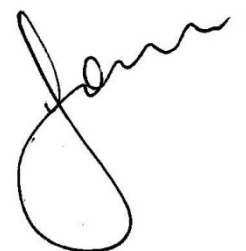


Notice is hereby given that statutory meeting of the Matura Community Board will be held in the Matura Marae, 17 Dorset Street, Matura, on Tuesday 29 November 2022, at 5.30pm

*THIS MEETING WILL INITIALLY BE CHAIRED BY HIS WORSHIP THE MAYOR*



Susan Jones  
Governance Manager

23 November 2022

## Agenda

- |    |   |           |
|----|---|-----------|
| 1. | Making and attesting of declarations        | Pages 1-2 |
| 2. | Election of Chairperson                     | Page 3    |
| 3. | Status, role and powers of Community Boards | Pages 4-5 |
| 4. | Standing Orders                             | Page 6    |
| 5. | Gore District Council Code of Conduct       | Pages 7-9 |
| 6. | Pecuniary Interests register                | Page 10   |

7. General explanations

Pages 11-22

STATUTORY MEETING AGENDA – MATAURA COMMUNITY BOARD

TUESDAY 29 NOVEMBER 2022

1. MAKING AND ATTESTING OF DECLARATIONS

(Memo from Chief Executive – 22.11.22)

The making and attesting of declarations is required by Community Board members under Clause 14, Part 1, Schedule 7 of the Local Government Act 2002.

A copy of the declaration for members that will be taken by His Worship the Mayor is attached.



## DECLARATION BY MEMBER

I, full name, declare that I will faithfully and impartially and according to the best of my skill and judgment execute and perform in the best interests of the Gore District, the powers, authorities and duties vested in or imposed upon me as Member of the Mataura Community Board by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987 or any other Act.

Dated at Gore this 29<sup>th</sup> day of November 2022

.....

**Full name**  
**Member**

**Signed in the presence of**

.....

**B R Bell**  
**Mayor**

## 2. ELECTION OF CHAIRPERSON

(Memo from Chief Executive – 23.11.22)

Clause 25 of Part 1 to Schedule 7 of the Local Government Act 2002 provides that every community board shall elect one of its members to be its Chairperson.

If more than one nomination for the position is received, one of the following voting processes applies. Please note that notwithstanding the wording in this section, the process is applicable to Community Boards by virtue of Section 54 of the Local Government Act 2002.

*(1) This clause applies to---*

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

*(b) the election or appointment of the deputy mayor; and*

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

*(d) the election or appointment of a representative of a local authority.*

*(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 a system of voting that requires that---*

*(a) the person to be elected or appointed receives the votes of a majority of the members of the local authority or committee present and voting; and*

*(b) if more than 1 round of voting is required, the least successful candidate in a round of voting may not be a candidate in the next round of voting.*

*(3) If the system of voting described in subclause (2) is adopted,---*

*(a) clause 24(1)(b) does not apply; and*

*(b) every equality of votes that is not to be determined by a further round of voting must be determined by lot in the manner that the local authority or committee determines.*

### 3. STATUS, ROLE AND POWERS OF COMMUNITY BOARDS

(Memo from Chief Executive – 23.11.22)

It is important that Board members understand the status, role and powers of the Matura Community Board. The following excerpts from the Local Government Act 2002 are provided to assist with this understanding:

#### **51. Status of Community Boards**

A community board---

- (a) is an unincorporated body; and
- (b) is not a local authority; and
- (c) is not a committee of the relevant territorial authority.

#### **52. Role of Community Boards**

The role of a community board is to---

- (a) represent, and act as an advocate for, the interests of its community; and
- (b) consider and report on all matters referred to it by the territorial authority, or any matter of interest or concern to the community board; and
- (c) maintain an overview of services provided by the territorial authority within the community; and
- (d) prepare an annual submission to the territorial authority for expenditure within the community; and
- (e) communicate with community organisations and special interest groups within the community; and
- (f) undertake any other responsibilities that are delegated to it by the territorial authority.

