



**I give notice that
an Ordinary Meeting of Council will be held on:**

Date:	Tuesday, 25 October 2016
Time:	11.00am
Location:	Council Chamber 72 Lake Terrace Taupo

AGENDA

MEMBERSHIP

Chairperson Mayor David Trewavas

Deputy Chairperson Cr Rosie Harvey

Members

- Cr John Boddy
- Cr Zane Cozens
- Cr Barry Hickling
- Cr Rosanne Jollands
- Cr Tangonui Kingi
- Cr Anna Park
- Cr Christine Rankin
- Cr Kirsty Trueman
- Cr John Williamson

Quorum 6

Gareth Green
Chief Executive Officer

Order Of Business

1	Apologies	
2	Conflicts of Interest	
3	Confirmation of Minutes	
	Nil	
4	Policy and Decision Making	
4.1	Declaration by Mayor	3
4.2	Declarations by Councillors	4
4.3	Appointment of Deputy Mayor	5
4.4	Legislative Advice for the Incoming Council	6
4.5	Adoption of Standing Orders.....	15
4.6	Appointment of Councillors to Turangi/Tongariro Community Board	18
4.7	First Meeting of Council	20
5	Confidential Business	
	Nil	

4.1 DECLARATION BY MAYOR

Author: Gareth Green, Chief Executive Officer

Authoriser:

PURPOSE

To enable His Worship the Mayor to make an oral declaration as required by the Local Government Act 2002.

DISCUSSION

Clause 14(1)(a) of Schedule 7 of the Local Government Act 2002 states that “a person may not act as a member of a local authority until that person has, at a meeting of the local authority following the election of that person, made an oral declaration”. The declaration is attached and consists of the required elements as set out in clause 14(3) of Schedule 7 of the LGA.

CONCLUSION

His Worship the Mayor will be invited to make his oral declaration and will then assume the Chair for the remainder of the meeting.

ATTACHMENTS

1. Declaration by Mayor

4.2 DECLARATIONS BY COUNCILLORS

Author: Gareth Green, Chief Executive Officer

Authoriser:

PURPOSE

To enable Taupō District councillors to make their oral declarations as required by the Local Government Act 2002.

DISCUSSION

Clause 14(1)(a) of Schedule 7 of the Local Government Act 2002 states that “a person may not act as a member of a local authority until that person has, at a meeting of the local authority following the election of that person, made an oral declaration”. The declarations for each elected councillor are attached and consist of the required elements as set out in clause 14(3) of Schedule 7 of the LGA.

CONCLUSION

Councillors will be invited to make their oral declarations.

ATTACHMENTS

1. **Declarations by Councillors**



4.3 APPOINTMENT OF DEPUTY MAYOR

Author: David Trewavas, Mayor

Authoriser:

PURPOSE

To note the appointment of Taupō District Council's Deputy Mayor.

DISCUSSION

Under the Local Government Act 2002 ("the Act"), the Mayor has the power to appoint the Deputy Mayor [s41A(3)(a)].

It is possible for the Council to overturn the Mayor's appointment of the Deputy Mayor however the process set out under clause 18 of Schedule 7 of the Act must be followed.

I have chosen to appoint Councillor _____ as the Deputy Mayor.

I would like to congratulate Councillor _____ and wish him/her all the best in his/her role as Deputy Mayor.

RECOMMENDATION(S)

That Council notes the appointment by the Mayor of Councillor _____ as Deputy Mayor.

ATTACHMENTS

Ni

4.4 LEGISLATIVE ADVICE FOR THE INCOMING COUNCIL

Author: Gareth Green, Chief Executive Officer

Authoriser:

EXECUTIVE SUMMARY

This report is to provide elected members with an overview of key legislation that you need to be aware of in your role as a councillor. 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 – ss 99, 105 and 105A
- Secret Commissions Act 1910
- Financial Markets Conduct Act 2013
- Protected Disclosures Act 2000
- Health and Safety at Work Act 2015
- Public Records Act 2005

There are certain legal provisions which members must be aware of 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) of Schedule 7 of the Local Government Act 2002.

