

Notice is hereby given that an extraordinary meeting of the Gore District Council will be held in the Council Chambers, civic administration building, 29 Bowler Avenue, Gore, on Tuesday 16 May 2023, at 3.15pm.



Stephen Parry
Chief Executive

11 May 2023

Agenda

1. Apologies
2. Declaration of Councillor conflict of interests
3. Ministerial intervention
4. Vote of no confidence
5. Legal opinion to remove the Mayor from the Chief Executive Appraisal Committee
6. Request to remove Mayor from Committees, Sub-Committees and Joint Committees

EXTRAORDINARY COUNCIL MEETING

TUESDAY 16 MAY 2023

3. REQUEST FOR MINISTERIAL INTERVENTION

(Memo from Chief Executive – 11.05.23)

- ✦ Attached is a copy of a requisition signed by eight elected members, requesting the Chief Executive to call an extraordinary meeting.

The following motion will be put to the meeting:

THAT the Council write to the Minister of Local Government requesting a meeting with Council representatives to discuss intervention measures available to assist the Council to effectively govern and conduct its business as usual.

11 May 2023

Stephen Parry 
Chief Executive
Gore District Council
29 Bowler Ave
GORE 9770

Received at 2:35 pm on 11 May
2023.



Dear Mr Parry

Requisition to Call an Extraordinary Meeting

We the undersigned, being elected members of the Gore District Council give notice that we wish to meet on Tuesday 16 May 2023 at 3:15 pm at the Gore Council to consider the following resolutions:

- 1 That the Council write to the Minister of Local Government requesting a meeting with Council Representatives to discuss intervention measures available to assist the Council to effectively govern and conduct its business as usual.
- 2 That the Council pass a vote of no confidence in the Mayor, Benjamin Bell.
- 3 That the Council remove the Mayor from the following Committees, Sub-Committees and Joint Committees:

Assets and Infrastructure Committee

Audit and Risk Committee

Community Wellbeing Committee

Policy and Regulatory Committee

Rural Halls and Domains Sub-Committee

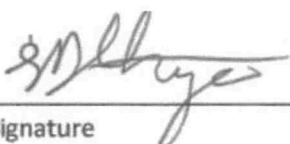
District Plan Sub-Committee

Great South Joint Shareholder Committee

Southland Waste Advisory Group (WasteNet)

Southland Civil Defence Emergency Management Group

Signed by:


Signature

JOE STRINGER
Name

P. D.

Signature

Paul McPhail

Name

[Signature]

Signature

Glenys Dickson

Name

[Signature]

Signature

Riadh O. McPhail

Name

[Signature]

Signature

Keith Howell

Name

[Signature]

Signature

Stewart MacDonell

Name

[Signature]

Signature

Bronwyn Reid

Name

[Signature]

Signature

Neville Phillips

Name

4. VOTE OF NO CONFIDENCE

The following motion will be put to the meeting:

THAT the Council pass a vote of no confidence in the Mayor, Benjamin Bell.

5. LEGAL OPINION TO REMOVE THE MAYOR FROM THE CHIEF EXECUTIVE APPRAISAL COMMITTEE

(Memo from Chief Executive – 11.05.23)

At last month's Council meeting, a report on the constitution and Terms of Reference for the Chief Executive's Performance Appraisal Committee was discussed. The revised membership of the Committee proposed to remove the Mayor from as a member due to concerns in regard to a notable conflict of interest.

His Worship challenged the Council's ability to remove him from the Appraisal Committee citing the specific provision of section 41A(5) in the Local Government Act 2002, as the basis for this stance. Further, it was contended by His Worship that a section within the Act trumped a clause within a schedule. This point was made as Clause 31 in Schedule 7 of the Act provides for a Council to appoint or remove any member to or from a Committee.

At the time this difference of view was expressed, I advised the Council meeting that staff were comfortable with the clarity provided in Clause 31 of Schedule 7 and had verbally conferred with the Council's lawyer before placing the report and recommendation in regard to the Chief Executive Appraisal Committee membership on the April Council meeting agenda. In the interests of certainty and clarity, a formal legal opinion on the Council's ability to remove the Mayor from a Committee was requested.

