



Meeting of the Hawke's Bay Regional Council

Date: Wednesday 30 October 2019
Time: 9.00am
Venue: Napier War Memorial Conference Centre
48 Marine Parade
Napier

Agenda

ITEM	SUBJECT	PAGE
1.	Pōwhiri Karanga - Haka Pōwhiri (Hukarere Māori Girls College) Whaikōrero - 2 speakers from Mana Whenua pae - Supporting waiata for each speaker (Hukarere Māori Girls College) - Speakers for Councillors, whānau, manuhiri, supporters - Supporting waiata after each speaker Transition Councillors cross floor to HBRC Karakia/invocation given to formally close pōwhiri formalities	
Decision Items		
2.	The Making and Attesting of the Declarations Required by Members	3
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5.	The Fixing of the Date and Time of the First Ordinary Meeting of the Council	19
Information or Performance Monitoring		
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HAWKE'S BAY REGIONAL COUNCIL

Wednesday 30 October 2019

SUBJECT: THE MAKING AND ATTESTING OF THE DECLARATIONS REQUIRED BY MEMBERS

Item 2

Reason for Report

1. Schedule 7, Part 1, clause 21 of the Local Government Act 2002 states:
"(4) The chief executive ... must chair the meeting until the chairperson has made and attested the declaration required under clause 14."
2. Schedule 7, Part 1, clause 14 of the Local Government Act 2002 states:
"(1) A person may not act as a member of a local authority until –
 - (a) that person has, at a meeting of the local authority following the election of that person, made an oral declaration in the form set out in subclause (3); and*
 - (b) a written version of the declaration has been attested as provided under subclause (2).*
(2) The written declaration must be signed by the member and witnessed by –
 - (a) ...*
 - (b) the chief executive of the local authority."*
3. All elected members will be asked to make the oral declaration (in the form shown as **attached** and complete the signing and witnessing provisions.

Decision Making Process

4. The making and attesting of declarations by members is specifically provided for under Schedule 7, Part 1, Clause 14 of the Local Government Act 2004.

Recommendation

That all elected members make their oral declarations and attest their written declarations.

Authored by:

Leeanne Hooper
GOVERNANCE LEAD

Approved by:

James Palmer
CHIEF EXECUTIVE

Attachment/s

- [↓1](#) English Declaration by a Member
- [↓2](#) Te Reo Maori Declaration by Member



Item 2

*Local Government Act
Schedule 7 Part 1 Section 14(3)
Declaration by Member*

I,, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of the Hawke’s Bay Region, the powers, authorities and duties vested in or imposed upon me as a member of the Hawke’s Bay Regional Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Attachment 1

Dated at Napier this 30th Day of October 2019.

Signature:

Signed in the presence of:

.....
*James Palmer
Chief Executive*

Ture Kāwanatanga ā-Rohe
Āpiti 7 Wāhi 1 Rārangi 14(3)
Oati a te Mema

Kei te oati au, a , ka whakatutuki pai au, i runga i te tika me te pono, me te whai whakaaro atu ki te rohe o Te Matau-a-Māui, i ngā mahi katoa ka riro i a au hei mema mō te Kaunihera ā-Rohe o Te Mātau-a-Māui e ai ki te Ture Kāwanatanga ā-Rohe 2002, ki te Ture Pārongo Whaimana me ngā Hui Kāwanatanga ā-Rohe 1987, ki Ture atu anō rānei.

He mea whakaū ki Ahuriri i tēnei rā, te 30 o Whiringa-ā-nuku 2019.

Waitohu:

He mea waitohu i mua i te aroaro o:

.....
James Palmer
Tumu Whakarae

HAWKE'S BAY REGIONAL COUNCIL

Wednesday 30 October 2019

Item 3

SUBJECT: ELECTION OF CHAIRPERSON

Reason for Report

1. This item provides the means for the election of the Chairperson as required by the Local Government Act 2002 (LGA) Schedule 7.

Officers' Recommendations

2. Although Council has previously adopted System A, explained following, Officers recommend that System B is resolved for this election due to its simplicity and because historically there have not been more than 2 nominees for Chair.

