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# **PALMERSTON NORTH CITY COUNCIL**

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AGENDA

## **INAUGURAL COUNCIL**

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**7PM, WEDNESDAY 26 OCTOBER 2022**

COUNCIL CHAMBER, FIRST FLOOR,  
CIVIC ADMINISTRATION BUILDING  
32 THE SQUARE, PALMERSTON NORTH

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# MEMBERS

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**Grant Smith (Mayor)**

**Mark Arnott  
Brent Barrett  
Rachel Bowen  
Vaughan Dennison  
Lew Findlay QSM  
Roly Fitzgerald  
Patrick Handcock ONZM  
Leonie Hapeta**

**Lorna Johnson  
Debi Marshall-Lobb  
Billy Meehan  
Orphée Mickalad  
Karen Naylor  
William Wood  
Kaydee Zabelin**

AGENDA ITEMS, IF NOT ATTACHED, CAN BE VIEWED AT

[pncc.govt.nz](http://pncc.govt.nz) | Civic Administration Building, 32 The Square  
City Library | Ashhurst Community Library | Linton Library

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**Chris Dyhrberg**

**Acting Chief Executive | PALMERSTON NORTH CITY COUNCIL**

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Te Marae o Hine | 32 The Square  
Private Bag 11034 | Palmerston North 4442 | New Zealand  
[pncc.govt.nz](http://pncc.govt.nz)

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NORTH  
CITY

# COUNCIL MEETING

26 October 2022

## ORDER OF BUSINESS

(NOTE: The meeting will open with a tikanga process to acknowledge first time Councillors which will be led by Rangitāne.)

### 1. Apologies

### 2. Notification of Additional Items

Pursuant to Sections 46A(7) and 46A(7A) of the Local Government Official Information and Meetings Act 1987, to receive the Chairperson's explanation that specified item(s), which do not appear on the Agenda of this meeting and/or the meeting to be held with the public excluded, will be discussed.

Any additions in accordance with Section 46A(7) must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting.

Any additions in accordance with Section 46A(7A) may be received or referred to a subsequent meeting for further discussion. No resolution, decision or recommendation can be made in respect of a minor item.

### 3. Declarations of Interest (if any)

Members are reminded of their duty to give a general notice of any interest of items to be considered on this agenda and the need to declare these interests.

## REPORTS

### 4. Address by the Acting Chief Executive

### 5. Oath of Office - Mayor

### 6. Oath of Office - Councillors

### 7. Inaugural address by The Mayor

### 8. Appointment of Deputy Mayor

Page 7

Presentation, by Grant Smith, Mayor.

### 9. Summary of Relevant Legislation

Page 9

Memorandum, presented by Desiree Harvey, Legal Counsel.

### 10. Council Meeting Schedule 2022

Page 17

Memorandum, presented by Hannah White, Democracy and Governance Manager.

### 11. Exclusion of Public

To be moved:

"That the public be excluded from the following parts of the proceedings of this meeting listed in the table below.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under Section 48(1) for passing this resolution

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public as stated in the above table.

Also that the persons listed below be permitted to remain after the public has been excluded for the reasons stated.

*[Add Third Parties]*, because of their knowledge and ability to assist the meeting in speaking to their report/s [or other matters as specified] and answering questions, noting that such person/s will be present at the meeting only for the items that relate to their respective report/s [or matters as specified].



## PRESENTATION

**TO:** Council

**MEETING DATE:** 26 October 2022

**TITLE:** Appointment of Deputy Mayor

**FROM:** Grant Smith, Mayor

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## RECOMMENDATION TO COUNCIL

1. That Council note that the Mayor has appointed Councillor Debi Marshall-Lobb as the Deputy Mayor.
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## SUMMARY

The Local Government Act 2002 (LGA) requires every territorial authority to have a Deputy Mayor.

Legally the Deputy Mayor's role is to perform all the responsibilities and duties of the Mayor when the Mayor is unavailable to do so. On a day to day basis they deputise for the Mayor when the latter has other commitments. This includes chairing Council meetings, addressing the media on Council issues and representing the Mayor at civic events.

The Mayor has used their power to appoint the Deputy Mayor under 41A(3)(a) of the LGA. Council has the power to remove the Deputy Mayor by following the procedure set out in clause 18, Schedule 7 of the Act.

## ATTACHMENTS

Nil





## MEMORANDUM

**TO:** Council

**MEETING DATE:** 26 October 2022

**TITLE:** Summary of Relevant Legislation

**PRESENTED BY:** Desiree Harvey, Legal Counsel

**APPROVED BY:** Sheryl Bryant, Assistant Chief Executive

### RECOMMENDATION TO COUNCIL

**1. That Council note the report Summary of Relevant Legislation for information.**

#### 1. ISSUE

There are a number of laws affecting members and other core legal requirements that elected members should be aware of when making decisions. This memorandum provides a general explanation of these, which is a statutory requirement of the inaugural Council meeting.