- ✦ Please find enclosed a carefully considered written opinion from Anderson Lloyd on this issue. As can be seen, the opinion makes it quite clear that clauses in a schedule are not subservient to sections located closer to a statute's commencement. The opinion is unambiguous that the Council has the right under clause 31 of Schedule 7 to remove a member, including the Mayor, from a Committee. On this basis, the way would appear clear for the Council to confidently endorse the following recommendation which was included in last month's meeting agenda:

RECOMMENDATION

THAT the report and legal opinion from Anderson Lloyd be received and noted.

1 May 2023

Stephen Parry
Gore District Council
sparry@goredc.govt.nz

Level 12
Otago House
477 Moray Place
Dunedin 9016

Private Bag 1959
Dunedin 9054
New Zealand

Dear Steve,

al.nz

Legal opinion – removal of Mayor from Committee

- 1 You have asked us to provide legal advice on the legal ability for Gore District Council (**Council**) to remove the Mayor from the Chief Executive Performance Appraisal Committee (the **Committee**). We understand that Council resolved to remove the Mayor from the Committee at its meeting on 28 March 2023.

Advice

- 2 In our opinion Council's resolution to discharge the Mayor from the Committee was within its power and valid.
- 3 Section 41A(5) of the Local Government Act 2002 (**LGA**), provides that the Mayor is a member of each committee of Council. Clause 31 Schedule 7 LGA provides Council the ability to remove any member from a committee.
- 4 A clause in a schedule has equal legal status to a section in a piece of legislation. Other than where expressly stated, one statutory provision does not prevail over the other. In this case, we consider s 41A(5) identifies a default situation in which the Mayor is a member of every committee, but that this does not prevent changes to the composition of committees by the Council at any time. Clause 31 provides the Council with a clear power to remove "*any member*" from a committee, and does not exclude any role (such as the Mayor) from the ambit of this power.

Reasoning

Local Government Act 2002

- 5 Section 41A(5) of the Local Government Act 2002 (**LGA**), provides that the Mayor is a member of each committee of Council:

41A Role and powers of mayors

...

- (5) A mayor is a member of each committee of a territorial authority.

- 6 Clause 31 Schedule 7 LGA provides Council the power to discharge any member of a committee:

31 Membership of committees and subcommittees

- (1) A local authority may appoint or discharge any member of a committee or a subcommittee.

Interpretation Act 1999

- 7 Section 5 of the Interpretation Act 1999 requires that "*the meaning of an enactment must be ascertained from its text and in the light of its purpose*". The meaning may be ascertained by considering indications provided in the enactment, including the organisation and format of the enactment.¹

Purpose of the LGA

- 8 The purpose of the LGA is provided in s 3 LGA:

3 Purpose

The purpose of this Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities; and, to that end, this Act—

- (a) states the purpose of local government; and
- (b) provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and
- (c) promotes the accountability of local authorities to their communities; and
- (d) provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach.

- 9 The purpose of local government is also provided in s 10 LGA:

10 Purpose of local government

- (1) The purpose of local government is—
- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
 - (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

- 10 The purpose of the LGA and of local government clearly places high importance on democratic decision making of a local authority as a whole. The role of a mayor as an individual member is not directly reflected in the overarching purpose of the LGA.

Organisation and format of the LGA

- 11 The organisation and format of an enactment has been considered by the Courts in case law.² We have found no support in case law for the proposed position that a section in an enactment

¹ Section 5(3) Interpretation Act 1999.

² See for example, *Re Marlborough District Council*, ENC Christchurch C069/03, 29 May 2003 and *R v Pora*, CA225/00, 20 December 2000.

has any primacy over a clause in a schedule of the same enactment, as a result of their organisation.

- 12 We consider a section and a schedule (or clauses in a schedule) in an Act have equal legal status. Other than where directly provided (for example, by use of a phrase such as "*unless expressly provided otherwise*", or "*notwithstanding section X*") one does not prevail over the other. The conventional principle of statutory interpretation is that the two provisions should be interpreted so they both have meaning, and any inconsistency should be resolved if possible. This principle is most consistent with our interpretation.

Parliamentary intention

- 13 A further relevant consideration is the intention of Parliament when drafting the provisions.³
- 14 Clause 31 schedule 7 sets out requirements for who must and who may be a member of a committee:

31 Membership of committees and subcommittees

(3) The members of a committee or subcommittee may, but need not be, elected members of the local authority, and a local authority or committee may appoint to a committee or subcommittee a person who is not a member of the local authority or committee if, in the opinion of the local authority, that person has the skills, attributes, or knowledge that will assist the work of the committee or subcommittee.