#### **53. Powers of community boards**

- (1) A community board has the powers that are---

- (a) delegated to it by the relevant territorial authority in accordance with clause 32 of Schedule 7; or
  - (b) prescribed by the Order in Council constituting its community.
- (2) The powers of a community board prescribed by Order in Council expire at the close of 6 years after the order comes into force.
- (3) Despite subsection (1), a community board may not---
- (a) acquire, hold, or dispose of property; or
  - (b) appoint, suspend, or remove staff.

***Mataura Community Board***

In addition to the limitation contained in the Local Government Act 2002, the Gore District Council resolved at its meeting on 24 April 2003 to delegate the following specific authority to the Mataura Community Board:

*“THAT the Board be delegated power to act, subject to any limitations contained within the Local Government Act 2002, in regard to those Council activities that are exclusively funded from within the Mataura Community Ward,*

*AND THAT the Board be delegated power to recommend in regard to those activities that are not exclusively funded from the Mataura Ward.”*

For the information of Board members, I can advise that with the formation of a combined urban rating area for Gore and Mataura in 2005, there are currently no activities that are exclusively funded from the Mataura Ward.

***Discretionary fund***

In its 2022/23 budget, the Council included a sum of \$5,772 included for Mataura initiatives. The intention is that the funds would be made available to the Mataura community for expenditure on items deemed appropriate by the Community Board. Further, the Council has approved the Mataura Community Board being given delegated authority to determine how the discretionary fund for Mataura initiatives of \$5,772 is to be expended on the proviso that all Community Board decisions are made at a formally constituted meeting, the decisions of the Board are minuted and received by the Council.

**RECOMMENDATION**

**THAT the report be received.**

#### 4. STANDING ORDERS

(Memo from Chief Executive – 23.11.22)

- ✦ It is a requirement of Clause 27, schedule 7 of the Local Government Act 2002, that every local authority adopt a set of Standing Orders for the conduct of its meetings and those of its committees. The Standing Orders were recently updated by Local Government New Zealand and were adopted by the Council at its inaugural meeting held on 22 November.

The document includes the option of participation via audio or audio-visual link and the Chair having, if necessary, both a deliberative and casting vote. The Council had previously adopted the option of the presiding Chair at any meeting having both a deliberative and casting vote. The retention of a casting vote had in the past been considered preferable in order that important matters such as the adoption of an Annual Plan or setting of rates does not suffer the impasse of an equality of votes.

Pursuant to clause 27(4) of schedule 7 of the Local Government Act 2002, 75% of elected Board members will need to approve the amended standing orders for the change to come into effect.

#### **RECOMMENDATION**

**THAT the Community Board approve the adoption of the Gore District Council Standing Orders, effective from 29 November 2022, retaining the provision that allows members to attend by audio or audio visual link (clauses 13.7 and 13.11-13.15) and to provide for a casting vote for the Chairperson (clause 19.3),**

**AND THAT the Board note that the Standing Orders have been based on a review undertaken by Local Government New Zealand.**



## 5. GORE DISTRICT COUNCIL CODE OF CONDUCT

(Report from Chief Executive – 23.11.22)

### 1.0 Introduction

In its 2006 report on codes of conduct, the Office of the Auditor General (OAG) noted that many the Council lacked a process for distinguishing between trivial and serious breaches of the code and consequently spent considerable time and resource hearing complaints on inconsequential matters. Many other issues have also arisen, such as:

- failure to adequately guard against the risk of members with an interest in a complaint taking part in the decision on whether or not to uphold a complaint,
- examples of members of the public making complaints about the behaviour of individual members for reasons that appear to be more concerned with settling ‘political’ differences, and
- lack of preparedness, Councils discovering, belatedly when faced with a code of conduct complaint, that they did not have the processes in place for handling the complaint, thus exacerbating the original issue.

Processes need to be put in place for investigating and resolving breaches of the code and the principles of natural justice must apply to the investigation, assessment and resolution of complaints made under the code.

