

**306th MEETING OF THE
CANTERBURY REGIONAL COUNCIL**

COUNCIL MEETING

**TO THE CHAIRMAN AND COUNCILLORS OF THE
CANTERBURY REGIONAL COUNCIL**

MEMBERSHIP OF THE COUNCIL

Cr T K Burke	Cr A R McKay
Cr J Demeter	Cr B S Murray
Cr C J Evans	Cr A G Neill
Cr P C R Harrow	Cr M E Oldfield
Cr J M Kane	Cr E M Sage
Cr R M Kirk	Cr D P Sutherland
Cr R I R Little	Cr R M G Tindall

The First meeting of the Council following the triennial general election of members
will be held on

Wednesday, 24 October 2007 at 10.00 a.m.

(Morning Tea will be available from 9.30 a.m.)

VENUE: Council Chamber (First Floor)
Pegasus Building
58 Kilmore Street
CHRISTCHURCH

BUSINESS: As per Order Paper attached.

Dr Bryan Jenkins
CHIEF EXECUTIVE

**RECOMMENDATIONS IN REPORTS ARE NOT TO BE TAKEN AS COUNCIL
POLICY UNTIL ADOPTED BY THE COUNCIL**

COMPLIANCE WITH LOCAL GOVERNMENT ACT 2002 DECISION-MAKING REQUIREMENTS

Except as below, a statement of compliance and a completed decision checklist is required for any agenda item on a council committee or the council recommending that a decision be made. This will be the responsibility of the person signing off the agenda item.

The compliance statement and checklist will not be used for:

- Recommendations that information be received or that the Council make a decision.
- Decisions taken under the Resource Management Act 1991 or the Biosecurity Act 1993 in relation to resource consents, decisions required when following the procedures set out in Schedule 1 of the Resource Management Act 1991, other permissions, submissions on plans, or references to the Environment Court.
- Decisions taken to proceed with enforcement procedures under various primary or secondary legislation or regulations, including procedures under the Resource Management Act 1991, the Biosecurity Act 1993, the Local Government Act 2002, and Environment Canterbury Bylaws.
- Administrative and personnel decisions that are entirely internal to Environment Canterbury.
- Other decisions where the procedures to be followed are set out in Legislation.

COMPLIANCE STATEMENT

The council committee (or the council) must formally certify that:

- (a) It is satisfied that it has sufficient information about the options and their benefits and costs, in terms of the region's social, economic, environmental and cultural well-being and the effects on community outcomes, bearing in mind the significance of the decisions.
- (b) It is satisfied that it knows enough about and has given adequate consideration to the views and preferences of affected and interested parties bearing in mind the significance of the decision.

INFORMATION CHECKLIST

(a)	A Statement of the Proposed Decision
(b)	A Statement of the Objective of the Proposed Decision and the Issue or Problem being addressed
(c)	A list of all reasonably practicable options, (including doing nothing).
(d)	For each option in (c): An evaluation of the Benefits and Costs, in terms of the region's social, economic, environmental and cultural well-being.
(e)	For each option in (c): A statement of the extent to which community outcomes would be promoted or achieved in an integrated and efficient manner.
(f)	For each option in (c): A statement of the Impact, if any, on Environment Canterbury's capacity to undertake its statutory responsibilities
(g)	If the Proposed Decision is a significant decision in relation to land or a body of water, a statement of how Maori values have been taken into account
(h)	A Statement of significant inconsistencies, if any, with any Existing Policy, Plan or Legislation arising from the Proposed Decision.
(i)	A statement how the views and preferences of affected or interested persons have been given adequate consideration during the definition of the problem or issue, the objective, the assessment of options and the development of the proposed decision, including the particular contribution of Maori to the decision-making process.

Notes:

The significance of proposals and decisions determines how much time, money and effort is put into exploring and evaluating options and obtaining the views of affected and interested parties. The significance of proposals and decisions is determined through reference to criteria contained in the policy on significance.

