

Council Meeting Agenda 23 October 2019



Meeting to be conducted at 10:00 a.m. in the Council Chamber
Level 2, Philip Laing House, 144 Rattray Street, Dunedin

Membership:

Cr Hilary Calvert	Cr Michael Laws
Cr Michael Deaker	Cr Kevin Malcolm
Cr Alexa Forbes	Cr Andrew Noone
Cr Marian Hobbs	Cr Gretchen Robertson
Cr Carmen Hope	Cr Bryan Scott
Cr Gary Kelliher	Cr Kate Wilson

Senior Officer: Sarah Gardner, Chief Executive

23 October 2019 10:00 AM

Agenda Topic	Page
1. APOLOGIES No apologies have been notified.	
2. CONFIRMATION OF AGENDA Note: Any additions must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting.	
3. DECLARATION OF INTEREST Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have.	
4. PUBLIC FORUM No requests to address the Council have been received.	
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5.1 Declaration of Office by Councillors Councillors-elect will take the declaration as required by Schedule 7, Clause 14 of the Local Govt Act 2002	3
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7. INTRODUCTORY FROM COUNCILLORS	
The Councillors will be provided time for introductory remarks.	
8. CLOSURE	

5.1. Declaration of Office by Councillors

Prepared for: Council

Report No. GOV1857

Activity: Governance Report

Author: Liz Spector, Committee Secretary

Endorsed by: Sarah Gardner, Chief Executive

Date: 13 October 2019

PURPOSE

- [1] Councillors-elect will take the declaration as required by Schedule 7, Clause 14 of the Local Government Act 2002.

ATTACHMENTS

1. Councillors' declaration Certificate 2019 [5.1.1 - 2 pages]



I, _____, 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 Otago region, the powers, authorities, and duties vested in, or imposed upon, me as a member of the Otago Regional Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Dated at Dunedin this **23rd** day of **October 2019**

Signature

**Signed in the presence of
Sarah Gardner, Chief Executive**



I, _____, 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 Otago region, the powers, authorities, and duties vested in, or imposed upon, me as a member of the Otago Regional Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Dated at Dunedin this **23rd** day of **October 2019**

Signature

**Signed in the presence of
Sarah Gardner, Chief Executive**

5.2. Voting System for Certain Appointments

Prepared for: Council

Report No. GOV1852

Activity: Governance Report

Author: Liz Spector, Committee Secretary

Endorsed by: Sarah Gardner, Chief Executive

Date: 15 October 2019

PURPOSE

- [1] To inform the councillors of the two voting options for the election of the chairperson, deputy chairperson, chairperson and deputy chairperson of a committee, and any appointment of a representative of a local authority, as defined by Schedule 7, Sec 25 of the Local Government Act 2002 (the Act). Once the voting procedure has been determined, the Chief Executive will then call for nominations for Chairperson.

EXECUTIVE SUMMARY

- [2] Business that must be conducted at the first meeting of Council after the triennial general election includes the election of the chairperson and deputy chairperson. Clause 25 of the Act requires by resolution that a person be elected or appointed using one of the following systems of voting:

1. System A

- 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 two or more candidates tie for the lowest number of votes, the person excluded from the next round is resolved by lot.

2. 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 two or more candidates tie for the most votes, the tie is resolved by lot.

- [3] The Council can choose either of the two voting systems described above for the appointments or elections. The Council is entitled to adopt different systems for each of the elections or appointments, however, it is suggested that the Council adopt the same procedure for all appointments for reasons of practicality.

RECOMMENDATION

That the Council:

- 1) **Resolves** a voting option for the election or appointment of positions defined by the Local Government Act 2002 as certain appointments, either:
 - a) Voting system A (election by the majority of members)
 - or
 - b) Voting system B (election by the majority of members)
- 2) **Agrees** that in the event of a tie between voting systems A and B, it will be resolved by lot as described in paragraph 5 of the report.
- 3) **Agrees** that in the event of a tie under voting system A, the candidate to be excluded from the next round of voting shall be resolved by lot as described in paragraph 5 of the report.
- 4) **Agrees** that in the event of a tie under voting system B, the candidate to be elected or appointed shall be resolved by lot as described in paragraph 5 of the report.

