

Late Agenda Item
(Not on agenda)

Council Meeting – 26 April 2018

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HURUNUI DISTRICT COUNCIL MEETING REPORT



To: Council
Report Prepared By: Hamish Dobbie, Chief Executive Officer
Date: 26 April 2018
Significance Level: Low

Vote of Confidence

Recommendation THAT THE COUNCIL CONSIDERS THE COMPLAINT RAISED BY HE TANGATA ABOUT THE ROLE OF COUNCILLOR DAVISON IN CHAIRING THE HURUNUI WATER PROJECT SHARE PROPOSAL PROCESS AND CONDUCTS A VOTE OF CONFIDENCE IN COUNCILLOR DAVISON WITH RESPECT TO THIS ROLE.

Executive Summary

- Councillor Davison was voted by this Council to chair the process looking at the potential purchase of Hurunui Water Project Shares by the Hurunui District Council.
 - He tangata has raised a complaint about Councillor Davison's role in chairing the Council's proposal to purchase shares in the Hurunui Water Project.
 - Officers are asking the Council to consider the complaint and conduct a vote of confidence in Councillor Davison with respect to this process.
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Background

The Council has for some time been considering a potential purchase of shares in the Hurunui Water Project. A variety of conflicts of interest have arisen during this process and acting on advice from the Chief Executive three councillors have recused themselves from this process. Because of these recusals Councillors elected Councillor Davison to chair the process.

<http://www.hurunui.govt.nz/assets/Documents/AgendasMinutes/Minutes/2017/27-April-2017-Council-minutes.pdf>

Prior to the vote being taken Councillor Davison reminded Councillors of the fact that he had previously been a shareholder in the Amuri Irrigation Company, but he had ceased being a shareholder when he sold his farm. He also informed Councillors that he was currently a trustee (appointed by Christchurch City and Selwyn District Councils) of the Central Plains Trust and that the Central Plains Trust was not Central Plains Water Ltd, rather it was a community trust which held the consents relied upon by the Central Plains Water scheme.

Under the chair of Councillor Davison, Council has progressed through a deliberate process of consideration of the issues, consultation with the community and consideration of due diligence on the potential share purchase.

He tangata has raised a formal complaint (Appendix 1) relating to Councillor Davison during this process and has requested his removal from the chair and indeed from the process.

Dealing with the formal complaint

In the normal course of events officers receive formal complaints relating to the services delivered by Council and make decisions about the resolution of those complaints. This issue is a formal complaint regarding the role of a Councillor and as such it is appropriate that the matter is dealt with by Council rather than by officers.

It is therefore proposed that Councillors conduct a vote of confidence in Councillor Davison as the elected chair on this matter.

Councillor Davison has chosen to vacate the chair and not take part in the discussion of this issue. He wishes to make it clear that he has chosen this course of action to ensure that Council comes to a fair resolution of this complaint.

Risks

There are at least three legal options available to parties which are not satisfied with Council's decision:

1. A complaint to the Ombudsman
2. A complaint to the Office of the Auditor General
3. A judicial review

An adverse decision from any of the three options above could at a minimum impact public confidence in Council's processes and at the maximum see Council's decision overturned and the consultation process required to be conducted again. In addition there is likely to be some cost to Council in defending its position.

Significance Consideration

Officers have assessed this issue as being of low significance. The number of people affected by Council's decision is low and the financial risks are limited to legal cost. It is however acknowledged that there are reputational risks associated with any decision on this issue.

Engagement

This matter is internal to Council and therefore no engagement is required. The Chief Executive Officer will inform the complainant of the outcome of this process and address the specific process and Local Government Official Information and Meetings Act requests from the complainant.

Options

Option 1: Do Nothing

<i>Advantages</i>	<i>Disadvantages</i>
	<ul style="list-style-type: none"> • The complaint is not resolved

Option 2: Council considers the complaint and conducts a vote of confidence in Councillor Davison as the chair

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • Council resolves the complaint 	<ul style="list-style-type: none"> • There is some risk of Council's decision on this matter being challenged

This is the preferred option

Appendices

Appendix 1 – Formal Complaint: Hurunui Water Project – Councillor Davison’s Role



**Report
Prepared by:**

Hamish Dobbie
Chief Executive Officer

**Officer in
Attendance:**

The report author will be in attendance to speak to this report.

He tangata
5 John Leith Pl
RD 1
Leithfield
Hurunui

22 April 2018

Hamish Dobbie
Hurunui District Council
66 Carters Road
Amberley

Dear Hamish,

FORMAL COMPLAINT: HURUNUI WATER PROJECT, CR DAVISON'S ROLE

We wish to lodge a formal complaint concerning the appointment of Councillor Dick Davison as Chair of the Hurunui District Council (HDC) process pertaining to the proposed purchase of shares in the Hurunui Water Project (HWP). We also wish to challenge Cr Davison's role in the consultation and decision-making process in relation to the proposed share purchase in the HWP.