The policy on significance together with Section 76 of the Local Government Act 2002 set out the Council's requirements in relation to decisions. Some decisions can only be made through the Long-Term Council Community Plan, or after the Special Consultative Procedures set out in the Act have been used, (refer to the policy on significance and the Act).

All decisions of Environment Canterbury are subject to the decision-making requirements of section 76 of the Act unless inconsistent with specific requirements of other legislation.

CANTERBURY REGIONAL COUNCIL

COUNCIL MEETING

ORDER PAPER

1. APOLOGIES
2. MEMBERS STATUTORY DECLARATIONS
3. ELECTION OF CHAIRPERSON AND DEPUTY CHAIRPERSON
4. RELEVANT LEGISLATION
5. FIXING DATE AND TIME OF FIRST COUNCIL MEETING

The Chief Executive of the Council as the principal administrative officer shall preside at the meeting until the Chairperson of the Council has been elected.

AGENDA ITEM NO: 2	SUBJECT MATTER: MEMBERS STATUTORY DECLARATIONS
REPORT: Council	DATE OF MEETING: 24 October 2007
FILE REFERENCES:	PORTFOLIO: PROJECT: OUTPUT:
REPORT BY: Jude Pani Manager Secretariat	ENDORSED BY:

PURPOSE

The purpose of this report is for the fourteen Councillors who have been elected to the Canterbury Regional Council to make their statutory declarations.

The Chief Executive must chair the meeting until the election of the chairperson and the making and attesting of the declaration required of the chairperson under clause 14, Schedule 7, of the Local Government Act 2002.

BACKGROUND

Clause 14, Schedule 7, of the Local Government Act (2002) states that a person may not act as a member of a local authority until that person has, at a meeting of the local authority following the election of that person, made an oral declaration in the form set out below; and a written version of the declaration has been attested.

The written declaration must be signed by the member and will be witnessed by the Chief Executive. The Chief Executive will invite Councillors to make their statutory declarations. Councillors will be called upon in alphabetical order.

The declaration must consist of the following elements:

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

The fourteen Councillors who have been elected to the Council are as follows:

Thomas Kerry **BURKE**

Patrick Charles Robert **HARROW**

Jane **DEMETER**

Carole Joyce **EVANS**

Johanna Mary **KANE**

Robert Miller **KIRK**

Ross Ian Robert **LITTLE**

Angus Robert **MCKAY**

Bronwen Sian **MURRAY**

Alexander George **NEILL**

Mark Eldred **OLDFIELD**

Eugenie Meryl **SAGE**

David Peter **SUTHERLAND**

Richard Mark Grattan **TINDALL**

AGENDA ITEM NO: 3	SUBJECT MATTER: ELECTION OF CHAIRPERSON AND DEPUTY CHAIRPERSON
REPORT: Council	DATE OF MEETING: 24 October 2007
FILE REFERENCES:	PORTFOLIO: PROJECT: OUTPUT:
REPORT BY: Jude Pani Manager Secretariat	ENDORSED BY:

PURPOSE

The purpose of this report is to provide a process for the election of the Council Chairperson and Deputy Chairperson.

The Chief Executive must chair the meeting until the election of the chairperson and the making and attesting of the declaration required of the chairperson under clause 14, Schedule 7, of the Local Government Act 2002.

BACKGROUND

Clause 21, Schedule 7, of the Local Government Act 2002 (LGA) provides that the chairperson and deputy chairperson of a regional council shall be elected by the regional council from among its members at its first meeting following the election of a regional council.

Clause 24, Schedule 7, of the LGA states that the acts of a local authority must be done, and the questions before the local authority must be decided at a meeting by –

- (a) vote; and
- (b) the majority of members that are present and voting.

Clause 24 also states that an act or question coming before the local authority must be done or decided by open meeting.