DISCUSSION

- [4] The Chief Executive will call for nominations for the voting systems and shall seek a mover and a seconder. Standing orders shall apply.
- [5] Both systems require a resolution by lot if two or more candidates receive an equal number of votes and no one else is elected. Consideration of the method of resolution by lot is required. It is recommended for names to be placed in a container with the name drawn out by an independent person declared the winner, or not excluded from the next round.
- [6] The Act requires that any decision by a local authority must be decided by open voting. The method of voting shall be by voice or by show of hands, the result of which, as announced by the Chief Executive, shall be conclusive unless such announcement is questioned immediately, in which case the Chief Executive will call for a division. If called, the Chief Executive will take note of the individual votes, declaring the result.
- [7] If the nominated system is voted down and the alternative system has not been nominated, the Chief Executive will call for nominations for that system. Once that system is moved and seconded, it shall be declared the winner. If neither system is resolved, the system will be determined by lot.
- [8] Once the system of voting has been resolved, the Chief Executive will call for nominations for Chairperson.

ATTACHMENTS

Nil

5.3. Election of Chairperson

Prepared for:	Council
Report No.	GOV1858
Activity:	Governance Report
Author:	Liz Spector, Committee Secretary
Endorsed by:	Sarah Gardner, Chief Executive
Date:	14 October 2019

PURPOSE

- [1] To receive nominations for and election of a Chairperson.

EXECUTIVE SUMMARY

- [2] Once the voting procedure has been resolved, the Chief Executive will call for nominations for the office of Chairperson. Each nominated person will be given the opportunity to speak to their nomination prior to a vote.
- [3] The Chief Executive shall call for a motion to vote for the Chairperson, in accordance with the system resolved. Standing orders shall apply. Councillors shall vote for one nominated candidate.
- [4] Once elected, the Chairperson must make and attest to the declaration required under Schedule 7, Clause 14 of the Local Government Act 2002. After making the declaration, the newly elected Chairperson shall take the chair for the rest of the meeting.
- [5] Election of the Deputy Chairperson will proceed after the Chairperson takes the chair.

5.4. Election of Deputy Chairperson

Prepared for:	Council
Report No.	GOV1859
Activity:	Governance Report
Author:	Liz Spector, Committee Secretary
Endorsed by:	Sarah Gardner, Chief Executive
Date:	14 October 2019

PURPOSE

- [1] To receive nominations for and elect a Deputy Chairperson.

EXECUTIVE SUMMARY

- [2] The elected Chairperson will call for a motion to vote for the Deputy Chairperson, in accordance with the voting system resolved. Standing orders shall apply. Councillors shall vote for one nominated candidate.

5.5. Adoption of Meeting Date Schedule to December 2020

Prepared for: Council
Report No. GOV1860
Activity: Governance Report
Author: Liz Spector, Committee Secretary
Endorsed by: Sarah Gardner, Chief Executive
Date: 14 October 2019

PURPOSE

- [1] A draft schedule of Council and Committee meetings has been prepared and is submitted to Council for consideration.

EXECUTIVE SUMMARY

- [2] A proposed meeting schedule through 31 December 2020 is attached.
- [3] The schedule is based on a six-week cycle with Council meetings scheduled three weeks after the Committee meetings. Statutory holidays are also referenced. There are eight Council and Committee rounds for 2020 which is consistent with the number of meetings held in previous years.
- [4] The schedule proposes one day for Council and Committee meetings. A full agenda will be prepared and notified no less than two clear working days prior to each meeting. It is suggested Council meetings start at 1 p.m. When additional time is required for workshops or additional business to be transacted, a second day may be added following the scheduled meeting date. For those traveling from out of town, overnight accommodation will be provided upon request.

RECOMMENDATION

That the Council:

- 1) **Adopts** the attached draft Schedule of Council and Committee meetings to December 2020.