Executive Summary

3. The LGA prescribes the voting requirements for the election of the Chairperson, including that Council's choice of voting system to be used must be determined by resolution. This means that Council needs to resolve the system of voting before the election of the Chair can take place.

Background

4. The Chief Executive is required to call for nominations for election to the office of Chairperson as outlined in LGA Schedule 7, clause 21. If a vote is required the Chief Executive must follow the provisions of clause 25, which states:

Section 24(3)

"An act or question coming before the local authority must be done or decided by open voting."

Section 25

"Voting systems for certain appointments—

(1) This clause applies to—

- (a) the election or appointment of the chairperson and deputy chairperson of a regional council; and*
- (b)*
- (c) the election or appointment of the chairperson and deputy chairperson of a committee; and*

(2) If this clause applies, a local authority or a committee (if the local authority has so directed) must determine by resolution that a person be elected or appointed by using one of the following systems of voting:—

- (a) the voting system in subclause (3) ('system A');*
- (b) the voting system in subclause (4) ('system B').*

(3) System A —

- (a) requires that a person is elected or appointed if he or she receives the votes of a majority of the members of the local authority or committee present and voting; and*

(b) has the following characteristics:—

- (i) there is a first round of voting for all candidates; and*

- (ii) *if no candidate is successful in that round there is a second round of voting from which the candidate with the fewest votes in the first round is excluded; and*
 - (iii) *if no candidate is successful in the second round there is a third, and if necessary subsequent, round of voting from which, each time, the candidate with the fewest votes in the previous round is excluded; and*
 - (iv) *in any round of voting, if 2 or more candidates tie for the lowest number of votes, the person excluded from the next round is resolved by lot.*
- (4) **System B—**
- (a) *requires that a person is elected or appointed if he or she receives more votes than any other candidate; and*
 - (b) *has the following characteristics:*
 - (i) *there is only 1 round of voting; and*
 - (ii) *if 2 or more candidates tie for the most votes, the tie is resolved by lot.”*

Options Assessment

5. If System A is adopted the actual vote will be conducted as follows.
- 5.1. Nominations for the position of Chairperson will be called for, which must be supported by a seconder (being a different person). A Councillor may nominate or second themselves, and may also nominate more than one person.
 - 5.2. Once the call for nominations results in no further nominees, nominations will be closed.
 - 5.3. Each nominee may then be allowed a period of up to 10 minutes to make a presentation.
 - 5.4. The first round of voting will then be undertaken by show of hands and with only one vote per Councillor (i.e. 9 in total).
 - 5.5. If there are three or more nominees and a majority of Councillors (i.e. 5) does not support one nominee then the candidate with the fewest votes will be excluded from the next round.
 - 5.6. If 2 or more candidates tie for the lowest number of votes, the person excluded from the next round will be resolved by lot. In this instance the names of the 2 candidates will be placed in a suitable container and the Council's Electoral Officer will draw a name from the container and this person will be excluded from the next round.
 - 5.7. A second and further round(s) of voting will be conducted if necessary in the same way as described above.
6. If System B is adopted the actual vote will be conducted as follows.
- 6.1. Nominations for the position of Chairperson will be called for, which must be supported by a seconder (being a different person). A Councillor may nominate or second themselves, and may also nominate more than one person.
 - 6.2. Once the call for nominations results in no further nominees, nominations will be closed.
 - 6.3. Each nominee may then be allowed a period of up to 10 minutes to make a presentation.
 - 6.4. The only round of voting will then be undertaken by show of hands and with only one vote per Councillor (i.e. 9 in total).

- 6.5. If 2 or more candidates tie for the most votes, the tie is resolved by lot and the remaining candidate will be declared to be the Chairperson.

Decision Making Process

7. The election of the chairperson is specifically provided for under Schedule 7, Part 1, Sections 21 and 25 of the Local Government Act 2002.

Recommendations

That Hawke's Bay Regional Council:

1. Resolves to adopt voting system **A or B** for the election of the Chairperson of Council as detailed in Schedule 7 Part 1 Section 25(3) of the Local Government Act 2002.
2. Confirms that in the case of determination by lot the method used shall be for the Electoral Officer of Council (Leeanne Hooper) to draw the name of the person to be excluded from the next round of voting from a suitable container with the Group Manager, Office of the Chief Executive and Chair acting as scrutineer during this process.
3. Elects Councillor _____ as Chairperson of Hawke's Bay Regional Council.
4. Councillor _____ makes his/her oral declaration and attests their written declaration.

