



---

## **NOTICE OF MEETING**

**Notice is hereby given of an  
Extraordinary Meeting of the  
Invercargill City Council  
to be held in the Council Chamber, First Floor  
Civic Administration Building,  
101 Esk Street, Invercargill  
On Monday 24 June 2019 at 5.00 pm**

Sir T R Shadbolt, KNZM JP  
Cr R R Amundsen (Deputy Mayor)  
Cr R L Abbott  
Cr A J Arnold  
Cr K F Arnold  
Cr T M Biddle  
Cr A H Crackett  
Cr I L Esler  
Cr G D Lewis  
Cr D J Ludlow  
Cr I R Pottinger  
Cr L F Soper  
Cr L S Thomas

CLARE HADLEY  
CHIEF EXECUTIVE

## **Council's Values:**

- Responsibility      Take ownership of decisions and outcomes, both collectively and individually.
- We willingly share our knowledge.
  - We acknowledge our mistakes, work to resolve them and learn from them.
  - We give and receive feedback in a constructive manner to resolve issues.
  - We do our job with total commitment.
- Respect              Everyone is important, as are their views.
- We support and care for each other.
  - We stop to listen, learn and understand.
  - We communicate in an honest, up-front and considerate manner.
  - We maintain confidences and avoid hurtful gossip.
- Positivity           Always look on the bright side of life.
- We are approachable, interested and friendly.
  - We are open and receptive to change.
  - We acknowledge and praise the efforts of others.
  - We work together as a team to get the job done.
- Above and Beyond   Take opportunities to go the extra mile.
- We take the initiative to improve our work practices to get the best results.
  - We challenge ourselves and each other to make it better.
  - We take pride in providing the best possible outcomes.
  - We are ambassadors for our Council at all times.

## **Council's Vision for the City:**

Enhance our City and preserve its character, while embracing innovation and change.

## **Council's Vision:**

We are an energised, fun and innovative team that makes it better for each other and our community.

## **Council's Mission:**

Making it better by making it happen.

# A G E N D A

2. **APOLOGIES**

3. **INTEREST REGISTER**

4. **COUNCIL DECISION MAKING – RECYCLABLES ACCEPTANCE SERVICES' CONTRACT**

5. **PUBLIC EXCLUDED SESSION**

Moved, seconded that the public be excluded from the following parts of the proceedings of this meeting, namely:

- (a) *Extension of Contract 650.*
- (b) *Contract 850 – Notice of Dispute.*
- (c) *Contract 850 – Notice of Motion.*

<b>General subject of each matter to be considered</b>	<b>Reason for passing this resolution in relation to each matter</b>	<b>Ground(s) under Section 48(1) for the passing of this resolution</b>
(a) Extension of Contract 650	Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	<b>Section 7(2)(i)</b>
(b) Contract 850 – Notice of Dispute	Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	<b>Section 7(2)(i)</b>
(c) Contract 850 – Notice of Motion	Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	<b>Section 7(2)(i)</b>

\*\*\*\*\*

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS  
INTEREST REGISTER**

A2279220

<b>ELECTED MEMBERS</b>			
<b>NAME</b>	<b>ENTITY</b>	<b>INTERESTS</b>	<b>PROPERTY</b>
<b>RONALD LINDSAY ABBOTT</b>	Invercargill City Council Kiwi-Pie Radio 88FM Invercargill Invercargill Art Gallery Invercargill Venues and Events Management	Councillor Director / Broadcaster Council Representative / Board Member Director	
<b>REBECCA RAE AMUNDSEN</b>	Invercargill City Council Arch Draught Ltd BP Orr Ltd Task Ltd Arts Murihiku Dan Davin Literary Foundation Heritage South Glengarry Community Action Group SMAG Board Venture Southland Southland Regional Heritage Committee	Councillor Director Director Director Trustee Trustee/Chair Contractor Events Co-ordinator (Volunteer)  Council Representative Council Representative Council Representative	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS  
INTEREST REGISTER**