Once elected, the Council chairperson must make and attest to the declaration required under clause 14 of Schedule 7 of the LGA. After making the following declaration, the newly-elected Council chairperson shall take the chair for the rest of the meeting:

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

VOTING SYSTEM FOR CERTAIN APPOINTMENTS

Clause 25, Schedule 7 of the LGA sets out the voting systems for certain appointments, including the election or appointment of the chairperson and deputy chairperson of a regional council.

The Council must first determine by resolution that the person will be elected or appointed by using the voting system in subclause (3) of clause 25 (system A), or subclause (4) of clause 25 (system B). An explanation of systems A and B follow:

“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.

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 one round of voting; and

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

SUGGESTED PROCESS FOR ELECTION OF CHAIRPERSON AND DEPUTY CHAIRPERSON

It is suggested that the following process be applied to the voting for the Chairperson and Deputy Chairperson:

Voting Process

1. Council resolves voting procedure to be adopted and the procedure in the event of a tie.
2. Nominations for Chairperson called for (nominated and seconded).
3. Nominees may be allowed a 10 minute period to make a presentation.
4. Voting for Chairperson as per agreed system.
5. Chairperson declared elected, makes a declaration as Chairperson and assumes chair.
6. Nominations for Deputy Chairperson called for (nominated and seconded).
7. Nominees may be allowed a 10 minute period to make a presentation.
8. Voting for Deputy Chairperson as per agreed system.
9. Deputy Chairperson declared elected.

In agreeing the voting process, groundrules need also to be agreed.

Groundrules

- A member may nominate or second themselves.
- Any member can call for a Division vote.
- Standing Orders apply – Divisions will be carried out with names called in random order.
- Any member can abstain from voting.
- Standing Orders apply that in the event of a tie for the election of Deputy Chairperson there is no casting vote.

Relevant Extracts from Environment Canterbury Standing Orders (adopted Nov 2004)

3.14.2 Chairperson's voting

The chairperson at any meeting has a deliberative vote and, in case of equality of votes, does not have a casting vote.

3.14.4 Members may abstain

Any member may abstain from voting.

3.14.7 Division

When a division is called, the chief executive or his/her nominee shall take down the names of the members voting for and against the motion and abstentions and is to hand the list to the chairperson to declare the result. The result of the division shall be entered into the minutes.

Any division sought on a vote at Council/Committee, with the exception of the Regional Land Transport Committee, be taken in random order of Councillors. The random order shall be determined by the use of a computer generated programme.

RECOMMENDATIONS

- (a) *That the voting procedure to be adopted for the election of the Council Chairperson and Deputy Chairperson be*
- (i) *System A, or*
 - (ii) *System B.*
- (b) *That in the event of a tie between the highest polling candidates, the names of the candidates receiving an equal number of votes be placed in a container and the candidate drawn out, by an independent person, is deemed to be elected.*
- (c) *That in the event of a tie between the lowest polling candidates, the names of the candidates receiving an equal number of votes be placed in a container and the candidate drawn out, by an independent person, is deemed to be excluded from the next round of voting.*

AGENDA ITEM NO: 4	SUBJECT MATTER: RELEVANT LEGISLATION
REPORT: Council	DATE OF MEETING: 24 October 2007
FILE REFERENCES:	PORTFOLIO: PROJECT: OUTPUT:
REPORT BY: Jude Pani Manager Secretariat	ENDORSED BY:

PURPOSE

The purpose of this report is to provide a general explanation of some of the laws that regulate the conduct of elected members.

ATTACHMENT

Extract from Local Government Act 2002 – Sections 14 and 39

BACKGROUND

Clause 21(5)(c) of Schedule 7 of the Local Government Act 2002 requires that, at the first meeting of the Council following a triennial general election of members, the chief executive must give or arrange for a general explanation of certain laws affecting members, including:

- The Local Government Official Information and Meetings Act 1987; and
- the appropriate provisions of the Local Authorities (Members' Interests) Act 1968; and
- sections 99, 105 and 105A of the Crimes Act 1961; and
- the Secret Commissions Act 1910; and
- the Securities Act 1978

COMMENT

There are certain legal provisions that councillors must be aware of because breaching the rules can have the consequence of loss of office, fines, or imprisonment. These provisions are contained in the:

- Secret Commissions Act 1910;
- Crimes Act 1961; and
- Local Authorities (Members' Interests) Act 1968.

