ACT 1968

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### 1 Short Title

This Act may be cited as the Local Authorities (Members' Interests) Act 1968.

### 2 Interpretation

(1) In this Act, unless the context otherwise requires,—

**Contract**, in relation to any local authority, means a contract made by any person directly with the local authority; and includes any relationship with the local authority which is intended to constitute a contract but is not an enforceable contract; but does not include any contract for the employment of any person as an officer or servant of the local authority; and contractor has a corresponding meaning:

**Incorporated company** means a company incorporated under the [Companies Act 1993] or any former Companies Act or a society incorporated under the Industrial and Provident Societies Act 1908 or any former Industrial and Provident Societies Act:

**Local authority means—**

- (a) Every local authority or public body of any of the classes for the time being specified in Part 1 of Schedule 1:
- (b) Every local authority or public body for the time being referred to in Part 2 of Schedule 1:

**Partner**, in the phrase “spouse or partner”, means a civil union partner or a de facto partner.

**Subcontract**, in relation to any contract made by a local authority, means a subcontract made with the contractor under that contract, or with another subcontractor, to do any work or perform any service or supply any goods or do any other act to which the head contract relates; and includes any subsidiary transaction relating to any such contract or subcontract; and subcontractor has a corresponding meaning.

- (2) For the purposes of this Act, a company shall be deemed to control another company if it owns 50 percent or more of the issued capital of that other company or is able to control the exercise of 50 percent or more of the total voting powers exercisable by all the members of that other company.
- (3) The Governor-General may from time to time, by Order in Council, amend Schedule 1 to this Act by including therein the name of any class of local authorities or public bodies or the name of any specified local authority or public body.

### 3 Disqualifying contracts between local authorities and their members

- (1) Except as provided in subsection (3) of this section, no person shall be capable of being elected as or appointed to be or of being a member of a local authority or of any committee of a local authority, if the total of all payments made or to be made by or on behalf of the local authority in respect of all contracts made by it in which that person is concerned or interested exceeds \$25,000 in any financial year.

- (2) For the purposes of subsection (1), a member of a local authority or of a committee thereof shall be deemed to be concerned or interested in a contract made by a local authority with an incorporated company, if—
- (a) The member or his spouse [[or partner]] singly or between them own, whether directly or through a nominee, 10 percent or more of the issued capital of the company or of any other company controlling that company; or
  - (b) The member or his spouse [[or partner]] is a member of the company, and either of them is the managing director or the general manager (by whatever names they are called) of the company; or
  - (c) The member or his spouse [[or partner]] is a member of a company controlling the company with which the contract is made and either of them is the managing director or the general manager (by whatever names they are called) of that controlling company; [[or]]
  - (d) The member or his spouse [or partner] is the managing director or general manager (by whatever names they are called) of the company and either of them is a member of a company controlling that company:]

Provided that nothing in this subsection shall apply with respect to the spouse [[or partner]] of any member where, at the time when the contract was entered into,—

- (i) Repealed.
  - (ii) In any case to which paragraph (a) of this subsection applies, the member did not know and had no reasonable opportunity of knowing that his spouse [[or partner]] owned any part of the issued capital of the company or of any company controlling that company; or
  - (iii) In any case to which paragraph (b) or paragraph (c) [[or paragraph (d)]] of this subsection applies, the member did not know and had no reasonable opportunity of knowing that his spouse [[or partner]] was a member of the company or of the controlling company, as the case may be, or held any of the offices specified in [[any of those paragraphs]].]
- (2A) For the purposes of subsection (1) of this section, a member of a local authority or of a committee thereof shall be deemed to be concerned or interested in a contract made by the local authority in which his spouse [[or partner]] is concerned or interested (not being a contract made with an incorporated company):

Provided that nothing in this subsection shall apply with respect to the spouse [[or partner]] of any member where, at the time when the contract was entered into,—

- (a) The member and his spouse [[or partner]] were living apart; or
  - (b) The member did not know and had no reasonable opportunity of knowing that his spouse [[or partner]] was concerned or interested in the contract.]
- (3) Notwithstanding anything in subsection (1) of this section,—
- (a) No person shall be disqualified under this section by virtue of his being concerned or interested in any contract made in any special case with the prior approval of the Audit Office on the application of the local authority. In any such special case the Audit Office may authorise the payment and receipt of such amount as it thinks fit:

- (aa) A person shall be deemed not to have been disqualified by virtue of his being concerned or interested in any contract made in any special case where, on the application of the local authority, the subsequent approval of the Audit Office is obtained; which approval shall be given only if the Audit Office is satisfied that—
  - (i) There is a sufficient special reason why prior approval was not obtained under paragraph (a) of this subsection; and
  - (ii) Prior approval would have been obtained under paragraph (a) of this subsection if that approval had been sought:
- (ab) No person shall be disqualified under this section by virtue of his being concerned or interested in any contract made on behalf of the local authority by an employee or committee of the local authority (unless the member of the local authority is a member of that committee) acting under delegated authority, where it is verified in writing to the Audit Office, by such one or more persons and in such manner as the Audit Office requires, that the member did not know and had no reasonable opportunity of knowing of that contract at the time it was made:
- (b) Where a person is concerned or interested in any contract solely by reason of being concerned or interested in any subcontract relating thereto, the provisions of this section shall, with the necessary modifications, apply to him as if references in this section to the amount payable by or on behalf of the local authority in respect of a contract were references to the amount payable by or on behalf of the contractor in respect of the subcontract:
- (c) In assessing under this section the amount of any payment made or to be made by or on behalf of the local authority in respect of any contract, no account shall be taken of any sum paid or to be paid as a refund of a deposit:
- (d) An interest in—
  - (i) Any loan raised by the local authority, whether on security or otherwise; or
  - (ii) Any payments made or to be made in respect of advertisements inserted by the local authority in any newspaper; or
  - (iii) Any lease granted or agreed to be granted to the local authority; or
  - (iv) Any payment received by way of compensation under [the Public Works Act 1981] for any loss, damage, or injury suffered by reason of the exercise of any power under that Act; or
  - (v) Any advance made by the local authority under the Rural Housing Act 1939; or
  - (vi) Any advance made or guarantee given by the local authority under [Part 32 of the Local Government Act 1974]; or

- (vii) any contract for the supply of goods or services made during a state of emergency declared under the Civil Defence Emergency Management Act 2002, if that contract does not continue for more than 1 month after the cessation of that state of emergency, and if the goods or services are supplied at charges not in excess of those normally applying in the district of the local authority or in the area under its jurisdiction at the time immediately preceding the state of emergency,—

shall not constitute a disqualification under this section:

- (e) Repealed.
- (f) No person shall be disqualified under this section by virtue of his being concerned or interested in any contract made before his election or appointment, if before that election or appointment his obligation in respect of the contract had been performed and the amount to be paid by or on behalf of the local authority in respect of the contract had been fixed; and any payment made thereafter by or on behalf of the local authority in respect of the contract shall not operate to disqualify that person for continuing to hold office or be taken into account for the purpose of calculating the amount that may be lawfully paid to him as a member of the local authority or, as the case may be, of a committee thereof in the same financial year in respect of any contract or contracts:
- (g) No person shall be disqualified under this section by virtue of his being concerned or interested in any contract, whether of a continuing nature or otherwise, made before his election or appointment and in respect of which his obligations have not been performed before that election or appointment, where the amount to be paid by or on behalf of the local authority in respect of the performance of the contract has been fixed in that contract subject to such amendments and additions as may be provided for in the contract, or, where the amount to be paid by or on behalf of the local authority in respect of the performance of the contract is not ascertainable until the contract has been performed, if—
  - (i) The contract is for a continuous period not exceeding 12 months from the date on which the contract is made; or
  - (ii) The contract is for a continuous period exceeding 12 months from the date on which the contract is made and that person has, with the consent of the local authority, relinquished that contract before acting as a member and within one month after the date of his election or appointment, as the case may be,—

and any payment made thereafter by or on behalf of the local authority in respect of the contract shall not operate to disqualify that person for continuing to hold office or be taken into account for the purpose of calculating the amount that may be lawfully paid to him as a member of the local authority or, as the case may be, of a committee thereof in the same financial year in respect of any contract or contracts:

- (h) No person shall be disqualified under this section by virtue of his being concerned or interested in any contract as an administrator or a trustee of any estate or trust in which he is not a beneficiary, or as the [manager appointed under the Protection of Personal and Property Rights Act 1988]:
- (i) No person shall be disqualified under this section by virtue of his being concerned or interested in any agreement entered into pursuant to [section 81 of the Noxious Plants Act 1978]:

- [(j) No person who is a member of a community board is disqualified under this section by virtue of that person or that person's spouse [[or partner]] being concerned or interested in any contract made by a territorial authority, if—
- (i) the contract, except for any preliminary work associated with it, is to be performed wholly outside the area under the jurisdiction of the community board of which that person is a member; and
  - (ii) the contract is one in which the community board has no jurisdiction or control or which has not been reported on to the territorial authority by the community board; and
  - (iii) neither that person nor that person's spouse [[or partner]] is also a member of the territorial authority that made the contract]
- [(3A) Nothing in subsection (3) (j) (iii) applies with respect to the spouse [[or partner]] of a member where, at the time when the contract was entered into, the member and the member's spouse [[or partner]] were living apart.]
- [(4) For the purposes of subsection (3) (j), territorial authority has the same meaning as in the Local Government Act 2002.]

4 Extraordinary vacancy created and person affected disqualified for re-election or reappointment

- (1) If any person, while holding office as a member of any local authority or of a committee thereof, becomes incapable of continuing to hold office under section 3 of this Act, his office shall thereby be vacated, and the vacancy shall be deemed an extraordinary vacancy and shall be dealt with in the manner (if any) provided by law for dealing with extraordinary or casual vacancies in the membership of that local authority or committee, as the case may be, and, if no provision exists for dealing with extraordinary or casual vacancies, may be dealt with in such manner as the Governor-General, by Order in Council, prescribes.
- (2) Every person whose office is vacated pursuant to subsection (1) of this section shall thereby be disqualified for being elected or appointed as a member of the local authority or committee, as the case may be, until the next general or ordinary election or appointment, as the case may be, of members thereof.

5 Penalty for acting unlawfully

Every person commits an offence who does any act as a member of any local authority or of a committee thereof while incapacitated under section 3, and is liable on summary conviction to a fine not exceeding \$200.

6 Member of local authority or committee not to discuss or vote on question in which he has pecuniary interest

- (1) A member of a local authority or of a committee thereof shall not vote on or take part in the discussion of any matter before the governing body of that local authority or before that committee in which he has, directly or indirectly, any pecuniary interest, other than an interest in common with the public.
- [(1A) Nothing in subsection (1) shall apply in any case where a member of a local authority or a committee of the local authority has been elected by or appointed to represent any activity, industry, business, organisation, or group of persons and his pecuniary interest is not different

in kind from the interests of other persons in the activity, industry, business, organisation, or group by which the member is elected or in respect of which he is appointed.]

- [(2) For the purposes of subsection (1), where an incorporated company has, directly or indirectly, a pecuniary interest in a matter before the governing body of a local authority or before a committee thereof, a member of the local authority or, as the case may be, of the committee shall be deemed to have a pecuniary interest in the matter, if—
- (a) The member or his spouse [[or partner]] singly or between them own, whether directly or through a nominee, 10 percent or more of the issued capital of the company or of any other company controlling that company; or
  - (b) The member or his spouse [[or partner]] is a member of the company, and either of them is the managing director or the general manager (by whatever names they are called) of the company; or
  - (c) The member or his spouse [[or partner]] is a member of a company controlling the company having a pecuniary interest in the matter before the governing body of the local authority or, as the case may be, before the committee, and either the member or his spouse [[or partner]] is the managing director or the general manager (by whatever names they are called) of that controlling company; [[or]]
  - [[d) The member or his spouse [or partner] is the managing director or general manager (by whatever names they are called) of the company having a pecuniary interest in the matter before the governing body of the local authority or, as the case may be, before the committee, and either of them is a member of a company controlling that company.]]  
]
- [(2A) Where the spouse [[or partner]] of a member of a local authority or of any committee thereof has, directly or indirectly, a pecuniary interest in a matter before the governing body of a local authority or before a committee thereof as the owner or one of the owners (otherwise than as a member of an incorporated company) of an estate or interest in any real or personal property or of any business or as a party to any contract or proposed contract with the local authority, the member shall, for the purposes of subsection (1), be deemed to have a pecuniary interest in the matter.]
- [(2B) Nothing in subsection (2) or subsection (2A) shall apply with respect to the spouse [[or partner]] of any member where, at the time when the member took part in the discussion of or, as the case may be, voted on the matter before the local authority or committee, the member and his spouse [[or partner]] were living apart.]
- (3) Nothing in subsection (1) shall apply with respect to any of the following matters:
- [(a) Any payment to or for the benefit of a member where it is legally payable and the amount or maximum amount or the rate or maximum rate of the payment has already been fixed; or]
  - (b) Any contract of insurance insuring members against personal accident; or
  - (c) An election or appointment of a member of the local authority to any office, notwithstanding that any remuneration or allowance is or may be payable in respect of that office; or
  - (d) Any formal resolution to seal or otherwise complete any contract or document in accordance with a resolution already adopted; or

