

## Notice of Meeting:

I hereby give notice that an ordinary Meeting of the Council will be held on:

**Date:** Thursday 20 October 2022  
**Time:** 10.30am  
**Venue:** Te Kōpū Mānia o Kirikiriroa Marae and Council Chamber  
Municipal Building, Garden Place, Hamilton

Lance Vervoort  
Chief Executive

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## Inaugural Council *Kaunihera* OPEN AGENDA

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### Membership

**Chairperson** Mayor P Southgate  
*Heamana*

**Members**

Cr A Casey-Cox	Cr M Donovan
Cr A Bydder	Cr M Huaki
Cr A O’Leary	Cr M Tauariki
Cr E Pike	Cr M van Oosten
Cr E Wilson	Cr R Hamilton
Cr K Naidoo-Rauf	Cr S Thomson
Cr L Hutt	Cr G Taylor

**Quorum:** A majority of members (including vacancies)

**Meeting Frequency:** Monthly – or as required

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Amy Viggers  
*Mana Whakahaere*  
Governance Lead

**17 October 2022**

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## **SWEARING IN CEREMONY**

*Entry of Official Party and Elected Members*

*Whakatau (Welcome and Blessing) by Hamilton City Council Kaumatua Tame Pokaia*

*Inaugural Council Meeting Opened by Chief Executive Lance Vervoort*

### **Installation of Mayor Paula Southgate**

The Mayor Paula Southgate will read and sign the Statutory Declaration required by the Local Government Act 2002, which will be witnessed by the Chief Executive. Following her declaration, the Mayor will have an opportunity to address the Meeting.

### **Installation of the Councillors**

The Councillors will read and sign the Statutory Declaration required by the Local Government Act 2002, which will be witnessed by Mayor Paula Southgate. Following their declarations, each Elected Member will have an opportunity to address the Meeting.

*Singing of the National Anthem*

*Official Party and Elected Members to depart*

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**1 Apologies – *Tono aroha***

**2 Confirmation of Agenda – *Whakatau raarangi take***

The Council to confirm the agenda.

**3 Declaration of Interest – *Tauaakii whaipaaanga***

Members are reminded of the need to be vigilant 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 – *Aatea koorero***

As per Hamilton City Council's Standing Orders, a period of up to 30 minutes has been set aside for a public forum. Each speaker during the public forum section of this meeting may speak for five minutes or longer at the discretion of the Mayor.

Please note that the public forum is to be confined to those items falling within the terms of the reference of this meeting.

Speakers will be put on a Public Forum speaking list on a first come first served basis in the Council Chamber prior to the start of the Meeting. A member of the Governance Team will be available to co-ordinate this. As many speakers as possible will be heard within the allocated time.

If you have any questions regarding Public Forum please contact Governance by telephoning 07 838 6727.

# Council Report

Item 5

**Committee:** Council **Date:** 20 October 2022  
**Author:** Michelle Hawthorne **Authoriser:** David Bryant  
**Position:** Governance and Assurance Manager **Position:** General Manager People and Organisational Performance  
**Report Name:** Inaugural and First Meeting Requirements

<b>Report Status</b>	<i>Open</i>
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## **Purpose - *Take***

### **First Council Meeting**

1. Clause 21(5)(d) in Schedule 7 of the LGA requires Council to fix the date and time of its first meeting or adopt a schedule of meetings. After discussion with staff, it is proposed that the first Council meeting take place at 9:30am on Thursday, 17 November 2022. A schedule of meetings for 2023 will be proposed at the first Council meeting.

### **Committee Structure and Appointments**

2. Section 41A of the Local Government Act 2002 (LGA) provides for the Mayor to appoint a Deputy Mayor, establish committees of the Council, and appoint a chairperson to each committee established.
3. The Mayor has elected to present this to the Council at the 17 November 2022 Council meeting.

## **Recommendation - *Tuutohu***

4. That the Council:
  - a) receives the report;
  - b) notes that the first Council meeting will take place at 9:30am on Thursday, 17 November 2022;
  - c) notes the Mayor's appointment of Deputy Mayor Angela O'Leary; and
  - d) notes that the Mayor will present the governance structure to the Council at the 17 November 2022 meeting.

## **Attachments**

There are no attachments for this report.

