

Community Board Members
WAIKANAE COMMUNITY BOARD

8 NOVEMBER 2016

Meeting Status: **Public**

Purpose of Report: For Information

EXPLANATION OF RELEVANT LEGISLATION AFFECTING ELECTED MEMBERS - 2016-2019 TRIENNIUM

PURPOSE OF REPORT

- 1 Schedule 7, Section 21(5)(c) of the Local Government Act 2002 requires the Chief Executive, or his nominee, to give Elected Members at the first meeting a general explanation of laws relevant to their role.

DELEGATION

- 2 This briefing is a statutory requirement. The application of Schedule 7, Section 21 to community boards is enabled through clause 54 of the Local Government Act 2002: *“Part 1 of Schedule 7 (excluding clauses 15 and 33 to 36) applies to community boards, with all necessary modifications, as if they were local authorities.”*

BACKGROUND

- 3 The explanation pertains to relevant statutory obligations which include the provisions relating to meetings and official information, members’ financial interests and disclosure duties, and offences relating to corruption.
- 4 Further to this explanation it is recommended that members familiarise themselves with the Local Government New Zealand governance handbook (“Grow”) for Elected Members to be provided under separate cover.

ISSUES AND OPTIONS

Issues

Local Government Official Information and Meetings Act 1987

- 5 This Act applies to every local authority in New Zealand and has two main aspects. The first concerns “Official Information”, its availability and the means of making it available. The second aspect deals with meetings of local authorities and their committees and in particular the rights of the public to attend such meetings. The principles underpinning the Act include open government and accountability.
- 6 Official information which includes practically all information held by a local authority or by any of its members, or staff in their official capacities, should be made available unless there are good reasons for withholding it. Good reasons for withholding are detailed in the Act and can be summarised as follows:
 - Providing the information would contravene legal requirements, including

- Breaching legal privilege
 - Prejudicing the maintenance of the law; or
 - Endangering the health or safety of any persons;
 - The need to protect the privacy of natural persons;
 - To prevent material loss to members of the public or improper commercial exploitation of information held, whether related to the authority's activities or those of another party;
 - To protect the public interest
 - To enable a local authority to conduct its affairs effectively without improper pressure or harassment;
 - The information requested is not available or is trivial;
 - Substantial collation or research would be required to provide the information
- 7 Decisions made by the Council regarding withholding information may be reviewed by the Ombudsman. The Chief Executive is delegated the power relating to requests for Official or Personal Information (the latter is subject to the provisions of the Privacy Act 1982), as it would not be practical for Council to consider all such requests.
- 8 Meetings of Council, its Committees and Community Boards are open to the public and the Council must publish a list of all meetings, with times and venues, in advance, each month. Agendas must also be available to the public before the meetings. The public may on occasion be excluded from all or part of a meeting for reasons essentially the same as the ones for withholding official information, as summarised above.
- 9 Meetings are run according to Standing Orders and members must abide by these. The Chair is the presiding member and must ensure that order is maintained.

The Local Authorities' (Members' Interests) Act 1968

- 10 The significant sections of this Act relate to Contracting and Pecuniary Interests, and Conflicts of Interest. It is important to note that these provisions also relate to a member's spouse or civil partner. The Office of the Auditor-General's publication "Guidance for members of local authorities about the law on conflicts of interest" has been provided to Elected Members under separate cover.
- 11 Section 5 of the Act disqualifies a person from being elected or appointed to membership of a Council or Committee if they have an interest in contracts to be let by that Council or Committee above \$25,000 in any one year, without the approval of the Audit Office.
- 12 Regarding discussing and voting, an Elected Member or appointed member may not take part in discussions, or vote on any matter if they have a direct or indirect financial interest. (An indirect financial interest could be one held by an elected member's spouse or partner.) Failure to observe this requirement is considered an offence and conviction would lead to disqualification from office. Members should declare any interests to the meeting (without being required to specify what the interest is) and it is the member's responsibility to act on this matter.

- 13 Situations sometimes arise (particularly in a small community) where an Elected Member does not have a pecuniary interest but does have an interest greater than the public at large, for example, as an office-holder in a community organisation seeking funding from Council.
- 14 A Register of Members' Interests is held at Council (updating is coordinated through the Democracy Services team) and members will be asked to declare any interests every six months. The Register is available for viewing on the Council website.

