

Council Meeting Agenda - 26 October 2022

Meeting will be held in the Council Chamber at Level 2, Philip Laing House
144 Rattray Street, Dunedin
[ORC YouTube Livestream](#)



Members:

Cr Alexa Forbes	Cr Andrew Noone
Cr Gary Kelliher	Cr Gretchen Robertson
Cr Michael Laws	Cr Bryan Scott
Cr Kevin Malcolm	Cr Alan Somerville
Cr Lloyd McCall	Cr Elliot Weir
Cr Tim Mepham	Cr Kate Wilson

Senior Officer: Pim Borren, Interim Chief Executive

Meeting Support: Dianne Railton, Governance Support Officer

26 October 2022 10:00 AM

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2.6 **MEETINGS FOR 2022**

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The report is provided for Council to agree the meeting dates for the remainder of the year.

3. **INTRODUCTION FROM COUNCILLORS**

The Councillors will be provided time for introductory comments.

4. **CLOSURE**

2.1. Declaration of Office by Councillors

Prepared for: Council
Report No. GOV2263
Activity: Governance Report
Author: Liz Spector, Governance Support Officer
Endorsed by: Pim Borren, Interim Chief Executive
Date: 19 October 2022

PURPOSE

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

ATTACHMENTS

Nil

2.2. Voting System for Certain Appointments

Prepared for:	Council
Report No.	GOV2267
Activity:	Governance Report
Author:	Liz Spector, Governance Support Officer
Endorsed by:	Pim Borren, Interim Chief Executive
Date:	19 October 2022

PURPOSE

- [1] To inform the councillors of the two voting options for the election of the Chairperson, and Deputy Chairperson, 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. 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 Chairperson and Deputy Chairperson, defined by the Local Government Act 2002, either:
 - a) Voting system A
 - or
 - b) Voting system B
- 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 7 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 excluded from the next round (under voting system A) or declared the winner (under voting system B).
- [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. The voting system drawn out by an independent person will be the voting system used.
- [8] Once the system of voting has been resolved, the Chief Executive will call for nominations for Chairperson.

ATTACHMENTS

Nil

2.3. Election of Chairperson

Prepared for: Council
Report No. GOV2268
Activity: Governance Report
Author: Liz Spector, Governance Support Officer
Endorsed by: Pim Borren, Interim Chief Executive
Date: 19 October 2022

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. In line with standing orders, a proposed process is set out below:
- a. Chief Executive to call for nominations
 - b. Each nomination to be moved and seconded
 - c. Each nominee will have up to 10 minutes to speak to their nomination
 - d. Each councillor will be able to ask one question of each nominee
 - e. Each mover and seconder will have a right of reply (up to 5 minutes)
 - f. The Chief Executive shall then call for a vote, in accordance with the system resolved in the previous item.
- [3] 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.
- [4] Election of the Deputy Chairperson will proceed after the Chairperson takes the chair.

2.4. Election of Deputy Chairperson

Prepared for: Council
Report No. GOV2264
Activity: Governance Report
Author: Liz Spector, Governance Support Officer
Endorsed by: Pim Borren, Interim Chief Executive
Date: 19 October 2022

PURPOSE

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

EXECUTIVE SUMMARY

[2] The elected Chairperson will call for nominations for Deputy Chairperson. The Chairperson will then 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.

2.5. Councillor Legal Briefing

Prepared for:	Council
Report No.	GOV2270
Activity:	Governance Report
Author:	Paul Beverley, Buddle Findlay / Alistair Logan, Partner, Ross Dowling Marquet Griffen
Endorsed by:	Pim Borren, Interim Chief Executive
Date:	19 October 2022

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 (Protection of Whistleblowers) Act 2022;
 - Health and Safety at Work Act 2015;
 - Resource Management Act 1991 ("RMA"); and
 - Other statutes.

RECOMMENDATION

That the Council:

- 1) **Notes** this report and the information contained in the attached Summary of legislation affecting Councillors.

BACKGROUND

- [5] 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.

DISCUSSION

- [6] At the first meeting, an overview will be provided of the legislation that is summarised in the Summary of legislation affecting Councillors, attached, as attachment "1".
- [7] An overarching summary of that legislation is provided below.
- [8] 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.
- [9] 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.
- [10] 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).
- [11] It is an offence under the Crimes Act to participate in bribery or corruption, or use Council information for financial benefit.
- [12] It is an offence under the Secret Commissions Act if a person:
- gives or offers to give a gift or other consideration to a Councillor;¹ or
 - a Councillor accepts, receives or solicits 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.
- [13] Councillors must comply with the Financial Markets Conduct Act and avoid insider trading and / or untrue statements in disclosure documents.
- [14] The Protected Disclosures (Protection of Whistleblowers) Act provides for the disclosure of serious offending through the Council's internal procedures or to an appropriate external authority.
- [15] 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.
- [16] 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.

