



NAPIER
CITY COUNCIL
Te Kaunihera o Ahuriri

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EXTRAORDINARY MEETING OF COUNCIL

Open Agenda

Meeting Date: Monday 4 November 2019

Time: 5.30pm

Venue: Mission Estate, Chapel
198 Church Road
Poraiti
Napier

Council Members Mayor-Elect Wise

Councillors-Elect Boag, Brosnan, Browne, Chrystal, Crown,
Mawson, McGrath, Price, Simpson, Tapine, Taylor, Wright

Officer Responsible Chief Executive

*Under the Local Government Act 2002 schedule 7 (21)(4), the
Chief Executive must preside over the meeting proceedings until
the declaration of the Mayor-Elect.*

Administrator Governance Team

**Next Council Meeting
To be fixed at this meeting**

ORDER OF BUSINESS

Procession of Mayor and Councillors Elect

Mihi whakatau – Council Kaumatua

Welcome – Chief Executive

Declaration of the Mayor Elect

As required by the Local Government Act 2002 schedule 7 (14) and (21)(5)(a), the Mayor-Elect will make their oral declaration and attest their written declaration witnessed by the Chief Executive:

I [name], 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 Napier City, the powers, authorities, and duties vested in, or imposed upon, me as Mayor of the Napier City Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Her Worship the Mayor will then be presented with the chains of office.

On making her declaration, her Worship the Mayor becomes the presiding member of this meeting.

Declarations of the Councillors Elect

As required by the Local Government Act 2002 schedule 7 (14) and (21)(5)(a), the Councillors-Elect will make their oral declaration and attest their written declaration witnessed by her Worship the Mayor:

I [name], 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 Napier City, the powers, authorities, and duties vested in, or imposed upon, me as member of the Napier City Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Each Councillor will then be presented with the medallion of their office, and take their place at the Council table in preparation for the Inaugural business of Council.

Mayor's opening speech

Agenda items

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Celebration

Elected members and their guests are invited to join the Chief Executive and Senior Leadership of Council in a celebration of the new Council's inauguration.

AGENDA ITEMS

1. LEGISLATION AFFECTING ELECTED MEMBERS - GENERAL EXPLANATION

<i>Type of Report:</i>	Legal and Operational
<i>Legal Reference:</i>	Local Government Act 2002
<i>Document ID:</i>	837619
<i>Reporting Officer/s & Unit:</i>	Devorah Nícuarta-Smith, Team Leader Governance

1.1 Purpose of Report

To provide elected members with a general explanation of laws affecting members as per Schedule 7(21) Local Government Act 2002.

Officer's Recommendation

That Council:

- a. Particularly note the provisions and requirements outlined by
 - i. Local Government Official Information and Meetings Act 1987
 - ii. Local Authorities (Members' Interests) Act 1968
 - iii. Crimes Act 1961 sections 99, 105 and 105a
 - iv. Secret Commissions Act 1910
 - v. Financial Markets Conduct Act 2013

As per Schedule 7(21) Local Government Act 2002
- b. Note the obligations of the Privacy Act 1993 and Health and Safety at Work Act 2015
- c. Note the further national and local legislation affecting the activities of Napier City Council, a list of which is provided to members so they may familiarise themselves as required

Mayor's Recommendation

That the Council resolve that the officer's recommendation be adopted.

1.2 Background Summary

The Local Government Act 2002 requires that a general explanation be provided to all elected members of the provisions of the following legislation:

- Local Government Official Information and Meetings Act 1987
- Local Authorities (Members' Interests) Act 1968
- Crimes Act 1961 sections 99, 105 and 105a

- Secret Commissions Act 1910
- Financial Markets Conduct Act 2013

The Privacy Act 1993 outlines the requirements on an Agency (and all its representatives) in regards to the collation, storage, management and any release of personal information.

The Health and Safety at Work Act 2015 made substantial changes to New Zealand's health and safety management, and places particular obligations on "Officers", defined under the Act as any person occupying a position in relation to the business or undertaking that allows that person to exercise significant influence over the business or undertaking. For the purposes of the Act, elected members and the Chief Executive are considered "Officers".

A summary of each of these Acts is outlined below.

As well as the legislation above, Napier City Council activities are governed by many further statutory requirements; a full list of the national and local law impacting on Napier is shown at **Attachment A**.