### 2.0 Public interest

In its report on codes of conduct, the Local Government Commission noted a lack of consistency in the way in which information about complaints and sanctions is communicated to the public. It stated that *“codes should provide for the proactive release of investigation outcomes in a timely manner and consistent fashion, in line with LGOIMA”* (LGC p.16).<sup>1</sup> Reflecting the Commission’s sentiments, the draft template for dealing with alleged breaches does not require minor breaches, or those that can be resolved through mediation, to be reported to the Council. Maintaining confidentiality should reduce the incentive to use a code of conduct for political purposes.

Where a complaint has been referred to an independent investigator the draft policy recommends that the investigator’s full report should be tabled at a Council meeting and that should be public unless grounds to exclude the public exist. This reflects the likelihood that complaints that have been found to be material, and which have not been able to be resolved through mediation, or less, will of necessity be of high public interest.

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<sup>1</sup> Local Government Commission, Codes of Conduct: Report to the Minister of Local Government, September 2021 at <https://www.lgc.govt.nz/other-commission-worlk/current-proposals/view/report-to-the-minister-of-local-government-september-2021/?step=main>

Applying a penalty or sanction under the Code of Conduct should ideally be the last, rather than the first response. Most situations should be able to be resolved without the need for sanctions – frequently an apology is all it will take to resolve an issue.

### **3.0 Matters to consider when adopting a policy for dealing with alleged breaches**

Having adopted the Code of Conduct, members should consider adopting a policy for dealing with alleged breaches of the code. A policy to investigate and assess alleged breaches needs to be tailored to the circumstances of each the Council, given the diversity in capacity, resources, and cultural context.

The following policy sets out procedures for investigating and assessing alleged breaches of the Code of Conduct. To ensure the policy is appropriate for the different scale and circumstances of the Council, the template provides a range of procedural options that need to be considered before the Policy should be adopted. The options were:

#### **Decision 1 - A single step or two step assessment process?**

This option is concerned with the process that should be followed once a complaint is received. Both are independent of the local authority; however the two-step process is designed to quickly address those complaints that have a low level of materiality, and with a minimum expense to the Council.

1. A **single step process**, in which the Chief Executive refers all complaints to an independent investigator who determines whether the complaint is valid and, if so, recommends an action(s) appropriate to the level of materiality or significance of the breach.
2. A **two-step process**, in which the Chief Executive refers all complaints to an initial assessor who determines whether the complaint is valid and, if so, can refer the complaint to a chairperson or recommend that the parties undertake mediation. Where the nature of a breach is significant and where mediation is not an option (or not agreed to) then the initial assessor will refer the complaint to an independent investigator, who may also re-assess the complaint.

In the draft Code of Conduct that was presented to the Council, a two-step process was recommended and accepted.

#### **Decision 2 – Binding or non-binding recommendations from an investigator?**

A key principle is that the process for investigating an alleged breach must be politically independent and be seen to be so. The proposal for investigating and making recommendations is designed to achieve that independence, however, the perception of independence and objectivity may be lost if it is elected members who decide the nature of the action to be taken when a complaint is upheld, particularly in the Council with small numbers of elected members.

One solution is for a local authority to agree to be bound by an independent investigator's recommendations. However, that may unreasonably restrict the Council to consider other matters, particularly in regard to a possible sanction. A degree of political independence can be achieved by ensuring that the complainant and the subject or subjects of the complaint, take no part in the decision-making process. This is what the draft policy promotes.

Under Clause 15, Schedule 7 of the Local Government Act 2002, the Council must adopt a Code of Conduct for its members.

- ✦ Local Government New Zealand (LGNZ) undertook a review of Codes of Conduct and an updated version based on the template provided by LGNZ and tailored to the Gore District Council, is enclosed. Also attached, is the Policy for investigating and ruling on alleged breaches of the Code.

Both the Code and the Policy were adopted by the Council at its inaugural meeting held on 22 November.

Clause 15 (6) of Schedule 7 requires that any amendment to the Code or an adoption of a new Code requires in every case a vote in support of the changes of not less than 75% of members present.

