

Notice of Meeting:

I hereby give notice that an ordinary meeting of the Dunedin City Council will be held on:

Date: Wednesday 26 October 2022
Time: 1.00 pm
Venue: Fullwood Room, Dunedin Centre, Dunedin

Sandy Graham
Chief Executive Officer

**Inaugural Council
PUBLIC AGENDA**

MEMBERSHIP

Mayor
Deputy Mayor

Mayor Jules Radich
Cr Sophie Barker

Members

Cr Bill Acklin
Cr Christine Garey
Cr Carmen Houlahan
Cr Cherry Lucas
Cr Jim O'Malley
Cr Steve Walker
Cr Andrew Whiley

Cr David Benson-Pope
Cr Kevin Gilbert
Cr Marie Laufiso
Cr Mandy Mayhem
Cr Lee Vandervis
Cr Brent Weatherall

Senior Officer

Sandy Graham, Chief Executive Officer

Governance Support Officer

Lynne Adamson

Lynne Adamson
Governance Support Officer

Telephone: 03 477 4000
Lynne.Adamson@dcc.govt.nz
www.dunedin.govt.nz

Note: Reports and recommendations contained in this agenda are not to be considered as Council policy until adopted.

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1 OPENING

Mana whenua will open the meeting with a Mihi Whakatau.

REPORTS

WELCOME BY THE CHIEF EXECUTIVE - SANDY GRAHAM

DECLARATION BY MEMBERS

To be made and attested as required by Section 7, Clause 14 of the Local Government Act 2002:

- a) The Mayor
(The Mayor to occupy the Chair).
- b) Councillors

WELCOME BY THE MAYOR

DISCUSSION

- 4 I intend to exercise the powers provided by the Act as follows:
- 5 I appoint Cr Sophie Barker as Deputy Mayor.
- 6 I establish the following Committees as committees of the whole:
 - a) Civic Committee
 - b) Community Services Committee
 - c) Customer and Regulatory Committee
 - d) Economic Development Committee
 - e) Finance and Council Controlled Organisations Committee
 - f) Infrastructure Services Committee
 - g) Strategy and Engagement Committee

Committee	Chair	Deputy Chair
Civic	Cr Bill Acklin	Cr Marie Laufiso
Community Services	Cr Marie Laufiso	Cr Mandy Mayhem
Customer and Regulatory	Cr Carmen Houlahan	Cr Andrew Whiley
Economic Development	Cr Andrew Whiley	Cr Christine Garey
Finance and CCOs	Cr Lee Vandervis	Cr Cherry Lucas
Infrastructure Services	Cr Jim O'Malley	Cr Brent Weatherall
Strategy and Engagement	Cr Sophie Barker	Cr Kevin Gilbert

- 7 In the previous triennium mana whenua has representatives on two standing committees. It is particularly timely, with the Strategic Framework Refresh project underway and the development of a Māori Strategic Framework, a Māori Capability plan and a Māori Engagement plan to continue to utilise the skill, expertise and mana of the two Rūnaka to provide strategic oversight of this work.
- 8 Mana whenua preference is to continue to have two representatives on each of the two identified Council Committees to ensure that there is equal representation of each of the two Rūnaka on both Committees. It would also ensure the possibility of Rūnaka developing capacity by mentoring younger Kai Tahu members into governance roles.
- 9 Requirements of the Local Government Act 2002 (LGA) require this to be reconsidered by the new Council.
- 10 If Council agrees, Rūnaka will be invited to identify representatives from Kāti Huirapa ki Puketeraki Rūnaka and Ōtākou Rūnaka, to be the representative members on the two committees.