- (e) The preparation, recommendation, approval, or review of a [district plan under the Resource Management Act 1991] or any section of such a scheme, unless the matter relates to any variation or change of or departure from a district scheme or section thereof or to the conditional use of land as defined in that Act; or
  - [(ea) The preparation, recommendation, approval, or review of general schemes under the Soil Conservation and Rivers Control Act 1941 for the preventing or minimising of damage by floods and by erosion; or]
  - [(eb) The preparation, recommendation, approval, or review of reports as to the effect or likely effect on the environment of any public work or proposed public work within the meaning of [[the Public Works Act 1981]]; or]
  - (f) Any matter in which, in the opinion of the Audit Office given before the vote or discussion and on written application to the Audit Office for its opinion, the pecuniary interest of a member is so remote or insignificant that it cannot reasonably be regarded as likely to influence him in voting on or taking part in the discussion of that matter.
- (4) Notwithstanding anything in subsection (1), the Audit Office may, of its own motion or upon written application made to it by the member concerned, declare that that subsection shall not apply with respect to any specified matter or specified class of matter to be considered by the local authority or committee, as the case may be, if the Audit Office is satisfied that the application of that subsection would impede the transaction of business by the local authority or committee or that it would be in the interests of the electors or inhabitants of the district of the local authority or of the area under its jurisdiction that the subsection should not apply.
- (5) Any person who under subsection (1) is prohibited from voting on or taking part in the discussion of any matter at any meeting at which he is present shall, when the matter is raised before the local authority or committee of which he is a member, declare to the meeting that he has a pecuniary interest in the matter, and the fact of the disclosure of interest and of the abstention from discussion and voting shall be recorded in the minutes of the meeting. Any such record in the minutes of the meeting shall be prima facie evidence of its contents, in the event of any question arising as to whether a member made a disclosure of interest and abstained from discussion and voting.
- (6) Notwithstanding anything in subsection (1), a member of any of the following bodies:
- (a) The University Grants Committee:
  - (b) The Council of Massey University:
  - (c) The Council of the University of Auckland:
  - (d) The Council of the University of Canterbury:
  - (e) The Council of the University of Otago:
  - (f) The Council of the University of Waikato:
  - (g) The Council of the Victoria University of Wellington:
  - [(gg) Repealed
  - (h) The [Council of Lincoln [[University]] ]:
  - [(i) Any Fire Board:]

[(j) Any Fire Committee:]

[(k) Any Fire Brigade Committee—]

shall be entitled to take part in the discussion before that body, or any committee thereof, of any matter that directly or indirectly affects his salary or allowances, but shall not be entitled to vote thereon.

7 Penalty for discussing or voting when pecuniary interested

- (1) Where any person does any act in contravention of or fails to comply with any provision of subsection (1) of section 6, he commits an offence and is liable on summary conviction to a fine not exceeding \$100.
- (2) It shall be a defence in proceedings for an offence against subsection (1) if the defendant proves that when he took part in the discussion of, or, as the case may be, voted on, the matter before the local authority or committee he did not know and had no reasonable opportunity of knowing that he had a pecuniary interest in that matter other than an interest in common with the public.
- (3) On the conviction of any person under subsection (1), he shall be deemed to have been granted leave of absence from the local authority and from every committee thereof, and shall not be capable of acting as a member of the local authority or of any committee thereof—
  - (a) If no appeal is lodged against the conviction, until the time for lodging an appeal against the conviction has expired:
  - (b) If an appeal is lodged against the conviction, until the appeal is determined.
- (4) Where the period of leave of absence of any member has expired pursuant to subsection (3) and the conviction has not been quashed or set aside,—
  - (a) The office of the member shall be vacated; and
  - (b) The vacancy shall be deemed an extraordinary vacancy, and shall be dealt with in the manner (if any) provided by law for dealing with extraordinary or casual vacancies in the membership of that local authority or committee. If no provision exists for dealing with extraordinary or casual vacancies, the vacancy may be dealt with in such manner as the Governor-General, by Order in Council, prescribes.