BACKGROUND

- [5] The Local Government Act generally requires 14 days' notice of meetings. Provision is also made to adopt a schedule of meetings, to obviate the need for the notice formality. A schedule also provides Councillors with the knowledge of meetings for the year in order

ATTACHMENTS

1. Proposed Meeting Schedule 2020 [5.5.1 - 2 pages]

SCHEDULE OF PROPOSED ORDINARY COUNCIL AND COMMITTEE MEETINGS
OCTOBER 2019 - DECEMBER 2020

DATE	DAY	MEETING	NOTES
30 OCTOBER 2019	WED	COUNCIL/WORKSHOPS	
31 OCTOBER	THURS	INDUCTION DAY	
12 NOVEMBER	TUESDAY	STRATEGIC RETREAT	9 - 3 P.M.
13 NOVEMBER	WED	COUNCIL/INDUCTION	
11 DECEMBER	WED	COUNCIL/INDUCTION	
29 JANUARY 2020	WED	COMMITTEES/WORKSHOPS	
30 JANUARY	THURS	COMMITTEES/WORKSHOPS	
6 FEBRUARY	THURS		WAITANGI DAY
19 FEBRUARY	WED	COUNCIL/WORKSHOPS	
20 FEBRUARY	THURS	WORKSHOPS	
11 MARCH	WED	COMMITTEES/WORKSHOPS	
12 MARCH	THURS	COMMITTEES/WORKSHOPS	
23 MARCH	MON	OTAGO ANNIVERSARY DAY - OBSERVED EASTER TUESDAY	
1 APRIL	WED	COUNCIL/WORKSHOPS	
2 APRIL	THURS	WORKSHOPS	
10 APRIL	FRIDAY		GOOD FRIDAY
13 APRIL	MONDAY		EASTER MONDAY
14 APRIL	TUESDAY		EASTER TUESDAY
22 APRIL	WED	COMMITTEES/WORKSHOPS	
23 APRIL	THURS	COMMITTEES/WORKSHOPS	
27 APRIL	MONDAY		ANZAC DAY (OBSERVED)
13 MAY	WED	COUNCIL/WORKSHOPS	
14 MAY	THURS	WORKSHOPS	
1 JUNE	MON		QUEEN'S BIRTHDAY
3 JUNE	WED	COMMITTEES/WORKSHOPS	
4 JUNE	THURS	COMMITTEES/WORKSHOPS	
24 JUNE	WED	COUNCIL/WORKSHOPS	
25 JUNE	THURS	WORKSHOPS	
15 JULY	WED	COMMITTEES/WORKSHOPS	
16 JULY	THURS	COMMITTEES/WORKSHOPS	
5 AUGUST	WED	COUNCIL/WORKSHOPS	
6 AUGUST	THURS	WORKSHOPS	
26 AUGUST	WED	COMMITTEES/WORKSHOPS	
27 AUGUST	THURS	COMMITTEES/WORKSHOPS	
16 SEPTEMBER	WED	COUNCIL/WORKSHOPS	

DATE	DAY	MEETING	NOTES
17 SEPTEMBER	THURS	WORKSHOPS	
7 OCTOBER	WED	COMMITTEES/WORKSHOPS	
8 OCTOBER	THURS	COMMITTEES/WORKSHOPS	
26 OCTOBER	MONDAY		LABOUR DAY
28 OCTOBER	WED	COUNCIL/WORKSHOPS	
29 OCTOBER	THURS	WORKSHOPS	
18 NOVEMBER	WED	COMMITTEES/WORKSHOPS	
19 NOVEMBER	THURS	COMMITTEES/WORKSHOPS	
9 DECEMBER	WED	COUNCIL/WORKSHOPS	
10 DECEMBER	THURS	WORKSHOPS	

6.1. Key Legislation Update (LGA 2002)

Prepared for:	Council
Report No.	GOV1861
Activity:	Councillor Induction Report
Author:	Paul Beverley, Buddle Findlay
Endorsed by:	Sarah Gardner, Chief Executive
Date:	16 October 2019

PURPOSE

1. The purpose of this report is to provide the Council with a summary of the legislative requirements that the Otago Regional Councillors ("**Councillors**") need to be aware of and understand as elected members of the Council.
2. This report is a summary only and does not include detailed legal advice on all of the relevant statutory provisions.