- [17] Other legislation confers functions, powers and duties on a Regional Council, in particular:
- Biosecurity Act 1993 (Pest management);
 - Civil Defence Emergency Management Act 2002 (Emergency Response);
 - Land Transport Management Act 2003 (Public Transport and Regional Transport Planning);
 - Local Government (Rating) Act 2002 (Revenue); and
 - Soil Conservation and Rivers Control Act 1941 (Flood Management).

CAUTION

- [18] To avoid doubt, this paper is a very brief summary only. The legislation is both more detailed and more complex. This paper does not constitute legal advice. Specific legal advice may be required on the legislation and its application to any particular case.

OPTIONS

- [19] Not applicable.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [20] Not applicable.

Financial Considerations

- [21] Not applicable.

Significance and Engagement

- [22] Not applicable.

Legislative and Risk Considerations

- [23] Relevant legislation is summarised in Attachment A.

Climate Change Considerations

- [24] Not applicable.

Communications Considerations

- [25] Not applicable.

NEXT STEPS

- [26] Not applicable.

ATTACHMENTS

1. Summary of legislation affecting Councillors [2.5.1 - 7 pages]

Attachment 1 – 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

Governance and Management

The role of Councillors is to act in a governance role.

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

- ensure 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;
- ensure governance structures and processes are effect, open and transparent;
- ensure, as far as practicable, responsibility and processes for decision-making in relation to regulatory responsibilities are separated from responsibility and processes for decision-making for non-regulatory aspects;
- be a good employer; and
- ensure the relationship between elected members and management is effective and understood.

After each general election the Council must adopt a local governance statement.

¹ LGA, sections 11 and 12.

² LGA, section 10.

³ LGA, section 14.

⁴ LGA, section 12.

Management

A local authority appoints a Chief Executive who is responsible to the Council for:

- implementing the decisions of the local authority;
- providing advice to Councillors;
- exercising delegated responsibilities, duties and powers are properly performed or exercised;
- managing the activities of the Council;
- employing Council staff;
- maintaining systems for the effective planning and accurate reporting of the financial and service performance of the Council; and
- supervising the performance by staff of their responsibilities, duties and powers.

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.

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 make available to the public official information held by local authorities, and to promote the open and public transaction of business at Council meetings, 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

⁵ LGA, section 43.

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.

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, unless that reason is outweighed by 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.

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. It is not a good reason to exclude the public to enable free and frank discussions to take place between Councillors.

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

¹¹ LGOIMA, section 6.

¹² LGOIMA, section 7.

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.

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.

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 "*the contracting rule*"; and / or
- participates in decision-making where they have a pecuniary interest "*the non-participation rule*".

The contracting rule

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.

²⁰ LGOIMA, section 46.

²¹ LGOIMA, section 46A.

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.

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

The non-participation rule

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

A pecuniary interest is a gain or loss of money as a result of a decision.

If a Councillor can reasonably be expected to gain or lose money because the decision under consideration, then he or she is disqualified from participating in the decision-making unless:

- the financial interest is an interest in common with the public generally (as for example the setting of general rates or uniform charges);
- the Auditor-General has granted an exemption on the grounds that the financial interest is so remote or insignificant it could not reasonably be regarded as influencing the Councillor; and
- the Auditor-General has granted a declaration allowing participation of the Councillor because it is in the public interest to enable the business of the Council to proceed.

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".³⁰

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.

A useful test is:³¹

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.

It is critical that Councillors be willing to change their minds during hearings and consultation processes.

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

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

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

³⁰ <https://oag.parliament.nz/2020/lamia/docs/lamia.pdf>

³¹ *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72, [2010] 1 NZLR 35.

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".³²

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;³³
- give a bribe to anyone in return from them doing, or failing to do, some act in their official capacity; and³⁴
- use or disclosure information gained in their position as a Councillor for their, or another person's, pecuniary gain or advantage.³⁵

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.³⁶

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.³⁷ 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.³⁸

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;³⁹ or
- accept, receive or solicit a gift or other consideration;⁴⁰

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;⁴¹
- 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;⁴²
- advise someone to enter a contract with a third party, and receive a gift or benefit from that third person in return;⁴³ and / or
- aid or abet any offence.⁴⁴

The consequences of committing an offence under the Act include imprisonment for up to seven years.⁴⁵

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.⁴⁶ 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.⁴⁷

³² Crimes Act 1961, section 99.

³³ Crimes Act, section 105(1).

³⁴ Crimes Act, section 105(2).

³⁵ Crimes Act, section 105A.

³⁶ LGA, schedule 7, clause 1(1)(b).

³⁷ Secret Commissions Act 1910, sections 3-4, 16(1)(b).

³⁸ Secret Commissions Act, Sections 3 and 5.

