



Otorohanga District Council

AGENDA

22 OCTOBER 2019

10.00am

Members of the Otorohanga District Council

His Worship the Mayor MM Baxter
Councillor K Christison
Councillor B Ferguson
Councillor R Johnson
Councillor K Jeffries
Councillor RA Klos
Councillor P McConnell
Councillor A Williams

Meeting Secretary: Mr. CA Tutty (Governance Supervisor)

OTOROHANGA DISTRICT COUNCIL

22 OCTOBER 2019

Notice is hereby given that an Inaugural meeting of the Otorohanga District Council will be held in the Council Chambers, 17 Maniapoto Street, Otorohanga on Tuesday 22 October 2019 commencing at 10am.

17 OCTOBER 2019

Tanya Winter
CHIEF EXECUTIVE

ORDER OF BUSINESS:

PRESENT

IN ATTENDANCE

APOLOGIES

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ITEM 1 **ELECTED MEMBERS DECLARATIONS**
TO: **HIS WORSHIP THE MAYOR AND COUNCILLORS**
 OTOROHANGA DISTRICT COUNCIL
FROM: **CHIEF EXECUTIVE**
DATE: **22 OCTOBER 2019**

Relevant Community Outcomes

- Foster an involved and engaged Community
-

Executive Summary

Pursuant to Schedule 7, Part 1, Clause 14 of the Local Government Act 2002, the Mayor is required to make and sign a declaration in the presence of the Chief Executive.

Pursuant to Schedule 7, Part 1, Clause 14 of the Local Government Act 2002, Councillors are required to make and sign a declaration in the presence of the Mayor.

Recommendations

It is recommended that:

1. Pursuant to Schedule 7, Part 1, Clause 14 of the Local Government Act 2002, the Mayor signs the declaration form in the presence of the Chief Executive.
2. Pursuant to Schedule 7, Part 1, Clause 14 of the Local Government Act 2002, all Councillors sign the declaration form in the presence of the Mayor.

Legal and policy considerations

Clause 14 of Schedule 7 of the Local Government Act sets out the requirements for elected members to sign a declaration prior to being sworn in to office.

14 Declaration by member

- 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) the chairperson; or
 - b) the mayor; or
 - c) a member of the local authority; or
 - d) the chief executive of the local authority; or
 - e) in the absence of the chief executive, some other officer appointed by the chief executive.
- 3) The form of the declaration must consist of the following elements:

Declaration by Mayor or Chairperson or Member

“I, AB, 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 [region or district], the powers, authorities, and duties vested in, or imposed upon, me as [Mayor or Chairperson or Member] of the [local authority] by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act

Dated at: [place, date]

Signature:

Signed in the presence of:

CD, [Mayor or Chairperson or Member or Chief Executive of local authority]”.

Tanya Winter

CHIEF EXECUTIVE

ITEM 2 **APPOINTMENT OF DEPUTY MAYOR**
TO: **HIS WORSHIP THE MAYOR AND COUNCILLORS**
 OTOROHANGA DISTRICT COUNCIL
FROM: **CHIEF EXECUTIVE**
DATE: **22 OCTOBER 2019**

Relevant Community Outcomes

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Executive Summary

The Deputy Mayor must be appointed at the first meeting of the local authority under Clause 21(5)(e) of schedule 7 of the Local Government Act 2002.

Recommendations

It is recommended that:

- 1) The Mayor appoints _____ as the Deputy Mayor; or
- 2) In the event that the Mayor has declined to exercise the power to appoint a Deputy Mayor, the Council appoints _____ as the Deputy Mayor.

Background

Section 41A(3) of the Local Government Act 2002 states a mayor has the power to appoint the deputy mayor. In the event that the Mayor declines to exercise the power of appointment, Council must then appoint a Deputy Mayor. S41A(4) does provide for the Council to overturn the appointment of the Deputy Mayor appointed by the Mayor however the Council must follow a process set out under Clause 18 of Schedule 7.