Authored by:

Leeanne Hooper
GOVERNANCE LEAD

Approved by:

James Palmer
CHIEF EXECUTIVE

Attachment/s

- [↓1](#) Declaration by Chairperson



Declaration by Chairperson

*I,,
 declare that I will faithfully and impartially, and according to the
 best of my skill and judgement, execute and perform, in the best
 interests of the Hawke's Bay Region, the powers, authorities and
 duties vested in or imposed upon me as Chair of the Hawke's Bay
 Regional Council by virtue of the Local Government Act 2002, the
 Local Government Official Information and Meetings Act 1987, or
 any other Act.*

DATED at Napier this 30th day of October 2019.

Signature:

Signed in the presence of:

.....
James Palmer
Chief Executive

Item 3

Attachment 1

HAWKE'S BAY REGIONAL COUNCIL

Wednesday 30 October 2019

Item 4

SUBJECT: ELECTION OF DEPUTY CHAIRPERSON

Reason for Report

1. This item provides the means for the election of the Deputy Chairperson as required by the Local Government Act 2002 (LGA) Schedule 7.

Officers' Recommendations

2. Although Council has previously adopted System A, explained following, Officers recommend that System B is resolved for this election due to its simplicity and because historically there have not been more than 2 nominees for Deputy Chair.

Executive Summary

3. The LGA prescribes the voting requirements for the election of the Deputy Chairperson, including that Council's choice of voting system to be used must be determined by resolution. This means that Council needs to resolve the system of voting before the election of the Deputy Chair can take place.

Background

4. The Chief Executive is required to call for nominations for election to the office of Deputy Chairperson as outlined in LGA Schedule 7, clause 21. If a vote is required the Chief Executive must follow the provisions of clause 25, which states:

Section 25

"Voting systems for certain appointments—

(1) This clause applies to—

(a) the election or appointment of the chairperson and deputy chairperson of a regional council; and

(b) ...

(c) the election or appointment of the chairperson and deputy chairperson of a committee; and

(2) If this clause applies, a local authority or a committee (if the local authority has so directed) must determine by resolution that a person be elected or appointed by using one of the following systems of voting:—

(a) the voting system in subclause (3) ('system A');

(b) the voting system in subclause (4) ('system B').

(3) System A —

(a) requires that a person is elected or appointed if he or she receives the votes of a majority of the members of the local authority or committee present and voting; and

(b) has the following characteristics:—

(i) there is a first round of voting for all candidates; and

(ii) if no candidate is successful in that round there is a second round of voting from which the candidate with the fewest votes in the first round is excluded; and

(iii) if no candidate is successful in the second round there is a third, and if necessary subsequent, round of voting from which, each

time, the candidate with the fewest votes in the previous round is excluded; and

- (iv) *in any round of voting, if 2 or more candidates tie for the lowest number of votes, the person excluded from the next round is resolved by lot.*

(4) **System B —**

- (a) *requires that a person is elected or appointed if he or she receives more votes than any other candidate; and*
- (b) *has the following characteristics:*
- (i) *there is only 1 round of voting; and*
- (ii) *if 2 or more candidates tie for the most votes, the tie is resolved by lot.”*