RECOMMENDATION(S)

That Council receives the report entitled "Legislative Advice for the Incoming Council".

DISCUSSION

The purpose of this report is to provide elected members with an overview of key legislation that you need to be aware of and have an understanding of in your role as a District Councillor.

A range of information has been provided to Councillors in their introductory packs which covers this material in more depth including:

Elected Members' GROW Handbook 2016 - Local Government New Zealand publication

Code of Conduct (which includes a summary of key legislation and decision making processes)

Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968 – Office of the Auditor General publication

In-house and LGNZ training between October and December 2016 will also cover in detail the roles and responsibilities of elected members, the Code of Conduct, and decision-making and consultation processes under the Local Government Act 2002.

LOCAL GOVERNMENT ACT 2002

The Local Government Act 2002 spells out local government's purpose, its general powers, specific bylaw making powers and the principles and processes that councils must abide by when making decisions.

The Local Government Act 2002 is based on the principle of general competence, which enables a council to do whatever is necessary to fulfil its role and achieve its purpose. Within this framework, there is a considerable degree of flexibility in deciding what activities are undertaken and how they are carried out.

The purpose of local government is defined in section 10 of the LGA 2002 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 meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.”*

“Good-quality” is defined as meaning infrastructure, services, and performance that are *“efficient, effective and appropriate to present and anticipated future circumstances”*.

Although couched as a single purpose, there are clearly two purposes to local government, essentially being the enabling of community democracy and meeting the needs of communities for infrastructure, services and regulatory functions.

Emphasis on cost-effectiveness

Subsection (1)(b) was inserted by s 7 of the Local Government Act 2002 Amendment Act 2012 to replace the former purpose of the promotion of the social, economic, environmental and cultural well-being of communities. The “four well-beings”, as they had come to be known, had been a cornerstone of the Local Government Act 2002 since its enactment. By way of explanation for the new purpose, the explanation to the Bill said:

“The current law relating to local government does not adequately focus councils on operating efficiently, or on delivering those services that only councils can provide or performing those roles that only councils can perform. For example, the very broad purpose of local government, as set out in the Local Government Act 2002, encompassing social, economic, cultural and environmental well-being, can divert councils into areas already covered by central government and the private sector.”

The new purpose remains focused on both current and future requirements, but is directed to the “needs of communities” for specific outcomes, namely good-quality:

- local infrastructure;
- local public services; and
- performance of regulatory functions

all of which are to be delivered in “a way that is most cost-effective for households and businesses”. This makes affordability, which is always a relative concept, the bottom line for determining how these outcomes are to be delivered.

As elected Council representatives, you are responsible for making key policy decisions that guide the Council’s activities and provide the direction for the District’s future. In performing its role, a council must have particular regard to the contribution that the following core services make to its communities:

- (a) Network infrastructure, which includes: roads, water supply, sewage disposal, and stormwater drainage;
- (b) Public transport services;
- (c) Solid waste collection and disposal;
- (d) The avoidance or mitigation of natural hazards;
- (e) Libraries, museums, reserves, and other recreational facilities and community amenities.

Other functions, responsibilities and activities may include:

- 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; and

- Promoting and facilitating development of the District that will benefit residents, and providing a comprehensive information service.

In performing its role, a council must act in accordance with the following key principles:

- Conduct business in an open, transparent and democratically accountable manner;
- Give effect to identified priorities and desired outcomes in an efficient and effective manner;
- Make itself aware of, and have regard to, the views of all of its communities;
- When making a decision, take account of:
 - (a) The diversity of the community, and the community's interests within its district;
 - (b) The interests of future as well as current communities; and
 - (c) The likely impact of any decision on the interests referred to in (a) and (b) above;
- Provide opportunities for Maori to contribute to its decision-making processes;
- Actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its identified priorities and desired outcomes;
- Undertake commercial transactions in accordance with sound business practices;
- Periodically assess the expected returns from investing in, or undertaking, a commercial activity, and satisfy itself that the expected returns are likely to outweigh the risks inherent in the investment or activity;
- Ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district, including by planning effectively for the future management of its assets;
- In taking a sustainable development approach, take into account:
 - (a) The social, economic and cultural interests of people and communities; and
 - (b) The need to maintain and enhance the quality of the environment; and
 - (c) The reasonably foreseeable needs of future generations.