# Council Report

<b>Committee:</b>	Council	<b>Date:</b>	20 October 2022
<b>Author:</b>	Michelle Hawthorne	<b>Authoriser:</b>	David Bryant
<b>Position:</b>	Governance and Assurance Manager	<b>Position:</b>	General Manager People and Organisational Performance
<b>Report Name:</b>	Explanation of Statutory Matters Affecting Elected Members		

<b>Report Status</b>	<i>Open</i>
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## Purpose - *Take*

- As required by clause 21(5) of Schedule 7 of the Local Government Act 2002, the Chief Executive is to provide or arrange a general explanation of the Local Government Official Information and meetings Act 1987 and other legislation affecting members.
- While not required, information on some aspects of the Local Government Act 2002 and Public Records Act 2005 have also been set out for Councillor's information.

## Staff Recommendation - *Tuutohu-aa-kaimahi*

- That the Council receives the report.

## Executive Summary - *Whakaraapopototanga matua*

- Pursuant to Schedule 7, Part 1, Clause 21 of the Local Government Act 2002, the Chief Executive Officer is required to give or arrange a general explanation of the [Local Government Official Information and Meetings Act 1987](#); and other laws affecting members, including:
  - the appropriate provisions of the [Local Authorities \(Members' Interests\) Act 1968](#);
  - [sections 99, 105](#), and [105A](#) of the Crimes Act 1961;
  - the [Secret Commissions Act 1910](#); and
  - the [Financial Markets Conduct Act 2013](#).
- General explanations on some aspects of:
  - the [Local Government Act 2002](#);
  - the [Public Records Act 2005](#);
  - the [Privacy Act 2020](#); and
  - [non-pecuniary conflicts of interest](#);
 have also been set out for Councillor's information.
- Staff consider the matters in the report have low significance and that the recommendations comply with the Council's legal requirements.

## Background - *Koorero whaimaarama*

- The Local Government Act 2002 requires the Chief Executive Officer to give or arrange a general explanation to Elected Members of relevant statutory obligations which include the

provisions relating to meetings and official information, members; financial interests and disclosure duties, offences relating to corruption and secret commission prohibitions.

8. The following explanations are provided solely as a guide, Elected Members and the public should seek independent legal advice if they need further information.

## **Discussion – *Matapaki***

### **The Local Government Official Information and Meetings Act (LGOIMA) 1987**

9. LGOIMA applies to every local authority in New Zealand and has two main aspects. The first concerns “Official Information”, its availability and the means of making it available. The second aspect deals with meetings of local authorities and their committees and in particular the right of the public to attend such meetings. The Act is about open government and accountability.

#### *Official Information*

10. LGOIMA contains rules relating to the disclosure of information held by a Local Authority to the public. The underlying principle of LGOIMA is that information should be made available unless there is good reason to withhold it.
11. In general, sections 6 and 7 of LGOIMA provide the following reasons for withholding information:
- i. making it available would be likely to prejudice the maintenance of the law, or endanger safety;
  - ii. withholding the information is necessary to:
    - protect the privacy of natural persons;
    - protect information where its release would disclose a trade secret or would prejudice the commercial position of the person who supplied, or who is the subject of, the information;
    - avoid offence to tikanga Māori or avoid disclosure of wāhi tapu locations;
    - protect an obligation of confidentiality where making it available would affect the future supply of information or would otherwise damage the public interest;
    - maintain free and frank discussion or protect officers and Elected Members from harassment;
    - maintain litigation or legal professional privilege;
    - enable the Council to carry out without prejudice or disadvantage commercial activities or negotiations; or
    - prevent the use of information for improper gain.
12. A decision to release or withhold information must be made by Council within 20 working days of the request being received. Elected Members should advise the CEO of any requests for information that are made to them as soon as practicable.
13. The obligations of LGOIMA are binding on Elected Members and apply to the disclosure of information held by an Elected Member, in his or her capacity as an Elected Member, to a member of the public. This includes email correspondence and any communication including conversations with Elected Members in his or her capacity as an Elected Member, and information held on a Council issued device such as a Surface Pro and Council issued phone. Additionally, correspondence and communication on private devices may also be subject to LGOIMA if this information was generated in an individual’s capacity as an Elected Member.