Local Government Official Information and Meetings Act 1987

This Act requires Agencies (including local authorities) to maintain transparency and availability in relation to the information they hold, and to promote the open and public transaction of business at meetings, in order to enable better participation by the public in the actions and decisions made, and to increase accountability.

There are provisions within the Act to protect official information and business deliberations in some instances where making them public at that time would negatively affect the public interest or personal privacy.

The Office of the Ombudsman acts as the advisory and adjudicating body in relation to queries or complaints under this Act.

Official Information

All information held by Council, including that produced or held by elected members within the requirements of their role fall within the scope of this Act and may be requested.

Any requests for information received by elected members should be provided to the Chief Executive and or Governance Team as soon as possible for appropriate action under the Act, which specifies clear time frames that must be met for actions taken in relation to requests.

Meeting Procedures

The Act outlines several requirements for formal meetings of the Council (that is, a meeting where decisions, recommendations and or resolutions are made) including public notification, access to agendas and minutes, and attendance by the public. It makes provision for the maintenance of orderly conduct of the meeting as required.

It notes the instances where local authorities may exclude the public from a meeting or section of a meeting and how this must be handled.

Local Authorities (Members' Interests) Act 1968

This Act outlines that an elected member and their spouse/ partner cannot hold or have an interest in contracts with Council with a value of \$25,000 or more per year, with some caveats.

An elected member may not discuss or vote on any matter in which they or their spouse/ partner have a financial interest, with some caveats.

Penalties include fines and or automatic disqualification from office.

Crimes Act 1961 sections 99, 105 and 105a

This Act outlines penalties for officials (including any member of any local authority) who accept bribes or agree to accept bribes for actions taken or not taken in the course of their official duties. The bribe may be for themselves or another person. A bribe is defined as money, valuable consideration, office, or employment, or any benefit, whether direct or indirect.

There are also penalties for officials who corruptly use or disclose information obtained in an official capacity for financial gain for themselves or any other person.

Penalties include imprisonment up to 7 years.

Secret Commissions Act 1910

This Act states that an Agent (a term which includes elected members of a local authority) must not give or receive gifts or inducements to do or not do things in relation to the business of the Principal (being Council).

Agents must not divert, obstruct or interfere with the proper business of the Principal, and must not fail to use due diligence in conducting this proper business with the intent to gain any gift or consideration for themselves or any other person.

Agents must make known any financial interest they hold in any contracts undertaken by the Principal; this includes interests held by a spouse or partner, parent, child or business partner of the Agent.

It is an offence to produce false or incomplete receipts, invoices or other accounting documents with an intent to deceive the Principal of any payments that may have been made to the Agent.

It is an offence for Agents to receive any secret reward for facilitating particular contract procurement outcomes.

There are also penalties for aiding and abetting any of the offences under this Act.

Penalties under this Act include imprisonment up to 7 years.

Financial Markets Conduct Act 2013

This Act essentially places elected members in the same position as company directors whenever the Council offers financial products (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
- Any requirements under the Act are not met in relation to offers of financial products

Privacy Act 1993

The Privacy Act 1993 outlines Principles that must be followed by any Agency (and by association any representative of that Agency) in relation to personal information.

These Principles guide the purpose, source and manner of collecting personal information, the storage and protection of personal information including length of storage, the expectations in relation to accuracy of and corrections to information held, and the limits on use and any disclosure of personal information.

The Act also provides for complaints to be made to the Privacy Commissioner and outlines how these will be addressed, should someone feel these Principles have been breached.

As representatives of Council as an Agency, elected members must abide by the expectations of the Act in relation to any personal information they are privy to.

Council has appointed Privacy Officers as required under section 23 of the Act; these are the Team Leader Governance, the Manager People and Capability and the Manager Information Services.

Health and Safety at Work Act 2015

This Act requires 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, and 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.

One of the most significant changes with the implementation of this Act was the introduction of “Officers”, defined as any person occupying a position in relation to the business or undertaking that allows that person to exercise significant influence over the management of the business or undertaking.

Officers have obligations of due diligence, which are:

- to acquire, and keep up-to-date, knowledge of work health and safety matters
- 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
- 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
- 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
- to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act

- to verify the provision and use of the resources and processes referred to above.

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.