(4) Despite subclause (3),—

(a) at least 1 member of a committee must be an elected member of the local authority; and

(b) an employee of a local authority acting in the course of his or her employment may not act as a member of any committee unless that committee is a subcommittee.

- 15 Section 41A was added to the LGA in 2013.⁴ Clause 31 schedule 7 was not amended when s 41A was added. Parliament had the opportunity to amend clause 31(3) or (4) to specify that the Mayor must be a member of a committee but did not make this amendment. Parliament also had the opportunity to amend clause 31(5) to exclude the Mayor from Council's power to discharge committee members but did not. This is indicative of Parliament's intention that the power in clause 31 is to apply to any member of a committee including the Mayor.

Meaning of s 41A(5) and clause 31 schedule 7 LGA

- 16 We interpret the meaning of s 41A(5) to be a default position; in other words that as a starting point, the Mayor is a member of every committee of Council. The wording of this provision does not prevent changes to the composition of committees by Council.
- 17 In our view the meaning of clause 31 clearly provides Council the power to discharge "*any member*" from a committee. This power is not qualified in any way to protect certain roles, or to

³ See for example *Transpower New Zealand Ltd v Commerce Commission*, HC Wellington CIV-2011-485-1032, 4 November 2011 at [17], referring to *Northland Milk Vendors Association v Northern Milk Ltd*, HC Whangarei CP49/88, 20 May 1988.

⁴ By section 21 of the Local Government Act 2002 Amendment Act 2012.

provide for other provisions to prevail over it. We consider therefore that this power may be used to remove any member of a committee, including the Mayor. This supports the purpose of the LGA to enable democratic decision making by Council as a whole.

- 18 We have considered and tested an interpretation that section 41A(5) prevails in all cases and means the Mayor can not be discharged from a committee by the Council. This interpretation is not correct in our assessment. It would mean:
- (a) consequences that do not always work such as a Mayor always being a member of every committee, even if they may not be qualified by legal requirements such as for example a hearing committee that requires accredited decision makers. The interpretation of legislation should avoid absurd and unreasonable consequences such as this;⁵ and
 - (b) this interpretation implies words into clause 31 that are not there. Effectively this alternative interpretation would mean the Council can discharge any member except the Mayor. This is not a necessary implication and is contrary to the general principle that reading words into a statute is not permissible.⁶
- 19 Our preferred interpretation also aligns with the scheme of section 41A(3) in which the Mayor can establish initial committees, including themselves as chairperson. The Council too has the power to re-constitute such committees under clause 30 schedule 7, despite the Mayor's initial decision. As the ultimate governance body, the purpose of the Act is that Council collectively has the ultimate oversight and decision making power to establish and re-constitute committees.
- 20 For completeness, we note that s 41A LGA provides the Mayor with the power to appoint themselves as chairperson of any committee established by the Mayor (s 41A (3)(b)-(c)). However in this particular instance, the Committee and its membership was established by the Council,⁷ and as such the power of the Mayor to appoint himself as chairperson of the Committee is not available.

Ngā mihi
Anderson Lloyd



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⁵ See for example *Agnew v Pardington*, CA109/05, 22 December 2005 at [32] ad [42].

⁶ *Simons Pass Station Ltd v Mackenzie District Council*, [2020] NZHC 3265 at [24, referring to *Northland Milk Vendors Association v Northern Milk Ltd*, HC Whangarei CP49/88, 20 May 1988.

⁷ Minutes of extraordinary meeting of Gore District Council, 24 January 2023, pages 2 and 5.

6. REQUEST TO REMOVE MAYOR FROM COMMITTEES, SUB-COMMITTEES AND JOINT COMMITTEES

The following motion will be put to the meeting:

THAT the Council remove the Mayor from the following Committees, Sub-Committees and Joint Committees:

- **Assets and Infrastructure Committee**
- **Audit and Risk Committee**
- **Community Wellbeing Committee**
- **Policy and Regulatory Committee**
- **Rural Halls and Domains Sub-Committee**
- **District Plan Sub-Committee**
- **Great South Joint Shareholder Committee**
- **Southland Waste Advisory Group (WasteNet)**
- **Southland Civil Defence Emergency Management Group**