



greater WELLINGTON
REGIONAL COUNCIL
Te Pane Matua Taiao

If calling, please ask for Democratic Services

Council

Wednesday 30 October 2019, 10.00am

Te Wharewaka o Pōneke, 2 Taranaki St, Wellington, 6011

Members

Cr Blakeley

Cr Connelly

Cr Hughes

Cr Laban

Cr Lee

Cr Ponter

Cr van Lier

Cr Brash

Cr Gaylor

Cr Kirk-Burnnand

Cr Lamason

Cr Nash

Cr Staples

Recommendations in reports are not to be construed as Council policy until adopted by Council

Council

Inaugural Council meeting for the 2019-2022 triennium
Wednesday 30 October 2019 at 10.00am
Te Wharewaka o Pōneke, 2 Taranaki St, Wellington, 6011

Public Business

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(Greg Campbell, Chief Executive, in Chair)		
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Council
30 October 2019
Report 19.474



For Information

DECLARATION BY COUNCILLORS

Te aronga Purpose

1. For Councillors to make the declaration required by clause 14 of Schedule 7 to the Local Government Act 2002.

Declaration

2. Councillors are to come forward in groups to make the following declaration:

I, (Full Name), declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of the Wellington Region, the powers, authorities, and duties vested in, or imposed upon, me as a member of the Wellington Regional Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Ngā kaiwaitohu Signatories

Writer	Francis Ryan – Manager, Democratic Services
Approver	Luke Troy – General Manager, Strategy

Council
30 October 2019
Report 19.476



For Decision

PROCESS FOR THE ELECTION OF THE COUNCIL CHAIRPERSON AND DEPUTY CHAIRPERSON

Te aronga

Purpose

1. To advise the Council on the procedure and options to elect the Council Chairperson and Deputy Chairperson.

He tūtohu

Recommendations

That the Council:

1. *Either* **adopts** statutory voting system A *or* **adopts** statutory voting system B (Schedule 7 to the Local Government Act 2002).
2. **Agrees** that any voting round that requires a resolution by 'lot' to exclude any person/s will use the procedure where the candidates' names (with the same number of votes) are placed in a container and the name of the person drawn out by an independent person is deemed the winner (i.e. elected or not excluded from the next round).
3. **Adopts** the system and procedure outlined in recommendations 1 and 2 for the election of both the Chairperson and Deputy Chairperson.

Te tāhū kōrero

Background

2. Under Schedule 7 to the Local Government Act 2002 (the Act) the Council must elect the Chairperson and Deputy Chairperson at the first meeting of Council following the triennial general election. The first meeting of the Council is on Wednesday 30 October 2019.
3. For each election, the Council must choose one of two statutory voting systems:
 - A Election by the majority of members present and voting, or
 - B Election by receiving a greater number of votes than any other candidate.

Characteristics of election by majority (Voting system A)

4. The characteristics of this voting system are:
 - a. The person who is elected receives the votes of a majority of the Council members present and voting
 - b. There is a first round of voting for all candidates
 - c. If no candidate is elected in that round, there is a second round of voting from which the candidate with the fewest votes in the first round is excluded
 - d. If no candidate is successful in the second round there is a third, and so on. Each time the candidate with the fewest votes in the previous round is excluded
 - e. If, in any round, two or more candidates tie for the lowest number of votes, the person excluded from the next round is resolved by lot
 - f. Rounds of voting will only be required where there are more than two candidates.

Characteristics of election by greatest number of votes (Voting system B)

5. The characteristics of this voting system are:
 - a. A person is elected if they receive more votes than any other candidate
 - b. There is only one round of voting
 - c. If two or more candidates tie for the most votes, the tie is resolved by lot.

Determining by 'lot' where there is a tie

6. Both voting systems A and B require a resolution by 'lot' if two or more candidates receive an equal number of votes and no one else is elected. The most common procedure is for the names of the candidates with the same number of votes to be placed in a container and the name of the person drawn out by an independent person is deemed the winner (i.e. elected or not excluded from the next round). It is recommended that this process be used in the event that there is a tie between candidates.

Ngā kōwhiringa

Options

7. The Council must choose either of the two voting systems described above to elect the Chairperson and Deputy Chairperson. The Council is entitled to adopt different systems for the election of the Chairperson and Deputy Chairperson. However, for reasons of ease and practicality, it is recommended that the Council adopt the same procedure for the election of both the Chairperson and Deputy Chairperson.

Option One – Voting system A - Election by the majority of members

Advantages	Disadvantages
The winning candidate is elected by a majority of Council members.	There may be multiple voting rounds.