#### **RECOMMENDATION**

**THAT the Community Board adopt the Code of Conduct and the policy for investigating and ruling on alleged breaches of the Code of Conduct for the 2022-2025 triennium.**

## 6. PECUNIARY INTERESTS REGISTER

(Report from Chief Executive - 23.11.22)

The Local Government (Pecuniary Interests Register) Amendment Act 2022 came into force on 20 November 2022.

The Act places an obligation on each elected member of a Council or Community Board to accurately record their financial interest in companies, trusts and real estate, as profiled in the summary provided to the Act in my report on relevant legislation for the attention of elected members.

Accurate compilation of member interests is compulsory and must be completed within 120 days for elected members coming into office. For elected members of the Gore District Council, the compliance date will therefore be 11 February 2023.

A common template will be provided to record member interests. To comply with the Act, the Council appointed its General Manager Corporate Support as registrar to oversee and maintain the register of interests.

The Amendment Act sets out that the registrar must create guidance documents for elected members to help them complete the forms. The forms are also to be prepared by the registrar.

The registrar must make a summary of all the information received available on the Council's website. All records must be kept for seven years.

### **RECOMMENDATION**

**THAT the report be received and noted.**

## 7. GENERAL EXPLANATIONS

(Memo from Chief Executive – 23.11.22)

Clause 21 (5), Schedule 7 of the Local Government Act 2002 requires that at the first meeting of the Community Board following the triennial general election, a general explanation must be given of the Local Government Official Information and Meetings Act 1987, and appropriate provisions of:

- (a) The Local Government Act 2022;
- (b) The Local Government Official Information and Meetings Act 1987;
- (c) The Local Authorities (Members' Interests) Act 1968;
- (d) The Serious Fraud Office Act 1990;
- (e) The Local Government (Pecuniary Interests Register) Act 2022;
- (f) The Health and Safety at Work Act 2015;
- (g) The Harmful Digital Communications Act 2015;
- (h) Sections 99, 105 and 105A of the Crimes Act 1961;
- (i) The Secret Commissions Act 1910; and
- (j) The Financial Markets Conduct Act 2013.

The purpose of this report is to provide the general explanation of these Acts as required by Clause 21 (5).

### **The Local Government Act 2002**

The LGA 2002 is local government's empowering statute. It establishes our system of local government and sets out the rules by which it operates. Those rules include the principles underpinning Council decision-making, governance principles, Te Tiriti obligations as set by the Crown, and the role of the chief executive which is:

1. implementing the decisions of the local authority,
2. providing advice to members of the local authority and to its community boards, if any and
3. ensuring that all responsibilities, duties, and powers delegated to him or her or to any person employed by the local authority, or imposed or conferred by an Act, regulation, or bylaw, are properly performed, or exercised,

4. ensuring the effective and efficient management of the activities of the local authority,
5. facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001,
6. maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority,
7. providing leadership for the staff of the local authority,
8. employing, on behalf of the local authority, the staff of the local authority (in accordance with any remuneration and employment policy), and
9. negotiating the terms of employment of the staff of the local authority (in accordance with any remuneration and employment policy).

### **The Local Government Official Information and Meetings Act 1987**

The LGOIMA sets rules for ensuring the public are able to access official information unless there is a valid reason for withholding it. All information should be considered public and released accordingly unless there is a compelling case for confidentiality. Even where information has been classified as confidential, best practice is for it to be proactively released as soon as the grounds for confidentiality have passed.

### **Requests**

Anyone can make a request for official information.

If the information sought is not held by the Council or a Council officer believes the request to be more closely connected with another organisation then the officer must, within 10 working days transfer the request.

Where the Council holds information, a decision on whether to release the information must be made within 20 working days of receipt of a request. Charges may be made for supplying information.

Where the information sought is large or consultations necessary for a proper response are needed then the Chief Executive or an authorised officer may extend the time limit for a “reasonable period”. The requester must be told the period of extension, the reasons for the extension and the fact that the extension can be referred to the Ombudsman.

Every request must be dealt with on its merits and a decision whether to refuse is made on the circumstances of each case.

Generally, where the information is released then it must be released in the manner requested.