Other enactments such as the Local Government Act 2002 and Local Government Official Information and Meetings Act 1987 (LGOIMA) deal with the role and function of the Council and councillors, and with the conduct of meetings.

The following is a brief summary of these enactments and other provisions that govern the conduct of the Council's affairs.

Secret Commissions

The Secret Commissions Act 1910 deems every councillor to be an agent of the Council (section 16(1)(b)). It creates offences in relation to accepting inducements or rewards for doing or forbearing to do something in relation to the Council's affairs, or showing or having shown favour or disfavour to any person in relation to the Council's affairs or business (section 4(1)). It is an offence, similarly, 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)).

Section 5 of the Act makes it an offence for a member not to disclose to the Council his or her pecuniary interest (which includes the pecuniary interest of a parent, spouse/partner, or child) in a contract when making a contract on behalf of the Council (see also the discussion of the Local Authorities (Members' Interests) Act 1968 below). Section 9 of the Act makes it an offence to aid or abet, or to be in any way directly or indirectly concerned in, or privy to, the commission of any offence against the Act.

Conviction of an offence under the Act carries with it the possibility of imprisonment for up to two years, or a fine not exceeding \$1,000. Such a conviction may also have the consequence of loss of office, in terms of clause 1 of Schedule 7 of the Local Government Act 2002

Crimes of Bribery and Corruption – Crimes Act 1961

Councillors are within the definition of an "official" in section 99 of the Crimes Act. Section 105 of that Act provides that every official is liable to imprisonment for a term not exceeding seven 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 him or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in an official capacity.

Putting this simply, it is an offence against this section to seek or obtain a reward for performing one's official duties as a councillor.

Section 105A then goes on to make it an offence, once again carrying a term of imprisonment of up to seven years, for an official to use any information acquired by him or her in an official capacity to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself, or any other person.

Members' Interests – including Pecuniary

The Local Authorities (Members' Interests) Act 1968 is one of the most important statutes governing the conduct of councillors. It has two main aspects. The first is the prohibition of certain contracts between local authorities and their members. The second prevents voting on or discussing questions in which a member has a pecuniary interest.

As to the first aspect, the Act provides that no-one may be elected or appointed or be a member of a local authority or of any committee of it, if the total payments to be made by the Council in respect of contracts made by it with that person exceeds \$25,000 (GST incl) in

any year (section 3(1)). The Act covers contracts made by the Council directly with the person concerned, and also contracts made by the Council in which the councillor is concerned or interested. Special provisions deal with companies in which a member or his or her spouse/partner is interested either as a shareholder, or as a member of the company, or by virtue of certain management positions. There are a number of exceptions to this rule but, in case of any doubt, a councillor should refer the matter to the Office of the Auditor-General or seek independent legal advice.

The penalty for breach of these provisions (which are contained in section 3 of the Act) is immediate loss of office (section 4) and there is also the possibility of a fine being imposed (section 5).

Section 6(1) of the Act prohibits a member of a local authority or of a committee of it from voting on, or taking part in the discussion of any matter before the governing body of that local authority or before that committee in which he or she has, directly or indirectly, any pecuniary interest, other than an interest in common with the public. Once again, there are special provisions dealing with a pecuniary interest in the context of the interests of the member or his or her spouse/partner in a company. The Office of the Auditor-General is empowered to declare that the rule will not apply with respect to any specified matter or specified class of matter on particular occasions. In doing so it must act in the interests of the electors or inhabitants of the district.