*Meetings*

14. LGOIMA also sets out the procedural requirements for the meetings of Local Authorities, the publication of agendas, procedures for discussion with the public excluded and access by the public to the agendas and minutes of meetings.
15. The grounds for excluding the public from a meeting are similar to those for withholding official information. These relate to protection of personal privacy, professionally privileged or commercially sensitive information and the maintenance of public health, safety and order. There are two exceptions to this, firstly the ground of maintaining free and frank expression of opinions by Elected Members does not enable exclusion of the public from meetings. Secondly the public may be excluded where a local authority wishes to deliberate in private on a decision against which a right of appeal lies to any court or tribunal.
16. Of particular importance for the roles and conduct of Elected Members is the fact that the Chair has the responsibility to maintain order at meetings, but all Elected Members should accept a personal responsibility for the maintenance of acceptable standards of address and debate.
17. Elected members should also refer to the Council's Standing Orders and Code of Conduct.

**The Local Authorities (Members' Interests) Act 1968**

18. The two particularly significant sections of this Act relate to Contracting and Pecuniary Interests. A third consideration is Conflict of Interest. It is important to note that these provisions also relate to a member's spouse or partner.

*Contracting*

19. Section 5 of this Act provides that an Elected Member is disqualified from office or from election to office, if that Elected Member is concerned or interested in any contracts or subcontracts under which payments made by or on behalf of the Local Authority exceed \$25,000 (inclusive of GST) in any financial year, unless prior approval has been obtained from the Auditor General.

*Voting and Discussion on Issues*

20. Elected Members are prohibited from participating in any Council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the Elected Member's spouse contracts with the authority or has a pecuniary interest. Elected Members must declare their interests at Council meetings where matters in which they have a pecuniary interest arise.

*Conflict of Interests*

21. Elected Members must make a general declaration of interest as soon as practicable after becoming aware of any such interests. These declarations are recorded in a register of interests maintained by Council.
22. Elected Members may also contact the Office of the Auditor General for guidance as to whether that Elected Member has a pecuniary interest. If there is a pecuniary interest, Council may seek an exemption to allow that Elected Member to participate or vote on a particular issue in which they may have a pecuniary interest.
23. Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 could potentially invalidate the particular decision made or the action taken by Council. Failure to observe these requirements could also leave the Elected Member open to prosecution under the Local Authorities (Members' Interests) Act 1968. In the event of a conviction Elected Members can be disqualified from office.



*Non-pecuniary conflicts of interest and predetermination*

24. Elected Members should also be familiar with the common law concerning non-pecuniary conflicts of interest. This includes issues of predetermination and bias (whether real or perceived) on the part of Elected Members when making a decision as an Elected Member of Council.
25. For ordinary decisions, the legal test is whether you are prepared, despite a predisposition to a particular view, to honestly consider whether to change your mind.
26. The law recognises that Elected Members operate in a political environment, and may take a public stance and be allied with community causes.
27. Actual predetermination will invalidate a decision – a perception of predetermination is not enough.
28. If an Elected Member decides that they have a non-pecuniary interest they must:
  - i. declare that they have a non-pecuniary interest when the matter comes up at a meeting;
  - ii. ensure that their declaration is recorded in the minutes; and
  - iii. refrain from discussion or voting on the matter.
29. Failure to observe the common law in this area may result in a judicial review of a Council decision.
30. Guidance is provided by the Office of the Auditor General in relation to these matters and Councillors are encouraged to familiarise themselves with this information [here](#).

**Crimes Act 1961**

31. Under the Crimes Act 1961 it is unlawful for an Elected Member to:
  - i. accept or solicit for themselves (or anyone else) any bribe (meaning money, valuable consideration, office, or employment, or any benefit, whether direct or indirect) for acting or not acting in relation to the business of Council; or
  - ii. use or disclose information gained in the course of their duties for their, or another person's, monetary gain or advantage.
32. These offences are punishable by a term of imprisonment of seven years or more. Elected Members convicted of these offences will also be automatically disqualified from office.

**Secret Commissions Act 1910**

33. Under the Secret Commissions Act 1910 it is unlawful for an Elected Member to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to Council.
34. If convicted of any offence under the Secret Commissions Act 1910 a person can be imprisoned for up to 2 years, fined up to \$1,000, or both. Elected Members convicted of these offences can be automatically disqualified from office.