- 11 The Audit and Risk Subcommittee is reconfirmed with Warren Allan Chair and Janet Copeland as Deputy Chair. The Office of Auditor General guidelines suggest independent members and an independent Chair on the Audit and Risk Subcommittee and the appointments meet those guidelines. The Councillor members of the Audit and Risk Subcommittee are the Mayor, the Deputy Mayor, the Chair and Deputy Chair of the Finance and CCO committee and Cr Christine Garey.
- 12 I further establish the following Subcommittees:
- a) Grants Subcommittee
 - b) Hearings Subcommittee.
- 13 Cr Marie Laufiso is appointed as the Chair of the Grants Subcommittee. The Councillor members of the Grants Subcommittee are Cr Sophie Barker, Cr Andrew Whiley, Cr Bill Acklin, Cr Cherry Lucas, and Cr Mandy Mayhem.
- 14 Cr Jim O’Malley is appointed as the Chair of the Hearings Subcommittee. Current Councillors who hold RMA certification will continue to be members and Cr Cherry Lucas will be added to this Subcommittee. Once the Delegations are finalised, other Councillors may be used for non-RMA hearings.
- 15 I have made the following Councillor appointments to Community Boards:

Community Board	Councillor Appointment
Mosgiel Taieri Community Board	Cr Cherry Lucas
Otago Peninsula Community Board	Cr Andrew Whiley
Saddle Hill Community Board	Cr Kevin Gilbert
Strath Taieri Community Board	Cr Bill Acklin
Waikouaiti Coast Community Board	Cr Jim O’Malley
West Harbour Community Board	Cr Mandy Mayhem

- 16 These appointments reflect the discussions I have had with each Councillor and where possible, recognise their areas of interest.

NEXT STEPS

- 17 If Council agrees to include mana whenua membership on the Strategy and Engagement Committee and the Infrastructure Services Committee, staff will contact both Rūnaka and ask they identify representatives for the two Committees.
- 18 The full delegations for the Committee structure will now be finalised by staff for adoption at the January 2023 Council meeting.