The penalty for discussing or voting when there is a pecuniary interest is, once again, loss of office, but only upon conviction of an offence (section 7).

Related to these statutory provisions is the common law principle of natural justice, which includes obligations to listen to both sides and not to be a judge in one's own cause.

Meetings – LGOIMA

The Local Government Official Information and Meetings Act 1987 governs the custody and release of official information. The fundamental principle in the Act is that information held by the Council is publicly available, unless one or more specified withholding grounds apply.

The Act also deals with local authority meetings, in Part VII. There are a number of important points in this latter part of the Act, namely:

- (a) The Act states the grounds upon which the public may be excluded from meetings (section 48). That may generally only occur when good reason to withhold information exists, and there is a statutory definition of that concept in sections 6 and 7 of the Act. Also, the public may be excluded where the subject matter of discussion is one in respect of which a right of appeal exists to any Court or Tribunal against the decision made by the Council (section 48(2)).
- (b) In excluding the public, the Council must make a resolution (in the form set out at Schedule 2A to the Act) stating the subject of each matter to be considered while the public is excluded, and the reasons must be given for excluding the public, in terms of the statutory grounds.
- (c) Chairpersons at meetings may require members of the public to leave a meeting if the behaviour of the person concerned is likely to prejudice or continue to prejudice the orderly conduct of the meeting (section 50).

- (d) If a meeting is open to the public, and an agenda is supplied to a member of the public or the minutes of a meeting are produced for inspection by any member of the public after the conclusion of the meeting, any defamatory matter which is published in this way is to be treated as privileged, unless the publication was predominantly motivated by ill will (section 52). Oral statements made at meetings of the Council are also privileged, unless the statement is proved to be predominantly motivated by ill will (section 53). Ordinarily, a statement that is "privileged" cannot support a cause of action for defamation (even though that statement might be untrue or misleading).
- (e) Items which are not on an agenda for a meeting may be dealt with if the meeting resolves to do so and the chairperson explains in open meeting why the item is not on the agenda and why consideration of it cannot be delayed to a subsequent meeting (section 46A(7)). (If the item is a minor matter relating to the general business of the Council then it may be discussed without the meeting having resolved to do so, so long as the chair explains at the beginning of the meeting, and when it is open to the public, that the item will be discussed; but in that case no resolution, decision or recommendation may be made except to refer the item to a subsequent meeting for further discussion (section 46A (7A)).

Securities and Insider Trading

The Council has wide borrowing powers under Part 6 of the Local Government Act 2002. One of the ways the Council can borrow is by issuing stock or other forms of debt instruments. If such debt instruments are offered to the public the Council must comply with the Securities Act 1978. What constitutes "offering to the public" is given a very wide meaning (section 3 of the Securities Act).

Background Information – The Securities Act regulates the offering of securities to the public. Local authority debt instruments are securities for the purposes of the Act. If the Council intends offering its debt instruments to the public it will have to produce a prospectus and an investment statement complying with the requirements of the Securities Act and the Securities Regulations 1983. In addition any advertisements relating to the offer will have to comply with certain requirements imposed by the Securities Act governing the advertising of public offers of securities. Certificates would also have to be issued to investors and certain information relating to the Council and the securities would have to be sent periodically to the holders of the Council's securities.

The Securities Act contains wide provisions establishing civil liability and criminal offences where a member of the public purchasing securities relies on untrue statements made in an advertisement (including an investment statement) or in a registered prospectus. In addition, there are general offences which apply to persons who do not otherwise comply with the provisions of the Act.

Elected members are deemed "directors" of the local authority for the purposes of the Securities Act and the Regulations made under it. As such they are potentially personally liable to investors if a registered prospectus or an investment (including an investment statement) contains an untrue statement. Members may also be criminally liable if the requirements of the Act or Regulations are not met. Some offences carry penalties that would also give rise to disqualification from office.