8. Voting system A is recommended if Council wants to guarantee that the winning candidate receives the votes of a majority of the members of Council.

Option Two – Voting system B – Election by the greatest number of votes

Advantages	Disadvantages
There is only one round of voting.	The winning candidate may not have the majority support of Council members.

Ngā tūāoma e whai ake nei

Next steps

9. Once the voting system is decided, the Chief Executive will call for nominations for the office of Council Chairperson. Once elected, the Chairperson must make and attest to the declaration required under clause 14 of Schedule 7 to the Act (see Declaration by Chairperson - Report 19.477). After making the declaration, the newly-elected Chairperson shall take the chair for the rest of the meeting.
10. The newly-elected Chairperson will then call for nominations for the office of Deputy Chairperson. No declaration is required by the newly-elected Deputy Chairperson.

Ngā kaiwaitohu

Signatories

Writer	Francis Ryan – Manager, Democratic Services
Approver	Luke Troy – General Manager, Strategy

Council
30 October 2019
Report 19.477



For Information

DECLARATION BY CHAIRPERSON

Te aronga Purpose

1. For the newly-elected Chairperson to make the declaration required by clause 14 of Schedule 7 to the Local Government Act 2002.

Declaration

2. The Chairperson shall make the following declaration:

I, (Full Name), declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of the Wellington Region, the powers, authorities, and duties vested in, or imposed upon, me as Chairperson of the Wellington Regional Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Ngā kaiwaitohu Signatories

Writer	Francis Ryan – Manager, Democratic Services
Approver	Luke Troy – General Manager, Strategy

Council
30 October 2019
Report 19.478



For Information

LAWS AFFECTING COUNCILLORS

Te aronga **Purpose**

1. To provide a general explanation of some of the laws which regulate the conduct of elected members.

Te horopaki **Context**

2. Clause 21 of Schedule 7 to the Local Government Act 2002 requires that, at the first meeting of the Council following a triennial general election, the Chief Executive must give or arrange for a general explanation of certain laws affecting members.
3. There are certain legal provisions that Councillors must be aware of because breaching the rules may result in loss of office, fines, or imprisonment. These provisions are contained in the:
 - Secret Commissions Act 1910
 - Crimes Act 1961
 - Local Authorities (Members' Interests) Act 1968
 - Local Government Official Information and Meetings Act 1987
 - Financial Markets Conduct Act 2013.
4. The Local Government Official Information and Meetings Act 1987 and other enactments such as the Local Government Act 2002 deal with the role and function of the Council and Councillors, and with the conduct of meetings. Recent changes to health and safety laws in New Zealand also introduce new due diligence obligations for Councillors. These matters will be discussed in upcoming legal briefings to Councillors.
5. The following is a brief summary of the above enactments and other provisions that govern the conduct of the Council's affairs.

Secret Commissions Act 1910

6. Under the Secret Commissions Act 1910, Councillors are deemed to be agents of the Council (section 16(1)(b)) and can be criminally liable for bribery and corruption offences. Under this Act, Councillors may be liable, for:
 - Accepting inducements or rewards for doing or forbearing to do something in relation to the Council's affairs (section 4(1))
 - Showing or having shown favour or disfavour to any person in relation to the Council's affairs or business (section 4(1))
 - Diverting, obstructing, or interfering with the proper course of the affairs or business of the Council with intent to obtain any gift or other consideration from any person interested in the affairs or business of the Council (section 4(2))
 - Failing to use due diligence in the prosecution of its affairs or business, with intent to obtain any gift or other consideration from any person interested in the affairs or business of the Council (section 4(2))
 - Not disclosing to the Council his or her pecuniary interest (which includes the pecuniary interest of a parent, spouse/partner, or child) in a contract when making a contract on behalf of the Council (refer also below to information pertaining to the Local Authorities (Members' Interests) Act 1968)
 - Aiding or abetting, or being in any way directly or indirectly concerned in, or privy to, the commission of any offence against the Act (section 9).
7. Conviction of an offence under this Act carries with it the possibility of imprisonment for any period not exceeding seven years. Such a conviction will have the consequence of loss of office in terms of clause 1 of Schedule 7 to the Local Government Act 2002.

Crimes Act 1961

8. Councillors also come under the definition of an official in section 99 of the Crimes Act 1961. Section 105(1) of the Act states:

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 herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her official capacity.
9. Put simply, it is an offence to seek or obtain a reward for performing one's official duties as a Councillor.