#### 2. BACKGROUND

Clause 21 of Schedule 7 of the Local Government Act requires that the business to be conducted at the first meeting of the Council following a triennial general election of members include a general description of the:

- [Local Government Official Information and Meetings Act 1987](#) (LGOIMA);
- [Local Authorities \(Members' Interests\) Act 1968](#) (LAMIA);
- [Crimes Act 1961](#);
- [Secret Commissions Act 1910](#); and
- [Financial Markets Conduct Act 2013](#).

Information about the legislation listed above is attached to this memorandum.

Officers have also provided a brief summary of relevant points in the [Health and Safety at Work Act 2015](#), [Local Government Act 2002](#), and the [Local Government \(Pecuniary Interests Register\) Amendment Act 2022](#). Further background laying out the implementation of the Local Government (Pecuniary Interests Register) Amendment Act 2022 will be provided in November; and other relevant legislation.

Elected Members should become familiar with the information set out in the Attachment. Further guidance on core local government legislation is available to members in the Elected Members Induction Handbook 2022 and will be discussed throughout the Elected Members' Induction Programme.

### 3. COMPLIANCE AND ADMINISTRATION

Does the Council have delegated authority to decide?	<b>Yes</b>
Are the decisions significant?	<b>No</b>
If they are significant do they affect land or a body of water?	<b>No</b>
Can this decision only be made through a 10 Year Plan?	<b>No</b>
Does this decision require consultation through the Special Consultative procedure?	<b>No</b>
Is there funding in the current Annual Plan for these actions?	<b>No</b>
Are the recommendations inconsistent with any of Council's policies or plans?	<b>No</b>
The recommendations contribute to Goal 5: A Driven & Enabling Council	
The recommendations contribute to the achievement of action/actions in Governance and Active Citizenship	
The action is: N/A	
Contribution to strategic direction and to social, economic, environmental and cultural well-being	Ensuring elected members are aware of the legislative framework under which they govern ensures robust decision-making.

### ATTACHMENTS

1. Laws affecting Elected Members  

## LAWS AFFECTING ELECTED MEMBERS

### Summary of core legal requirements

There are a number of core legal requirements that affect elected members, both individually and collectively. The legislation that will apply to your individual actions is outlined below followed by the statutory framework and public law principles that apply to your decision making as a collective.

#### 1. LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

##### Principle and Purposes

The fundamental principle embodied in this Act is that ***information should be made available unless there is good reason for withholding it***. This is known as the principle of availability.

The express purposes of the Act are:

- To make information held by Council more freely available.
- To promote the right of access to personal information (although this is now largely governed by the Privacy Act 2020).
- To promote more open conduct of Council meetings.
- To protect information where it is in the public interest and for reasons of personal privacy.

##### Procedures

The Act contains detailed provisions on how requests for information are to be made and how they are to be dealt with, including the review of Council decisions by the Ombudsman.

Anyone can request information. Organisations have the same rights as individuals. Decisions on requests for information are required to be made as soon as practicable, and no later than 20 working days after receiving the request.

##### Reasons for Withholding Information

Valid reasons for withholding information include:

- Providing the information would prejudice the maintenance of law, or endanger the health or safety of any person.
- To protect the privacy of natural persons.
- To protect information where it is provided under an obligation of confidence or which would prejudice the commercial position of the person who supplied it or who was the subject of the information.
- To prevent or mitigate material loss to members of the public.
- To enable Council to conduct its affairs without improper pressure or harassment.

- To maintain legal professional privilege.
- To enable Council to carry on commercial activities or negotiations.
- The information requested is not available, or is trivial, or cannot be provided without substantial collation or research.

The only reasons which can be used for a refusal to supply information are those specified in the Act itself. Nearly all of the reasons described above are set out in sections 6 and 7 of the Act. In most cases, the reasons permitted by the Act must be weighed against *other considerations which render it desirable, in the public interest, to make the information available.*

### **Meetings**

Members of the public, including media, have the right to attend all meetings of Council. This right includes meetings of all committees and sub-committees but does not include working parties or advisory groups. These parties/groups are excluded as they cannot make decisions or pass resolutions.

Copies of agenda are required to be made available for public inspection at least two working days before the meeting, and at the meeting. For Palmerston North City Council, the 'display points' include the Customer Service Centre at the Civic Administration Building and Libraries. An exception is made for information that is likely to be considered with the public excluded from the meeting. Copies of agenda and/or reports must also be supplied on request.