Elected members are not currently defined as officers under the Act. However elected members are encouraged to maintain a good understanding of health and safety matters in relation to Council, its' employees, contractors and the public.

1.3 Issues

If Elected Members have any questions or concerns in relation to legislation impacting on the activities of Council and their role during their term of office these should be discussed with the Chief Executive as soon as they arise.

1.4 Significance and Engagement

This report is prepared in accordance with the requirements of the Local Government Act 2002 for a Triennial meeting and does not trigger the Significance and Engagement Policy.

1.5 Implications

Financial

N/A

Social & Policy

N/A

Risk

N/A

1.6 Options

The options available to Council are as follows:

- a. To note the provisions and requirements of legislation on elected members as per the Local Government Act 2002

1.7 Development of Preferred Option

N/A

1.8 Attachments

- A Legislation particularly affecting Napier City Council [↓](#)

National legislation particularly affecting Napier City Council**Aa**

- Airport Authorities Act 1966
- Animal Identification Act 1993
- Animal Welfare Act 1999
- Animals Act 1967
- Animals Law Reform Act 1989

Bb

- Biosecurity Act 1993
- Building Act 2004
- Building Research Levy Act 1969
- Burial and Cremation Act 1964
- Bylaws Act 1910

Cc

- Citizenship Act 1977
- Civil Defence Emergency Management Act 2002
- Crimes Act 1961

Dd

- Dog Control Act 1996
- Dog Control Amendment Act 2003
- Dog Control and Hydatids Act 1982

Ee

- Electoral Act 1993

Ff

- Fencing of Swimming Pools Act 1987
- Financial Markets Conduct Act 2013
- Financial Reporting Act 1993
- Financial Transactions Reporting Act 1996
- Food Act 1981

Gg

- Gambling Act 2003

Hh

- Harbours Act 1950
- Hazardous Substances and New Organisms Act 1996
- Health and Safety at Work Act 2015

Ll

- Litter Act 1979
- Local Authorities (Members' Interests) Act 1968
- Local Electoral Act 2001
- Local Government (Rating) Act 2002
- Local Government Act 1974
- Local Government Act 2002
- Local Government Official Information and Meetings Act 1987
- Local Authorities (Members' Interests) Act 1968

Pp

- Public Records Act 2005
- Privacy Act 1993

Rr

- Rating Valuations Act 1998
- Receiverships Act 1993
- Reserves Act 1977
- Residential Tenancies Act 1986
- Resource Management Act 1991

Ss

- Sale and Supply of Alcohol Act 2012
- Secret Commissions Act 1910
- Securities Transfer Act 1991
- Smoke-free Environments Act 1990
- Soil Conservation and Rivers Control Act 1941
- Sovereign's Birthday Observance Act 1952
- Stamp and Cheque Duties Act 1971
- Standards Act 1988
- State-Owned Enterprises Act 1986
- Statistics Act 1975
- Statutes Amendment Acts 1936-51
- Statutory Land Charges Registration Act 1928
- Summary Offences Act 1981
- Summary Proceedings Act 1957
- Survey Act 1986

Local legislation affecting Napier City Council

- Hawke's Bay Endowment Land Empowering Act 2002
- Napier Borough Endowments Amendment Act 1999
- Napier City Council (Land) Empowering Act 1989
- Napier City Council (Sale of Liquor) Empowering Act 1993
- Napier Foreshore Act 1927
- Napier Foreshore Extension Act 1935
- Napier Foreshore Extension Act 1966
- Napier Harbour Board Act 1878
- Napier Harbour Board Amendment and Endowment Improvement Act 1887
- Napier Harbour Board Amendment and Endowment Improvement Act 1899
- Napier Harbour Board Amendment and Endowment Improvement Act 1912
- Napier Harbour Board and Napier Borough Enabling Act 1926
- Napier Harbour Board and Napier Borough Enabling Act 1933
- Napier Harbour Board and Napier Borough Enabling Act 1936
- Napier Harbour Board and Napier Borough Enabling Act 1945
- Napier Harbour Board and Napier Borough Enabling Amendment Act 1949
- Napier Harbour Board and Napier City Enabling Amendment Act 1965
- Napier Harbour Board and Napier City Enabling Amendment Act 1966
- Napier Harbour Board and Napier City (Inner Harbour) Subdivision Act 1966
- Napier Harbour Board Empowering Act 1932-33
- Napier Harbour Board Loan Act 1906
- Napier Public Baths Act 1908