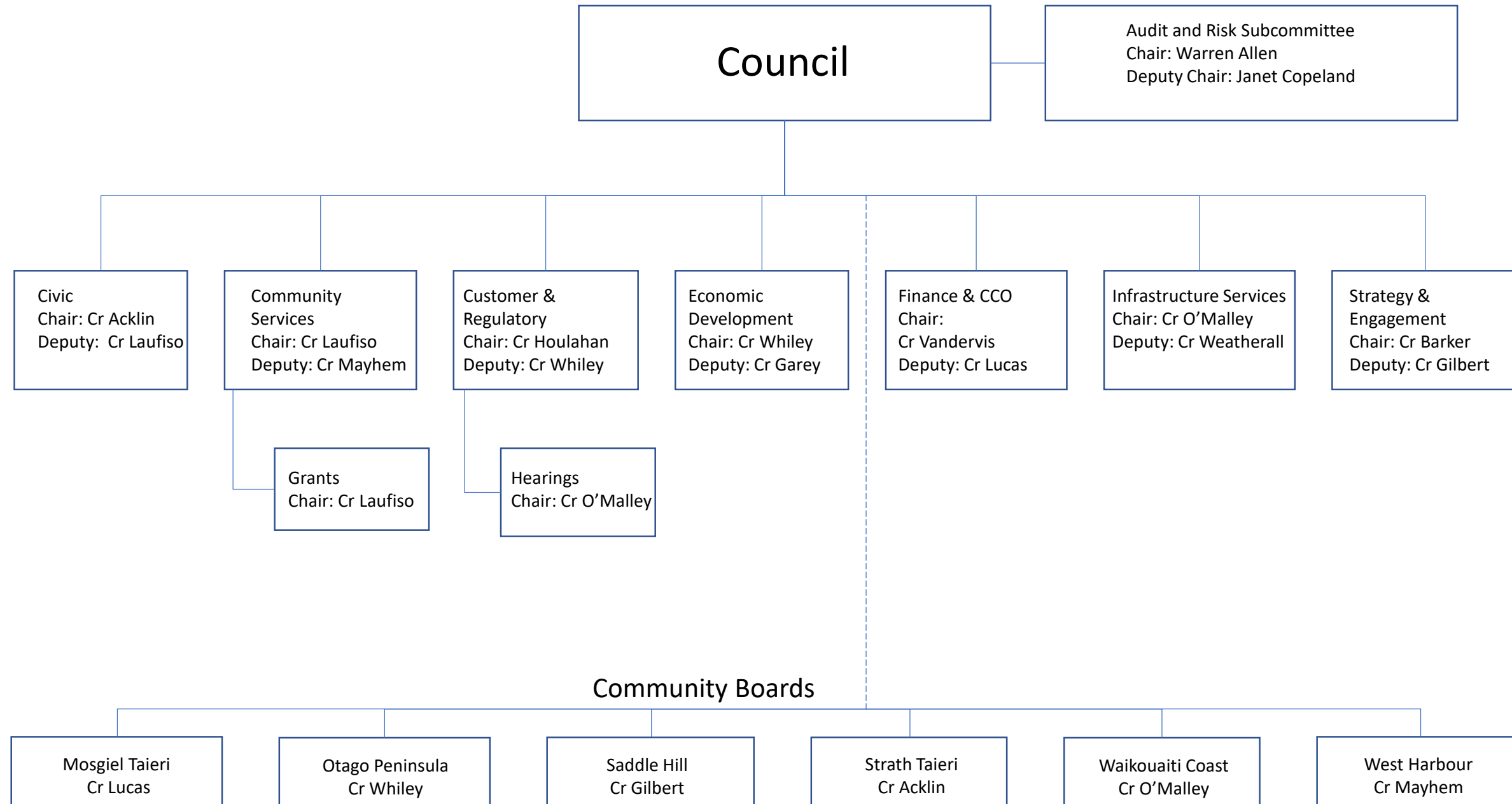
Signatories

Authoriser:	Jules Radich - Mayor
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Attachments

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↓A	Council Committee Structure	15

Committee Structure



APPOINTMENT OF ACTING DEPUTY MAYOR

Department: Civic and Executive Leadership Team

EXECUTIVE SUMMARY

- 1 There are occasions when the Mayor and Deputy Mayor are out of Dunedin at the same time, and it is necessary to have an elected member designated to deal with any issues that arise during these times.
- 2 I would like to appoint an Acting Deputy Mayor to act during any joint absences for this triennium.
- 3 As this is an administrative report, there are no options or Statement of Consideration.

RECOMMENDATIONS

That the Council:

- a) **Appoints** Councillor Andrew Whiley as Acting Deputy Mayor for any joint absences of the Mayor and Deputy Mayor during this triennium.

DISCUSSION

- 4 I believe it is prudent to have a Councillor designated to fill the role of Acting Deputy Mayor to cover any joint absences of the Mayor and Deputy Mayor. This has been the practice in previous trienniums and is necessary in case any matters arise during periods of joint absences that require political input but are not within the jurisdiction of any particular Committee Chair.

OPTIONS

- 5 Not applicable.

Signatories

Authoriser:	Jules Radich - Mayor
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Attachments

There are no attachments for this report.

ELECTED MEMBER REMUNERATION FOR THE 2022 - 2025 TRIENNIUM

Department: Civic

EXECUTIVE SUMMARY

- 1 The Local Government Act 2002 (LGA) gives the Remuneration Authority (the Authority) the responsibility for setting remuneration for local government elected members.
- 2 The Authority allocates a base pay for each councillor, along with a pool for remunerating additional responsibilities, to a system of allocating a governance pool (the pool) to each council. The pool provides the total amount that can be paid in remuneration to councillors, excluding the Mayor, whose remuneration has been determined directly by the Authority. This change takes effect following the election.
- 3 The purpose of this paper is to give consideration to the allocation of the pool to remunerate councillors, and to update the current Rules for Recovery of Expenses (the Rules).

RECOMMENDATIONS

That the Council:

- a) **Approves** annual remuneration of \$112,619 for the Deputy Mayor.
- b) **Approves** annual remuneration of \$91,382 for Chairs of Standing Committees.
- c) **Approves** annual remuneration of \$80,442 for Deputy Chairs of Standing Committees.
- d) **Approves** annual remuneration of \$64,353 for Councillors.
- e) **Notes** the Rules for Recovery of Expenses.
- f) **Notes** the proposed remuneration levels and Rules for the Recovery of Expenses will be forwarded to the Remuneration Authority for approval.

BACKGROUND

- 4 The Authority allocates a base pay for each councillor, along with a pool for remunerating additional responsibilities, to a system of allocating a governance pool to each council.
- 5 From 1 July 2022 until the new council assumes office following the election, an interim determination applied, and was based on a system of allocating a base pay for each councillor, along with a pool for remunerating additional responsibilities.