EXECUTIVE SUMMARY

3. Clause 21(5)(c) of schedule 7 of the Local Government Act ("**LGA**") requires that certain legislation must be brought to the attention of Councillors at its first meeting.
4. This report summarises selected aspects of the following legislation:
 - LGA;
 - Local Government Official Information and Meetings Act 1987 ("**LGOIMA**");
 - Local Authorities (Members' Interests) Act 1968;
 - Crimes Act 1961;
 - Secret Commissions Act 1910;
 - Financial Markets Conduct Act 2013;
 - Protected Disclosures Act 2000;
 - Health and Safety at Work Act 2015; and
 - Resource Management Act 1991 ("**RMA**").

RECOMMENDATION

That the Council:

5. **Receives** this report and the information contained in the attached Summary of legislation affecting Councillors.

BACKGROUND

6. At the first Council meeting following an election there is certain legislation that must be brought to the attention of the Councillors in accordance with clause 21(5)(c) of Schedule 7 of the LGA.

ISSUE

7. [as above]

DISCUSSION

8. At the first meeting, an overview will be provided of the legislation that is summarised in the Summary of legislation affecting Councillors, attached.
9. An overarching summary of that legislation is provided below.
10. Councillors should ensure that they are aware of:
 - the Council's purpose and powers under the LGA; and
 - the provisions in the LGA concerning personal liability, including the circumstances where they will not be indemnified by the Council.
11. The principle of open and transparent Council business that underpins the LGOIMA means that the starting position, subject to limited exceptions, is that:
 - official information is publicly available;
 - meetings are open to the public and are publicly notified; and
 - agendas, reports and minutes are publicly available.
12. The Local Authority (Members' Interest) Act prevents Councillors' pecuniary interests from influencing their decision-making by prohibiting them from being interested in contracts with the Council worth more than \$25,000 (including GST) per annum or participating in decision-making where they have a pecuniary interest. The common law also deals with bias and / or pre-determination (non-pecuniary interests).
13. It is an offence under the Crimes Act to participate in bribery or corruption, including the use of Council information for financial benefit.
14. Similarly, offence will be committed under the Secret Commissions Act if a person:
 - give or offer to give a gift or other consideration to an agent, such as a Councillor;¹ or
 - accept, receive or solicit a gift or other consideration; as an inducement or reward for doing some act, or showing favour or disfavour to a person, in relation to the Council's business.
15. Councillors must comply with the Financial Markets Conduct Act and avoid insider trading and / or untrue statements in disclosure documents.
16. The Protected Disclosures Act provides for the disclosure of serious wrongdoing through the Council's internal procedures.
17. The Health and Safety at Work Act imposes duties on the Council and Councillors to ensure a safe work environment. There are significant penalties for a breach of these duties.
18. Finally, the RMA establishes the Council's role in sustainable management and provides for functions in relations to planning, resource consents, and compliance, monitoring and enforcement.

¹ Secret Commissions Act, sections 3.

To avoid doubt, this paper is by way of summary only and does not constitute legal advice. Specific legal advice may be required on the legislation and any particular scenario that may arise.