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 the Act is to enable the public to have progressively increasing access to any official information held by local authorities. However, official information and authority deliberations are to be protected to the extent that this will be consistent with public interest and personal privacy.

Increasing access to official information will enable more effective participation by the public in the actions and decisions of local authorities and will promote the accountability of local authority members and officials with a view to enhancing respect for the law and promoting good local government in New Zealand.

There are two aspects to the Act:

- Access to information held by a local authority; and
- Local authority meetings.

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. However, LGOIMA does provide certain reasons that a Council might rely on to withhold particular information, such as the protection of privacy, commercial advantage, protection of negotiations, and the like (these are set out in the Council's Standing Orders).

LGOIMA provides for anyone to have the right to request information held by the Council, and 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.

It should be noted that the Privacy Act places strict limitations regarding the release of information relating to private individuals and this must be seen as curtailing the general rule regarding access to information.

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 is already in the public domain. However, any information marked "Public Excluded" or "Confidential" should not be released to the public or discussed outside the meeting concerned. Members must keep to the law. A member cannot choose when to obey rules regarding confidentiality, and when to breach them. The constant and consistent observance of the rules regarding confidentiality is critical to the delivery of good governance to the community.

If, as an elected member, you are asked to provide any such information to a third party, you should refer the request to the Democracy & Community Engagement Manager. 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 and Confidentiality

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 the Act. 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.

When the public is excluded by due resolution of the Council, and when the Council holds information confidentially, then it is critical that the rules of confidentiality are strictly observed and maintained by the members of the Council.

The Standing Orders to be adopted by the Council will contain a provision to the effect that, subject to the provisions of LGOIMA, no member (or officer) is permitted to disclose to any person, other than a member or officer or person authorised by the chief executive, any information which has been presented or is to be presented to any meeting from which the public is properly excluded, or where it is proposed that the public be properly excluded.

The obligation to comply with the confidentiality provisions of LGOIMA as stated in the Standing Orders is reinforced by clause 16(1) of Schedule 7 to the Local Government Act 2002 which provides that "A member of a local authority must abide by the standing orders adopted under clause 27".

Section 238(1) of that Act makes it an offence for a member to fail to comply with a direction or prohibition given under the Act. Accordingly, a breach of the confidentiality provisions within Standing Orders may be an offence that might lead to a prosecution and a fine.

Breaching confidentiality is dealt with seriously because the obligation of confidence and the obligation for open government must be observed with equal assurance. Actions which involve "going public" are akin to public self-promotion and are dishonourable (and potentially illegal). If good government and good decision-making is to be delivered, then members must maintain a high standard of personal integrity.

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 relates to major and urgent matters only. The Council is still subject to the requirements of the decision-making processes as set out in the Local Government Act 2002. 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 of the local authority 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 www.taupo.govt.nz. Copies of agendas are also available from the Council offices and public libraries.

Other provisions of 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" – a pecuniary interest and a 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, they 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 has 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 an elected member's 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 member 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. Though not an absolute requirement of the Act, the Council's Standing Orders require that where a member declares a pecuniary interest in the issue being debated, the member should physically withdraw themselves from the table unless the meeting is in public excluded in which case they should leave the room. 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 commence proceedings against any member. While the Act does not define pecuniary interest, 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:

1. What is the nature of the decision being made?
2. 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?
3. Is my financial interest one that is in common with the public?
4. Do any of the exceptions in the Act apply to me?
5. 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" which has been provided to elected members. 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

A 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". 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:

1. 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
2. The member has a close relationship with an individual or organisation affected by the matter.