Options Assessment

5. If System A is adopted the actual vote will be conducted as follows.
- 5.1. Nominations for the position of Deputy Chairperson will be called for, which must be supported by a seconder (being a different person). A Councillor may nominate or second themselves, and may also nominate more than one person.
- 5.2. Once the call for nominations results in no further nominees, nominations will be closed.
- 5.3. The first round of voting will then be undertaken by show of hands and with only one vote per Councillor (i.e. 9 in total).
- 5.4. If there are three or more nominees and a majority of Councillors (i.e. 5) does not support one nominee then the candidate with the fewest votes will be excluded from the next round.
- 5.5. If 2 or more candidates tie for the lowest number of votes, the person excluded from the next round will be resolved by lot. In this instance the names of the 2 candidates will be placed in a suitable container and the Council's Electoral Officer will draw a name from the container and this person will be excluded from the next round.
- 5.6. A second and further round(s) of voting will be conducted if necessary in the same way as described above.
6. If System B is adopted the actual vote will be conducted as follows.
- 6.1. Nominations for the position of Deputy Chairperson will be called for, which must be supported by a seconder (being a different person). A Councillor may nominate or second themselves, and may also nominate more than one person.
- 6.2. Once the call for nominations results in no further nominees, nominations will be closed.
- 6.3. The only round of voting will then be undertaken by show of hands and with only one vote per Councillor (i.e. 9 in total).
- 6.4. If 2 or more candidates tie for the most votes, the tie is resolved by lot and the remaining candidate will be declared to be the Deputy Chairperson.

Decision Making Process

The election of the Deputy Chairperson is specifically provided for under Schedule 7, Part 1, Sections 21 and 25 of the Local Government Act 2002.

Recommendations

That Hawke’s Bay Regional Council:

1. Resolves to adopt voting system **A or B** for the election of the Deputy Chairperson of Council as detailed in Schedule 7 Part 1 Section 25(3) of the Local Government Act 2002.
2. Confirms that, in the case of determination by lot, the method used shall be for the Electoral Officer of Council (Leeanne Hooper) to draw the name of the person to be excluded from the next round of voting from a suitable container with the Group Manager Office of the Chief Executive and Chair acting as scrutineer during this process.
3. Elects Councillor _____ as Deputy Chairperson of Hawke’s Bay Regional Council.

Authored by:

Leeanne Hooper
GOVERNANCE LEAD

Approved by:

James Palmer
CHIEF EXECUTIVE

Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL

Wednesday 30 October 2019

SUBJECT: THE FIXING OF THE DATE AND TIME OF THE FIRST ORDINARY MEETING OF THE COUNCIL

Item 5

Reason for Report

1. This item provides the means for Council to confirm the date and time for its first ordinary meeting following the triennial general elections as required by Schedule 7, Part 1, Section 21(5)(d) of the Local Government Act 2002.

Decision Making Process

2. The fixing of the date and time of the first ordinary meeting of the Council is specifically provided for under Schedule 7, Part 1, Section 21(5)(d) of the Local Government Act 2002.

Recommendations

That Hawke's Bay Regional Council confirms that its first ordinary meeting will be held on Wednesday 6 November 2019 commencing at 9.00am.

Authored by:

Leeanne Hooper
GOVERNANCE LEAD

Approved by:

James Palmer
CHIEF EXECUTIVE

Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL

Wednesday 30 October 2019

Item 6

SUBJECT: RELEVANT LEGISLATION AFFECTING MEMBERS

Reason for Report

1. This item provides a summary of relevant legislation affecting members, as required for the first meeting of the Local Authority by the Local Government Act.

Local Government Act 2002

2. This is the principal piece of legislation which establishes the Council and determines the role and functions of Council. The purpose, role and powers of local authorities (City Councils, District Councils, Regional Councils, Unitary Authorities and Community Boards) are set out in Part 2 of the Act.
3. Under section 10, the purpose of local government is to:
 - 3.1. enable democratic local decision-making by and on behalf of communities; and
 - 3.2. to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.
4. Part 4 of the Act identifies the principles and requirements for the governance and management of local authorities and specifies where members are liable for certain actions and able to be indemnified.
5. Section 14 stipulates "principles" for the governance and management of local authorities. These principles and other provisions are intended to ensure that members are responsible, open, transparent, and democratically accountable in their decision making, as well as making clear the role of the Chief Executive.
6. Schedule 7 sets out numerous issues of relevance to members including remuneration, code of conduct, meeting procedures and conduct, subordinate decision-making structures, delegations and other matters.
7. Legislative reform for the LGA is currently before the House. The Bill seeks to implement the Government's Better Local Services reform package, which intends to deliver better public services and build a more productive and competitive economy. Proposed key changes include flexibility for joint services and infrastructure; stronger accountability arrangements for council-controlled organisations; a more proactive role for the Local Government Commission; changes to local government reorganisation processes; and delegated law-making powers.

