



A G E N D A

Council

Council Chambers

Thursday 24 October 2013
commencing at 9.00 am

His Worship the Mayor, M.T. Havill (**Chairperson**)
Councillors J.H. Butzbach, P.M. Cox, M.S. Dawson, D.G. Hope,
A.R. Keenan, L.J. Martin, M.D. Montagu, C.A. van Beek



INAUGURAL COUNCIL MEETING

INAUGURAL MEETING OF THE WESTLAND DISTRICT COUNCIL, TO BE HELD IN THE COUNCIL CHAMBERS, 36 WELD STREET, HOKITIKA ON THURSDAY 24 OCTOBER 2013 COMMENCING AT 9.00 AM

Tanya Winter
Chief Executive

24 October 2013

Council Vision

"Westland will, by 2030, be a world class tourist destination and have industries and businesses leading through innovation and service.

This will be achieved by:

- *Involving the community and stakeholders*
- *Having inspirational leadership*
- *Having expanded development opportunities*
- *Having top class infrastructure for all communities*
- *Living the '100% Pure NZ' brand*

"Westland, the last best place"

Purpose:

The Council is required to give effect to the purpose of local government as prescribed by section 10 of the Local Government Act 2002. That purpose is:

- (a) To enable democratic local decision-making and action, by and on behalf of, communities; and
- (b) To meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

1. STATUTORY BUSINESS:

1.1 Present and Apologies.

1.2 Declaration by His Worship The Mayor.

1.3 Short Address by His Worship The Mayor.

1.4 Declaration by Councillors.

1.5 Short Address by Individual Councillors.

1.6 Appointment of Deputy Mayor.

1.7 Council Meeting Schedule for the remainder of 2013. (Pages 4-7)

1.8 Legislative Advice to the incoming Council. (Pages 8-18)

**Date of First Ordinary Council Meeting
Thursday 31 October 2013
commencing at 9.00 am**

Report



DATE: 24 October 2013
TO: Mayor and Councillors
FROM: Chief Executive

COUNCIL MEETING SCHEDULE FOR THE REMAINDER OF 2013

1.0 SUMMARY

- 1.1 The purpose of this report is to adopt a schedule of Council meetings for the remainder of 2013.
- 1.2 This issue arises from a requirement in the Local Government Act 2002 to determine the date of the first meeting of Council at the inaugural Council meeting.
- 1.3 The Council is required to give effect to the purpose of local government as prescribed by section 10 of the Local Government Act 2002. That purpose is:
 - (c) To enable democratic local decision-making and action, by and on behalf of, communities; and
 - (d) To meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.
- 1.4 Council seeks to meet this obligation and the achievement of the district vision set out in the Long Term Plan 2012-22. The matters raised in this report relate to those elements of the vision identified in the following table.

| Vision's Objectives | Achieved By |
|---------------------------------|---|
| Having inspirational leadership | Complying with the legislative requirements at the inaugural Council meeting. |

- 1.5 This report concludes by recommending that Council adopt the meeting schedule attached as **Appendix 1**.

2.0 BACKGROUND

2.1 Under the Local Government Act 2002 Council is required at their inaugural meeting to fix the date and time of the first meeting of the local authority, or adopt a schedule of meetings.

2.2 In the last triennium Council was meeting monthly, and the attached meeting schedule proposed that this arrangement be continued at least for the remainder of 2013 and until a committee structure is confirmed.

3.0 CURRENT SITUATION

3.1 In accordance with the LGA 2002 Council must at the minimum determine the date for the first Council meeting. It is proposed that this be 31 October 2013.

4.0 OPTIONS

4.1 Adopt the schedule of meetings for the remainder of 2013 as attached in **Appendix 1**.

4.2 Amend the schedule.

5.0 SIGNIFICANCE AND CONSULTATION

5.1 This matter is administrative and is therefore in accordance with Council's Policy on Significance is assessed as being of low significance.

5.2 No consultation is required this decision.

6.0 ASSESSMENT OF OPTIONS (INCLUDING FINANCIAL IMPLICATIONS)

6.1 The meeting on 31 October 2013 must be confirmed. This is when the Annual Report 2012-13 will be adopted by Council and it is the statutory deadline for this.

6.2 Changing the rest of the schedule will mean that Council needs to confirm alternative dates for meetings. This will need to be done immediately so that diaries can be amended and the public notified.

7.0 PREFERRED OPTION AND REASONS

7.1 The preferred option is to adopt the schedule as it is. This will mean that the public can be advised of the meeting schedule, and staff are able to plan their workloads accordingly.