A 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. 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.

Again, the booklet provided by Office of the Auditor General provides some excellent advice and information on this issue. Practically, if you feel that you may have an "interest" in any matter before the Council or a Committee of which you are a member, then you should discuss the issue with a trusted advisor (e.g. your lawyer (at no cost to the Council)), the Mayor, the Committee Chair or me before the meeting. While this will not relieve you of your obligations under the Act, it will provide you with some independent guidance.

The Council has adopted the recommendation of the Office of the Auditor General and has asked all elected members to make a written declaration of their personal and financial interests that may at times conflict with their role as an elected member. This information will be kept in a "Register of Interests". The Register of Interests is a document that is made available for public inspection upon request. Members are responsible for keeping their written declarations up to date at all times. In addition, members will be reminded on an annual basis to update their declaration.

CRIMES ACT 1961: SECTIONS 99, 105 & 105A

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

1. 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; or
2. Use information gained in the course of their duties for their, or another person's advantage or monetary gain.

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) *Every one 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.

Each elected member of the Council is considered to be an “official” of the Council. A “bribe” includes “any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect which means the provision has the potential for quite wide application.

A conviction would result in the loss of office - refer clause 1 of Schedule 7 of the Local Government Act 2002 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”.

By s 16(1)(b) of the Act, an elected member is deemed to be an “agent” of the Council. As such, the Act makes it an offence for any elected member (agent) to accept gifts without the consent of the Council (the principal), 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 (section 4(2)).

It is also 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. The act of aiding or abetting or in any way facilitating an offence against the Act is itself an offence.

A person who commits an offence against the Act is liable to imprisonment for a term not exceeding 7 years. Such a conviction would also have the consequences of loss of office - refer clause 1 of Schedule 7 of the Local Government Act 2002.

FINANCIAL MARKETS CONDUCT ACT 2013 (“FMCA”)

The FMCA governs how financial products are created, promoted and sold, and the ongoing responsibilities of those who offer, deal and trade them. It aims to facilitate capital market activity, in order to help businesses to fund growth and individuals to reach their financial goals. The main purposes of the FMCA are to:

- (a) promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
- (b) promote and facilitate the development of fair, efficient, and transparent financial markets.

Under the FMCA, if the Council were to issue financial products, such as equity or debt securities under its borrowing powers, elected members will be in a similar position to company directors.

Elected members may therefore be personally liable if product disclosure statements to investors contain untrue information, and may be liable for civil action or criminal prosecution if the requirements of the Act, such as keeping an audited register of financial products issued, are not met.

However, the FMCA does not impact on Council’s current business activities as the Council does not, at this time, offer securities to the public.

PROTECTED DISCLOSURES ACT 2000 (WHISTLE-BLOWER PROTECTION)

Under the Protected Disclosures Act 2000, 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. The Council's current Protected Disclosures Policy was adopted in 2014.

PERSONAL LIABILITY OF ELECTED MEMBERS

Section 43 of the Local Government Act 2002 provides an indemnity (by the Council) for elected members in relation to:

- 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;
- costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as an elected member.

The Local Government Act 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:

1. the Council unlawfully spends money;
2. the Council unlawfully sells or disposes of an asset;
3. the Council unlawfully incurs a liability; or
4. 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 Taupō District Council, you have a defence if you can prove that the act or failure which led to the loss occurred:

1. without your knowledge; or
2. with your knowledge but against your protest made at or before the time when the loss occurred; or
3. contrary to the manner in which you voted on the issue at a meeting of the Council; or
4. 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.

HEALTH AND SAFETY AT WORK ACT 2015

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”.

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) 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
- (c) 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
- (d) 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
- (e) to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
- (f) to 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.

Members of a governing body of a territorial authority, local board or community board elected or appointed under the Local Electoral Act 2001 are expressly excluded from liability for offences under ss 47, 48 and 49 for failing to comply with a duty imposed on officers under s 44 (duties of officers). In essence, that means elected members of local authorities will not be liable for such a failure. However that exclusion does not apply to members who are also an officer of a council-controlled organisation.