The following extracts from the Local Government Act 2002 are provided for reference:

Section 41A Role and powers of mayors

- (1) The role of a mayor is to provide leadership to—
 - (a) the other members of the territorial authority; and
 - (b) the people in the district of the territorial authority.
- (2) Without limiting subsection (1), it is the role of a mayor to lead the development of the territorial authority’s plans (including the long-term plan and the annual plan), policies, and budgets for consideration by the members of the territorial authority.
- (3) For the purposes of subsections (1) and (2), a mayor has the following powers:
 - (a) to appoint the deputy mayor;
 - (b) to establish committees of the territorial authority;
 - (c) to appoint the chairperson of each committee established under paragraph (b), and, for that purpose, a mayor—
 - (i) may make the appointment before the other members of the committee are determined; and
 - (ii) may appoint himself or herself.

- (4) However, nothing in subsection (3) limits or prevents a territorial authority from—
- (a) removing, in accordance with clause 18 of Schedule 7, a deputy mayor appointed by the mayor under subsection (3)(a); or
 - (b) discharging or reconstituting, in accordance with clause 30 of Schedule 7, a committee established by the mayor under subsection (3)(b); or
 - (c) appointing, in accordance with clause 30 of Schedule 7, 1 or more committees in addition to any established by the mayor under subsection (3)(b); or
 - (d) discharging, in accordance with clause 31 of Schedule 7, a chairperson appointed by the mayor under subsection (3)(c).
- (5) A Mayor is a member of each committee of a territorial authority.
- (6) To avoid doubt, a mayor must not delegate any of his or her powers under subsection (3).
- (7) To avoid doubt, —
- (a) clause 17(1) of Schedule 7 does not apply to the election of a deputy mayor of a territorial authority unless the mayor of the territorial authority declines to exercise the power in subsection (3)(a);
 - (b) clauses 25 and 26(3) of Schedule 7 do not apply to the appointment of the chairperson of a committee of a territorial authority established under subsection (3)(b) unless the mayor of the territorial authority declines to exercise the power in subsection (3)(c) in respect of that committee.

Schedule 7 Election and removal of chairperson, deputy chairperson, and deputy mayor

Clause 17 Election of deputy mayor or deputy chairperson

- (1) A territorial authority must elect 1 of its members to be its deputy mayor in accordance with clause 25.
- (2) A regional council must elect 1 of its members to be its deputy chairperson in accordance with clause 25.
- (3) The deputy mayor or deputy chairperson must perform all the responsibilities and duties, and may exercise all the powers, of the mayor or chairperson, —
 - (a) with the consent of the mayor or chairperson, at any time during the temporary absence of the mayor or chairperson;
 - (b) without that consent, at any time while the mayor or chairperson is prevented by illness or other cause from performing the responsibilities and duties, or exercising the powers, of his or her office;
 - (c) while there is a vacancy in the office of the mayor or chairperson.

Clause 18 Power to remove chairperson, deputy chairperson, or deputy mayor

- (1) At a meeting that is in accordance with this clause, a territorial authority or regional council may remove its chairperson, deputy chairperson, or deputy mayor from office.
- (2) If a chairperson, deputy chairperson, or deputy mayor is removed from office at that meeting, the territorial authority or regional council may elect a new chairperson, deputy chairperson, or deputy mayor at that meeting.
- (3) A meeting to remove a chairperson, deputy chairperson, or deputy mayor may be called by—
 - (a) a resolution of the territorial authority or regional council; or
 - (b) a requisition in writing signed by the majority of the total membership of the territorial authority or regional council (excluding vacancies).
- (4) A resolution or requisition must—
 - (a) specify the day, time, and place at which the meeting is to be held and the business to be considered at the meeting; and
 - (b) indicate whether or not, if the chairperson, deputy chairperson, or deputy mayor is removed from office, a new chairperson, deputy chairperson, or deputy mayor is to be elected at the meeting if a majority of the total membership of the territorial authority or regional council (excluding vacancies) so resolves.

- (5) A resolution may not be made and a requisition may not be delivered less than 21 days before the day specified in the resolution or requisition for the meeting.
- (6) The chief executive must give each member notice in writing of the day, time, place, and business of any meeting called under this clause not less than 14 days before the day specified in the resolution or requisition for the meeting.
- (7) A resolution removing a chairperson, deputy chairperson, or deputy mayor carries if a majority of the total membership of the territorial authority or regional council (excluding vacancies) votes in favour of the resolution.