Local Government Official Information and Meetings Act

8. The purposes LGOIMA (stated in Section 4 of the Act) are—
 - (a) *to increase progressively the availability to the public of official information held by local authorities, and to promote the open and public transaction of business at meetings of local authorities, in order—*
 - (i) *to enable more effective participation by the public in the actions and decisions of local authorities; and*
 - (ii) *to promote the accountability of local authority members and officials,—*
and thereby to enhance respect for the law and to promote good local government in New Zealand:
 - (b) *to provide for proper access by each person to official information relating to that person:*
 - (c) *to protect official information and the deliberations of local authorities to the extent consistent with the public interest and the preservation of personal privacy.*

Official and Personal Information

9. Official Information includes virtually all information held by a local authority, or by any of its members, officers or employees in their official capacities. It includes files, records, letters, documents, manuals, written instructions, plans, photographs, diary notes, computer data and anything else that records some aspect of the authority's activities.
10. The over-riding principle of the Act is that information will be made available unless there are:

6 Conclusive reasons for withholding official information

Good reason for withholding official information exists, for the purpose of [section 5](#), if the making available of that information would be likely—

(a) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or

(b) to endanger the safety of any person.

Or

7 Other reasons for withholding official information

(1) Where this section applies, good reason for withholding official information exists, for the purpose of section 5, unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.

(2) Subject to sections 6, 8, and 17, this section applies if, and only if, the withholding of the information is necessary to—

(a) protect the privacy of natural persons, including that of deceased natural persons; or

(b) protect information where the making available of the information—

(i) would disclose a trade secret; or

(ii) would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; or

(ba) in the case only of an application for a resource consent, or water conservation order, or a requirement for a designation or heritage order, under the Resource Management Act 1991, to avoid serious offence to tikanga Maori, or to avoid the disclosure of the location of waahi tapu; or

(c) protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information—

(i) would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or

(ii) would be likely otherwise to damage the public interest; or

(d) avoid prejudice to measures protecting the health or safety of members of the public; or

(e) avoid prejudice to measures that prevent or mitigate material loss to members of the public; or

(f) maintain the effective conduct of public affairs through—

(i) the free and frank expression of opinions by or between or to members or officers or employees of any local authority, or any persons to whom section 2(5) applies, in the course of their duty; or

(ii) the protection of such members, officers, employees, and persons from improper pressure or harassment; or

- (g) *maintain legal professional privilege; or*
 - (h) *enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities; or*
 - (i) *enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or*
 - (j) *prevent the disclosure or use of official information for improper gain or improper advantage.*
11. Any refusal to provide official information requested must include the reason for its refusal and advice of the applicant's right to complain to the Ombudsman.
 12. The Office of the Ombudsman provides useful guidance for responding to LGOIMA and OIA requests, available online at <http://www.ombudsman.parliament.nz/resources-and-publications/guides/official-information-legislation-guides>
 13. It is impractical for all requests for official or personal information to be considered by the Council, and Section 42 of the Act authorises the delegation to any officer or employee of all or any of the local authority's powers under the Act, except the power to decide upon an Ombudsman's recommendation.
 14. Requests for information are considered by the staff recipient in the first instance and dealt with in accordance with HBRC's Official Information Request staff policy.
 15. Requests for information that may be held by elected representatives themselves are considered in accordance with the Council's adopted "Protocol for CE Response to LGOIMA Request for Councillors' Communications" as attached.

Meetings of Local Authorities

16. Decision making meetings of councils and their committees are open to the public and must be publicly notified (s.46), including start times and places they will be held, with agendas and associated reports to be considered available to the public beforehand (s.46A).
17. Councils may only exclude the public from all or part of a meeting for good reason, as specifically provided for by the Act.

Public Records Act 2005

18. The Public Records 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 Public Records Act 2005 provides for the continuity of the National Archives and the role of the Chief Archivist. The Act enables accountability by ensuring that full and accurate records of the affairs of local government are created and maintained. It also provides a framework within which local authorities create and maintain their records and has a role in enhancing public confidence in the integrity of local authority records.
19. The definition of a record includes information, whether in its original form or otherwise, and is not limited to just written information. The definition also includes (but is not limited to) a signature, a seal, text, images, sound, speech, or data in any medium and recorded or stored by any electronic device or process.
20. In the conduct of their affairs elected members may receive information directly, for example from constituents. Members will need to consider whether that information meets the definition of a local authority record and if so will need to ensure it is included in the Council's records.