- 6 Following the election, a new pool-based approach has come into effect. Councillors will be paid a minimum allowable remuneration of \$64,181 pa until a determination is made on how the pool is to be allocated.

The Authority advised that the pool for the DCC councillors, excluding the Mayor, would be \$1,191,826.00. The minimum remuneration payable to a Councillor as per the determination is \$64,181 pa. This leave a balance of \$293,292 which the determination requires, must be fully allocated.

DISCUSSION

- 7 This report discusses how to allocate the remainder of the pool.
- 8 The Council’s recommendations to the Authority must include a remuneration rate for the base councillor position and rates for all positions that hold additional responsibility.
- 9 The proposed remuneration is detailed in the table below but can be summarised as follows.
- 10 The role of Deputy Mayor has significant additional responsibilities, and it is recommended that this role is remunerated at a ratio of 1.75 when compared to the base Councillor remuneration.
- 11 The new committee structure has seven standing committees which all have a Chair, and a Deputy Chair. The proposal is that Chairs are remunerated at a ratio of 1.42 when compared to base Councillor remuneration.
- 12 Deputy Chairs will be remunerated at a ratio of 1.25 when compared to base Councillor remuneration.
- 13 While the minimum base Councillor remuneration is \$64,181, the proposal is that this base is increased to \$64,353 to recognise the additional duties that all Councillors will have including roles as Deputy Chairs, Councillor representatives on Community Boards and Councillor representatives on a considerable number of external organisations.
- 14 These additional responsibilities will be fully detailed in the report to the Authority as they require justification for the level of remuneration that Council intends paying.

Position	Number	Ratio to base rem	Base Rem	Additional Rem	Total Rem per Councillor	Total Annual Rem
Deputy Mayor	1	1.75	\$64,353	\$48,265	\$112,619	\$ 112,619
Chair	6	1.42	\$64,353	\$27,028	\$91,382	\$ 548,291
Deputy Chair	5	1.25	\$64,353	\$16,088	\$80,442	\$ 402,209
Councillor	2	1.00	\$64,353	0	\$64,353	\$ 128,707
TOTAL						\$1,191,826

- 15 This proposal fully allocates the pool as required by the determination. I believe it is a fair representation of the responsibilities of each of the outlined positions.

OPTIONS

- 16 The Council has no option but to allocate the full pool of \$1,191,826 and the proposal in the report does that. Council is free to consider alternative options for allocating the pool, but any alternative must ensure full allocation and be able to be justified to the Authority.
- 17 The Council is also required to have the Rules. These have been updated to reflect current practice and modern communications and are attached. These will be forwarded to the Authority, who is required to confirm them.

NEXT STEPS

- 18 Both the remuneration rates and the Rules will be forwarded to the Authority by Wednesday 16 November 2022, to ensure that the proposal put forward by the Council can be considered and a determination can be made pre-Christmas.
- 19 Regardless of the determination date, all remuneration rates decided by Council will be back-dated to take effect from the day following the day that the Council makes a formal decision on remuneration.

Signatories

Authoriser:	Jules Radich - Mayor
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Attachments

	Title	Page
↓A	Rules for Recovery of Expenses	22

SUMMARY OF CONSIDERATIONS

Fit with purpose of Local Government

This decision enables democratic local decision making and action by, and on behalf of communities.

Fit with strategic framework

	Contributes	Detracts	Not applicable
Social Wellbeing Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Economic Development Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Environment Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arts and Culture Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 Waters Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Spatial Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Integrated Transport Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parks and Recreation Strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other strategic projects/policies/plans	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Māori Impact Statement

This has not been assessed in preparing this report.

Sustainability

The level of remuneration being proposed is above the base level remuneration for all Councillors and is aimed to provide a more sustainable income recognising the mahi that will be required from all elected members.

LTP/Annual Plan / Financial Strategy /Infrastructure Strategy

There are no implications as the increase in the remuneration pool was included in the Annual Plan.

Financial considerations

The increase in remuneration was included in the Civic budget

Significance

The decision is considered low in terms of the Council’s Significance and Engagement Policy

Engagement – external

There has been no external engagement.

Engagement - internal

There have been discussions with Councillors about possible levels of remuneration.

Risks: Legal / Health and Safety etc.

There are no identified risks.