Clause 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) 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 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.

Tanya Winter

CHIEF EXECUTIVE

ITEM 3 **GENERAL EXPLANATION OF STATUTORY REQUIREMENTS**
TO: **HIS WORSHIP THE MAYOR AND COUNCILLORS**
 OTOROHANGA DISTRICT COUNCIL
FROM: **CHIEF EXECUTIVE**
DATE: **22 OCTOBER 2019**

Relevant Community Outcomes

- Foster an involved and engaged Community
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Executive Summary

The purpose of this report is to provide the Council with an overview of key legislation that you need to be aware of and have an understanding of in your role as a member of the Council. This report will highlight some of the key aspects of the following legislation:

- Local Government Act 2002
- Local Government Official Information and Meetings Act 1987
- Local Authority (Members' Interests) Act 1968
- Crimes Act 1961 – Sections 99, 105 and 105A
- Secret Commissions Act 1910
- Protected Disclosures Act 2000
- Public Records Act 2005
- Health and Safety at Work 2015
- Financial Markets Conduct Act 2013

Recommendation

It is recommended that:

- 3) Council receives the report on general information on statutory requirements for elected members in accordance with the Local Government Act 2002 Schedule 7, Part 1, Clause 21(5)(c).

Background

There are certain legislative provisions which members must be aware to avoid a risk of disqualification from office. There is also a requirement to have these brought to your attention at the inaugural meeting of the Council under Clause 21(5)(c) of Schedule 7 of the Local Government Act 2002.

Legislation

LOCAL GOVERNMENT ACT 2002

The Local Government Act 2002 (LGA2002) defines local government's purpose, its general powers, its specific by-law making powers and the principles and processes that councils must abide by when making decisions. The LGA2002 is based on the principle of general competency, which enables a council to do whatever is necessary to fulfil its role. Within this framework, there is a considerable degree of flexibility in deciding what activities are undertaken and how they are carried out. It states that the overall role of the Council is to ensure democratic local decision-making and action by, and on behalf of, communities.

The purpose of local government is defined in section 10 of the LGA2002 and states "The purpose of local government is:

- a. To enable democratic local decision-making and action by, and on behalf of, communities; and
- b. To promote the social, economic, environmental and cultural well-being of communities in the present and for the future

As elected Council representatives you are responsible for making key policy decisions that guide our activities and provide the direction for our District's future. The Otorohanga District Council carries out a number of functions, responsibilities and activities which include:

- Constructing, managing and maintaining local infrastructure on behalf of the community. This infrastructure includes: roads, water supply, sewage disposal, refuse collection and disposal, and stormwater drainage.
- Providing and maintaining community facilities and assets which include: parks and reserves, libraries, community halls, cemeteries, swimming pool, public conveniences and harbours.
- Planning for the future needs of the district.
- Managing the environment for present and future residents.
- Undertaking a regulatory role to ensure that residents have a safe, desirable and healthy environment in which to live.
- Advocacy on behalf of the local community with central government, other local authorities and other agencies.
- Promoting and facilitating development of the district that will benefit residents, and providing a comprehensive information service.

LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987 (LGOIMA)

LGOIMA provides for all local government activities to take place in an open and transparent environment. It also specifies that, generally, all information held by a local authority in any form should be available to the public. The purpose of LGOIMA is to enable more effective participation by the public in the actions and decisions of local authorities and to promote the accountability of local authority members and officials with a view to enhancing respect for the law and promote good local government in New Zealand.

There are two aspects to this Act:

- Access to local authority information; and
- Meetings process

A brief overview of these provisions is provided in the following paragraphs.

Access to Local Authority Information

Generally, all information held by a local authority in any form should be available to the public, subject to certain reasons set out where a Council might rely on to withhold particular information, such as the protection of privacy, commercial advantage, protection of negotiations.