8.0 RECOMMENDATION

A) **THAT** Council adopted the schedule of meetings for the remainder of 2013 as attached in **Appendix 1**.

Appendix 1: Meeting Schedule for 2013

Tanya Winter
Chief Executive

Appendix 1

Meeting Schedule for 2013

| | | |
|-------------|--------------------------|---------|
| 31 October | Ordinary Council Meeting | 9.00 am |
| 28 November | Council Meeting | 9.00 am |
| 19 December | Council Meeting | 9.00 am |

Report



DATE: 24 October 2013
TO: Mayor and Councillors
FROM: Chief Executive

LEGISLATIVE ADVICE TO THE INCOMING COUNCIL

1.0 SUMMARY

- 1.1 The purpose of this report is to provide the Council with an overview of key legislation that you need to be aware of and have an understanding of in your role as an elected member.
- 1.2 This issue arises from a legislative requirement to ensure that at the inaugural Council meeting elected members are aware of the statutory framework that they will operate in.
- 1.3 The Council is required to give effect to the purpose of local government as prescribed by section 10 of the Local Government Act 2002. That purpose is:
- (e) To enable democratic local decision-making and action, by and on behalf of, communities; and
 - (f) To meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.
- 1.4 Council seeks to meet this obligation and the achievement of the district vision set out in the Long Term Plan 2012-22. The matters raised in this report relate to those elements of the vision identified in the following table.

| Vision's Objectives | Achieved By |
|---------------------------------|--|
| Having inspirational leadership | Ensuring elected members are well equipped to perform their leadership roles |

- 1.5 This report concludes by recommending that Council receives this report.

2.0 BACKGROUND

- 2.1 There are certain legal provisions which elected members must be aware of to avoid a risk of disqualification from office. There is also a requirement to have these brought to members attention at the Inaugural meeting of the Council under Clause 21 (5) of Schedule 7 of the Local Government Act 2002.
- 2.2 A range of information has been provided to elected members in their induction packs which cover this material in more depth including:
- Elected Members' Governance Handbook 2013 - Local Government New Zealand publication (copy already provided)
 - Code of Conduct (copy already provided)
 - [Guidance for members of local authorities about the Local Authorities \(Members' Interests\) Act 1968](#)
 - [Managing conflicts of interest: guidance for public entities](#)
- 2.3 In-house training during November and December 2013 will also cover in detail the roles and responsibilities of elected members, the Code of Conduct and decision-making and consultation processes under the Local Government Act 2002.
- 2.4 This in-house training combined with the Newly Elected Members training courses in November 2013 will set the legislative framework within which the Council works and provide an understanding of the roles and responsibilities of an elected member.

3.0 CURRENT SITUATION

- 3.1 Council members took up office when the public declaration was made after the triennial local body elections on 12 October 2013.
- 3.2 This report fulfils the requirements of Clause 21 (5) of Schedule 7 of the Local Government Act 2002 by providing information on the following legislation:
- 3.2.1 [Local Government Official Information and Meetings Act 1987](#)
 - 3.2.2 [Local Authority \(Members' Interests\) Act 1968](#)
 - 3.2.3 [Crimes Act 1961 - Sections 99, 105 and 105A](#)
 - 3.2.4 [Secret Commissions Act 1910](#)
- 3.3 It also provides information on other pieces of key legislation:

3.3.1 [Local Government Act 2002](#)

3.3.2 [Protected Disclosures Act 2000](#)

3.4 A summary of the above legislation is provided in **Appendix 1**.

4.0 OPTIONS

4.1 There are no options. Council is being asked to receive the information only.

5.0 SIGNIFICANCE AND CONSULTATION

5.1 This matter is administrative and is therefore in accordance with Council's Policy on Significance is assessed as being of low significance.

5.2 No consultation is required this decision.

6.0 RECOMMENDATION

A) **THAT** the report 'Legislative Advice to the Incoming Council' be received.

Appendix 1: Summary of legislation

Tanya Winter
Chief Executive

APPENDIX 1: SUMMARY OF LEGISLATION

1. LOCAL GOVERNMENT ACT 2002

The Local Government Act 2002 spells out local government's purpose, its general powers, its specific by-law making powers and the principles and processes that councils must abide by when making decisions.

The Local Government Act 2002 is based on the principle of general competency, which enables a council to do whatever is necessary to fulfil its role. Within this framework, there is a considerable degree of flexibility in deciding what activities are undertaken and how they are carried out. It states that the overall role of the Council is to ensure democratic local decision-making and action by, and on behalf of, communities.