³⁹ Secret Commissions Act, section 3.

⁴⁰ Secret Commissions Act, section 4.

⁴¹ Secret Commissions Act, section 5.

⁴² Secret Commissions Act, section 7.

⁴³ Secret Commissions Act, section 8.

⁴⁴ Secret Commissions Act, section 9.

⁴⁵ Secret Commissions Act, section 13.

⁴⁶ Financial Markets Conduct Act 2013, sections 6-8; LGA.

⁴⁷ Financial Markets Conduct Act, sections 485, 510-512.

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.⁴⁸

7. Protected Disclosures (Protection of Whistleblowers) Act 2022

This Act protects Councillors and Council employees who disclose information of serious wrongdoing. The disclosure must either be in accordance with the Council's internal policies or made to an appropriate external authority. For a local authority the appropriate external authorities include Worksafe, the Human Rights Commission, the Police, the Director of Serious Fraud Office, MfE, the Department of Conservation, the Controller and Auditor-General, an Ombudsman, the Privacy Commissioner, the Department of Internal Affairs, and the Parliamentary Commissioner for the Environment. Ministers and MPs are not appropriate authorities.

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.⁴⁹

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.⁵⁰ 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.⁵¹

9. Resource Management Act 1991

The RMA focuses on the sustainable management of natural and physical resources.⁵² The Council has functions, powers and duties in relation to the soil, water, air and coastal environment of the Otago Region.⁵³

Broadly, the Council has three main functions:

- developing regional policy statements and regional plans;⁵⁴
- hearing and making decision on resource consent applications;⁵⁵ and
- undertaking compliance, monitoring and enforcement.⁵⁶

⁴⁸ Financial Markets Conduct Act, sections 234, 240-244.

⁴⁹ Health and Safety at Work Act 2015, sections 17-18.

⁵⁰ Health and Safety at Work Act, section 36.

⁵¹ Health and Safety at Work Act, section 44.

⁵² RMA, section 5.

⁵³ RMA, section 30.

⁵⁴ RMA, sections 59-70.

⁵⁵ RMA, sections 87AA-139A.

⁵⁶ RMA, sections 28A, 35, Part 12.

2.6. Meetings for 2022

Prepared for:	Council
Report No.	GOV2271
Activity:	Governance Report
Author:	Amanda Vercoe, General Manager Governance, Culture and Customer
Endorsed by:	Amanda Vercoe, General Manager Governance, Culture and Customer
Date:	19 October 2022

PURPOSE

- [1] To set Council meeting dates for the remainder of 2022.

EXECUTIVE SUMMARY

- [2] It is proposed that Council meetings for the ORC take place on:
- Wednesday 9 November 2022, 1pm
 - Wednesday 7 December 2022, 1pm
- [3] This allows meeting time to consider the committee structure for the 2022-2025 triennium, and the elected member remuneration distribution, in addition to business related papers before the end of the year.
- [4] It is proposed to use Thursday 10 November and Thursday 8 December 2022 for current state/induction briefings, and workshops, following discussions with the Chair on how best to use this time.
- [5] A proposed meeting schedule for 2023 will be brought to the meeting in December 2022 for adoption, following discussions with the Chair.

RECOMMENDATION

That the Council:

- 1) **Notes** this report.
- 2) **Agrees** that Council meetings will take place on 9 November and 7 December 2022.
- 3) **Agrees** that Council induction/current state briefings, and workshops will take place on 10 November and 8 December 2022.
- 4) **Notes** that a council meeting schedule for 2023 will be presented to the December Council meeting for consideration and adoption.

BACKGROUND

- [6] The Local Government Act, Schedule 7, Clause 21(5)(d) requires Council to fix the date and time for the first meeting of the local authority, or the adoption of a schedule.

DISCUSSION

- [7] Nil.

OPTIONS

[8] To consider meeting dates.

CONSIDERATIONS

Strategic Framework and Policy Considerations

[9] Nil.

Financial Considerations

[10] Nil.

Significance and Engagement

[11] Nil.

Legislative and Risk Considerations

[12] Setting meeting dates is a requirement under the Local Government Act.

Climate Change Considerations

[13] Otago Regional Councillors come to meetings from around the region. To maximise the efficiency of the travel and minimise emissions, typically Council, committee and workshop/briefing meetings are scheduled over two consecutive days.

Communications Considerations

[14] Council meetings are advertised in line with requirements under the Local Government Official Information and Meetings Act, which includes advertising in the ODT and on the ORC website. Members of the public can attend the public parts of Council and committee meetings in person in the Council Chamber, or watch the livestream of the meetings on the ORC's YouTube channel (the meetings then remain here for future viewing). Meeting agendas are also put online a minimum of two working days ahead of the meeting.

NEXT STEPS

[15] To organise the meetings, as per Council's decision.

ATTACHMENTS

Nil