LGOIMA provides for anyone to have the right to request information held by the Council and that if any such request is refused the applicant has the right of appeal to the Ombudsman. The Ombudsman will then consider the request; the nature and content of the information concerned and the grounds relied on for refusing to provide it. If the Ombudsman believes that some or all of the information should be released, they will recommend a course of action to the Council. It is then up to the Council to decide what to do. The Council's decision is reviewable by the High Court.

Another requirement of LGA2002 is that Council publish a document outlining its functions and giving a general description of the information held by it. This material is published through the Local Governance Statement which is required to be updated within six months following each election. The Local Governance Statement is publicly available on the Council's website however it will need to be updated following the Council's decision on its governance structure for 2019-22. LGOIMA specifically provides that there will be no liability on Councillors for any information released in good faith. It should be noted however that the Privacy Act 1993 places strict limitations on Council in respect of the release of information relating to private individuals.

Under LGOIMA the authority to make decisions regarding whether information should be released is delegated to the Chief Executive. As a general rule, any information contained in the open section of any agenda (e.g. the pages that are **not** headed "public excluded") is already in the public domain. Any information marked "public excluded" or "confidential" should not be released or discussed outside the meeting concerned.

If, as an elected member, you are asked to provide any such information to a third party you should refer the request to either the Chief Executive or to the Group Manager responsible for the report. Should an elected member release confidential information and should the Council suffer any loss as a result, the member may become personally liable for the Council's loss if it can be shown that the member was not acting in good faith.

Local Authority Meetings

LGOIMA provides that all meetings of Council, which includes meetings of its committees and community boards, shall be open to the public unless certain specified reasons can be satisfied for excluding them. These reasons are basically the same as for withholding information and are set out within section 48 of LGOIMA. It is necessary for the meeting to be satisfied that any one or more of these reasons exist before the public is excluded. Staff will provide guidance and suggestions where it may be considered to be appropriate for the Council or for one of its committees to meet with the public excluded.

LGOIMA also enables the Mayor (or Chairperson in the case of committees and community boards) to introduce an item that is not on the agenda as long as there is a clear reason why the item is not on the agenda and why it cannot wait until the next meeting. A formal resolution, including reasons must then be passed to receive and consider the item. This may only relate to major and urgent matters. The Council is still subject to the requirements of the decision making processes as set out in the LGA2002. LGOIMA states that in terms of minor matters, no resolution, decision or recommendation may be made in respect of that item except to refer it to a subsequent meeting for further discussion. This requirement is not intended to make the decision making process any more difficult or protracted than necessary but to ensure transparency.

Agendas for Council and Committee meetings have to be made available to the public two clear working days before the day of the meeting. The agendas are published on the Council website. Copies of agendas are also available from the council offices and public libraries. Other provisions of the LGOIMA require meetings to be publicly notified and provide that any matter including defamatory matter published in any agenda, or oral statements made at any meeting are privileged unless proven to have been made with malice.

LOCAL AUTHORITY (MEMBERS' INTERESTS) ACT 1968

The Local Authority (Members' Interests) Act 1968 helps to protect the integrity of local authority decision-making by ensuring that Councillors are not affected by personal motives when they participate in Council decision-making and cannot use their position to obtain preferential access to contracts. This Act deals with two forms of "interest", pecuniary interest and non-pecuniary interest.

Pecuniary interest

The two specific rules in the Act are that members cannot:

1. Enter into contracts with their local authority worth more than \$25,000 (including GST) in a financial year unless the Auditor-General approves the contracts (referred to as the contracting rule). Breach of this rule results in automatic disqualification from office; and
2. Participate in matters before the Council in which they have a pecuniary interest, other than an interest in common with the public (referred to as the participation rule). Breach of this rule is a criminal offence and conviction results in automatic disqualification from office

A pecuniary interest is one that involves money. This could be direct or indirect. It is sometimes difficult to decide whether an interest in a particular matter is pecuniary or some other kind. It is always the responsibility of elected members to make this decision, to declare any interest when appropriate and to ensure that as an elected member you comply with the Act's requirements at all times. The Act generally provides that no person shall be capable of being a member of Council if that person is concerned or interested in any contracts with the Council where the total payments made by the Council in respect of such contracts exceeds \$25,000 in any one financial year.