2. FIXING OF THE DATE AND TIME OF THE FIRST ORDINARY MEETING OF COUNCIL

<i>Type of Report:</i>	Legal and Operational
<i>Legal Reference:</i>	Local Government Act 2002
<i>Document ID:</i>	837620
<i>Reporting Officer/s & Unit:</i>	Devorah Nícuarta-Smith, Team Leader Governance

2.1 Purpose of Report

To fix the date and time of the first Ordinary (business) meeting of Council as required under Schedule 7(21)(d) of the Local Government Act 2002.

Officer's Recommendation

That Council:

- a. Authorise the Chief Executive to call the first Ordinary meeting of Council for 1pm, Tuesday 19 November 2019

Mayor's Recommendation

That the Council resolve that the officer's recommendation be adopted.

2.2 Background Summary

The Local Government Act 2002 requires a Council to fix the time and date of its first Ordinary (business) meeting at its Triennial Meeting.

The Act also outlines the required length of time for public notification of the first business meeting; in order to meet these requirements and allow for the appropriate preparation of reports it is proposed that the first meeting be held at 1pm, Tuesday 19 November 2019.

Napier City Council formal meetings are currently hosted at the Hawke's Bay Regional Council Chamber, 159 Dalton Street, Napier.

It is noted that formal meetings after the first business meeting are intended to be held on Thursdays at 10am.

2.3 Issues

No issues

2.4 Significance and Engagement

This report is prepared in accordance with the requirements of the Local Government Act 2002 for a Triennial meeting and does not trigger the Significance and Engagement Policy.

2.5 Implications

Financial

N/A

Social & Policy

N/A

Risk

N/A

2.6 Options

The options available to Council are as follows:

- a. To authorise the first business meeting of Council to be held at 1pm, Tuesday 19 November 2019.
- b. To fix another date or time for the first business meeting, noting that there will be significant logistical implications for any adjustments to the recommendation.

2.7 Development of Preferred Option

It is recommended that the first business meeting be held at 1pm, Tuesday 19 November 2019 as this has been discussed and agreed with the Mayor- Elect, and negotiated with the Hawke's Bay Regional Council, and there may be considerable logistical implications to amendments at this time.

2.8 Attachments

Nil

3. VOTING SYSTEM FOR CONFIRMING ROLES AND RESPONSIBILITIES

<i>Type of Report:</i>	Legal and Operational
<i>Legal Reference:</i>	Local Government Act 2002
<i>Document ID:</i>	858490
<i>Reporting Officer/s & Unit:</i>	Devorah Nícuarta-Smith, Team Leader Governance

3.1 Purpose of Report

To adopt the voting system Council will use in relation to the election or appointments of the Deputy Mayor, Chairpersons and Deputy Chairpersons of any committees, and representatives of Council on other bodies.

Officer's Recommendation

That Council:

- a. Adopt Voting System B as outlined in the Local Government Act 2002 schedule 7 clause 25(4), and as required under schedule 7 clause 25 (1) and (2), for use in relation to the election or appointments of the Deputy Mayor, Chairpersons and Deputy Chairpersons of any committees, and representatives of Council on other bodies.
 - i. Voting System B:
 - a. requires that a person is elected or appointed if he or she receives more votes than any other candidate; and
 - b. has the following characteristics:
 - (i) there is only 1 round of voting; and
 - (ii) if 2 or more candidates tie for the most votes, the tie is resolved by lot.

Mayor's Recommendation

That the Council resolve that the officer's recommendation be adopted.

3.2 Background Summary

The Local Government Act 2002 ('LGA 2002') schedule 7 clause 25 requires that Council must determine by resolution which one of two voting systems will be used in relation to the election or appointments of the Deputy Mayor, Chairpersons and Deputy Chairpersons of any committees, and representatives of Council on other bodies.