OPTIONS

17. Not applicable.

CONSIDERATIONS

Policy Considerations

18. Not applicable.

Financial Considerations

19. Not applicable

Significance and Engagement

20. Not applicable.

Legislative Considerations

21. Relevant legislation is summarised in Attachment A.

Risk Considerations

22. Not applicable.

NEXT STEPS

23. Not applicable.

ATTACHMENTS

1. Summary of legislation affecting Councillors [6.1.1 - 8 pages]

Attachment A – Summary of legislation affecting Councillors

1. Local Government Act 2002

The role of the Council

The LGA sets out the purpose, role and powers of a local authority. The Council has flexibility to perform its role as long as it complies with the LGA and any other legislation.¹

The Council's purpose is:²

- to enable democratic local decision-making and action by, and on behalf of, communities; and
- to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

The Council must act in accordance with a number of 'principles' including for example (these are summarised):³

- acting in an open, transparent and democratically accountable manner;
- acting in an efficient and effective manner to deliver on its priorities;
- making itself aware of the views of all of its communities ;
- in decision-making, taking into account the diverse views of communities and current and future interests of communities, as well as the impact on the 4 'well-beings' (social, economic, environmental, cultural);
- providing an opportunity for Māori to contribute to the Council's decision-making processes;
- seeking to co-operate and collaborate with other councils;
- acting prudently in commercial transactions;
- ensuring prudent stewardship and efficient and effective use of resources including through planning; and
- in taking a sustainable development approach, taking into account the 4 well-beings, the need to maintain and enhance the quality of the environment, and the reasonably foreseeable needs of future generations.

Subject to limited exceptions, the Council cannot exercise its powers for the benefit of a single district. It must exercise its powers wholly or principally for the benefit of all, or a significant part, of the Otago region.⁴

Personal liability

Councillors are indemnified by the Council in relation to:⁵

- civil liability (both costs and damages) if they were acting in good faith and in pursuance of the Council's responsibilities or powers; and
- costs arising from any successfully defended criminal action relating to acts or omissions in their capacity as a Councillor.

¹ LGA, sections 11 and 12.

² LGA, section 10.

³ LGA, section 14.

⁴ LGA, section 12.

⁵ LGA, section 43.

Councillors are, however, jointly and severally liable (including for costs) if the Council incurs loss because of certain unlawful actions by the Council, and the Office of the Controller and Auditor-General ("**Auditor-General**") reports on that loss. The loss must arise because the Council:⁶

- unlawfully spends Council money;
- unlawfully sells or disposes of an asset;
- unlawfully incurs a liability; or
- intentionally or negligently fails to enforce the collection of money it is lawfully entitled to receive.

Councillors may have a defence if they can prove that the act or failure to act resulting in the loss occurred:⁷

- without their knowledge;
- with their knowledge but against their protest made at or before the time when the loss occurred;
- contrary to the manner in which they voted on the issue at the Council meeting; or
- in circumstances where they acted in good faith and in reliance on information, or advice, from a Council employee or a professional advisor / expert whom they reasonably believed to be competent.

2. Local Government Official Information and Meetings Act 1987

The LGOIMA aims to increase the availability to the public of official information held by local authorities, and to promote the open and public transaction of business at Council meetings, in order to enable more effective public participation and to promote accountability.⁸ There are two key aspects: access to information and the conduct of Council meetings.

Access to Council information

Principle of availability

Anyone may request information held by the Council.⁹ The starting position is that all information (with limited exceptions) held by the Council should be made available to the public unless there is a good reason for withholding it.¹⁰

Reasons for withholding information

To conclusively withhold information the disclosure must be likely to prejudice the maintenance of the law or endanger the safety of any person.¹¹ LGOIMA also provides 'other reasons' for withholding information, provided that the reason outweighs the public interest in the information being available. Other reasons include the:¹²

- protection of privacy, trade secrets / commercial positions, or confidential information;
- avoidance of serious offence to tikanga Maori / disclosure of location of waahi tapu;
- avoidance of prejudice to measures protecting health and safety of the public / preventing or mitigating material loss to members of the public;
- maintenance of legal professional privilege or effective conduct of public affairs;
- enablement of commercial activities or negotiations without prejudice or disadvantage; and
- prevention of improper gain / improper advantage from official information.

⁶ LGA, section 44-47.

⁷ LGA, section 46(4).

⁸ LGOIMA, section 4.

⁹ LGOIMA, section 10(1).

¹⁰ LGOIMA, sections 2(1), 5.

¹¹ LGOIMA, section 6

¹² LGOIMA, section 7.