## EXTRACT FROM THE CRIMES ACT 1961

### PART 6 - CRIMES AFFECTING THE ADMINISTRATION OF LAW AND JUSTICE, BRIBERY AND CORRUPTION

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#### 99 Interpretation

In this part of this Act, unless the context otherwise requires,—

**Bribe** means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect:

**Judicial officer** means a Judge of any Court, or a [District Court Judge], Coroner, [Justice of the Peace, or Community Magistrate], or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath:

**Law enforcement officer** means any constable, or any person employed in the detection or prosecution or punishment of offenders:

**Official** means any person in the service of Her Majesty in right of New Zealand (whether that service is honorary or not, and whether it is within or outside New Zealand), or any member or employee of any local authority or public body, or any person employed in the Education service within the meaning of the [State Sector Act 1988].

#### 105 Corruption and bribery of official

- (1) Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.
- (2) Every one is liable to imprisonment for a term not exceeding [7 years] who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him in his official capacity.

#### 105A Corrupt use of official information

Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly uses [[or discloses]] any information, acquired by him in his official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or any other person.

## Secret Commissions Act 1910

1910 No 40

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### An Act for the prohibition of secret commissions

[3 December 1910

#### 1 Short Title and commencement

This Act may be cited as the Secret Commissions Act 1910, and shall come into operation on the 1st day of January 1911.

#### 2 Interpretation

In this Act, unless a contrary intention appears,—

**Agent** includes any person who is or has been, or desires or intends to be, employed by or acting for any other person, whether as agent, servant, broker, auctioneer, architect, solicitor, director, or in any other capacity whatever, either alone or jointly with any other person:

**child of any agent** includes a child of a spouse or a civil union partner or a de facto partner of an agent and in [section 5\(2\)](#) **child** has a corresponding meaning

**Principal** includes any person by whom an agent is or has been, or intends or desires to be, employed, or for whom an agent acts or has acted, or intends or desires to act:

**Consideration** means valuable consideration of any kind; and particularly includes discounts, commissions, rebates, bonuses, deductions, percentages, employment, payment of money (whether by way of loan, gift, or otherwise howsoever), and forbearance to demand any money or valuable thing.

### **3 Gifts to agent without consent of principal an offence**

- (1) Every person is guilty of an offence who corruptly gives, or agrees or offers to give, to any agent any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne 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 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.
- (2) Any gift or other consideration given or offered or agreed to be given to any parent, husband, wife, [civil union partner, de facto partner,] or child of any agent, or to his partner, clerk, or servant, or (at the agent's request or suggestion) to any other person, shall be deemed for the purposes of this section to have been given or offered or agreed to be given to the agent.

### **4 Acceptance of such gifts by agent an offence**

- (1) Every agent is guilty of an offence who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, or solicits from any person, for himself or for any other person, any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne 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 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.
- (2) Every agent who diverts, obstructs, or interferes with the proper course of the affairs or business of his principal, or fails to use due diligence in the prosecution of such affairs or business, with intent to obtain for himself or for any other person any gift or other consideration from any person interested in such affairs or business, shall be deemed to have corruptly solicited a consideration within the meaning of this section.

### **5 Duty of agent to disclose pecuniary interest in contract**

- (1) Every agent is guilty of an offence who makes a contract on behalf of his principal and fails to disclose to his principal, at the time of making the contract or as soon as possible thereafter, the existence of any pecuniary interest which the agent has in the making of the contract, unless to the knowledge of the agent the existence of such pecuniary interest is already known to his principal.
- (2) For the purposes of this section any pecuniary interest which a parent, husband, wife, [civil union partner, de facto partner,] child, or partner of the agent has in the making of the contract shall be deemed to be the pecuniary interest of the agent, unless he proves that he had no knowledge of that interest at the time when he made the contract.
- (3) For the purposes of this section an agent shall not be deemed to have any pecuniary interest in the making of a contract by reason merely of the fact that he or any person mentioned in the last preceding subsection is a shareholder in an incorporated company having more than 20 members.

### **6 Giving false receipt, invoice, etc, to agent an offence**

Every person is guilty of an offence who, with intent to deceive the principal, gives to any agent, or signs or otherwise authenticates for the use of any agent, any receipt, invoice, account, or other document of any nature whatsoever in relation to the affairs or business of the agent or his principal

which contains any statement which is false, defective, or misleading in any material particular, or which omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed, in relation to the matters referred to in that document.