**Financial Markets Conduct Act 2013**

35. The Financial Markets Conduct Act 2013 essentially places elected members in the same position as company directors whenever the Council offers financial products (such as an issue of debt or equity securities). Elected members may be personally liable if documents that are registered under the Act, such as a product disclosure statement, contain false or misleading statements. Elected members may also be liable if the requirements of the Act are not met in relation to offers of financial products.

### The Local Government Act 2002 (Act)

36. The Act is the primary piece of legislation that governs Local Authorities. While Elected Members must have regard for the whole Act, their attention is drawn to the following points relating to the Indemnity of Elected Members, Liability of Elected Members, Disqualification of Elected Members, Decision Making and the purpose of Local Government.

#### *Purposes of Local Government*

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

#### *Principles relating to local authorities*

39. 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
  - d. a local authority should provide opportunities for Māori to contribute to its decision-making processes:
  - e. a local authority should actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes; and
  - f. a local authority should undertake any commercial transactions in accordance with sound business practices; and
  - g. a local authority should periodically—
    - i. assess the expected returns to the authority from investing in, or undertaking, a commercial activity; and
    - ii. satisfy itself that the expected returns are likely to outweigh the risks inherent in the investment or activity; and
  - h. a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets; and
  - i. 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.

### *Indemnity of Elected Members*

40. Part 4 of the Act contains provisions for the liability of Elected Members of a Local Authority. In certain cases, under Section 43 of the Act, Elected Members are indemnified by the Local Authority.
41. In general, the indemnity covers:
- i. Costs and damages for any civil liability from any action brought by a third party if the Elected Member was acting in good faith and in carrying out the responsibilities or powers of the Local Authority; and
  - ii. Costs arising from any successfully defended criminal action relating to acts or omissions of an Elected Member in their capacity as an Elected Member.
42. This indemnity does not extend to directors of Council Controlled Organisations, nor does this indemnity extend to liability for loss under Section 46 of the Act.

### *Liability of Elected Members*

43. Under Sections 44, 45 and 46 of the Act a Local Authority is to be regarded as having incurred a loss to the extent that any of the following actions and omissions has occurred and the Local Authority has not been fully compensated for the action or omission concerned:
- i. money belonging to, or administrable by, a Local Authority has been unlawfully expended
  - ii. an asset has been unlawfully sold or otherwise disposed of by the Local Authority;
  - iii. a liability has been unlawfully incurred by the Local Authority;
  - iv. a Local Authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.
44. Following a report from the Auditor General and response from the Local Authority, the loss may be recoverable as a debt due to the Crown from each Elected Member of the Local Authority jointly and severally. Section 46 provides statutory defences for Elected Members to such proceedings.
45. Section 47 of the Act applies if, in a proceeding commenced by the Attorney-General the Local Authority is:
- i. held to have:
    - disposed of or dealt with, any of its property wrongfully or illegally;
    - applied its property to any unlawful purpose;
    - permitted the reserves that it must be managed to be used for purpose not authorised by law;
  - ii. restrained from acting in the ways referred to above.
46. The costs and other expenses arising out of the proceeding must not be paid out of general revenues by the Local Authority and must be paid, by order of the Court, by the Elected Members of the Local Authority who, by voting or otherwise, assented to the acts concerned.

### *Disqualification of Elected Members from Office*

47. Under Schedule 7 of the Act, Elected members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more years imprisonment, or if they cease to be or lose their status as an elector under section 80 Electoral Act 1993 or for certain breaches of the Local Authorities (Members' Interests) Act 1968.