Local Authorities (Members' Interests) Act 1968 (LAMIA)

21. The LAMIA provides rules about members discussing and voting on matters in which they have a pecuniary interest and about contracts between members and the council. LAMIA has two main rules.

22. The contracting rule prevents an elected member from having interests in contracts with the local authority that are worth more than \$25,000 per year, unless the Auditor-General approves the contracts. Breach of the rule results in automatic disqualification from office (s.3 LAMIA)
23. The participation rule prevents an elected member from participating in a decision in which they have a financial interest, other than an interest in common with the public. The Auditor-General can approve participation in limited circumstances. Breach of the rule is a criminal offence and conviction results in automatic disqualification from office (s.6 LAMIA).
24. More guidance can be found in the Elected Members' Conflict of Interest Guidelines and Office of the Controller and Auditor-General publications: "[Guidance](#) for members of local authorities about the Local Authorities (Members' Interests) Act 1968" and "[Managing conflict of interest](#): Guidance for Public entities" on the Office of the Auditor General's website.

Crimes Act 1961

25. Under sections [99](#), [105](#), and [105A](#) of this Act it is unlawful for an elected member to:
 - 25.1. Accept or obtain, or agree or offer to accept or attempt to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, in their official capacity.
 - 25.2. The definition of bribe includes any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect.
 - 25.3. Corruptly use or disclose any information acquired in their official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself or any other person.
26. These offences are punishable by a term not exceeding seven years. Elected members convicted of these offences will also be automatically ousted from office.

Secret Commissions Act 1910

27. This Act sets out corruption type offences associated with either giving or receiving gifts or other consideration by elected members (deemed agents of the council) to act in a certain way in relation to council business.
28. The definition of "agent" includes the agent's family and partners or employees. The scope of the act also extends to a child of a spouse or a civil union partner or a de facto partner of an elected member.
29. "Consideration" means valuable consideration of any kind. The nature of the consideration not only includes discounts, commissions, payment of money but also postponing or refraining from demanding the repayment of any money or valuable thing owed.
30. The Act also addresses the duty of elected members to disclose any pecuniary interest which the council may have in the making of a contract. Such disclosure must be at the time of making the contract or as soon as possible thereafter.
31. Under this act it is unlawful for an elected member (or officer) to advise anyone to enter in to a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to council.
32. These offences are punishable by a term not exceeding seven years. Elected members convicted of these offences will also be automatically ousted from office.

Financial Markets Conduct Act 2013

33. The Financial Markets Conduct Act (FMCA) 2013 imposes on elected 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.

34. The FMCA also prohibits any elected 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.
35. The penalties for certain offences under the FMCA (false or misleading statements in disclosure documents = 10 years; or insider trading = 5 years) are such that if an elected member were convicted that conviction would result in ouster from office.

Health and Safety at Work Act 2015

36. On 4 April 2016, the Health and Safety at Work Act 2015 (HSWA) came into force. The HSWA provides a significant change to New Zealand's recent health and safety legislation and is a response to the scrutiny placed on New Zealand's health and safety practices following the Pike River tragedy.
37. The 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) (i.e. the Council) to ensure, as far as is reasonably practicable, the safety of workers and others who may be impacted by the work the business undertakes.
38. One of the significant changes is the introduction of "Officers", who is any person occupying a position in relation to the business or undertaking, that allows the person to exercise significant influence over the management of the business or undertaking.
39. Officers have obligations of due diligence, which are:
 - 39.1. to acquire, and keep up-to-date, knowledge of work health and safety matters; and
 - 39.2. to gain an understanding of the nature of the operations of the business or undertaking of the PCBU, and generally of the hazards and risks associated with those operations; and
 - 39.3. to ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
 - 39.4. to ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and
 - 39.5. to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
 - 39.6. to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).
40. The duties of the Officers and of the PCBU are independent of each other. This means if a PCBU has failed to meet its duty but the Officers exercised due diligence then they would not be personally liable for the health and safety failings.
41. For the purposes of the HSWA, elected Council members and the Chief Executive are by default identified as "Officers". Elected members are exempt from the liabilities of failure to meet the due diligence duty. The focus of any liability is on the Council as the PCBU. The Chief Executive is understood to have significant personal liability in this capacity.