The Act also provides that an "interest" exists where a member's spouse is involved and/or where a member or their spouse is a major shareholder or have control or management of a company which contracts with Council or where the company has a pecuniary interest in the decision. It may also apply where your family trust has a contract with the Council. The Act does provide that on application to it the Office of the Auditor General may give specific approval to a

member being concerned or interested in a particular contract, in which case the provisions of the Act will not disqualify the Councillor from remaining in office. The approval needs to be gained before the contract concerned is entered into.

The Act also requires that a member shall not vote or take part in the discussion of any matter in which he/she has any pecuniary interest, other than an interest in common with the public. This interest is required to be declared by the member and is noted in the minutes.

The Office of the Auditor General is the agency, which oversees this legislation and it also has the responsibility and power to institute proceedings against any member. The Act does not define pecuniary interest, however the Office of the Auditor-General uses the following test: "Whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned."

In deciding whether you have a pecuniary interest you should consider the following factors: What is the nature of the decision being made? Do I have a financial interest in that decision – do I have a reasonable expectation of gain or loss of money as a result of making that decision? Is my financial interest one that is in common with the public? Do any of the exceptions in the Act apply to me? Could I apply to the Auditor-General for approval to participate?

Further guidance is provided in the booklet "Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968". This can be found [here](#). It is important that you pay particular attention to the contents of this booklet as this is one of the few areas of the Council's business where staff do not set out to provide pro-active advice and members are personally liable for compliance with the provisions of this Act.

Non-pecuniary interest

Non-pecuniary interest is any interest the member may have in an issue that does not involve money. A common term for this is "bias" or pre-determination. Rules about bias operate not only to ensure that there is no actual bias, but also so there is no appearance or possibility of bias. The principle is that justice should not only be done, but it should be seen to be done.

Bias may be exhibited where: -

- By their statements or conduct a member may indicate that they have predetermined the matter before hearing or considering all of the relevant information on it (including the Council's debate); or
- The member has a close relationship with an individual or organisation affected by the matter.

Non-pecuniary interest is a difficult issue as it often involves matters of perception and degree. The question you need to consider, drawn from case law, is: "Is there, to a reasonable, fair-minded and informed observer, a real indication of bias on the part of a member of the decision making body, in the sense that they might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?" If there is, the member should declare their interest and withdraw from the debate and take no further part in the discussion of this item. The law about bias does not put you at risk of personal liability. Instead, the validity of the Council's decision could be at risk. The need for public confidence in the decision-making process is paramount and perception can be an important factor. Councillors who don't heed this advice run the risk of exposing Council to judicial review on a decision-making process, a lengthy and expensive exercise. Again the guide by the Office of the Auditor General provides some excellent advice and information on this issue.

Council maintains a member's interest register, and elected members were provided with a form to complete in your Welcome Packs. This register will be circulated at the start of Council and Community Board meetings every quarter for updating, and members will be asked to declare interests on any matters on the agenda at the start of every meeting. It is the responsibility of elected members to ensure your list of interests remains up to date.

CRIMES ACT 1961: SECTIONS 99, 105 & 105A

Under this Act it is unlawful for an elected member (or officer) to:

- Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of the Council
- Use information gained in the course of their duties for their, or another person's monetary gain or advantage.

Section 99 of the Crimes Act 1961 defines a member or employee of a local authority as an official. For the avoidance of doubt and for the purposes of this Act this means that each elected member of the Council is considered to be an official of the Council. Section 99 also defines a "bribe" as being "any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect". The words "or indirect" open this definition considerably, e.g. an offer of employment to a son or a daughter could be construed as amounting to being a bribe so members need to be aware of their exposure under this Act through other family members.

Section 105 and 105A provide: -

105. Corruption and bribery of official—

1. *Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.*
2. *Everyone is liable to imprisonment for a term not exceeding [7 years] who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him in his official capacity.*

105A. Corrupt use of official information—

Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly uses [or discloses] any information, acquired by him in his official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or any other person.