## **7 Delivery of false receipt, etc, to principal an offence**

Every agent is guilty of an offence who delivers or presents to his principal any receipt, invoice, account, or other document of any nature whatsoever in relation to the business or affairs of his principal which to the knowledge of the agent is false or defective in any material particular, or is in any way likely to mislead the principal, or which to the knowledge of the agent omits to state the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed, in relation to the matters referred to in that document, or which to the knowledge of the agent omits to disclose the fact of any gift or other consideration having been received by or promised to the agent in respect of those matters, unless in any such case the fact which is not disclosed is, to the knowledge of the agent, already known to the principal at the time when the said document is so delivered or presented to him.

## **8 Receiving secret reward for procuring contracts an offence**

- (1) Every person is guilty of an offence who advises any person to enter into a contract with a third person and receives or agrees to receive from that third person, without the knowledge and consent of the person so advised, any gift or consideration as an inducement or reward for the giving of that advice or the procuring of that contract, unless the person giving that advice himself acts as the agent of the third person in entering into the contract, or is to the knowledge of the person so advised the agent of that third person.
- (2) For the purposes of this section a person shall be deemed to advise another person to enter into a contract if he makes to that other person any statement or suggestion with intent to induce him to enter into the contract.

## **9 Aiding and abetting offences**

Every person is guilty of an offence who aids, abets, counsels, or procures, or is in any way directly or indirectly knowingly concerned in or privy to the commission of any offence against this Act, or the commission outside New Zealand of any act in relation to the affairs or business of a principal residing or carrying on business in New Zealand which if committed in New Zealand would be an offence against this Act.

## **10 Offences by persons acting on behalf of agents**

Every person is guilty of an offence who, with or without authority, does on behalf of any other person who is an agent any act which if done by that agent himself would be an offence against this Act.

## **11 Except as provided in this section, customary nature of gift to be no defence**

- (1) Nothing in this Act contained shall be deemed to prohibit or render illegal any recognised practice or usage of any trade or calling existing at the time of the passing of this Act if the Court before which the matter of such practice or usage is in question shall be satisfied that such practice or usage is honest and reasonable; and, in so determining, the said Court may have regard to the

circumstance that the commissions, rebates, or allowances paid or made by the third party to the agent under such practice or usage were prior to this Act lawfully receivable by the agent without any breach of his duty towards his principal; or the circumstance that the said commissions, rebates, or allowances so paid or made would not in any case be paid or allowed by such third party to the principal; or the circumstance that the same were paid or allowed in respect of services lawfully rendered by the agent to such third party without injury or loss to the principal and without any breach by the agent of his duty towards his principal.

- (2) Except as provided by this section, evidence shall not be admissible in any proceeding for an offence against this Act to show that any such gift or consideration as is mentioned in this Act is customary in any trade or calling, nor shall the customary nature of any such gift or consideration be any defence in such proceedings.

## **12 Consent of Attorney-General necessary for prosecution**

- (1) No prosecution for an offence against this Act shall be commenced without the leave of the Attorney-General;
- (2) The leave of the Attorney-General may be granted without notice to the defendant and it is not necessary in the charge to state that leave has been granted, or to state the terms of that leave.
- (3) Objections to a charge for want of leave, or for want of conformity to the terms of leave, must be made before a District Court Judge before the trial, and if the District Court Judge is satisfied that leave has not been granted, or that the terms thereof have not been conformed to, the District Court Judge must either
  - (a) permit the prosecutor to withdraw the charge; or
  - (b) dismiss the charge.

## **13 Penalty on conviction**

A person who commits an offence against this Act is liable to imprisonment for a term not exceeding 7 years.

## **14 Proceedings to be before District Court Judge only**

Repealed

## **15 Incriminating answers and discovery**

No person shall in any civil or criminal proceedings be excused from answering any question put either viva voce or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may criminate or tend to criminate him in respect of an offence against this Act; but his answer shall not be admissible in evidence against him in any criminal proceedings for an offence against this Act.