Decision Making Process

42. As this report is for information only and no decision is to be made, the decision making provisions of the Local Government Act 2002 do not apply.

Recommendation

That Hawke's Bay Regional Council takes note of the information contained in the "**Relevant Legislation Affecting Members**" staff report.

Authored by:

**Leeanne Hooper
GOVERNANCE LEAD**

Approved by:

**James Palmer
CHIEF EXECUTIVE**

Attachment/s

[↓](#)1 Protocol for CE response to LGOIMA Requests for Councillors' Communications

Hawkes Bay Regional Council

Protocol for Chief Executive Response to LGOIMA Requests For Elected Representatives' Communications

Adopted by Council Resolution on 26 July 2017

Purpose

1. The purpose of this protocol is to set out, in accordance with the Local Government Official Information and Meetings Act (LGOIMA), an objective and transparent process for:
 - 1.1. The assessment and determination of requests for the official information communications to, from and/or between any elected representative of the Hawke's Bay Regional Council
 - 1.2. Collection of official information from elected representatives when that official information is held on private/personal and/or another organisation's systems or equipment
 - 1.3. Communication of the Chief Executive's Decisions on such requests

Principles

2. The following principles underlie this protocol:
 - 2.1. The key Purposes of the Act (s.4) are to:
 - 2.1.1. progressively increase the availability of official information held by agencies, and promote the open and public transaction of business at meetings, in order to enable more effective public participation in decision making; and promote the accountability of members and officials; and so enhance respect for the law and promote good local government; and
 - 2.1.2. protect official information and the deliberations of local authorities to the extent consistent with the public interest and the preservation of personal privacy.
 - 2.2. The **Principle of availability** underpins the whole of the LGOIMA. The Act explicitly states that: (s.5) *The question whether any official information is to be made available ... shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it (emphasis added).*

Definitions

3. The term "**official information**" is defined in section 2 of the Act as "any information held by a local authority"
4. The Act defines "**document**" s.2(1) as: (a) any writing on any material; (b) any information recorded or stored by means of any tape recorder, computer, or other device; and any material subsequently derived from information so recorded or stored; (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means; (d) any book, map, plan, graph, or drawing; (e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced
5. "**Member**" in relation to a local authority, means any person elected or appointed to that local authority or to any committee or subcommittee of that local authority, and includes the presiding member of that local authority or of any committee or subcommittee of that local authority

Process

6. Upon receiving a request, the Chief Executive will:
 - 6.1. Notify relevant councillor(s) that the Council has received a request that pertains to them and:
 - 6.1.1. initiate retrieval of relevant official information from HBRC systems
 - 6.1.2. request that the relevant councillor(s) provide any official information they have in their official capacity in confidence to the Chief Executive
 - NOTE:** If a councillor advises that they have no official information or that they do have official information but declines to provide it to the Chief Executive, the responsibility for responding to any subsequent requests or complaints in relation to the original request, including in relation to any investigation by the Ombudsman, will rest with the councillor(s) concerned.
 - 6.2. Undertake an assessment of the official information retrieved to determine whether there are any grounds under sections 6 and 7 of the LGOIMA to withhold any of that material
 - 6.3. Make his/her preliminary decision on Council's response to the request
 - 6.4. Prepare any official information for release in accordance with preliminary decision
 - 6.5. Consult with the relevant councillor(s) on the initial determination to obtain their view
 - 6.6. Make a final determination, taking into account the views of the consulted councillor(s) and communicate this determination to the relevant councillor(s)
 - 6.7. Refer the matter to the Ombudsman for a ruling if the relevant councillor(s) do not accept the Chief Executive's final determination
 - 6.8. Communicate the CE's Decision, or that the matter has been referred to the Ombudsman, to the requestor and the relevant councillor(s)
 - 6.9. Provide any relevant official information in accordance with Decision on Request