The purpose of local government is defined in section 10 of the LGA 2002 and states

"The purpose of local government is:

- (a) To enable democratic local decision-making and action by, and on behalf of, communities; and*
- (b) To meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses."*

Good-quality is defined as *"efficient, effective and appropriate to present and anticipated future demand"*.

As elected Council representatives you are responsible for making key policy decisions that guide our activities and provide the direction for our District's future. The Westland District Council carries out a number of functions, responsibilities and activities which include:

- Constructing, managing and maintaining local infrastructure on behalf of the community. This infrastructure includes: roads, water supply, sewage disposal, refuse collection and disposal, and stormwater drainage.
- Providing and maintaining community facilities and assets which include: parks and gardens, library, community halls, museum, cemeteries, swimming pools, and public toilets.
- Planning for the future needs of the district.
- Managing the environment for present and future residents.
- Undertaking a regulatory role to ensure that residents have a safe, desirable and healthy environment in which to live.

- Advocacy on behalf of the local community with central government, other local authorities and other agencies.
- Promoting and facilitating development of the district that will benefit residents, and providing a comprehensive visitor information service.

2. LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987 (LGOIMA)

LGOIMA provides for all local government activities to take place in an open and transparent environment. It also specifies that, generally, all information held by a local authority in any form should be available to the public. The purpose of LGOIMA is to enable more effective participation by the public in the actions and decisions of local authorities and to promote the accountability of local authority members and officials with a view to enhancing respect for the law and promote good local government in New Zealand.

There are two aspects to this Act:

- Access to Local Authority Information; and
- Local Authority meetings

A brief overview of these provisions is provided in the following paragraphs.

2.1 Access to Local Authority Information

Generally, all information held by a local authority in any form should be available to the public. However, LGOIMA does provide that certain material does not constitute “information” for the purposes of the Act. This includes library or museum material, information acquired solely for reference or exhibition purposes, information held by the Council as agent for the purpose of safe custody and correspondence with the Ombudsman relating to a matter under investigation by that office.

It also sets out certain reasons that a Council might rely on to withhold particular information, such as the protection of privacy, commercial advantage, protection of negotiations, and the like.

LGOIMA provides for anyone to have the right to request information held by the Council and that if any such request is refused the applicant has the right of appeal to the Ombudsman. The Ombudsman will then consider the request; the nature and content of the information concerned and the grounds relied on for refusing to provide it. If the Ombudsman believes that some or all of the information should be released, they will recommend a course of action to the Council. It is then up to the Council to decide what to do. The Council’s decision is reviewable by the High Court.

Another requirement of the Act is that Council publish a document outlining its functions and giving a general description of the information held by it. This material is published through the Local Governance Statement which is required to be updated within six months following each election. The Local Governance Statement is publicly

available on the Council's website however it will need to be updated following the Council's decision on its governance structure for 2013-16.

LGOIMA specifically provides that there will be no liability on Councillors for any information released in good faith under the legislation. It should be noted however that the Privacy Act places strict limitations on Council in respect of the release of information relating to private individuals and this must be seen as curtailing the general rule.

Under LGOIMA the authority to make decisions regarding whether information should be released is delegated to the Chief Executive.

As a general rule, any information contained in the open section of any agenda (e.g. the white pages that are not headed "confidential") is already in the public domain. Any information marked "public excluded" or "confidential" (e.g. the pink pages) should not be released or discussed outside the meeting concerned. If, as an elected member, you are asked to provide any such information to a third party you should refer the request to either myself or to the Group Manager responsible for the report. Should an elected member release confidential information and should the Council suffer any loss as a result, the member may become personally liable for the Council's loss if it can be shown that the member was not acting in good faith.

2.2 Local Authority Meetings

LGOIMA provides that all meetings of Council, which includes meetings of its committees, shall be open to the public unless certain specified reasons can be satisfied for excluding them.

These reasons are basically the same as for withholding information and are set out within Section 48 of the Act. It is necessary for the meeting to be satisfied that any one or more of these reasons exist before the public is excluded. Staff will provide guidance and suggestions where it may be considered to be appropriate for the Council or for one of its committees to meet with the public excluded.

LGOIMA also enables the Mayor (or Chairperson in the case of committees) to introduce an item that is not on the agenda as long as there is a clear reason why the item is not on the agenda and why it cannot wait until the next meeting. A formal resolution, including reasons must then be passed to receive and consider the item. This relates to major and urgent matters only. The Council is still subject to the requirements of the decision making processes as set out in the Local Government Act 2002. LGOIMA states that in terms of minor matters, no resolution, decision or recommendation may be made in respect of that item except to refer it to a subsequent meeting of the local authority for further discussion. This requirement is not intended to make the decision making process any more difficult or protracted than necessary but to ensure transparency.