The Securities Markets Act 1988 includes prohibitions against insider trading and "tipping" in the securities of a "public issuer" – which the Council would be if any of its debt securities were listed on a stock exchange. If councillors pass on non-public, price sensitive information to any person (tip) or use it themselves (by trading) then they may be liable under this Act for civil penalties.

Councillors' Personal Liability

Generally speaking, councillors are indemnified in respect of their actions as a councillor. Section 43 of the Local Government Act 2002 provides for this indemnity (by the Council) in relation to:

- (a) civil liability (both for costs and damages) if the councillor is acting in good faith and in pursuance (or intended pursuance) of the responsibilities or powers of the Council; and
- (b) costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a councillor.

However, there is a potential personal exposure on the part of councillors in certain circumstances - where the Auditor-General has reported on a "loss" incurred by the Council, for which the Council has not been compensated (sections 44 to 46). The loss must arise out of one of the following actions or omissions:

- (a) money belonging to, or administrable by, the Council being unlawfully expended; or
- (b) an asset being unlawfully sold or otherwise disposed of by the Council; or
- (c) a liability being unlawfully incurred by the Council; or
- (d) the Council intentionally or negligently failing to enforce the collection of money it is lawfully entitled to receive.

If the Auditor-General has made such a report, then that loss is recoverable as a debt due to the Crown (which in turn must be paid back to the Council) from each councillor jointly and severally. This is a serious concern for members, who should always be alert to ensure that their decision-making is within the bounds of the law. However, a councillor has a defence to such a claim if he or she can prove that the act or failure giving rise to the loss occurred:

- (a) without the councillor's knowledge; or
- (b) with the councillor's knowledge but against his or her protest made at or before the time when the loss occurred; or
- (c) contrary to the manner in which the councillor voted on the issue at a meeting of the Council; or
- (d) in circumstances where, although being a party to the act or failure to act, the councillor acted in good faith and in reliance on reports, statements, financial data, or other information prepared or supplied, or on professional or expert advice given, by any Council officer or professional advisor in relation to matters which the councillor believed on reasonable grounds to be within that person's competency. LGA 2002 Section 46(4).

Code of Conduct

The Council has a Code of Conduct for Councillors (as required by clause 15 of Schedule 7 of the Local Government Act 2002). The Code of Conduct sets out (amongst other things)

understandings and expectations about the manner in which councillors may conduct themselves while acting as councillors, including behaviour toward one another, staff, the public, and the disclosure of information. Under clause 15(4), councillors must comply with the Code.

Councillors will be asked to review or reconfirm the Code of Conduct at a meeting early in the new triennium.

Non-Pecuniary Conflict of Interest

There are legal rules about conflicts of interest, more generally, which apply to non-pecuniary conflicts of interest. Of key significance is the matter of bias – this is not limited to actual bias, but also relates to the appearance or possibility of bias. Situations of non-pecuniary bias commonly involve predetermination of a matter before hearing all relevant information or a close relationship or involvement with an individual or an organisation affected by the matter. Detailed guidance on the laws on conflict of interest is contained in the Controller and Auditor-General's publication *Guidance for members of local authorities about the law on conflicts of interest*, which will be separately circulated to councillors.

At the commencement of each meeting councillors are expected to declare any conflicts of interest. A declaration may be in relation to a pecuniary interest (other than an interest in common with the public) or a non-pecuniary interest giving rise to a risk of bias. Councillors are advised to read Order Papers before a meeting to see whether they have an interest in any matters that are to be discussed or voted on. If there are, councillors should, if possible, advise the relevant committee chairperson before the meeting starts that they are going to declare an interest in a particular matter. Once a conflict is declared, the councillor will be required to abstain from discussion and voting, and should leave the meeting for that item. In declaring a conflict of interest, a councillor is not required to inform the meeting about the nature of the interest or why it exists.

Purpose, Role and Powers of the Council

Because it underpins everything which the Council, and thus the councillors, do, it is useful to briefly describe the general statutory framework within which the Council operates.