Procedure and decision-making

The Council must follow the procedures set out in LGOIMA regarding assistance, transferral, decision-making, time limits, method of provision, deletions and refusal.¹³

The grounds to refuse a request are limited, and include the conclusive and other reasons mentioned above, as well as situations where:¹⁴

- the information is or will soon be publicly available, does not exist, or is not held by the Council; and
- the request would require substantial collation or research.

Review rights

If a requestor disagrees with the decision they can make a complaint to the Ombudsmen who can investigate and review the decision and make recommendations. The Council has a public duty to observe any recommendation and must publicly notify its decision including; giving its reasons, grounds in support and any advice relied on.¹⁵

Council meetings

All Council meetings, including committees and sub-committees, should with limited exceptions be open to the public (including news media).¹⁶ That does not apply where there are no resolutions or decisions made at the meeting.¹⁷

Exclusion

The public may be excluded from a meeting if any of the reasons in LGOIMA for withholding information apply, or in other limited circumstances. Any Council resolution to exclude the public must:¹⁸

- use the correct form in Schedule 2A;
- form part of the minutes and be available to the public; and
- state the general subject matter, reasons for passing the resolution and the grounds on which the resolution is based.

Conduct

The person presiding at any meeting is responsible for maintaining order and can require any member of the public to leave if they reasonably believe that person is likely to prejudice, or continue to prejudice, the orderly conduct of the meeting.¹⁹

The Council's standing orders outline expected Councillor conduct during meetings.

Notification of meeting

The Council must publicly notify the date, time and place of meetings in accordance with LGOIMA.²⁰

Agendas, reports and minutes

Agendas and reports must be made available to the public:²¹

- at least two working days before an ordinary meeting; or
- as soon as is reasonable in the circumstances if it is an extraordinary meeting.

¹³ LGOIMA, sections 10-16.

¹⁴ LGOIMA, section 17.

¹⁵ LGOIMA, sections 27-37.

¹⁶ LGOIMA, sections 45, 47 and 49.

¹⁷ LGOIMA, section 45(2).

¹⁸ LGOIMA, section 48.

¹⁹ LGOIMA, section 50.

²⁰ LGOIMA, section 46.

²¹ LGOIMA, section 46A.

Items can be excluded from reports by the chief executive if it is reasonable to expect that item will be discussed with the public excluded.²²

Minutes must be made available to the public, unless the public was excluded in which case any request will be deemed an official information request.²³

Defamation

Defamatory matters in agendas or minutes are privileged unless the plaintiff can prove they were predominantly motivated by ill will towards the plaintiff, or that the defendant otherwise took improper advantage of publication.²⁴

3. Local Authority (Members' Interest) Act 1968

The Act 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. The Act provides rules about members discussing and voting on matters in which they have a pecuniary interest and about contracts between members and the Council.

Pecuniary interests

The Act deals with situations where a Councillor:

- is concerned or interested in a disqualifying contract; and / or
- participates in decision-making where they have a pecuniary interest.

Disqualifying contracts

Councillors will be disqualified from office if they are 'concerned or interested in' contracts with the Council worth more than \$25,000 (including GST) in total in any financial year. If a Councillor acts while disqualified they will commit an offence.²⁵

A Councillor will be 'concerned or interested' in a contract if they, or their spouse or partner (civil union or de facto):²⁶

- on their own, or together, own 10% or more of the shares in the company or controlling company that the Council is contracting with; or
- either is a shareholder and either is the managing director or general manager of the company, or of the controlling company that the Council is contracting with; and
- when the contract was entered into the Councillor:
 - was living together with their spouse or partner; or
 - knew and had a reasonable opportunity of knowing that their spouse or partner was concerned or interested in the contract.

However, there are exceptions where the contract will not disqualify the Councillor from office, including if the Councillor has:²⁷

- obtained prior approval, or retrospective approval (in limited cases), from the Auditor-General; or

²² LGOIMA, section 46A.

²³ LGOIMA, section 51.