Agendas for Council and Committee meetings have to be made available to the public two clear working days before the day of the meeting. The agendas are published on the

Council website www.westland.govt.nz . Copies of agendas are also available from the council office and public library.

Other provisions of the LGOIMA require meetings to be publicly notified and provide that any matter including defamatory matter published in any agenda, or oral statements made at any meeting are privileged unless proven to have been made with malice.

3. LOCAL AUTHORITY (MEMBERS' INTERESTS) ACT 1968

The Local Authority (Members' Interests) Act 1968 helps to protect the integrity of local authority decision-making by ensuring that Councillors are not affected by personal motives when they participate in Council decision-making and cannot use their position to obtain preferential access to contracts.

This Act deals with two forms of "interest", pecuniary interest and non-pecuniary interest.

3.1 Pecuniary interest

The two specific rules in the Act are that members cannot:

1. Enter into contracts with their local authority worth more than \$25,000 (including GST) in a financial year unless the Auditor-General approves the contracts (referred to as the contracting rule). Breach of this rule results in automatic disqualification from office; and
2. Participate in matters before the Council in which they have a pecuniary interest, other than an interest in common with the public (referred to as the participation rule). Breach of this rule is a criminal offence and conviction results in automatic disqualification from office

A pecuniary interest is one that involves money. This could be direct or indirect. It is sometimes difficult to decide whether an interest in a particular matter is pecuniary or some other kind. It is always the responsibility of elected members to make this decision, to declare any interest when appropriate and to ensure that as an elected member you comply with the Act's requirements at all times.

The Act generally provides that no person shall be capable of being a member of Council if that person is concerned or interested in any contracts with the Council where the total payments made by the Council in respect of such contracts exceeds \$25,000 in any one financial year. The Act also provides that an "interest" exists where a member's spouse is involved and/or where a member or their spouse is a major shareholder or have control or management of a company which contracts with Council or where the company has a pecuniary interest in the decision. It may also apply where your family trust has a contract with the Council. The Act does provide that on application to it the Office of the Auditor General may give specific approval to a member being concerned or interested in a particular contract, in which case the provisions of the Act will not

disqualify the Councillor from remaining in office. The approval needs to be gained before the contract concerned is entered into.

The Act also requires that a member shall not vote or take part in the discussion of any matter in which he/she has any pecuniary interest, other than an interest in common with the public. Though not an absolute requirement of the Act, the Council's Standing Orders require that, where a member declares an interest in the issue being debated, the member must withdraw from the Council Chambers. This interest is required to be declared by the member and is noted in the minutes.

The Office of the Auditor General is the agency, which oversees this legislation and it also has the responsibility and power to institute proceedings against any member. The Act does not define pecuniary interest, however the Office of the Auditor-General uses the following test:

"Whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned."

In deciding whether you have a pecuniary interest you should consider the following factors:

- What is the nature of the decision being made?
- Do I have a financial interest in that decision – do I have a reasonable expectation of gain or loss of money as a result of making that decision?
- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the Act apply to me?
- Could I apply to the Auditor-General for approval to participate?

Further guidance is provided in the booklet "Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968" - the website link is included in this report. It is important that you pay particular attention to the contents of this document as this is one of the few areas of the Council's business where staff do not set out to provide pro-active advice and members are personally liable for compliance with the provisions of this Act.

3.2 Non-pecuniary interest

Non-pecuniary interest is any interest the member may have in an issue that does not involve money. A common term for this is "bias". Rules about bias operate not only to ensure that there is no actual bias, but also so there is no appearance or possibility of bias. The principle is that justice should not only be done, but it should be seen to be done. Bias may be exhibited where:-

- By their statements or conduct a member may indicate that they have predetermined the matter before hearing or considering all of the relevant information on it (including the Council's debate); or
- The member has a close relationship with an individual or organisation affected by the matter.

Non-pecuniary interest is a difficult issue as it often involves matters of perception and degree. The question you need to consider, drawn from case law, is:

“Is there, to a reasonable, fair-minded and informed observer, a real indication of bias on the part of a member of the decision making body, in the sense that they might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?”

If there is, the member should declare their interest and withdraw from the debate. The law about bias does not put you at risk of personal liability. Instead, the validity of the Council’s decision could be at risk. The need for public confidence in the decision-making process is paramount and perception can be an important factor.

Again the document provided by Office of the Auditor General provides some excellent advice and information on this issue. General guidance is if you feel that you may have an “interest” in any matter before the Council or a Committee of which you are a member then you should discuss the issue with your lawyer (at no cost to the Council), the Mayor, the Committee Chair or CE before the meeting. While this will not relieve you of your obligations under the Act it will provide you with some independent guidance.