### **Refusals**

In considering a refusal of a request for official information, the Act fixes the responsibility on the Chief Executive or an officer authorised by him or her. While the statutory responsibility is placed on the Chief Executive, that officer

is not prevented from consulting the Council or any other person in relation to a decision to refuse.

There are both conclusive and other reasons for withholding information set out in sections 6 and 7 of LGOIMA, which include:

Conclusive reasons for withholding – if making the information available would likely:

- prejudice the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial; or
- endanger the safety of any person.

Other reasons for withholding – withholding the information is necessary to:

- protect the privacy of natural persons, including that of deceased natural persons;
- protect information where it would disclose a trade secret or would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;
- in the case of an application for resource consents or certain orders under the Resource Management Act 1991, to avoid serious offence to tikanga Māori, or to avoid the disclosure of the location of waahi tapu;
- protect information the subject of an obligation of confidence, where making that information available would prejudice the supply of similar information (and it is in the public interest for this to continue), or would be likely otherwise to damage the public interest;
- avoid prejudice to measures protecting the health or safety of members of the public;
- avoid prejudice to measures that prevent or mitigate material loss to members of the public;
- maintain the effective conduct of public affairs through free and frank expression of opinions between or to members and local authority employees in the course of their duty or the protection of such people from improper pressure or harassment;
- maintain legal professional privilege;
- enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
- prevent the disclosure or use of official information for improper gain or improper advantage.

Regarding these 'other' reasons, a public interest balancing test applies. In these cases, the Council must consider whether the withholding of that information is outweighed by other considerations that render it desirable, in the public interest, to make that information available. Decisions about the release of information under LGOIMA need to be made by the appropriately authorised people within each Council, and elected members must work within the rules adopted by each Council.

The LGOIMA also sets the rules that govern public access to meetings and the grounds on which that access can be restricted, which occurs when meetings consider matters that are confidential.

### **The role of the Ombudsman**

An Ombudsman is an Officer of Parliament appointed by the Governor-General on the recommendation of Parliament. An Ombudsman's primary role under the Ombudsmen Act 1975 is to independently investigate administrative acts and decisions of central and local government departments and organisations that affect someone in a personal capacity. Ombudsmen investigate complaints made under LGOIMA.

Anyone who has a complaint of that nature about a local authority may ask an Ombudsman to investigate that complaint. Investigations are conducted in private. The Ombudsman may obtain whatever information is considered necessary, whether from the complainant, the Chief Executive of the local body involved, or any other party. The Ombudsman's decision is provided in writing to both parties.

If a complaint is sustained, the Ombudsman may recommend the local authority takes whatever action the Ombudsman considers would be an appropriate remedy. Any such recommendation is, however, not binding. Recommendations made to the local authority under this Act will, in general, become binding unless the local authority resolves otherwise. However, any such resolution must be recorded in writing and be made within 20 working days of the date of the recommendation.

### **Ombudsman's investigation**

Under the Act the Ombudsman can investigate any refusal by the Council to provide information and can investigate the charges made by the Council.

If the matter cannot be resolved during the investigation the Ombudsman may make a recommendation to the Council. The Council is under a public duty to observe that recommendation unless, within 21 working days of receiving the recommendation, it resolves not to accept it.

A decision not to accept an Ombudsman's recommendation must be notified to the applicant and the Ombudsman and published in the New Zealand Gazette together with the Council's reasons for its decision. The applicant may apply to the High Court for a review of the Council's decision. Whatever the result of the High Court hearing, the applicant's legal costs must be paid by the Council unless the Court is satisfied the application was not reasonably or properly brought.

Convention and respect dictate that in most circumstances the Ombudsman's recommendation would be accepted.



**Other rights of access**

The Act also gives every person a right of access to any document, including manuals which the Council holds containing policies, rules, or guidelines by which decisions or recommendations are made. There are limited rights of refusal available to the Council.