A2279220

<b>ALLAN JAMES ARNOLD</b>	Invercargill City Council Ziff's Café Bar Ltd Buster Crabb Ltd Ziff's Tour Ltd Ziff's HR Ltd Ziff's Trust NZMCA Southland Aero Club Invercargill Club Invercargill East Rotary Southland Aero Club	Councillor Executive Director Executive Director Executive Director Executive Director Trustee Administrator Member Member Member Member Committee Member	
<b>KAREN FRANCES ARNOLD</b>	Invercargill City Council Funding Scheme	Councillor Trustee/Chair	
<b>TONI MARIE BIDDLE</b>	Invercargill City Council Invercargill Venue and Events Management Limited Southland Museum and Art Gallery Trust Board McIntyre and Dick Waihopai Runaka	Councillor Director Trustee Husband (Kris MacLellan) – Chief Executive Officer As a contractor	

Extraordinary Council - INTEREST REGISTER

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS  
INTEREST REGISTER**

A2279220

<b>ALEX HOLLY CRACKETT</b>	Invercargill City Council Ride Southland Southland Youth Futures Advisory Board Venture Southland and Sub Committee Sport Southland McIntyre Dick	Councillor Chair Chair  Council Representative  Trustee Marketing Manager	High Street Invercargill
<b>IRWIN LLOYD ESLER</b>	Invercargill City Council Bluff Community Board Bluff Maritime Museum Otatara Landcare Group	Councillor Council Representative Council Representative Member	
<b>GRAHAM DAVID LEWIS</b>	Invercargill City Council Invercargill City Holdings Limited Southland Indoor Leisure Centre Charitable Trust Bluff 2024 Rejuvenation Invercargill Community Recreation & Sports Trust Hospice Southland Invercargill City Properties	Councillor Director Trustee  Officer Trustee  Trustee Director	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS  
INTEREST REGISTER**

A2279220

<b>DARREN JAMES LUDLOW</b>	Invercargill City Council Radio Southland Invercargill City Holdings Limited Invercargill Venue and Events Management Southland Museum and Art Gallery Trust Board Healthy Families Invercargill Murihiku Maori Wardens Southland Community Law Centre Invercargill Community Recreation and Sport Trust Invercargill City Properties	Councillor Manager Director Director / Chairman Trustee Board Member Board Member Board Member Trustee Director	770 Queens Drive Invercargill
<b>IAN REAY POTTINGER</b>	Invercargill City Council Southland Electronics Limited Santa Parade Organiser	Councillor Director Alice Pottinger (Wife)	171 Terrace Street Invercargill 9810
<b>TIMOTHY RICHARD SHADBOLT</b>	Invercargill City Council Invercargill Airport Limited Kiwi Speakers Limited SIT Ambassador	Mayor Director Director Contractor	

**INVERCARGILL CITY COUNCIL ELECTED MEMBERS  
INTEREST REGISTER**

A2279220

<b>LESLEY FRANCES SOPER</b>	Invercargill City Council Breathing Space Southland Trust (Emergency Housing) Omaui Tracks Trust National Council of Women (NCW) Active Communities Invercargill Public Art Gallery Citizens Advice Bureau Southland ACC Advocacy Trust	Councillor Chair Secretary/Treasurer Member Chair/Trustee Board Member Board Member Employee	137 Morton Street Strathern Invercargill  24 Margaret Street Richmond Invercargill
<b>LINDSAY STEWART THOMAS</b>	Invercargill City Council Invercargill City Holdings Limited HWCP Management Limited	Councillor Director Director	



**INVERCARGILL CITY COUNCIL ELECTED MEMBERS  
INTEREST REGISTER**

A2279220

<b>EXECUTIVE STAFF</b>			
<b>NAME</b>	<b>ENTITY</b>	<b>INTERESTS</b>	<b>PROPERTY</b>
<b>PAMELA GARE</b>	Invercargill City Council  DJ & PM Gare Family Trust	Director of Environmental and Planning Services  Trustee	
<b>CLARE HADLEY</b>	Invercargill City Council  Hadley Family Trust	Chief Executive  Trustee	
<b>CAMERON MCINTOSH</b>	Invercargill City Council	Director of Works and Services	
<b>DAVID FOSTER</b>	Invercargill City Council	Acting Director of Finance and Corporate Services  Executive Director Foster and Associates Ltd	