PUBLIC RECORDS ACT 2005

The Public Records Act 2005’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 PRA provides for the continuity of the National Archives and the role of the Chief Archivist. It also promotes accountability by providing 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. Council has processes in place to ensure records are secure and it should be noted that some records will be subject to the provisions of the Privacy Act 1993.

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.

CONCLUSION

This report provides a brief summary of some of the key pieces of legislation that are of importance to elected representatives. External and in-house training and briefings have been set down over the next few months to ensure that you are familiar with and understand your roles and responsibilities as an elected representative, and the legislative framework within which you now operate.

ATTACHMENTS

Nil

4.5 ADOPTION OF STANDING ORDERS

Author: Gareth Green, Chief Executive Officer

Authoriser:

PURPOSE

To adopt a set of Standing Orders for use during the 2016-19 Triennium of Council.

EXECUTIVE SUMMARY

The Local Government Act 2002 (“LGA”) requires local authorities to adopt a set of Standing Orders to guide the orderly conduct of its meetings and those of its committees (clause 27 of Schedule 7 of the LGA).

Over the past several months, a Local Government New Zealand (“LGNZ”) / Equip working party has been working on preparing an updated suite of Standing Orders and a guide. These documents were finalised in August 2016 and are attached to this report.

The LGNZ / Equip Standing Orders contain all the essential elements which were included in the New Zealand Standard 9202:2003 model Standing Orders, including references to relevant legislation governing the conduct of meetings; however they have been updated and simplified to better meet the needs of councils and community boards.

The LGNZ / Equip Standing Orders contain three optional provisions for consideration. Officers’ recommendations for these are detailed in this report.

Note that adoption of a new set of Standing Orders requires a vote of not less than 75% of the members present (clause 27(3) of Schedule 7 of the LGA).

RECOMMENDATION(S)

1. That Council adopts the Local Government New Zealand / Equip Standing Orders for the conduct of its meetings and those of its committees, with an amendment to clause 21 to specify Option C as the default option for speaking and moving motions and amendments [A1756100].
2. That the Common Seal be affixed to the Standing Orders in the presence of His Worship the Mayor and the Chief Executive Officer.

BACKGROUND

Council has previously adopted the New Zealand Standards ‘*Model Standing Orders for Meetings of Territorial Authorities, Regional Councils and Community Boards*’ (NZS 9202:2003) with amendments over time. These Standing Orders were becoming outdated; the structure was not particularly intuitive; they contained extensive use of statutory provisions and legal jargon; and there were copyright issues. For these reasons, LGNZ / Equip produced an updated set of Standing Orders which became available in August 2016. Special versions have been provided for regional councils, territorial authorities and community boards.

It is envisaged that most councils and community boards will adopt the LGNZ / Equip version of Standing Orders either at inaugural meetings or early in the new Triennium. A similar report to this will be considered by the Turangi/Tongariro Community Board at its inaugural meeting on Wednesday 26 October.

DISCUSSION

Refer to the attached *Guide to Standing Orders* for a summary of key provisions grouped by ‘General matters’; Pre-Meeting; and Meeting Procedures.

The three optional provisions which can be tailored to suit individual councils’ needs relate to Chairperson’s casting vote (SO 18.3); joining meetings via audio and audio-visual link (SO 12.7-12.16); and procedures for dealing with motions and amendments (SO 21).

Chairperson’s casting vote (SO 18.3)

The default provision is that the Mayor, Chairperson or any other person presiding at a meeting has a deliberative vote and, in the case of an equality of votes, has a casting vote. Although in recent times Taupō

District Council amended Standing Orders to remove the Mayor's/Chairperson's casting vote, it is recommended that Council accepts the default provision going forward. The reason for this is that a casting vote "enable(s) a meeting to conduct and conclude important business without the risk that a vote might be tied and as a result a significant statutory timeframe might be exceeded" – for example, the adoption of a Long-term or Annual Plan (page 7, *Guide to Standing Orders*).