*Decision Making provisions*

48. Under sections 77-81 of the Local Government Act provide a detailed set of instructions and considerations for local authorities to consider and follow when making decisions. In short:
- i. local authorities must identify all reasonably practicable options;
  - ii. assess the options in terms of their advantages and disadvantages;
  - iii. consider the relationship of Māori and their culture and traditions with their ancestral land, water sites, wāhi tapu, valued flora and fauna and other taonga (if the decision is a significant decision relating to land or significant bodies of water);
  - iv. consider community views and preferences (in itself this is not a requirement to consult).
49. These provisions apply to any decision regardless of its degree. In recognition of this, the Act contains a provision that allows a local authority to tailor a decision-making process to the significance and nature of the decision and circumstances in which it is made. This includes the:
- i. extent to which options are identified and analysed;
  - ii. the degree to which benefits and costs are quantified;
  - iii. the extent and nature of the information to be considered; and
  - iv. the extent of any written record.
50. The significance of a decision is defined as the degree of importance that the local authority assesses a decision to have regard to:
- i. the principles set out in section 14;
  - ii. the extent of the local authority's resources;
  - iii. the extent to which the nature of a decision, or the circumstances in which a decision is taken, allow the local authority scope and opportunity to consider a range of options or views and preferences of other persons.
51. Council is empowered to make its own judgment about how to comply with these requirements, largely in proportion to the decision's significance.
52. The law requires that decisions by public bodies must:
- i. Comply with the law, e.g. with the requirements of the LGA;
  - ii. Be made in a procedurally fair manner. (What is required will depend on the circumstances); and
  - iii. Be reasonable in the sense of being a decision that a reasonable and rational decision-maker could make.
53. Decisions that fail to meet these requirements can be subject to judicial review by the High Court.

**Public Records Act 2005**

54. The Public Records Act's purpose is to provide a framework to keep central and local government organisations accountable by ensuring records are full and accurate, well maintained and accessible. The Public Records Act 2005 provides for the continuity of the National Archives and the role of the Chief Archivist. The Act enables accountability by ensuring that full and accurate records of the affairs of local government are created and maintained. It also provides a framework within which local authorities create and maintain

their records and has a role in enhancing public confidence in the integrity of local authority records.

55. The definition of a record includes information, whether in its original form or otherwise, and is not limited to just written information. The definition also includes (but is not limited to) a signature, a seal, text, images, sound, speech, or data in any medium and recorded or stored by any electronic device or process.
56. In the conduct of their affairs elected members may receive information directly, for example from constituents. Members will need to consider whether that information meets the definition of a local authority record and if so will need to ensure it is included in the Council's records.

### **Privacy Act 2020**

57. The Privacy Act 2020 governs how organisations and businesses can collect, store, use and share information about individuals.
58. It ensures that:
  - individuals know when their information is being collected
  - information is used and shared appropriately
  - information is kept safe and secure
  - individuals can get access to their information
59. A privacy breach occurs when an organisation or individual either intentionally or accidentally:
  - Provides unauthorised or accidental access to someone's personal information.
  - Discloses, alters, loses or destroys someone's personal information
  - A privacy breach also occurs when someone is unable to access their personal information due to, for example, their account being hacked.
60. Under the Privacy Act 2020, if Council has a privacy breach that either has caused or is likely to cause anyone serious harm, Council must notify the Privacy Commissioner and any affected people as soon as we are practically able.
61. Elected Members may have access to private information about individuals in the course of their duties. Elected members should take care not to disclose or use private information about an individual(s) in a way that breaches the Privacy Act 2020.

### **Legal and Policy Considerations - *Whaiwhakaaro-aa-ture***

62. Staff confirm that the staff recommendation complies with the Council's legal and policy requirements.
63. Staff have considered the key considerations under the Climate Change Policy and have determined that an adaptation assessment and emissions assessment is not required for the matter(s) in this report.

### **Wellbeing Considerations - *Whaiwhakaaro-aa-oranga tonutanga***

64. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
65. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report.
66. The recommendations set out in this report are consistent with that purpose.

**Risks - Tuuraru**

67. Real or perceived non-compliance with any of the aforementioned legislations may expose Council to the risk of negative media coverage, poor community perception of Council and lack of trust in Council's decision-making and governance. This risk is managed by providing members with this report outlining the key components of key legislation to which they are expected to adhere.
68. All reports to Council and Committee, such as this report, will also include a section on Legal and Policy considerations, where officers will draw the attention to specific legislation, regulations, policies and/or bylaws relating to the matter at hand.

**Significance & Engagement Policy - *Kaupapa here whakahira/anganui*****Significance**

69. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the matter(s) in this report has/have a low level of significance.

**Engagement**

70. Given the low level of significance determined, the engagement level is low. No engagement is required.

**Attachments - *Ngaa taapirihanga***

There are no attachments for this report.