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

- 15 These sections make it a crime for any official to corruptly accept or obtain any bribe for themselves or another person for doing, or failing to do, an action within in their official capacity; or to corruptly use, for their own gain, information obtained in their official role. A breach of these provisions carries a penalty of a term of imprisonment, not exceeding seven years.

The Secret Commissions Act 1910

- 16 Under this Act it is an offence for an elected member to accept or attempt to obtain for themselves (or any other person) a gift, inducement or reward for doing or not doing something. A breach of these provisions carries a penalty of a term of imprisonment, not exceeding seven years.

The Financial Markets Conduct Act 2013

- 17 This Act promotes informed participation in the financial markets, facilitating the development of fair, efficient and transparent financial markets. It replaces a number of outdated pieces of legislation, including the Securities Act 1978 and also details how offences and misconduct around financial products or services would be dealt with.
- 18 The Act essentially places Elected Members in the same position as company directors if the Council ever offered stock to the public (which the Council's current Treasury Management Policy expressly bans). Elected members may be personally liable if investment documents such as a prospectus contained untrue statements.

The Health and Safety at Work Act 2015

- 19 This Act allocates duties to those people who are in the best position to control risks to health and safety as appropriate to their role in the workplace and for the person conducting a business or undertaking (PCBU) (ie the Council) to ensure, as far as reasonably practicable the safety of workers and others who may be impacted by the work the business undertakes. One of the significant changes is the introduction of the term 'Officer' who is any person occupying a position in the business or undertaking who exercises significant influence over the management of the business or undertaking. The roles of Chief Executive, the Mayor and Elected Members are deemed to be Officers under the Act.
- 20 Officers have obligations of due diligence to ensure that the organisation meets its health and safety obligations:
 - (a) to acquire, and keep up-to-date, knowledge of work health and safety matters; and

(b) to gain an understanding of the nature of the operations of the business or undertaking and generally of the hazards and risks associated with those operations; and

(c) to ensure that the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work;

(d) To ensure that the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards, and risks for responding in a timely way to that information; and

(e) to ensure that the business or undertaking has and implements processes for complying with any duty of organisation under his Act; and

(f) to verify the provision and use of the resources and processes referred to in paras (c) to (e).

- 21 Elected members are exempt from prosecution for failure to comply with the duty of officers when acting in their capacity as an Officer, however they are still required to exercise due diligence when carrying out their duties. The role of the Chief Executive is not exempt from prosecution.

Local Government Act 2002

- 22 Under Schedule 7 of the Local Government Act 2002 an elected member may be ousted from office if, while in office, that person is convicted of an offence punishable by a term of imprisonment of two years or more.

Public Records Act 2005

- 23 This Act's purpose is to provide a framework to keep central and local government organisations accountable by ensuring records are full and accurate, well maintained and accessible. The definition of a record includes information, whether in its original form or otherwise, and is not limited to just written information. It includes a signature, a seal, text, images, sound, speech, or data in any medium and recorded or stored by any electronic device or process. In the conduct of their affairs elected members should be mindful of the parameters of this Act, especially in respect of storage and archiving of emails.

CONSIDERATIONS

Policy considerations

- 24 There are no policy considerations.

Legal considerations

- 25 There are no additional legal considerations.

- 26 If any Elected Member has doubts about compliance with any legislation they are advised to consult with the Chief Executive in the first instance.

Financial considerations

- 27 There are no financial considerations.

Tāngata whenua considerations

28 There are no tāngata whenua considerations.

SIGNIFICANCE AND ENGAGEMENT

Degree of significance

29 As this matter is a procedural one prescribed under statute, it is deemed to have a low level of significance under Council policy.

Engagement planning

30 An engagement plan is not needed to implement this matter.

Publicity

31 A media release is not relevant to the matters contained in this report.

RECOMMENDATIONS

32 That Waikanae Community Board members of the 2016-2019 Triennium note the general explanation of legislation provided by the Chief Executive's nominee pursuant to Section 21 of Schedule 7, Local Government Act 2002.

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