Audio and audio-visual link (SO 12.7-12.16)

Although technology is not yet advanced enough to easily accommodate participation in Taupō District Council and committee meetings via audio or audio-visual link, it is recommended that the default provisions relating to these possibilities be adopted. This will avoid the need to amend Standing Orders in the future, if and when technology improves sufficiently to allow members to attend meetings remotely. Note that members attending electronically do not count as part of the quorum for a meeting.

Motions and amendments (SO 21)

It is recommended that Council selects "Option C" as its default option for dealing with motions and amendments at meetings. This most closely aligns with the conduct of Taupō District Council meetings in recent times. It is also the simplest option and the approach which allows most flexibility for members to speak at meetings. Please refer to page 49 of the attached Standing Orders document for proposed Taupō District Council wording for clause 21.

OPTIONS

Analysis of Options

Option 1. Adopt the LGNZ / Equip Standing Orders with minor amendments to clause 21 and any other amendments agreed to at the meeting.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Standing Orders are up-to-date, streamlined, easy to navigate • The LGNZ / Equip version has been produced by industry experts and reflects current best practice around the country • Clause 21 amendment simplifies procedures for speaking and moving motions 	<ul style="list-style-type: none"> • The document is new to staff and returning elected members, however training will be provided as required

Option 2. Do not adopt the LGNZ / Equip Standing Orders.

Advantages	Disadvantages
<ul style="list-style-type: none"> • The NZS 9202:2003 model Standing Orders continue to apply and staff and returning elected members are familiar with the content 	<ul style="list-style-type: none"> • Standing Orders are outdated; the structure is not particularly intuitive; they contain extensive use of statutory provisions and legal jargon; there are copyright issues

Analysis Conclusion:

The preferred option is Option 1 – adopt the LGNZ / Equip Standing Orders with minor amendments to clause 21.

CONSIDERATIONS

Financial Considerations

The LGNZ / Equip Standing Orders and guide have been purchased at a one-off cost of \$250 + GST. This is significantly less than the cost of purchase of NZS model Standing Orders. There are no ongoing costs associated with adoption of the LGNZ / Equip Standing Orders.

Legal Considerations

Local Government Act 2002

The matter comes within scope of the Council's lawful powers, including satisfying the purpose statement of Section 10 of the Local Government Act 2002. The matter will enable the Council to meet the current and future needs of communities for good quality local public services (i.e. efficient, effective and appropriate to present and anticipated future circumstances).

Council is required to adopt a set of Standing Orders for the conduct of its meetings and those of its committees (clause 27, Schedule 7, LGA) and then abide by those Standing Orders (clause 16(1), Schedule 7, LGA). If Council does not adopt the LGNZ / Equip version as proposed, the NZS model Standing Orders will continue to apply.

Policy Implications

There are no known policy implications.

Risks

There are no known risks.

SIGNIFICANCE OF THE DECISION OR PROPOSAL

Council's Significance and Engagement policy identifies the following matters that are to be taken into account when assessing the degree of significance of proposals and decisions:

- a. The level of financial consequences of the proposal or decision;
- b. Whether the proposal or decision will affect a large portion of the community or community of interest;
- c. The likely impact on present and future interests of the community, recognising Maori cultural values and their relationship to land and water;
- d. Whether the proposal affects the level of service of an activity identified in the Long Term Plan;
- e. Whether community interest is high; and
- f. The capacity of Council to perform its role and the financial and other costs of doing so.

Officers have undertaken a rounded assessment of the matters in clause 11 of the Significance and Engagement Policy (2016), and are of the opinion that the proposal under consideration is of low importance.

ENGAGEMENT

Taking into consideration the above assessment, that the decision is of a low degree of significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

COMMUNICATION/MEDIA

No communication/media is required. If adopted the Standing Orders will be uploaded to Council's website.