Members of the public can be excluded from the meeting upon the passing of the appropriate resolution. The reasons for which the public may be excluded from meetings are set out in section 48 of the Act and include:

- (a) There is good reason for withholding information under sections 6 and 7 of the Act, as summarised above.
- (b) Disclosure would be contrary to the provisions in another enactment.
- (c) The meeting is to consider a recommendation from the Ombudsman.
- (d) Private deliberation is necessary as a decision is subject to a right of appeal to a court or tribunal.

The reasons to exclude the public from meetings are also set out as an Appendix to the Council's Standing Orders.

A meeting must be open to the public when a resolution to exclude the public is passed, and the resolution must indicate the general subject matter to be considered. Where it is proposed that some person or persons be allowed to remain after the public has been excluded, such provision must be incorporated in the resolution stating the names of the persons concerned and the reasons for their remaining. This requirement does not apply to Council officers.

The form required for the resolution is set out in the schedule to the Local Government Official Information and Meetings Act and is included in each agenda.

Although a meeting may be held with public excluded, that does not automatically mean that the minutes or any information considered at the meeting will be protected from public scrutiny. A request can be made to inspect such information and must be considered in light of circumstances at the time the request is made, and not when the meeting was held. The Chief Executive and Legal Counsel have delegated authority to release information in these circumstances.

## **2. LOCAL GOVERNMENT (PECUNIARY INTERESTS REGISTER) AMENDMENT ACT 2022**

This amendment to the Local Government Act 2002 will come into force on 20 November 2022. It creates a new set of requirements and obligations on Elected Members which relate to members' pecuniary (financial) interests.

The purpose of the new provisions is to increase transparency, trust and confidence in local government by keeping and making publicly available, information about members' pecuniary interests. It is largely modelled on the regime that applies to members of Parliament but has been tailored to reflect particular aspects of local government.

From 2023, every Council will be required to keep a register of its members' pecuniary interests, and to make a summary of it publicly available on its website. Each Council must appoint a Registrar to maintain the register and provide advice and guidance to members.

Members are required to declare any pecuniary interests they have in respect of the previous 12-month period by 13 February 2023 (for the current triennium). This means that any relevant pecuniary interests that existed at any point during this 12-month period must be disclosed in the member's return. It is not necessary for an interest to have existed for the full 12-month period.

Members are obliged to provide annual returns, which are to be included on the register, and to subsequently advise of any errors or omissions in those returns. Any failure to comply with the new obligations amounts to an offence, and so it is important that members understand and comply with these new provisions.

Additional guidance on the requirements of this amendment will be provided during the Induction Process.

## **3. LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968**

The Local Authorities (Members' Interests) Act 1968 (LAMIA) deals with financial conflicts of interest. It prohibits elected members from taking part in discussion or voting in situations where an elected member has a direct or indirect financial interest, other than an interest in common with the general public.

When a matter is raised at a meeting of the Council or a Committee in which a member has a pecuniary interest, the member prohibited from voting or discussing the matter must declare

the pecuniary interest. The fact of that disclosure and abstention from discussion and voting on it is also recorded in the minutes. Standing Orders expect that where a pecuniary conflict of interest arises a member would declare an interest (no need to give the detail) and remove themselves from the table. Where the item is to be held in Public Excluded session the member would remove themselves from the room.

The Local Authorities (Members' Interests) Act 1968 also prohibits elected members from entering into contracts with Council (either the Governing Body or local boards, as applicable) valued at over \$25,000. The \$25,000 limit is GST-inclusive. The value is for all contracts, not each contract in a financial year.

The same rules can apply where a member's spouse, partner, company (depending on shareholding levels or the member's position in the company) or in some circumstances a family trust, has a financial interest or is concerned or interested in a contract.

In some cases, the Office of the Auditor-General can consider providing an exemption to an elected member so they may participate in a decision in which they have a financial interest or enter into a contract with the Council valued at over \$25,000.

A failure to comply with the Local Authorities (Members' Interests) Act 1968 could result in an elected member being prosecuted and disqualified from office.

Members will receive a form following their election to register their interests according to LAMIA and the Local Government (Pecuniary Interests Register) Amendment Act, and annually thereafter.

#### **4. CRIMES ACT 1961**

The Crimes Act 1961 makes it an offence for an elected member to "corruptly seek" or accept a bribe or reward for doing, or not doing, something in his or her official capacity as an elected member. It is also an offence for an elected member to obtain any advantage or financial gain from information received in that role. A conviction for either of these offences under the Crimes Act would result in an elected member being disqualified from office and could lead to imprisonment.

#### **5. SECRET COMMISSIONS ACT 1910**

The Secret Commissions Act 1910 makes it an offence for an elected member to take bribes, or use their position for improper gain. It is also an offence for an elected member not to disclose a direct or indirect financial interest they have in a Council contract. A conviction under this Act would result in an elected member being disqualified from office and could also lead to a fine or imprisonment.