Conflict of Interest

There are no identified conflicts of interest

Community Boards

Community Board remuneration is dealt with separately by the Authority and is not part of the pool.

RULES FOR THE RECOVERY OF EXPENSES AND CHILDCARE

The table below details the resources available to elected members, and the types of expenses for which members may seek reimbursement. The process to follow when seeking reimbursement is set out beneath the table, on page five.

Position	Expense Type	Description
Mayor	Car	<p>The Mayor has the option of:</p> <ul style="list-style-type: none"> being provided with a Council car with unrestricted private use, offset by an adjustment in salary approved by the Remuneration Authority; <u>or</u> being provided with a Council car for Mayoral use only. This option means the car can be driven home and garaged by the Mayor (providing he/she has an office set up in the home), but does not permit any private use. The car can also be used by other officers.
Mayor, Deputy Mayor and Councillors	Landline and Broadband Connection	<ul style="list-style-type: none"> up to \$ 800 per annum for broadband connection.
	Conferences/Council Business	<p>Actual and reasonable registration, travel, accommodation, meal and related incidental expenses incurred by members in attendance at conferences and approved Council business on behalf of the Council, held both within New Zealand and overseas, provided:</p> <ul style="list-style-type: none"> the related expenditure can be accommodated within the Civic budget approval to attend the conference has been given by the Mayor and Manager Governance
	Training/Seminars	<p>Actual and reasonable registration, travel, meal and related incidental expenses incurred by members attending training or seminars for the purpose of professional development provided:</p> <ul style="list-style-type: none"> the expenditure can be accommodated within the relevant activity budget approval to attend the training has been given by the Mayor. Note – this is for actual travel costs (petrol/diesel for example). Mileage is not payable for conference attendance.

Position	Expense Type	Description
	Computing Equipment/Laptops	Option of either: <ul style="list-style-type: none"> Provision of an iPad Pro (for electronic agendas) including full support and applications necessary for Council business, and A Dell Laptop with Windows 10.
	Mobile phone	DCC phone: <ul style="list-style-type: none"> Provision of an Apple iPhone 13 or a Samsung S22 mobile phone and corporate plan (data, texts and voice) including full support and applications necessary for Council business or
	Mobile Phone Expenses (Own Phone)	If providing own phone then: <ul style="list-style-type: none"> Up to \$500 per annum (\$ 41.66 per month) to cover council generated calls, texts and data through mobile phones.
	Stationery	Supply of reasonable amounts of paper, letterhead, business cards and envelopes and printer consumables for Council business. Reimbursement of ICT consumables such as paper and ink cartridges of up to \$200 during the term of the determination.
Community Board Chairpersons	Car Parks	Provision of a single car park (currently in Harrop St).
	Mobile Phone Expenses	Access to a Council car park (currently in Harrop St) for use on Council business.
Community Board Members	Parking Expenses	\$500 per annum (\$41.66 per month) to cover Council generated calls, tests and data through mobile phones.
	Conferences/Community Board Business	Reimbursement of car parking expenses related to Community Board Meetings, Working Party or other Committee meetings held outside the Board area during business hours, on receipt of a signed claim accompanied by a receipt. Actual and reasonable registration, travel, accommodation, meal and related incidental expenses incurred by members in attendance at conferences and approved Community Board business on behalf of the Community Board, held both within New Zealand and overseas, provided: <ul style="list-style-type: none"> The related expenditure can be accommodated within the Civic budget

Position	Expense Type	Description
		<ul style="list-style-type: none"> Approval to attend the conference has been given by the Board or the approval by the Mayor. <p>Note – this is for actual travel costs (petrol/diesel for example). Mileage is not payable for conference attendance.</p>
	Community Board Conference and Community Board forums	<p>The Council will cover the accommodation, travel and registration costs for one Community Board Member (per Community Board) to attend the Conference or Forum when it is held South Island, and two Community Board members in total to attend the conference or forum when they are held in the North Island.</p>
	Training/Seminars	<p>Actual and reasonable registration, travel, meal and related incidental expenses incurred by members attending training or seminars for the purpose of professional development provided:</p> <ul style="list-style-type: none"> the expenditure can be accommodated within the relevant activity budget approval to attend the training has been given by the Mayor and the Manager Governance.