CONCLUSION

It is recommended that Council adopts the updated LGNZ / Equip version of Standing Orders, with one amendment to clause 21 – general procedures for speaking and moving motions.

ATTACHMENTS

1. **Draft Taupo District Council Standing Orders**  
2. **Guide to Standing Orders**  

4.6 APPOINTMENT OF COUNCILLORS TO TURANGI/TONGARIRO COMMUNITY BOARD

Author: Gareth Green, Chief Executive Officer

Authoriser:

PURPOSE

To appoint Turangi/Tongariro Ward Councillors to the Turangi/Tongariro Community Board.

DISCUSSION

Councillors ZM Cozens and T Kingi have been elected to Taupō District Council to represent the Turangi/Tongariro Ward. Council may now appoint these councillors to the Turangi/Tongariro Community Board.

Section 50 of the Local Government Act 2002 provides that:

“The membership of a community board consists of –

- (a) members elected under the Local Electoral Act 2001; and*
- (b) members (if any) of, and appointed in accordance with the Local Electoral Act 2001 by, the territorial authority in whose district the relevant community is situated.”*

The provision in the Local Electoral Act 2001 relating to membership of community boards is s 19F which states:

“19F Membership of community boards

(1) Every community board –

- (a) is to consist of not fewer than 4 members nor more than 12 members; and*
- (b) is to include at least 4 elected members; and*
- (c) may include appointed members*

(2) ...

(3) The persons who are appointed under subsection (1)(c) as members of the community board must –

- (a) be members of, and must be appointed by, the territorial authority for the district in respect of which the community is constituted; and*
- (b) if the territorial authority is divided into wards, also be members of the territorial authority representing a ward in which the community is situated.”*

On 23 July 2012, Council confirmed its representation arrangements for the 2013 local government elections. These arrangements included the following in respect of the Turangi/Tongariro Community Board [resolutions 4945 B (3), 30 May 2012 and 4981, 23 July 2012]:

“That the Turangi/Tongariro community board will have a total membership of eight [8] with six [6] members to be elected and with two [2] members appointed being two members elected to Council from the Turangi/Tongariro ward.”

CONCLUSION

In the absence of any further change to representation arrangements for the Taupō District, it is recommended that Council appoints Turangi/Tongariro Ward Councillors ZM Cozens and T Kingi to the Turangi/Tongariro Community Board for the 2016-19 Triennium of Council.

These appointments will enable the Community Board to proceed with full membership at its inaugural meeting tomorrow.

RECOMMENDATION(S)

That Council appoints Councillors ZM Cozens and T Kingi to the Turangi/Tongariro Community Board for the 2016-19 Triennium of Council.

ATTACHMENTS

Nil

4.7 FIRST MEETING OF COUNCIL

Author: Gareth Green, Chief Executive Officer

Authoriser:

PURPOSE

To fix the date and time of the first meeting of Taupō District Council following this inaugural meeting.

DISCUSSION

Part of the business Council must conduct at this inaugural meeting is the fixing of the date and time of the first meeting of the Triennium, or the adoption of a schedule of meetings [clause 21(d) of Schedule 7 of the Local Government Act 2002].

It is proposed that the first meeting be held at 1.00pm on Tuesday 8 November 2016 and subsequent meetings be held at the same time on Tuesday 29 November and Tuesday 13 December.

Due to advertising timeframes, the 8 November meeting will be an “extraordinary” meeting in terms of the Local Government Official Information and Meetings Act 1987.

Council’s committee structure will be confirmed at the 8 November meeting. Officers will then bring a proposed meeting schedule for 2017 to the 29 November Council meeting, for consideration.

CONCLUSION

Council can now confirm that its first meeting will be held at 1.00pm on Tuesday 8 November 2016. Appropriate advertising will then be arranged.

RECOMMENDATION(S)

That Council confirms that the first meeting of the Taupō District Council for the 2016-19 Triennium will be held at 1.00pm on Tuesday 8 November 2016.

ATTACHMENTS

Nil