Section 22 of the Act provides that where the Council makes a decision or recommendation in respect of any person in that person's personal capacity, that person has the right on request to have within a reasonable time a written statement from the Council of:

- (a) the findings on material issues of fact;
- (b) a reference to the information on which the findings were based; and
- (c) the reasons for the decision or recommendation.

**Access to meetings**

The Act provides the public and media have a right of access to all meetings of the Council, committees, sub-committees (with power to act) and community boards unless the meeting resolves to exclude the public. Copies of meeting agendas must be available for the public and the media.

The grounds for excluding the public and the media from a meeting can only be those provided in the Act and essentially are the same grounds as for withholding official information. A motion to exclude must state the subject matter of the "non-public" matter and the specific reason provided in the Act.

Even where a meeting has resolved to exclude the public a person can request a copy of the minutes of the meeting and that request must be treated in the same way as a request for official information and subject to review by an Ombudsman.

**Order papers**

Order papers for meetings must be publicly available at least two working days before the meeting. Supplementary reports cannot be dealt with unless agreed to by the meeting and unless the Chairperson explains why the report was not on the Order Paper and why the subject cannot wait until the next meeting.

**Order at meetings**

Section 50 of the Act provides that the Chairperson of a meeting may require a member of the public to leave the meeting if the Chairperson believes on reasonable grounds that person's behaviour is "likely to prejudice or continue to prejudice" the orderly conduct of the meeting.

The Chairperson may call on a police constable or Council officer to remove a person from the meeting.

### **Qualified privilege**

Sections 52 and 53 of the Act provide **that written or oral** statements on any matter before a meeting of the Council, committee or community board is privileged unless the statement is proved to be made with malice. This type of privilege is known as qualified privilege.

Qualified privilege is a protection afforded by the law on certain occasions to a person acting in good faith and without any improper motive who makes a statement defamatory about another person.

It is established law that meetings of local authorities are privileged occasions. The reason given by the Courts is that those who represent local government electors should be able to speak freely on any matter they believe affects the interests of their residents.

The situation regarding statements made outside a formal meeting is not so clear. Certainly the statutory protection of sections 52 and 53 would not extend outside a meeting.

If malice can be established by the maker of a statement then the privilege is lost. With the question of malice, motive can be crucial. If it is established the maker of the statement had some other dominant and improper motive then malice will be established. Generally speaking, malice is a desire to injure the defamed person and this desire must be the dominant motive for the statement. The maker should guard against making reckless statements.

What is required for qualified privilege to apply is a positive belief in the truth of what is said, and that there is no suggestion of personal spite or ill-will by the maker.

### **The Local Authorities (Members' Interests) Act 1968**

#### **Pecuniary interests**

The LAMIA provides rules about members discussing or voting on matters in which they have a pecuniary interest and about contracts between members and the council. LAMIA has two main rules, referred to here as the contracting rule (in section 3 of the LAIMA) and the participation rule (in section 6 of the LAIMA).

- The **contracting rule** prevents a member from having interests in contracts with the local authority that are worth more than \$25,000 in any financial year, unless the Auditor-General approves the contracts. Breach of the rule results in automatic disqualification from office.
- The **participation rule** prevents a member from voting or taking part in the discussion of any matter 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.

Both rules have a complex series of subsidiary rules about their scope and exceptions.

The LAMIA does not define when a person is “concerned or interested” in a contract (for the purposes of section 3) or when they are interested “directly or indirectly” in a decision (for the purposes of section 6). However, it does set out two situations where this occurs. These are broadly where:

- a person’s spouse or partner is “concerned or interested” in the contract or where they have a pecuniary interest in the decision; or
- a person or their spouse or partner is involved in a company that is “concerned or interested” in the contract or where the company has a pecuniary interest in the decision.

However, in some situations outside the two listed in the Act a person can be “concerned or interested” in a contract or have a pecuniary interest in a decision, for example, where a contract is between the members family trust and the Council.

#### **Non-pecuniary conflicts of interest**

In addition to the issue of pecuniary interests, which are addressed through the LAMIA, there are also legal rules about conflicts of interest more generally. These are rules that apply to non-pecuniary conflicts of interest and include the common law rule about bias. To determine if bias exists, consider this question: Is there a real danger of bias on the part of the member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?