## **16 Persons deemed to be agents within the meaning of this Act**

- (1) For the purposes of this Act—
  - (a) Every officer of a corporation and every member of a governing body of a corporation shall be deemed to be an agent of the corporation:

- (b) Every officer or member of any local authority, Board, Council, committee, or other body of persons, whether incorporated or unincorporated, charged by statute with any public functions shall be deemed to be an agent of that local authority, Board, Council, committee, or other body:
  - (c) Every person in the service of the Crown, or acting for or on behalf of the Crown, or holding any office in the public service, shall be deemed to be an agent of the Crown:
  - (d) Every partner in a firm shall be deemed to be an agent of the firm:
  - (e) An executor, administrator, or trustee shall be deemed to be an agent of the beneficiaries under the will, intestacy, or trust:
  - (f) The committee of the estate of a person of unsound mind shall be deemed to be the agent of that person:
  - (g) An arbitrator, umpire, or valuer shall be deemed to be an agent of every party to the arbitration or valuation:
  - (h) A liquidator of a company shall be deemed to be an agent of the company.
- (2) If by virtue of the provisions of this Act any agent is deemed to be the agent of 2 or more principals in respect of the same matter, this Act shall apply to each of those principals in the same manner as if he was the sole principal.
- (3) Nothing in this section shall be so construed as to restrict in any manner the meaning of the terms "agent" or "principal" as used in this Act.

## **FINANCIAL MARKETS CONDUCT ACT 2013**

The main purposes of this Act are to

- (a) promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
- (b) promote and facilitate the development of fair, efficient, and transparent financial markets.

Additional purposes

This Act has the following additional purposes:

- (a) to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services:

Its application to Council would arise if Council wished to borrow money by public stock issues. In such a case, Council would be required to publish an investment statement and a prospectus. Where published documents relating to an issue of securities are found to contain false or misleading information, or are likely to mislead or confuse or contain untrue statements, the directors (in this case the Mayor and Councillors) of the issue may be held both criminally liable and civilly liable.



# Decision Report

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**To:** Mayor and Councillors

**From:** Group Manager, Corporate Services

**Date:** Thursday, 24 October 2019

**File reference:** Document: 2661198  
Appendix A: 2563580 (2018/19 Annual Report)

**Portfolio holder:** Mayor Adams

**Meeting date:** Wednesday, 30 October 2019

**Subject:** **2018/19 Annual Report**

## **Recommendation:**

THAT the report be received, and

THAT the draft 2018/19 Annual report be adopted, and

THAT the Audit Opinion be received, adopted and incorporated into the 2018/19 Annual Report, and

THAT pursuant to Section 98 of the Local Government Act 2002, the audited Annual Report for the year ending 30 June 2019, including the Audit Opinion, be adopted and made publicly available.

## **1 Purpose**

The purpose of this report is to present to Council the draft 2018/19 Annual Report for its consideration and adoption, as required by Section 98 of the Local Government Act 2002 (LGA).

The Summary Annual Report, that represents the information contained in the full Annual Report document is proposed to be presented to Council at a November 2019 meeting.

The matter or suggested decision does not involve a new activity, service, programme, project, expenditure or other deliverable.



## **2 Background**

### **2.1 Statutory requirements**

The statutory requirement for the Annual Report is contained in Section 98 of the Local Government Act 2002, which states:

- (1) A local authority must prepare and adopt in respect of each financial year an annual report containing in respect of that year the information required by Part 3 of Schedule 10.*
- (2) The purposes of an annual report are—*
  - (a) to compare the actual activities and the actual performance of the local authority in the year with the intended activities and the intended level of performance as set out in respect of the year in the long-term plan and the annual plan; and*
  - (b) to promote the local authority's accountability to the community for the decisions made throughout the year by the local authority.*
- (3) Each annual report must be completed and adopted, by resolution, within 4 months after the end of the financial year to which it relates.*
- (4) A local authority must, within 1 month after the adoption of its annual report, make publicly available—*
  - (a) its annual report; and*
  - (b) a summary of the information contained in its annual report.*
- (5) The summary must represent, fairly and consistently, the information regarding the major matters dealt with in the annual report.*
- (6) A local authority must, within 1 month after the adoption of its annual report, make the report and the summary prepared under subsection (4)(b) publicly available.*

The Annual Report must:

- report on the performance of any Council Controlled Organisations,
- report on the various financial provisions specified in the Local Government Act 2002,
- contain a report from the Auditor General on Council's compliance with the requirements of the LGA,
- be adopted by the Council on or before 31 October 2019,
- be made publicly within 1 month after the adoption.

In addition to the Annual Report, the Council is required to prepare a Summary of the Annual Report. The summary must represent, fairly and consistently, the information regarding the major matters contained within the full Annual Report document. The summary of the Annual Report has not yet been finalised and will be presented separately to Council at its November meeting, but before the end of month as legislatively required. The summary will not contain any new/different material than what is already contained (and approved by Audit NZ) in the Annual Report.