The Council has adopted the recommendation of the Office of the Controller and Auditor General and has asked all elected members to make a written declaration of their personal and financial interests that may at times conflict with their role as an elected member. This information will be kept in a "Register of Interests". The Register of Interests is a document that is made available for public inspection upon request. Members are responsible for keeping their written declarations up to date at all times. In addition Members will be reminded on an annual basis to update their declaration.

4. CRIMES ACT 1961: SECTIONS 99, 105 & 105A

Under this Act it is unlawful for an elected member (or officer) to:

- Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of the Council
- Use information gained in the course of their duties for their, or another person’s monetary gain or advantage.

Section 99 of the Crimes Act 1961 defines a member or employee of a local authority as an official. For the avoidance of doubt and for the purposes of this Act this means that each elected member of the Council is considered to be an official of the Council. Section 99 also defines a “bribe” as being “any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect”. The words “or indirect” open this definition considerably, e.g. an offer of employment to a son or a daughter could be construed as amounting to being a bribe so members need to be aware of their exposure under this Act through other family members.

Section 105 and 105A provide:-

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) *Everyone 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.

The Act will include a clause that makes these provisions gender neutral. As elected members are deemed to be “officials” for the purposes of this Act and you are therefore subject to these penalties if you are found to be in breach of them. Such a conviction would also have the consequences of loss of office in terms of Clause 1 of Schedule 7 of the Local Government Act 2002 (which disqualifies a Member who is convicted of an offence punishable by a term of imprisonment of two years or more).

5. **SECRET COMMISSIONS ACT 1910**

This Act basically establishes offences relating to the giving, receiving or soliciting of gifts or other consideration as an inducement or reward for doing or forbearing to do something in relation to the affairs of the Council, or showing or having shown favour or disfavour to any person in relation to the Council’s affairs or business (section 4(1)). It applies to elected members and covers any such gifts given, received or solicited by “any parent, husband, wife, or child of any agent, or to his partner, clerk, or servant, or (at the agent’s request or suggestion) to any other person”.

The Act makes it an offence for any agent (for the purposes of the Act an elected member is deemed to be an “Agent” of the Council) (section 16(1)(b)) to accept gifts without the consent of the principal (the Council), not to disclose a pecuniary interest in any contract which the agent makes on behalf of the principal, or who knowingly delivers to their principal a false receipt, invoice, account or other document in relation to the principal’s business. It is an offence to divert, obstruct, or interfere with the proper course of the affairs or business of the Council, or to fail 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)).

It also provides that it is an offence for any person to advise a party to enter into a contract with a third party and to receive gifts or consideration from that third party as

reward for procuring the contract, unless that person is known by the party to be the agent of that third party. It further provides that the act of aiding or abetting or in any way facilitating an offence against the Act is itself an offence.

Prosecutions made for offences under this Act require the approval of the Attorney-General who has the power to decide whether any such prosecution shall be dealt with as an indictable offence or as one punishable on summary conviction. If any such offence is treated as an indictable offence penalties for individuals include up to two years imprisonment or a fine of up to \$1,000.00. Such a conviction would also have the consequences of loss of office in terms of Clause 1 of Schedule 7 of the Local Government Act 2002. For a summary offence the penalties include a period of up to 3 months imprisonment or a fine of up to \$100.00.

6. PROTECTED DISCLOSURES ACT 2000 (WHISTLE-BLOWER PROTECTION)

The Protected Disclosures Act 2000 was amended in May 2009 to provide protection to elected members. Under the Act the definition of an employee of a public sector organisation (PSO) includes elected members of a local authority.

Under the Act an employee who discloses information about a serious wrongdoing by the PSO is protected from civil or criminal liability that might arise from such a disclosure and from retaliatory action against the employee. Serious wrongdoing under the Act includes unlawful or irregular use of funds or resources, conduct that risks public health and safety; conduct that risks the maintenance of law; conduct that constitutes an offence; and oppressive, improper discriminatory conduct, gross negligence or gross mismanagement by a public official.

Protection under the Act applies where an employee has information about a serious wrongdoing; a reasonable belief that the information is true or likely to be true; the employee wishes to have the matter investigated; and desires protection under the Act.

The Act requires disclosure by an employee to follow the internal procedures of the PSO. The Council is required to establish internal procedures to address the receipt of and dealing with information about serious wrongdoing in or by the Council. Council has an internal Protected Disclosures Policy and Procedure for staff.