**TO: EXTRAORDINARY COUNCIL**

**FROM: CLARE HADLEY – CHIEF EXECUTIVE**

**MEETING DATE: MONDAY 24 JUNE 2019**

<b>COUNCIL DECISION MAKING – RECYCLABLES ACCEPTANCE SERVICES' CONTRACT</b>
--

**SUMMARY**

Invercargill City Council is responsible for the provision of a wide range of services. Approximately 70% of all services provided by Invercargill City Council are contracted out to third parties. Some of those services are contracted jointly with other territorial authorities in accordance with the <i>Local Government Act 2002</i> .
---

This paper sets out the range of factors that influence the manner in which Invercargill City Council achieves the objectives of the <i>Local Government Act 2002</i> .
---

**RECOMMENDATIONS**

**It is recommended that the “Council Decision Making Joint Procurement” report be received; and**

**THAT these factors be taken into account in considering the report on Contract 850 Recycling Acceptance Services.**

**IMPLICATIONS**

1.	<i>Has this been provided for in the Long Term Plan/Annual Plan?</i> Not applicable
2.	<i>Is a budget amendment required?</i> Not applicable
3.	<i>Is this matter significant in terms of Council's Policy on Significance?</i> No
4.	<i>Implications in terms of other Council Strategic Documents or Council Policy?</i> None
5.	<i>Have the views of affected or interested persons been obtained and is any further public consultation required?</i> Not applicable
6.	<i>Has the Child, Youth and Family Friendly Policy been considered?</i> Not Applicable

Following its decision on 5 June 2019 Invercargill City Council (Council) is required to consider how it proposes to satisfy its legislative and contractual obligations with respect to the provision of waste services. This paper sets out some of the requirements on Council and/or alternative options that are available to it to resolve the current impasse. It does not provide legal advice, but rather identifies legal issues for consideration.

## **Background**

In order to understand the decisions that Council is required to make it is first necessary to understand the statutory and contractual background that has led to the need to make this decision.

### **1 Triennial Agreements**

The *Local Government Act* 2002 (the LGA) imposes a requirement in section 15 that Council enter into a triennial agreement with all local authorities within a region. Section 15(2)(c) relevantly provides that the triennial agreement must include processes and protocols through which all local authorities can participate in identifying, delivering, and funding facilities and services of significance to more than one district.

Section 15(3)(a) states that the triennial agreement may also include commitments by local authorities within the region to establish or continue one or more joint committees or other joint governance arrangements to give better effect to one or more of the matters referred to in section 15(2).

Section 15(6) provides that is a decision of a local authority is significantly inconsistent with, or is expected to have consequences that will be significantly inconsistent with, the agreement under this section that is currently in force within the region, the local authority must, when making the decision, clearly identify-

- (a) The inconsistency; and
- (b) The reasons for the inconsistency; and
- (c) Any intention of the local authority to seek an amendment to the agreement....

In October 2016 Council, in accordance with section 15 of the LGA entered into the current Triennial Agreement Southland Region (Triennial Agreement). Relevantly the Triennial Agreement provides:

1. The parties agree to work in good faith together for the good governance of their localities and regions;
2. Collaboration can make planning more efficient, reduce costs, increase available resources and help make strategic judgments about the allocation of resources and the delivery of services.

WasteNet/Waste Advisory Group is identified in the Triennial Agreement at Appendix 1 as one of the structures that promote communication and collaboration.

Further legal context is provided in Appendix 2 of the Triennial Agreement. This relevantly includes:

Section 14(1)(e) of the LGA:

A local authority should actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes;

Section 14(1) (g) of the LGA:

A local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets.

Recent changes to the LGA also include:

Section 14(1)(c) of the LGA:

When making a decision, a local authority should take into account of –

- (i) ..
- (ii) ..
- (iii) The likely impact of any decision on each aspect of well-being referred to in section 10.

Section 10 being to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

## 2 The Waste Minimisation Act 2008

The *Waste Minimisation Act 2008* (WMA) provides that a territorial authority must promote effective and efficient waste management and minimisation within its district. The WMA acknowledges that Council in performing its duties under the WMA must comply with its obligations under the LGA.