As elected members are deemed to be "officials" for the purposes of this Act and you are therefore subject to these penalties if you are found to be in breach of them. Such a conviction would also have the consequences of loss of office in terms of Clause 1 of Schedule 7 of the LGLA2002 (which disqualifies a Member who is convicted of an offence punishable by a term of imprisonment of two years or more).

SECRET COMMISSIONS ACT 1910

This Act basically establishes offences relating to the giving, receiving or soliciting of gifts or other consideration as an inducement or reward for doing or forbearing to do something in relation to the affairs of the Council, or showing or having shown favour or disfavour to any person in relation to the Council's affairs or business (section 4(1)). It applies to elected members and covers any such gifts given, received or solicited by "any parent, husband, wife, or child of any agent, or to his partner, clerk, or servant, or (at the agent's request or suggestion) to any other person".

The Act makes it an offence for any agent (for the purposes of the Act an elected member is deemed to be an "Agent" of the Council):

- to accept gifts without the consent of the principal (the Council);
- not to disclose a pecuniary interest in any contract which the agent makes on behalf of the principal; or
- who knowingly delivers to their principal a false receipt, invoice, account or other document in relation to the principal's business.

It is an offence to divert, obstruct, or interfere with the proper course of the affairs or business of the Council, or to fail to use due diligence in the prosecution of its affairs or business, with intent to obtain any gift or other consideration from any person interested in the affairs or business of the Council.

It also provides that it is an offence for any person to advise a party to enter into a contract with a third party and to receive gifts or consideration from that third party as reward for procuring the contract, unless that person is known by the party to be the agent of that third party.

It further provides that the act of aiding or abetting or in any way facilitating an offence against the Act is itself an offence. Prosecution for offences under this Act require the approval of the Attorney-General who has the power to decide whether any such prosecution shall be dealt with as an indictable offence or as one punishable on summary conviction. If any such offence is treated as an indictable offence penalties for individuals include up to two years imprisonment or a fine of up to \$1,000.00. Such a conviction would also have the consequences of loss of office in terms of Clause 1 of Schedule 7 of the Local Government Act 2002. For a summary offence the penalties include a period of up to 3 months imprisonment or a fine of up to \$100.00.

PROTECTED DISCLOSURES ACT 2000 (WHISTLE-BLOWER PROTECTION)

The Protected Disclosures Act 2000 was amended in May 2009 to provide protection to elected members. Under this Act the definition of an employee of a public sector organisation (PSO) includes elected members of a local authority. Under the Act an employee who discloses information about a serious wrongdoing by the PSO is protected from civil or criminal liability that might arise from such a disclosure and from retaliatory action against the employee. Serious wrongdoing under the Act includes:

- unlawful or irregular use of funds or resources,
- conduct that risks public health and safety;
- conduct that risks the maintenance of law;
- conduct that constitutes an offence; and
- oppressive, improper discriminatory conduct, gross negligence or gross mismanagement by a public official.

Protection under the Act applies where an employee has information about a serious wrongdoing, a reasonable belief that the information is true or likely to be true; the employee wishes to have the matter investigated; and desires protection under the Act.

The Act requires disclosure by an employee to follow the internal procedures of the PSO. The Council is required to establish internal procedures to address the receipt of and dealing with information about serious wrongdoing in or by the Council.

PERSONAL LIABILITY OF ELECTED MEMBERS

Elected Members are indemnified in respect of their actions as a member of the Council, under section 43 of the LGA2002 which provides for this indemnity (by the Council) in relation to:

- a. civil liability (both for costs and damages) if the Member is acting in good faith and in pursuance of the responsibilities or powers of the Council;
- b. costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as an elected member.

The LGA2002 provides for a theoretical personal exposure on the part of elected members in certain circumstances if the Council has incurred loss due to actions of the Council. The loss must arise out of one of the following situations: if the Council unlawfully spends money; if the Council unlawfully sells or disposes of an asset; if the Council unlawfully incurs a liability; if the Council intentionally or negligently fails to enforce the collection of money it is lawfully entitled to receive.