#### **6. FINANCIAL MARKETS CONDUCT ACT 2013**

The Financial Markets Conduct Act 2013 essentially places Elected Members in the same position as company directors whenever the Council offers stock to the public. Elected Members may be personally liable if investment documents such as a prospectus contain

untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

## **7. HEALTH AND SAFETY AT WORK ACT 2015**

The purpose of the Health and Safety at Work Act is to protect the health and safety of workers at their workplaces. It sets out compulsory requirements and offences and penalties for failing to meet those requirements. Elected Members have a personal and individual duty of due diligence to ensure that the Council complies with its obligations under the Act. Staff will provide regular reporting to aid members in carrying out this duty.

## **8. LOCAL GOVERNMENT ACT 2002 - LIABILITY**

### **Personal liability of elected members**

The Local Government Act 2002 provides that elected members are indemnified by the Council for the following:

- costs and damages for any civil liability, as long as the member was acting in good faith and was carrying out responsibilities or powers of the Council (or relevant committee or other subordinate decision-making body); and
- costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a member.

### **Personal liability for losses incurred**

Elected members may be liable (jointly and separately) for the losses of the Council where the Council has:

- unlawfully spent money;
- unlawfully sold or disposed of an asset;
- unlawfully incurred a liability; and / or
- intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Members are only liable for these types of losses if the Auditor-General issues a report on the loss to the Minister of Local Government. The Auditor-General has not issued a report on losses incurred by a Council since the Local Government Act was enacted in 2002 (although the possibility has been considered).

An elected member will have a defence (and will not be liable) if they can prove the act (or failure to act) that resulted in the loss occurred:

- without their knowledge;
- with their knowledge but against their protests made at or before the time when the loss occurred;

- contrary to the manner in which they voted on the issue at a meeting; or
- in circumstances where they acted in good faith and relied on reports, information, or professional / expert advice given by a Council staff member or a professional adviser or expert on matters that the elected members reasonably believed were within the person's competency.

#### **9. LOCAL GOVERNMENT ACT 2002 - DECISION MAKING REQUIREMENTS**

The Local Government Act 2002 sets out the procedure for Council decision-making. The key factor is first determining how significant a decision is.

Before a decision is made, Council should:

- Determine if the decision is significant;
- Identify all reasonably practicable options for achieving the outcome and assess the options' advantages and disadvantages;
- Consider the views of people likely to be affected by or have an interest in the decision (this may or may not require formal consultation);
- Ensure provision has been made for Māori participation; and
- Identify if the decision might be inconsistent with any of Council's current policies and if so give reasons as to why the decision might still be made

Officers give this advice through written reports.

#### **10. FURTHER ADVICE**

As an elected member, you can seek advice from Legal Counsel and our Legal Services team on any of the laws relating to a particular decision or Council issue. For further legal advice or assistance, please contact Desiree Harvey, Legal Counsel, Chief Executive's Unit at [desiree.harvey@pncc.govt.nz](mailto:desiree.harvey@pncc.govt.nz).



## MEMORANDUM

**TO:** Council

**MEETING DATE:** 26 October 2022

**TITLE:** Council Meeting Schedule 2022

**FROM:** Hannah White, Democracy and Governance Manager

### RECOMMENDATION TO COUNCIL

1. That Council agree the following meeting dates for the remainder of 2022.

- Council - 9.00am, Wednesday 9 November 2022
- Council - 9.00am, Wednesday 16 November 2022
- Council - 9.00am, Wednesday 30 November 2022
- Council - 9.00am, Wednesday 7 December 2022
- Council - 9.00am, Wednesday 14 December 2022

to be held at the Council Chamber, first floor, Civic Administration Building, 32 The Square, Palmerston North.

### 1. ISSUE

- 1.1 The Mayor has recommended that Council meets until the end of the year to manage the business of council.

### 2. BACKGROUND

- 2.1 The Local Government Official Information and Meetings Act 1987 (LGOIMA) requires Council to notify the public of the time and place of all of its committee meetings.

Section 7(19)(6) of the Local Government Act allows for local authorities to adopt and amend a schedule of meetings:

If a local authority adopts a schedule of meetings—

(a) the schedule—

- (i) may cover any future period that the local authority considers appropriate; and
- (ii) may be amended; and

(b) notification of the schedule or of any amendment to that schedule constitutes a notification of every meeting on the schedule or amendment.

**3. NEXT STEPS**

- 3.1 If approved, these meetings will be publicly notified.
- 3.2 A Schedule of Meetings for 2023 will be presented to Council in December 2022.

**ATTACHMENTS**

Nil