MEETING SCHEDULE FOR THE REMAINDER OF 2022

Department: Civic

EXECUTIVE SUMMARY

- 1 A meeting schedule is included for consideration in accordance with Schedule 7, Clause 21 of the Local Government Act 2002.
- 2 As this is an administrative report, there are no options or summary of considerations.

RECOMMENDATIONS

That the Council:

- a) **Adopts** the meeting schedule for the remainder of the 2022 year.
- b) **Notes** that a meeting schedule for the 2023 year will be prepared for consideration at the Council meeting on 13 December 2022.
- c) **Notes** that the Community Boards will consider and confirm their own meeting schedules.

DISCUSSION

- 3 A proposed meetings schedule for the remainder of 2022 is set out below:

Council	
Council	Tuesday 8 November, 10.00 am
Council	Tuesday 29 November, 10.00 am
Council	Tuesday, 13 December, 10.00 am
Community Boards	
Inaugural Mosgiel Taieri Community Board	Wednesday, 2 November, 9.30am
Inaugural Strath Taieri Community Board	Wednesday, 2 November, 10.30am
Inaugural Otago Peninsula Community Board	Wednesday, 2 November, 11.30am
Inaugural Saddle Hill Community Board	Wednesday, 2 November, 1.30pm
Inaugural Waikouaiti Coast Community Board	Wednesday, 2 November, 2.30pm
Inaugural West Harbour Community Board	Wednesday, 2 November, 3.30pm

- b) The grounds in support of that refusal; and
- c) Advice as to the right to apply to the Ombudsman to seek a review of the refusal.

Meetings

- 14 This Act requires Council to prepare agendas and other reports for Council and Committee meetings and to make them available a minimum of two working days in advance of the meeting date and time. It also requires that the Council meetings be held in public, unless there are grounds for the matter to be considered with the public to be excluded.
- 15 All meetings must be advertised in accordance with s46(1) and s46(2) of LGOIMA. Meetings must be advertised not more than 14 days or less than five before the end of each month, except that if the meeting is to occur after the 21st day of the month it may be advertised not more than 10 or less than five working days before the day on which it is to be held.
- 16 Any meetings not advertised in accordance with s46(1) and s46(2) of LGOIMA will be extraordinary meetings and public notice given as provided for in s46(3) and s46(4). This means that notice is given as soon as practicable with an indication of the general nature of the business. However, meetings will not be invalid due to not being advertised in accordance with s46. There is provision in s46(6) for meetings to be advertised after the event.
- 17 In the event of it being necessary to hold an extraordinary meeting, s46(4) will apply. This provides for such notice as is reasonable in the circumstances with the business to be transacted described.
- 18 The Act provides that the public and media have the right of access to all meetings of the Council, committees, subcommittees (with the power to decide) and Community Boards unless the meeting resolves to exclude the public. The grounds for excluding the public and the media from a meeting can only be those provided in the Act and essentially are the same grounds as for withholding official information. However the public may be excluded where the subject matter of the discussion is one in respect of which a right of appeal exists to any Court or Tribunal.
- 19 A resolution to exclude the public is required. The motion must state the subject of the "non public" matter and the specific reason provided in the Act and be put while the public is still present. A full explanation of the grounds to exclude the public is contained in Appendix 1 of the Standing Orders.
- 20 Even where a meeting has resolved to exclude the public, a person can request a copy of the minutes of the meeting. That request must be treated in the same way as a request for official information, and a decision to refuse may be subject to review by an Ombudsman.
- 21 The release of publicly excluded information by members without authority is prohibited under the Council's and the Community Boards' Standing Orders. Any request for information or intention to release publicly excluded information should be referred to the Chief Executive Officer in the first instance.

Adding matters to the agenda

- 22 The Chief Executive Officer is solely responsible for the agenda for Council meetings. The Chief Executive Officer may include or withdraw items on an agenda.