### **2.2 Audit and Risk Committee**

The Audit & Risk Committee reviewed a draft copy of the Annual Report at its meeting on 8 October 2019.

The Committee resolved to recommend that Council adopts the 2018/19 Annual Report subject to adjustments recommended by Audit NZ.

## **3 Financial results**

### **3.1 Surplus/Deficit**

2018/19 is the first year covered by the forecasts in the 2018-28 Long Term Plan. For the first two years of the plan Council forecast to run at a deficit before running at a surplus for the

remaining eight years of the plan. The forecast operating deficit for 2018/19 was \$1.5 million. Council's actual result was a \$600,000 deficit.

This result is \$900,000 better than expected. Some of the reasons for the difference were:

- Interest costs were \$500,000 lower than budget
- Vested Assets were \$300,000 higher than budget

Councils 'Total Comprehensive Revenue and Expenses' represents the surplus/deficit including asset revaluations. This result was a \$19.5 million surplus compared to a budgeted surplus of \$300,000. The main reason for the difference was a larger than expected increase in the value of Council's land assets.

### **3.2 Debt**

Council's total external debt was \$38 million. This is the same level as the previous year. It was approximately \$9 million lower than was forecast, mainly due to delays in completing forecast capital projects.

## **4 Results of Audit**

Late September/early October Audit New Zealand have been onsite carrying out an audit of the Annual Report as takes place every year. As the preparation of an annual report and summary is a requirement of the Local Government Act 2002, Audit New Zealand must check that all statutory requirements are met before it issues the Audit Opinion. This Opinion reports on whether the Council has met its legislative requirements.

### **4.1 Non-Standard Audit Opinion**

A disappointing feature of this year's Annual Report is that Council has received a non-standard audit opinion. In Council's case, this means there is a part of the Annual Report that Audit New Zealand has not been able to find sufficient evidence to satisfy itself that this part is accurate.

Audit's concern is not with any of the financial results disclosed in the Annual Report.

During the auditing process, Council became aware that there were significant issues with the capture of data that underpinned the reporting processes that related to two measures. These were the median response and resolution times for customer service requests where there is an interruption to the customer's water supply, and where there was a wastewater overflow. These are two of the mandatory non-financial performance measures that Council is required to report on. This predominantly revolved around the incorrect classification of service request data, incomplete service request data, incomplete finalising and closure of service requests and a lack of verification of service request reporting during the 2018/19 year.

Council was already aware of a need to make improvements to the customer service request system and had developed and launched a new customer service request system on 30 April 2019. While this did address some of the issues, the annual audit process identified that some shortcomings remained in the new system.

As of October 2019, Council has commissioned an independent review of the service request process which provides the underlying data for this performance measure. The outcome of this review is that the processes and systems supporting the identification of the performance measure data will be amended to more accurately align with the requirements of the Department of Internal Affairs mandatory performance measures to ensure the data is robust

and that it accurately reflects the Councils response to service requests. The recommendations will be implemented with urgency.

## **5 Significance and Engagement Assessment**

This decision does not trigger the Significance and Engagement Policy Assessment Tool and therefore is not considered significant under the Significance and Engagement Policy 2017.

The level of engagement considered appropriate for this matter is to inform (i.e. one-way communication disseminating information) the community that the adopted 2018/19 Annual Report and Summary are available to view. This will be achieved using the following communications methods:

- article in the HDC News page in the Hauraki Herald and/or news release/social media releases.
- HDC website updated with the latest annual report and summary documents plus supporting content.
- distribution of the documents as per distribution list.

## **6 Conclusion**

If there are any further changes to the 2018/19 Annual Report recommended by Audit NZ following the release of the Council agenda, those changes will be tabled at the Council meeting and explained at that time. If the Audit Opinion has not been received prior to the meeting, Audit NZ will provide it at the meeting. As of the drafting of the agenda, the Audit Opinion had not been received.

Pending the receipt of the Audit Opinion, the Annual Report must be adopted by Council at its meeting on 30 October 2019, to comply with legislation.

Further formatting of the final Annual Report may occur prior to printing.

## **7 Recommendation**

The Council is asked to adopt the draft 2018/19 Annual Report, adopt the Audit Opinion, and give approval to make the audited Annual Report and Summary (once received and adopted in November) publicly available within one month of adoption.

Duncan Peddie  
Group Manager - Corporate Services