We understand that the correct process is to raise a complaint with customer services in the first instance and that within three days the complainant will be advised of to whom the matter has been referred. We consider this matter to be time sensitive and hence we have written directly to you and cc'd in Customer Services.

We strongly believe that Cr Davison is not the right person for the role of chair - for the reasons outlined below - and would like to see him removed as chair for all future deliberations, including the upcoming opportunity for councillors to request additional information on Thursday 26 April 2018. Additionally, we request that Cr Davison be recused from further involvement in the process related to the proposed purchase of shares in HWP.

After attending the public meetings, we were appalled by Cr Davison's clear bias, cemented by his recent appearance on TVNZ on 8 April 2018. His demeanour, in the submission room and at the public meetings, did not show an openness to the process in any way, shape or form. We felt that his facilitation, at times, created an oppressive and unreasonable atmosphere.

Given that Cr Davison is a trustee for the Central Plains Water scheme and was once involved in the Amuri Irrigation Company, he should have been working hard in the submission room and at public meetings to present an open mind. It shows a lack of respect for the entire process. The fact Cr Davison has not deemed it necessary to run the meetings with an open mind and has made public statements in support of irrigation at this time has undermined the whole process. The clear bias present in the process is contrary to the legal definition of consultation as held in:

Wellington International Airport Limited and others v Air New Zealand [1993] 1 NZLR 671, at p. 675. Judgment of the Court of Appeal delivered by McKay J quoting McGechan J in the High Court in Air New Zealand and others v Wellington International Airport Limited and others, HC, Wellington, CP 403-91, Jan 6, 1992:

"Consultation must allow sufficient time, and a genuine effort must be made. It is a reality not a charade. The concept is grasped most clearly by an approach in principle. To "consult" is not merely to tell or present. Nor, at the other extreme is it to agree. Consultation does not necessarily involve negotiation toward an agreement, although the latter not uncommonly can follow, as the tendency in consultation is to seek at least consensus. Consultation is an intermediate situation involving meaningful discussion. Despite its somewhat impromptu nature I cannot improve on the attempt at description, which I made in West Coast United Council v Prebble, at p 405:

'Consultation involves the statement of a proposal not yet fully decided upon, listening to what others have to say, considering their responses and then deciding what will be done.'

The bias displayed by Cr Davison is also contrary to Government guidelines on consultation. We draw your attention to one of Government's guidelines, pertinent to our concerns about Cr Davison's stated bias:

While you may begin consultation with a preferred option, submissions should be considered with an open mind before any final decision is made.

We request that a new Chair be appointed immediately and that Cr Davis be recused from further involvement in the consultation and decision making process regarding HWP. We further ask you to investigate with urgency, our concern that the consultation process has been irreparably affected by the role of Chair and facilitator who displayed a clear bias throughout the process.

Additional requests:

1. Please provide us with a copy of the complaints policy that will be followed in this matter.
2. Please advise us of the process that Council uses to elect its facilitators for public consultation meetings.
3. We urgently request, pursuant to the Local Government Official Information and Meetings Act (1987) s.10 (1):
 - a) the date that Cr Davison was chosen to facilitate the public consultation meetings

b) the decision making process used to appoint Cr Davison to facilitate the public meetings.

4. We understand that pursuant to section 10(4) of the LGMOIA (1987) that we are required to provide reasons for requesting this information in urgency. Our reason is that, subject to the information provided, we are considering taking legal action regarding Cr Davison's role in the process. Given the timeframe for decision making in the HWP process, we consider this to be a time sensitive issue.

Additional information

We remain very concerned over the lack of transparency in this HWP process. While we understand that, at times and in the interests of commercial sensitivity, privacy needs to be maintained, we are at a loss as to why the due diligence process is deemed commercially sensitive in its entirety. We are further concerned that Councillors will be making a decision without access to what due diligence has taken place. The lack of transparency combined with the absence of Council receiving independent advice on the potential purchase is a fundamental concern that we have in the Council's process. In the interests of openness we wish to communicate with Council that we are seeking advice as to how we may challenge these issues. We will be requesting further information from Council about these matters.

Conclusion

We would like to be able to maintain faith and confidence in our Council and also in the basic principles of living in a democratic society. We look forward to hearing the outcome of our complaint as soon as possible.

Please do not hesitate to get in touch if any issues need clarifying

Yours sincerely,



Nadia Maxwell
Chair
He tangata
M: 021 163 8218 E: nadia@overactiveimagination.co.nz

He tangata Committee:

Jo Martin



Ben Kepes



Sam Mahon



Viv Kepes



For media enquiries please contact Ben Kepes. M:021 2384136 E:
ben@diversity.net.nz

Cc: HDC customer services
Mayor Winton Dalley
HDC Councillors
Hon Nanaia Mahuta
Malcolm Alexander, LGNZ
Dave Cull, LGNZ
Jen Miller, Royal Forest and Bird Protection Society of New Zealand