The question is not limited to actual bias but relates to the appearance or possibility of bias. This is in line with the principle that justice should not only be done but should be seen to be done. Whether or not you believe that you are not biased is irrelevant. The focus should be on the nature of any conflicting interest or relationship, and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- statements or conduct indicate that a member has predetermined the decision before hearing all relevant information (that is, they have a “closed mind”), or
- a member has close relationship or involvement with an individual or organisation affected by the decision.

### **Seeking exemption from the Auditor-General**

Members who have a financial conflict of interest that is covered by section 6 of the LAMIA, may apply to the Auditor-General for approval to participate. The Auditor-General can approve participation in two ways.

1. Section 6(3)(f) allows the Auditor-General to grant an exemption if, in their opinion, a member's interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Councillor when voting or taking part in the discussion.
2. Section 6(4) allows the Auditor-General to grant a declaration enabling a member to participate if they are satisfied that:
  - a. the application of the rule would impede the transaction of business by the council; or
  - b. it would be in the interests of the electors or residents of the district/region that the rule should not apply.

More information on non-pecuniary conflicts of interest and how to manage them can be found in the Auditor-General's Guidance for members of local authorities about the law on conflicts of interest.

### **The Local Government (Pecuniary Interests Register) Act 2022**

The Local Government (Pecuniary Interests Register) Amendment Act comes into force on 20 November 2022. Under this Act, a local authority must now keep a register of the pecuniary interests of their members, including community and local board members. The purpose of the register is to record members' interests to ensure transparency and strengthen public trust and confidence in local government processes and decision-making. Prior to this Act being passed, recording of elected members interests was discretionary. This is now no longer the case.

Registers must comprise the following:

- the name of each company of which the member is a director or holds or controls more than 10% of the voting rights and a description of the main business activities of each of those companies,
- the name of every other company or business entity in which the member has a pecuniary interest, other than as an investor in a managed investment scheme, and a description of the main business activities of each of those companies or business entities,
- if the member is employed, the name of each employer of the member and a description of the main business activities of those employers,
- the name of each trust in which the member has a beneficial interest,
- the name of any organisation or trust and a description of the main activities of that organisation or trust if the member is a member of the organisation, a member of the governing body of the organisation, or a

trustee of the trust, and the organisation or trust receives funding from the local authority, local board, or community board to which the member has been elected,

- the title and description of any organisation in which the member holds an appointment by virtue of being an elected member,
- the location of real property in which the member has a legal interest, other than an interest as a trustee, and a description of the nature of the real property,
- the location of real property, and a description of the nature of the real property, held by a trust if the member is a beneficiary of the trust and it is not a unit trust or a retirement scheme whose membership is open to the public.

Each Council must make a summary of the information contained in the register publicly available; and ensure that information contained in the register is only used or disclosed in accordance with the purpose of the register; and is retained for seven years.

A separate report on this legislation and the process required for compliance appears elsewhere on the agenda.

#### **The Serious Fraud Office Act 1990**

The Serious Fraud Office (SFO) is the lead law enforcement agency for investigating and prosecuting serious financial crime, including bribery and corruption. The SFO has an increasing focus on prevention by building awareness and understanding of the risks of corruption – noting that the extent of corruption is influenced by organisational frameworks and support given to staff. The SFO encourages organisations to adopt appropriate checks and balances and build a culture based on ethics and integrity.

The four basic elements of best practice organisational control promoted by the SFO involve:

- Operations people with the right skills and experience in the relevant areas, with clear accountability lines.
- Risk mitigation to manage risks that can't be eliminated through segregation, discretion reduction, delegations, management oversight, and audit.
- Basic standards of behaviour moderated by a Code of Conduct, ongoing interests and gift processes (not simply annual declaration), plenty of opportunities and ways to speak up, disciplinary options, training and support.
- Design and oversight based on a clear understanding of operational realities (design, governance, management, audit, investigation, business improvement, and legal).