10. Section 105A sets out that it is an offence for an official to use any information acquired by him or her in an official capacity to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself, or any other person.
11. Conviction of an offence under both section 105 and section 105A carries with it the possibility of an imprisonment for a term not exceeding seven years.

Local Authorities (Members' Interests) Act 1968

12. The Local Authorities (Members' Interests) Act 1968 is one of the most important statutes governing the conduct of Councillors. It has two main aspects:
 - a A Councillor must not hold interests in council contracts with a separate or combined value greater than \$25,000 (GST inclusive) in any financial year, which have not been approved by the Office of the Auditor-General (section 3(1)).

This Act includes contracts made by Council directly with the person concerned, and also contracts made by the Council in which the Councillor is concerned or interested. Special provisions deal with companies in which a member or his or her spouse/partner is interested either as a shareholder, or as a member of the company, or by virtue of certain management positions.
 - b Councillors must not vote or take part in a Council discussion if they have a direct or indirect pecuniary interest in the discussion (section 6(1)).

Again, there are special provisions dealing with a pecuniary interest in the context of the interest of the member or his or her spouse/partner in a company.
13. There are exceptions to these rules but, in case of any doubt, a Councillor should refer the matter to the Office of the Auditor-General or seek independent legal advice.
14. The penalty for breach of these provisions (section 3) includes immediate loss of office (section 4) and the possibility of a fine (section 5). The penalty for discussing or voting when there is a pecuniary interest will only result in loss of office upon conviction of an offence (section 7).
15. Related to these statutory provisions is the common law principle of natural justice, which includes obligations to listen to both sides and not to be a judge in one's own cause.

Local Government Official Information and Meeting Act 1987

16. The Local Government Official Information and Meetings Act 1987 governs the custody and release of official information, as well as access to local authority meetings.

Information

17. The fundamental principle in the Act is that information held by the Council is publicly available, unless one or more specified withholding grounds apply. Information held by elected members in their official capacity is deemed to be held by the Council itself.

18. The Act sets out a framework for dealing with requests for information and provides that requestors may complain to the Ombudsman if they have concerns about an agency's response to their request.

Meetings

19. Local authority meetings must be open to the public (section 47), unless there are statutory reasons for public exclusion (section 48). Conclusive reasons for excluding the public exist where inclusion of the public would:
 - a Prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
 - b Endanger the safety of any person.
21. The public may also be excluded where the subject matter of discussion is one in respect of which a right of appeal exists to any court or tribunal against the decision made by the Council (section 48(2)). Other grounds for exclusion are provided for in section 7 of the Act.
22. In excluding the public, the Council must make a resolution (in the form set out at Schedule 2A to the Act) stating the subject of each matter to be considered while the public is excluded, and the statutory grounds for excluding the public.

Other Matters

23. The Act makes the following further important points, related to matters of availability and privilege at local authority meetings:
 - a Items that are not on the meeting agenda may be dealt with at the meeting:
 - i if it is decided to do so by resolution, and
 - ii the chairperson explains when the meeting is open to the public why the item is not on the agenda and why the discussion item cannot be delayed until a subsequent meeting (section 46A(7))
 - b If the item is a minor matter relating to general business:
 - i the chairperson explains when the meeting is open to the public, the item may be discussed, and
 - ii no resolution, decision or recommendation may be made except to refer the item to a subsequent meeting for further discussion (section 46A(7)).
 - c All statements made at meetings of Council and any publications resulting from a meeting of council (i.e. agendas/minutes) are 'privileged'. A statement that is regarded as 'privileged' cannot support a cause of action for defamation (even though that statement might be untrue or misleading). An exception to this rule exists if the statement, or defamatory publication, is proven to have been predominantly motivated by ill will (sections 52 and 53).

Financial Markets Conduct Act 2013

24. Under the Financial Markets Conduct Act 2013, elected members are in a similar position to company directors if the Council were to issue financial products, such as equity or debt securities, under its borrowing powers. Elected members may therefore be personally liable if product disclosure statements to investors contain untrue information, and may be liable for civil action or criminal prosecution if the requirements of the Act, such as keeping an audited register of financial products issued, are not met.
25. The Act also prohibits any member who has information about a listed company that is not generally available to the market, from trading in the company's shares or from disclosing that information.
26. The penalties for providing false or misleading statements in disclosure documents and insider trading carry the possibility of imprisonment.

Ngā kaiwaitohu

Signatories

Writer	Francis Ryan – Manager, Democratic Services
Approver	Luke Troy – General Manager, Strategy