The Disqualification from Office "Rule"

- 31 Unless prior approval of the Auditor General (or some other specified exception) applies, LAMIA disqualifies elected and appointed members of Council from office where they are "concerned or interested" in contracts with the Council that exceed a cumulative value of \$25,000 (inclusive of GST) in any financial year. Contracts include any sub-contracts.
- 32 If a member breaches the \$25,000 (inclusive of GST) limit, that member is disqualified from holding office and, if they continue to act, may be prosecuted and fined.
- 33 Generally a person will be concerned or interested in a contract or other matter where:
- That person or their spouse separately or together hold 10% of the issued capital of the company or a controlling company; and/or
 - The member or spouse is a shareholder of the company or controlling company and either the member or spouse is a managing director or general manager or equivalent.
- 34 Retrospective approval from the Office of the Auditor-General can only be given in limited circumstances and so prior approval should always be sought at the first opportunity.
- 35 It is your responsibility to keep track of contracts or subcontracts in which you are concerned or have an interest, and to ensure that pre-approval for the transaction is sought from the Auditor-General at the first opportunity if the total amount of payment exceeds the \$25,000 (including GST) limit in one financial year.

The Participation "Rule"

- 36 LAMIA prohibits members of the Council, a Committee or Community Board voting on any matter in which they have a direct or indirect pecuniary interest, other than an interest in common with the public.

Pecuniary Interests

- 37 A pecuniary interest is: *"whether, if the matter were dealt with in a particular way, discussion or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned."* In addition, if your spouse has a pecuniary interest you are deemed to have the same interest.
- 38 A pecuniary interest via a company arises where:
- That person or their spouse separately or together hold 10% of the issued capital of the company or a controlling company; and/or
 - The member or spouse is a shareholder of the company or controlling company and either the member or spouse is a managing director or general manager or equivalent.
- 39 Where uncertainty exists, the member must adopt a "lowest risk" approach. In most instances, this will mean withdrawing from discussion and voting.
- 40 A pecuniary interest may exist even where an organisation is a not for profit agency such as sporting, cultural or charitable associations. However, pecuniary interests may arise where such decision-makers hold membership at a golf club occupying land leased from the local authority when the lease rental has a consequence for the size of the members' subscription or other fees.

- 41 Any member who contravenes the prohibition against discussing or voting on a matter in which they have a pecuniary interest commits an offence liable to a fine. Upon conviction the member is disqualified from holding office and an extraordinary vacancy is created.

Non Pecuniary Interests

- 42 A non-pecuniary conflict of interest exists where:

"...a fair-minded observer reasonably thinks 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."

- 43 Therefore non-pecuniary interests can be actual interests or perceived interests.

Actual Conflict of Non-Pecuniary Interest

- 44 A close relationship or involvement between the elected member and an individual or organisation affected by the matter for decision can mean that there is an actual conflict of a non-pecuniary interest.
- 45 Example: if the elected member is an office holder in the club or strongly identified with the club, or if the decision will result in a benefit to the club.

Perceived Conflict of Non-Pecuniary Interest

- 46 The roles of a member may also intersect with other responsibilities held such that a perception of bias cannot be avoided.
- 47 Examples:
- Statements or conduct by the member may indicate that they have made up their mind before hearing all the information relevant to the decision.
 - If the elected member is a Justice of the Peace who sat in the District Court to hear and determine traffic infringements and that person is seeking a decision from Council, the appearance of a conflict of interest could not be avoided if that person participated in the Council decision-making. It would be inappropriate for such a person to be the decision-maker in a matter where the Council is the informant or prosecuting agency.

Council Controlled Organisations (CCOs)

- 48 The fact of being a CCO director will not usually prevent a member from participating in local authority matters concerning the CCO – especially if the role gives the member specialised knowledge that it would be valuable to contribute.
- 49 However, the participation rule applies in circumstances where there is a conflict between your duty as a member of the local authority and your duty to act in the interests of the other organisation.
- 50 An example may be if the Council is considering a change in the mode of delivery of one of its services that could affect the financial position of a CCO.
- 51 The appointment of Councillors to be directors of CCOs will not be a matter in respect of which any member will be prohibited from discussion and voting.

- 52 However, in matters relating to the setting of fees payable to the directors of CCOs, council members who are directors of any of the CCOs concerned would have a direct pecuniary interest and the prohibition would apply. For new CCOs, when the directors have not yet been appointed, all Councillors would have an indirect pecuniary interest. In this situation, the Council would need to apply to the Auditor-General for a declaration to enable members to determine the fees.