²⁴ LGOIMA, sections 52-53.

²⁵ Local Authority (Members' Interests) Act 1968, sections 2-5.

²⁶ Local Authority (Members' Interests) Act, sections 2-4.

²⁷ Local Authority (Members' Interests) Act, section 3(3).

- performed their obligations under the contract for a fixed amount before appointment as a Councillor.

Participation in decision-making

Councillors must not vote or participate in Council discussions if they have a direct or indirect pecuniary interest (other than that in common with the public). However, there are some exceptions, such as if the Auditor-General permits participation.²⁸

A Councillor commits an offence, and will be disqualified from office on conviction, if they participate in Council decision-making when they have a pecuniary interest.²⁹

The Auditor-General, who administers the Act and can institute proceedings against Councillors who breach the Act,³⁰ applies the following test for assessing whether there is a pecuniary interest (no definition in the Act):³¹

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 they can participate in decision-making, Councillors should consider, in regard to the decision at issue:³²

- whether they can reasonably expect to gain or lose money because of the decision; and
- if so, whether their financial interest is an interest in common with the public; and
- if their interest is not an interest in common with the public, whether any of the exceptions in the Act apply.

The Auditor-General provides more detailed guidance on pecuniary interests in its publication "Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968".

Non-pecuniary interests

Non-pecuniary interests broadly concern bias, conflicts of interest or pre-determination. The Act does not deal with non-pecuniary interests. Instead they are governed by common law.

Whether a Councillor has a non-pecuniary interest will be fact dependent. However, the risk is highest where:

- a Councillor's statements or conduct imply pre-determination of a matter; or
- a Councillor has a close relationship or involvement with an individual or organisation affected by the matter.

In contrast to pecuniary interests which expose the individual Councillor to liability, non-pecuniary interests undermine the validity of the Council's decision. If there is perceived, or actual, bias or predetermination the Council's decision may be challenged. Council decisions must be fair, and be seen to be fair.

²⁸ Local Authority (Members' Interests) Act, section 6.

²⁹ Local Authority (Members' Interests) Act, section 7.

³⁰ Local Authority (Members' Interests) Act, section 8.

³¹ Controller and Auditor-General Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968 (Office of the Auditor-General, Wellington, 2010) at [3.6].

³² Controller and Auditor-General at [3.54].

The Auditor-General provides more detailed guidance on non-pecuniary interests and recommends considering the following question:³³

Would a fair-minded observer reasonably think that a member of the decision-making body might not bring an impartial mind to the decision, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party.

4. Crimes Act 1961

Sections 99, 105 and 105A of the Crimes Act prohibit Councillors from participating in, or benefiting from, bribery and corruption.

Under the Act a Councillor is an "official", and a bribe is broadly defined as "any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect".³⁴

Further, Councillors cannot:

- accept or solicit a bribe for themselves or anyone else in return for doing, or failing to do, an act as a Councillor;³⁵
- give a bribe to anyone in return from them doing, or failing to do, some act in their official capacity; and³⁶
- use or disclosure information gained in their position as a Councillor for their, or another person's, pecuniary gain or advantage.³⁷

If convicted of corruption and bribery, or corrupt use of official information, the consequence is potentially imprisonment for a term of up to seven years and disqualification from office.³⁸

5. Secret Commissions Act 1910

The Act prohibits Councillors, who are deemed to be agents of the Council, from giving or receiving gifts of other consideration in return for actions relating to the Council's business.³⁹ The Act also covers gifts or other consideration received by, or the pecuniary interests of, the Councillor's parent, spouse, partner (civil union or de facto), or child.⁴⁰

A Councillor will commit an offence if they:

- give or offer to give a gift or other consideration to an agent, such as a Councillor;⁴¹ or
 - accept, receive or solicit a gift or other consideration;⁴²
- as an inducement or reward for doing some act, or showing favour or disfavour to a person, in relation to the Council's business.

A Councillor will also commit an offence, with limited exceptions, if they:

- make a contract on behalf of the Council and fail to disclose any pecuniary interest;⁴³

³³ Controller and Auditor-General at Part 5: *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72, [2010] 1 NZLR 35.