The Local Government Act 2002 sets out the following purpose of local government (section 10):

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) to promote the social, economic, environmental, and cultural wellbeing of communities, in the present and for the future.

The Council's role is to give effect to that purpose of local government in relation to the Canterbury region and to perform the duties and exercise the rights conferred on it by law (section 11). The Council is responsible and democratically accountable for the decision-making of the local authority (section 41(3)).

Except where another law provides otherwise, the Council has full capacity to carry on or undertake any activity or business, or do any act, or enter into any transaction (section 12(2)). However, the Council must exercise its powers wholly or principally for the benefit of the Canterbury region (section 12(4)). That does not prevent two or more councils engaging in joint or co-operative activities (section 12(6)).

In performing its role, a Council must act in accordance with certain principles in section 14 of the Local Government Act 2002. In addition, section 39 of that Act sets out governance principles that apply to councils. The text of sections 14 and 39 is attached

When making decisions, the Council must comply with the decision-making requirements set out in Part 6 of the Act. Under Part 6, local authorities are required to continually confirm their mandate from their communities through various forms of consultation.

Comparative roles of the Council and the Chief Executive/Council Staff

This is a brief summary of the legal provisions relevant to the respective roles of the Chief Executive and the Council.

Section 42(1) of the Local Government Act 2002 requires the Council to appoint a Chief Executive. The Chief Executive's responsibilities are set out in subsection (2), as follows:

- (a) implementing the Council's decisions;
- (b) providing advice to members of the Council;
- (c) ensuring that all responsibilities, duties and powers delegated to him or her or to any person employed by the Council, or imposed or conferred by an Act, regulation or bylaw are properly performed or exercised;
- (d) ensuring the effective and efficient management of the Council's activities;
- (e) maintaining systems to enable effective planning and accurate reporting of the Council's financial and service performance;
- (f) providing leadership for the Council's staff;
- (g) employing staff, on behalf of the Council; and
- (h) negotiating the terms of employment of the Council's staff.

It is important to emphasise that the Chief Executive's responsibilities in relation to staff are to be exercised to the exclusion of the Council. The Council's role is limited to the appointment of the Chief Executive; all other appointments are for the Chief Executive to make, on the Council's behalf.

Overall, section 42 demonstrates a legislative intent that the Chief Executive should be responsible for managing, with the staff he or she appoints, the affairs of the Council. Although the dividing line will sometimes be difficult to draw, the Council's role should be in the establishment of policy and associated decision-making. Actual implementation of the decisions, administration and management should be in the hands of the Chief Executive and his or her staff.

Council's Planning Process – LTCCP

The Local Government Act 2002 requires the Council to adopt a number of planning and other policy and financial management documents. The principal planning document is the long-term council community plan (LTCCP) which covers a period of at least 10 years and is reviewed every three years. The LTCCP can be amended at any time, but this requires use of the special consultative procedure. In addition, prior to the beginning of each financial year the Council must have adopted an annual plan for that year (although for those years where a new LTCCP is adopted, the financial statement and funding impact statement included in the LTCCP in relation to the first year is the annual plan (section 95(4)).

Under section 97 of the Local Government Act 2002, certain decisions may only be made if they are provided for in the LTCCP. These are:

- (a) a decision to alter significantly the intended level of service provision for any significant activity carried out by or on behalf of the Council (including a decision to commence or cease any such activity);
- (b) a decision to transfer the ownership or control of a strategic asset to or from the Council;
- (c) a decision to construct, replace, or abandon a strategic asset; and
- (d) a decision that will, directly or indirectly, significantly affect the capacity of the Council, or the cost to the Council, in relation to any activity identified in the LTCCP.

Strategic assets are defined in the Act, partly by reference to assets listed in the Council's policy on significance.