If the Auditor-General has reported on a "loss", then that loss is recoverable as a debt due to the Crown. This must be paid back to the Council from each elected member jointly and severally. However, as a Member of the Otorohanga District Council, you have a defence if you can prove that the act or failure which led to the loss occurred:

- without your knowledge; or
- with your knowledge but against your protest made at or before the time when the loss occurred;
- or contrary to the manner in which you voted on the issue at a meeting of the Council;
- or in circumstances where you acted in good faith and relied on information or professional or expert advice given by a Council officer or professional advisor on matters which you reasonably believed were within that person's competency.

PUBLIC RECORDS ACT 2005:

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 Act provides for the continuity of the National Archives and the role of the Chief Archivist, it ensures 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.

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.

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.

HEALTH AND SAFETY AT WORK 2015 (HSWA)

In the Health and Safety at Work Act 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 (means a person conducting a business or undertaking). The Chief Executive is understood to have significant personal liability in this capacity.

On 4 April 2016, the Health and Safety at Work Act 2015 came into force. The HSWA provides a significant change to New Zealand's current 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.

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.

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.

For the purposes of the HSWA, elected Council members (which include the Mayor and Councillors but excludes Community Board members) and the Chief Executive are by default identified as "Officers". Group Managers are also identified as "Officers". Officers have obligations of due diligence, which are:

- (a) to acquire, and keep up-to-date, knowledge of work health and safety matters; and
- (b) 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
- (c) 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
- (d) 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
- (e) ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
- (f) verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

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.

FINANCIAL MARKETS CONDUCT ACT 2013

The Financial Markets Conduct Act 2013 essentially places elected members in the same position as company directors whenever the Council offers financial products (such as an issue of debt or equity securities). Elected members may be personally liable if documents that are registered under the Act, such as a product disclosure statement, contain false or misleading statements. Elected members may also be liable if the requirements of the Act are not met in relation to offers of financial products.

Tanya Winter

CHIEF EXECUTIVE

ITEM 4 **PROPOSED SCHEDULE OF ORDINARY MEETINGS DATES FOR COUNCIL
DECEMBER 2019 TO DECEMBER 2020**

TO: **HIS WORSHIP THE MAYOR AND COUNCILLORS
OTOROHANGA DISTRICT COUNCIL**

FROM: **CHIEF EXECUTIVE**

DATE: **22 OCTOBER 2019**

Relevant Community Outcomes

- Foster an involved and engaged Community
-

Executive Summary

Pursuant to Schedule 7, Part 1, Clause 21(5)(d) of the Local Government Act 2002 at the inaugural meeting of the triennium Council is required to either fix the date of the first meeting of the local authority or adopt a schedule of meetings.

This report proposes that schedule of meeting dates for the period December 2019 to December 2020 be considered and adopted.

Recommendation

It is recommended that:

The presented schedule of dates for ordinary meetings of Otorohanga District Council for the period December 2019 to December 2020, with any required amendments, be approved in accordance with Schedule 7, Part 1, Clause 21(5)(d) of the Local Government Act 2002.

Report Discussion

The meeting dates proposed follow the same pattern used in the 2016 triennium which is the 3rd Tuesday of the month commencing at 10am. It is Council's decision whether to amend this meeting cycle, and, should this be considered Council staff will provide advice at the meeting on the implications for either a shorter or a longer timeframe between meetings. It is proposed that the first ordinary meeting of Council be on Tuesday 5 November 2019. This meeting is scheduled so that Council can make decisions that enable Community Boards to undertake their business at their meetings on 12 and 13 November 2019.

On this basis the following Schedule is proposed:

- Tuesday 5 November 2019
- Tuesday 17 December 2019
- Tuesday 28 January 2020 (4th Tuesday to allow for a full Christmas/New Year break)
- Tuesday 18 February 2020
- Tuesday 17 March 2020
- Tuesday 21 April 2020 (Good Friday 10 April, Easter Monday 13 April 2020)
- Tuesday 19 May 2020
- Tuesday 16 June 2020
- Tuesday 21 July 2020
- Tuesday 18 August 2020
- Tuesday 15 September 2020
- Tuesday 20 October 2020 (Labour Day Monday 26 October 2020)
- Tuesday 17 November 2020
- Tuesday 15 December 2020

Tanya Winter
CHIEF EXECUTIVE