³⁴ Crimes Act 1961, section 99.

³⁵ Crimes Act, section 105(1).

³⁶ Crimes Act, section 105(2).

³⁷ Crimes Act, section 105A.

³⁸ LGA, schedule 7, clause 1(1)(b).

³⁹ Secret Commissions Act 1910, sections 3-4, 16(1)(b).

⁴⁰ Secret Commissions Act, sections 3 and 5.

⁴¹ Secret Commissions Act, sections 3.

⁴² Secret Commissions Act, section 4.

⁴³ Secret Commissions Act, section 5.

- give the Council any receipt, invoice, account or other document in relation to Council's business which they know is false, omits information, or is likely to mislead;⁴⁴
- advise someone to enter a contract with a third party, and receive a gift or benefit from that third person in return;⁴⁵ and / or
- aid or abet any offence.⁴⁶

The consequences of committing an offence under the Act include imprisonment for up to seven years.⁴⁷

6. Financial Markets Conduct Act 2013

Under the Act Councillors have the same responsibilities as company directors if the Council offers financial products (debt or equity) to the public.⁴⁸ Councillors may be personally liable if investment documents, such as a product disclosure statement, contain untrue statements, and may be liable for criminal prosecution if the Act's requirements are not met.⁴⁹

Councillors are also prohibited from trading in a company's shares, or disclosing information, if they have information that is not generally available to the market.⁵⁰

7. Protected Disclosures Act 2000

The Act protects employees who disclose information about serious wrongdoing. Councillors are classified as an employee. To gain protection:⁵¹

- the information must be about serious wrongdoing (which is defined in the Act);
- the Councillor must believe on reasonable grounds that the information is, or is likely, true;
- the Councillor must want to disclose the information so investigation can occur; and
- the Councillor must want the disclosure to be protected.

The Council must have internal procedures for receiving and dealing with information about serious wrongdoing. A Councillor wanting to disclose information must follow those procedures.⁵²

8. Health and Safety at Work Act 2015

Under the Act the Council is classified as a person conduct a business or undertaking, while Councillors are classified as officers. These classifications impose different duties and penalties for offences.⁵³

The Council has a duty of care to ensure, so far as is reasonably practicable, the health and safety of those who may be affected by the Council's work.⁵⁴ Councillors must exercise due diligence (which is defined in section 44(4) of the Act) to ensure that the Council complies with its duty of care.⁵⁵

⁴⁴ Secret Commissions Act, section 7.

⁴⁵ Secret Commissions Act, section 8.

⁴⁶ Secret Commissions Act, section 9.

⁴⁷ Secret Commissions Act, section 13.

⁴⁸ Financial Markets Conduct Act 2013, sections 6-8; LGA.

⁴⁹ Financial Markets Conduct Act, sections 485, 510-512.

⁵⁰ Financial Markets Conduct Act, sections 234, 240-244;

⁵¹ Protected Disclosures Act 2000, sections 3, 5-6.

⁵² Protected Disclosures Act, sections 7 and 11.

⁵³ Health and Safety at Work Act 2015, sections 17-18.

⁵⁴ Health and Safety at Work Act, section 36.

⁵⁵ Health and Safety at Work Act, section 44.

9. Resource Management Act 1991

The RMA focuses on the sustainable management of natural and physical resources.⁵⁶ The Council has functions, powers and duties in relation to the soil, water, air and coastal environment of the Otago Region.⁵⁷

Broadly, the Council has three main functions:

- developing regional policy statements and regional plans;⁵⁸
- hearing and making decision on resource consent applications;⁵⁹ and
- undertaking compliance, monitoring and enforcement.⁶⁰

⁵⁶ RMA, section 5.

⁵⁷ RMA, section 30.

⁵⁸ RMA, sections 59-70.

⁵⁹ RMA, sections 87AA-139A.

⁶⁰ RMA, sections 28A, 35, Part 12.