The LTCCP must set out any steps that the Council intends to take to develop Māori capacity to contribute to the decision making process over the period covered by the plan (Schedule 10, Pt 1, cl 5). The LTCCP and the annual plan, as well as many other formal policy documents must be adopted using the special consultative procedure (SCP). This procedure is also required where there is a proposed change in the mode of delivery of certain significant activities. The SCP contained in section 83 of the LGA 02 includes:

- (a) preparation of a statement of proposal, which must be included on the agenda for a meeting of the Council;
- (b) preparation and distribution of a summary of that proposal;
- (c) public notice;
- (d) the opportunity for the public to make submissions and to be heard in relation to that submission; and
- (e) deliberation and the making of a final decision on the proposal.

Court decisions relating to "consultation" have stressed that bodies or persons having a statutory obligation to consult must go into the process with an open mind, that is, a mind capable of persuasion having fairly considered the submissions.

In addition, and quite apart from those decisions requiring use of the SCP, the Local Government Act 2002 contains detailed provisions which govern more generally the Council's required approach to decision-making and consultation. These include the requirement to consider community views (section 78), and to encourage Māori contributions to the decision-making process (section 81).

RECOMMENDATION

That the general explanation of certain laws affecting members be received..

Extracts from the Local Government Act 2002

14 Principles relating to local authorities

- (1) In performing its role, a local authority must act in accordance with the following principles:
 - (a) a local authority should—
 - (i) conduct its business in an open, transparent, and democratically accountable manner; and
 - (ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner;
 - (b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and
 - (c) when making a decision, a local authority should take account of—
 - (i) the diversity of the community, and the community's interests, within its district or region; and
 - (ii) the interests of future as well as current communities; and
 - (iii) the likely impact of any decision on each aspect of well-being referred to in section 10:
 - (d) a local authority should provide opportunities for Maori to contribute to its decision-making processes;
 - (e) a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources; and
 - (f) a local authority should undertake any commercial transactions in accordance with sound business practices; and
 - (g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region; and
 - (h) in taking a sustainable development approach, a local authority should take into account—
 - (i) the social, economic, and cultural well-being of people and communities; and
 - (ii) the need to maintain and enhance the quality of the environment; and
 - (iii) the reasonably foreseeable needs of future generations.
 - (2) If any of these principles, or any aspects of well-being referred to in section 10, are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).
- Status Compendium

39 Governance principles

A local authority must act in accordance with the following principles in relation to its governance:

- (a) a local authority should ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community; and
- (b) a local authority should ensure that the governance structures and processes are effective, open, and transparent; and
- (c) a local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities; and
- (d) a local authority should be a good employer; and
- (e) a local authority should ensure that the relationship between elected members and management of the local authority is effective and understood.

AGENDA ITEM NO: 5	SUBJECT MATTER: FIXING DATE AND TIME OF FIRST COUNCIL MEETING
REPORT: Council	DATE OF MEETING: 24 October 2007
FILE REFERENCES:	PORTFOLIO: PROJECT: OUTPUT:
REPORT BY: Jude Pani Manager Secretariat	ENDORSED BY:

PURPOSE

The purpose of this report is for the Council to fix the date and time of the first meeting of the Canterbury Regional Council.

BACKGROUND

Clause 21(5)(d) of Schedule 7 of the Local Government Act 2002 requires that the business of the inaugural meeting of the Council following a triennial general election of members shall include the fixing of the date and time of the first meeting of the Canterbury Regional Council, or the adoption of a schedule of meetings.

A schedule of meetings for the remainder of 2007 will be tabled.

Legislation requires that there be at least 14 days between the Inaugural Meeting and the first meeting of Council. It is proposed that the first Council meeting be held on Wednesday 7 November, commencing at 8.30 a.m.

RECOMMENDATIONS

- (a) *That the first meeting of the Council be held on Wednesday 7 November 2007 commencing at 8.30 a.m.*
- (b) *That schedule of meetings for the remainder of 2007, as tabled, be adopted.*