System A is outlined in clause 25(3):

(a) requires that a person is elected or appointed if he or she receives the votes of a majority of the members of the local authority or committee present and voting; and

(b) has the following characteristics:

- (i) there is a first round of voting for all candidates; and
- (ii) if no candidate is successful in that round there is a second round of voting from which the candidate with the fewest votes in the first round is excluded; and

(iii) if no candidate is successful in the second round there is a third, and if necessary subsequent, round of voting from which, each time, the candidate with the fewest votes in the previous round is excluded; and

(iv) in any round of voting, if 2 or more candidates tie for the lowest number of votes, the person excluded from the next round is resolved by lot.

System B is outlined in clause 25(4):

(a) requires that a person is elected or appointed if he or she receives more votes than any other candidate; and

(b) has the following characteristics:

(i) there is only 1 round of voting; and

(ii) if 2 or more candidates tie for the most votes, the tie is resolved by lot

The appointment of the Deputy Mayor will be finalised at this Triennial meeting, as required under LGA 2002 schedule 7 clause 21; further appointments will be brought by the Mayor to future meetings for adoption.

It is proposed that Council adopt System B as the vehicle by which it addresses the Mayor's proposed appointees, as this System is easier to engage with and is closest to Council's typical simple majority voting practices.

3.3 Issues

No Issues

3.4 Significance and Engagement

This decision is required under the Local Government Act 2002 and does not trigger the Significance and Engagement Policy.

3.5 Implications

Financial

N/A

Social & Policy

N/A

Risk

N/A

3.6 Options

The options available to Council are as follows:

- a. To adopt voting System A as outlined in LGA 2002 schedule 7 clause 25(3)
- b. To adopt voting System B as outlined in LGA 2002 schedule 7 clause 25(4)

3.7 Development of Preferred Option

It is recommended that System B is adopted; it is easier to engage with, and most in line with Council's usual simple majority voting practices.

3.8 Attachments

Nil

4. APPOINTMENT OF DEPUTY MAYOR

<i>Type of Report:</i>	Legal and Operational
<i>Legal Reference:</i>	Local Government Act 2002
<i>Document ID:</i>	839535
<i>Reporting Officer/s & Unit:</i>	Devorah Nícuarta-Smith, Team Leader Governance

4.1 Purpose of Report

To present the Mayor's preferred appointment for Deputy Mayor as per section 41A of the Local Government Act 2002, for consideration by Council as per schedule 7 clauses 17 and 21 of the Local Government Act 2002.

Mayor's Recommendation

That Council:

- a. Endorse the appointment of Councillor Annette Brosnan as Deputy Mayor, as per section 41A and schedule 7 clauses 17 and 21 of the Local Government Act 2002

4.2 Background Summary

The Local Government Act 2002 allows a Mayor to appoint their Deputy Mayor under section 41A(3)(a).

However the appointment must be confirmed by all of Council under schedule 7 clause 17 of the same Act. This decision must be made at the Triennial Meeting of Council under schedule 7 clause 21 of the Local Government Act 2002 using the voting system agreed via the previous report.

Schedule 7 clause 17 also outlines the expectations on the appointed Deputy Mayor:

17 Election of deputy mayor or deputy chairperson

...

(3) The deputy mayor or deputy chairperson must perform all the responsibilities and duties, and may exercise all the powers, of the mayor or chairperson,—

(a) with the consent of the mayor or chairperson, at any time during the temporary absence of the mayor or chairperson:

(b) without that consent, at any time while the mayor or chairperson is prevented by illness or other cause from performing the responsibilities and duties, or exercising the powers, of his or her office:

(c) while there is a vacancy in the office of the mayor or chairperson.

(4) In the absence of proof to the contrary, a deputy mayor or deputy chairperson acting as mayor or chairperson is presumed to have the authority to do so.

(5) A deputy mayor or deputy chairperson continues to hold his or her office as deputy mayor or deputy chairperson, so long as he or she continues to be a

member of the territorial authority or regional council, until the election of his or her successor.

4.3 Issues

No issues.

4.4 Significance and Engagement

This matter is fully legislated by the Local Government Act 2002 and does not trigger the Significance and Engagement Policy.

4.5 Implications

Financial

N/A

Social & Policy

N/A

Risk

N/A

4.6 Options

The options available to Council are as follows:

- a. To endorse the appointment of the Mayor's preferred Deputy Mayor, being Councillor Annette Brosnan
- b. To select and appoint another candidate to the Deputy Mayoralty

4.7 Development of Preferred Option

N/A

4.8 Attachments

Nil