### **The Health and Safety Act at Work Act 2015**

The Health and Safety at Work Act 2015 aims to create a new culture towards health and safety in workplaces. A Council is termed a Person Conducting a Business or Undertaking (PCBU) - all involved in work, including elected members, are required to have a duty of care. Elected members are “officers” under the Act and officers are required to exercise due diligence to ensure that the PCBU complies with its duties. However, certain officers, such as elected members, cannot be prosecuted if they fail in their due diligence duty. Despite this, as officers, the key matters to be mindful of are:

- stepping up and being accountable,
- identifying and managing your risks,
- making health and safety part of your organisation’s culture, and
- getting your workers involved.

Councils have wide discretion about how these matters might be applied, for example:

- adopting a charter setting out the elected members’ role in leading health and safety – with the Chief Executive,
- publishing a safety vision and beliefs statement,
- establishing health and safety targets for the organisation with your chief executive,
- ensuring there is an effective linkage between health and safety goals and the actions and priorities of your chief executive and their senior management, or
- having effective implementation of a fit-for-purpose health and safety management system.

Elected members, through their Chief Executive need to ensure their organisations have sufficient personnel with the right skill mix and support, to meet the health and safety requirements. This includes making sure that funding is sufficient to effectively implement and maintain the system and its improvement programmes.

### **The Harmful Digital Communications Act 2015**

The Harmful Digital Communications Act (HDCA) was passed to help people dealing with serious or repeated harmful digital communications. The Act covers any harmful digital communications (like text, emails, or social media content) which can include racist, sexist and religiously intolerant comments – plus those about disabilities or sexual orientation and sets out 10 communication principles for guiding communication online. Under the Act, a digital communication should not:

- disclose sensitive personal facts about an individual;
- be threatening, intimidating, or menacing;

- be grossly offensive to a reasonable person in the position of the affected individual;
- be indecent or obscene;
- be used to harass an individual;
- make a false allegation;
- contain a matter that is published in breach of confidence;
- incite or encourage anyone to send a message to an individual for the purpose of causing harm to the individual;
- incite or encourage an individual to commit suicide; and/or
- denigrate an individual by reason of colour, race, ethnic or national origins, religion, gender, sexual orientation or disability.

More information about the Act can be found at [Netsafe](#).

### **Sections 99, 105 and 105A Crimes Act 1961**

#### **(a) Section 99**

Section 99 defines, for the purposes of the Crimes Act 1961, an “official” as any member or employee of any local authority. Member here would include a community board member.

#### **(b) Section 105**

Section 105 provides that it is an offence punishable by seven years imprisonment for an “official” to corruptly accept or obtain, or to attempt to obtain, any bribe in respect of anything done or omitted to be done by the official in an official capacity.

A person making or attempting to make the bribe is liable to three years imprisonment.

#### **(c) Section 105A**

Section 105A provides that every official is liable to seven years imprisonment who corruptly uses any information acquired in an official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for the official or any other person.

### **Secret Commissions Act 1910**

This Act puts in legislation the principle that a person holding a position of trust, such as elected members, should not make a profit through their office. The Act provides that elected members and officers are “agents” of the Council and that every agent commits an offence who corruptly accepts or obtains or solicits, for themselves or any other person, any gift or other consideration as an inducement or reward for doing or not doing any act in relation to the Council’s affairs, or for having shown favour or disfavour to any person in relation to the Council’s affairs.

Any agent who diverts, obstructs or interferes with the proper course of the Council's business, or fails to use due diligence in the prosecution of such business with intent to obtain for themselves or any other person any gift or other consideration shall be deemed to have corruptly solicited a consideration.

While "gift" is not defined, "consideration" is. It includes discounts, commissions, rebates, bonuses, deductions, percentages, employment and money (including loans).

Generally, trade practices or customary gifts do not constitute a defence to a charge under the Act.

### **Financial Markets Conduct Act 2013**

The Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever the Council offers stock to the public. Elected members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

The Council does not make any public stock offerings and has no plans to in the foreseeable future.

### **RECOMMENDATION**

**THAT the information be received.**