A waste management plan (WMP) must provide:

1. Methods for achieving effective and efficient waste management and minimisation; and
2. How the implementation plan is to be funded.

Council has entered into a joint plan in accordance with section 45 of the WMA. While the current WMP is overdue for review it would currently remain in force pending review in accordance with the WMA. A change to current arrangements would require community consultation.

In pursuance of its obligations under the WMA Council entered into the joint venture agreement with Southland and Gore and established the joint committee (the JV).

In August 2018 Council delegated to the JV the authority to set out the request for tender documentation for the renewal of contract 650 (the Delegation). Relevantly the Delegation, understood explicitly or otherwise, included the setting of the terms and conditions for the assessment of the tenders received and the process that would be used for the assessment of those tenders (the RFP Process). Legal guidance is that once attributes have been set by the RFP Process council is only able to evaluate, and select the winning tender, against those attributes.

The Delegation was an extension of the existing delegation to WasteNet as set out in the existing JV. While not explicitly referring to the JV it is most likely that the Council would be bound by the terms of the JV with respect to the conduct of the RFP Process. Relevantly the JV establishes a dispute resolution procedure for a dispute between the parties on matters referred WasteNet.

**Current Situation**

WasteNet:

1. as the delegate of Council for the preparation of the tender documentation has completed the tender process and assessed the tenders against the criteria established in the RFP Process; and
2. has provided the results of that assessment to the three Councils;
3. Southland and Gore have resolved, after consideration of the assessment in accordance with the RFP Process set out by WasteNet, to accept the recommendation of a preferred tenderer.

It is noted that there were further negotiations undertaken between WasteNet and the preferred tenderer, and that these negotiations are consistent with the requirements set out in the RFP Process.

Council has resolved to not accept that recommendation. Although the paper including the recommendation from WasteNet was read by Council, it may not have received the focused discussion that such an RFP Process demands.

Council is aware that the failure by it to make a decision has led to the other Councils issuing a notice of dispute under the JV.

The RFP process is currently in limbo. At this stage it remains open however there is a risk relating to how that process is finally resolved.

**Issues**

Council has to balance a number of obligations and issues in making this decision. In the ordinary course Council is able to change its decisions. Council is however also able to make a decision to bind itself to a process.

Once Council has bound itself to a process the implication of misinterpreting those voluntarily adopted rules depends on the context in which the misinterpretation occurs. In the majority of cases the misinterpretation will impact the legal validity of the decision on the ground that it is an error of law, is unreasonable in an administrative law sense or frustrates a legitimate expectation (of a tenderer in this case). These are issues which may arise if Council decides to not follow the RFP Process or deviates from that process in a material manner.

The issue is complicated by the fact that the decision impacts not only a decision by Council under its own tender process. In the ordinary course Council has significant grounds under the RFP Process to manage the arrangements. Decisions of Council under the RFP Process are normally treated as commercial and in the absence of lack of good faith and some other specific grounds its decisions will be only subject to review on the basis of the material set out in the RFP Process.

Good faith arguably requires that the Council adhere to the assessment process established by the RFP Process. If Council does not wish to complete the RFP Process then similar considerations arise as to the method by which it is able to terminate this process.

In this case the tender is not purely a commercial decision for Council. Contract 850 is part of Council's statutory obligations under the WMA and is part of the Triennial Agreement between Council, Southland and Gore. This gives rise to the potential the process is subject to judicial review. While the Courts do not normally review tenders under judicial review, this might apply here because of the JV. That exposes Council to a risk of higher standards of decision making. The 850 tender processes raise additional issues, as provided for in the WasteNet agreement.

It is public knowledge that one of the issues addressed in the RFP Process is price. Council will need to weigh up its obligations, including the obligation to provide efficient services jointly (section 14(e) of the LGA) and the impact of any dispute between the three Councils as to the provision of these services.

***From Here***

Council is required to weigh up all the issues identified and make a decision. While identifying the issues and background for the purposes of transparency Council notes that many of these issues involve commercial matters and are subject to ongoing negotiations.

Where there is a conflict between the principles required to be considered by Council the LGA provides that in resolving that conflict Council should *conduct its business in an open, transparent, and democratically accountable manner* (s14(a)(i)).

\*\*\*\*\*