Declaring Pecuniary and Non-Pecuniary Interests and abstention from voting and discussing

- 53 Members are under a duty to declare to the meeting their interest. Their abstention from discussion and voting must be recorded in the minutes.
- 54 The prohibition against discussing and voting on a matter does not apply in certain situations, such as:
- a) Members' remuneration where the maximum rate has already been fixed;
 - b) Election or appointment of any member to a Council, or Community Board, office notwithstanding that remuneration is payable;
 - c) The preparation, approval, or review of a district plan, unless the matter relates to any variation or change or departure from a district plan or to the conditional use of land.

Exemptions from the Auditor General

- 55 The Audit Office has the power to declare that the prohibition shall not apply in respect of any particular matter if the Office is satisfied the prohibition would impede the business of the Council or that it is in the interest of the electors that the prohibition not apply. An exemption cannot be given retrospectively – applications must be made before the member participates.
- 56 The booklet, published by the Audit Office entitled "Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968", was distributed to all elected members and it is strongly recommended that new elected members read this document carefully and existing elected members refresh their knowledge. Members who misplace their copy should contact the Governance Support Team as replacement copies can always be provided.

Sections 99, 105 and 105A of the Crimes Act 1961

- 57 Councillors and Community Board Members come within the definition of an "official" in section 99 of the Crimes Act. It is an offence against this section to seek or obtain a reward for performing one's official duties as a Councillor or Community Board Member.
- 58 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 himself 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.
- 59 Section 105A provides it is an offence 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.

- 60 Example: a breach of this provision could be proved if an elected member, knowing that land was to be re-zoned, invested in the purchase of that land before the proposal had been publicly notified.

Secret Commissions Act 1919

- 61 This Act upholds the principle that persons holding positions of trust such as members of Council, Committees or Community Boards should not make a profit from holding office.
- 62 The Act provides that elected members and officers are "agents" of the Council and that every agent commits an offence who corruptly accepts or obtains or solicits, for themselves or for any other person, any gift or other consideration as an inducement or reward for doing or not doing any act in relation to the Council's affairs, or for having shown favour or disfavour to any person in relation to the Council's affairs.
- 63 Any agent who diverts, obstructs or interferes with the proper course of the Council's business, or fails to use due diligence in the execution of such business with intent to obtain for themselves or any other person any gift or other consideration shall be deemed to have corruptly solicited a consideration.
- 64 While "gift" is not defined, "consideration" is. It includes discounts, commissions, rebates, bonuses, deductions, percentages, employment and money (including loans).
- 65 Section 5 of the Act provides that an agent, who makes a contract on behalf of the Council, must disclose to the Council any pecuniary interest in the contract. This provision is similar to that contained in the Local Authorities (Members' Interests) Act 1968.
- 66 Also, it is an offence to advise the Council with intent to induce it to enter into a contract with a third person, and receive any gift or consideration from the third person, without disclosing to the Council the fact of payment of the gift or other consideration.
- 67 Upon conviction for any offence under the Act an agent is liable to a fine or two years imprisonment and would be disqualified from holding office.

Financial Markets Conduct Act 2013

- 68 Under the Financial Markets Conduct Act 2013, elected members are in a similar position to company directors if the Council were to issue financial products, such as equity or debt securities, under its borrowing powers.
- 69 The Financial Markets Conduct Act 2013 imposes on Members the same responsibilities as company directors whenever Council offers securities (debt or equity) to the public. Members may be personally liable if investment documents such as a disclosure statement contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met. They may be personally liable for civil action or criminal prosecution if the requirements of the Act, such as keeping an audited register of financial products issued, are not met.
- 70 The Act also prohibits any Member who has information about a listed company that is not generally available to the market, from trading in that company's shares or from disclosing that information. Therefore, if elected members become aware of inside information, care must be taken not to use it or divulge it to other people.

- 71 The penalties for certain offences under this Act (false or misleading statements in disclosure documents – 10 years; or insider trading – five years) are such that if a Member were convicted, that conviction would result in a disqualification from holding office.

Signatories

Author:	Sharon Bodeker - Acting Manager Governance
Authoriser:	Sandy Graham - Chief Executive Officer

Attachments

There are no attachments for this report.