



# **Waitaki**

DISTRICT COUNCIL

*TE KAUNIHERA Ā ROHE O WAITAKI*

**I hereby give notice that the  
Inauguration and Meeting  
of the 12<sup>th</sup> Waitaki District Council  
will be held on:**

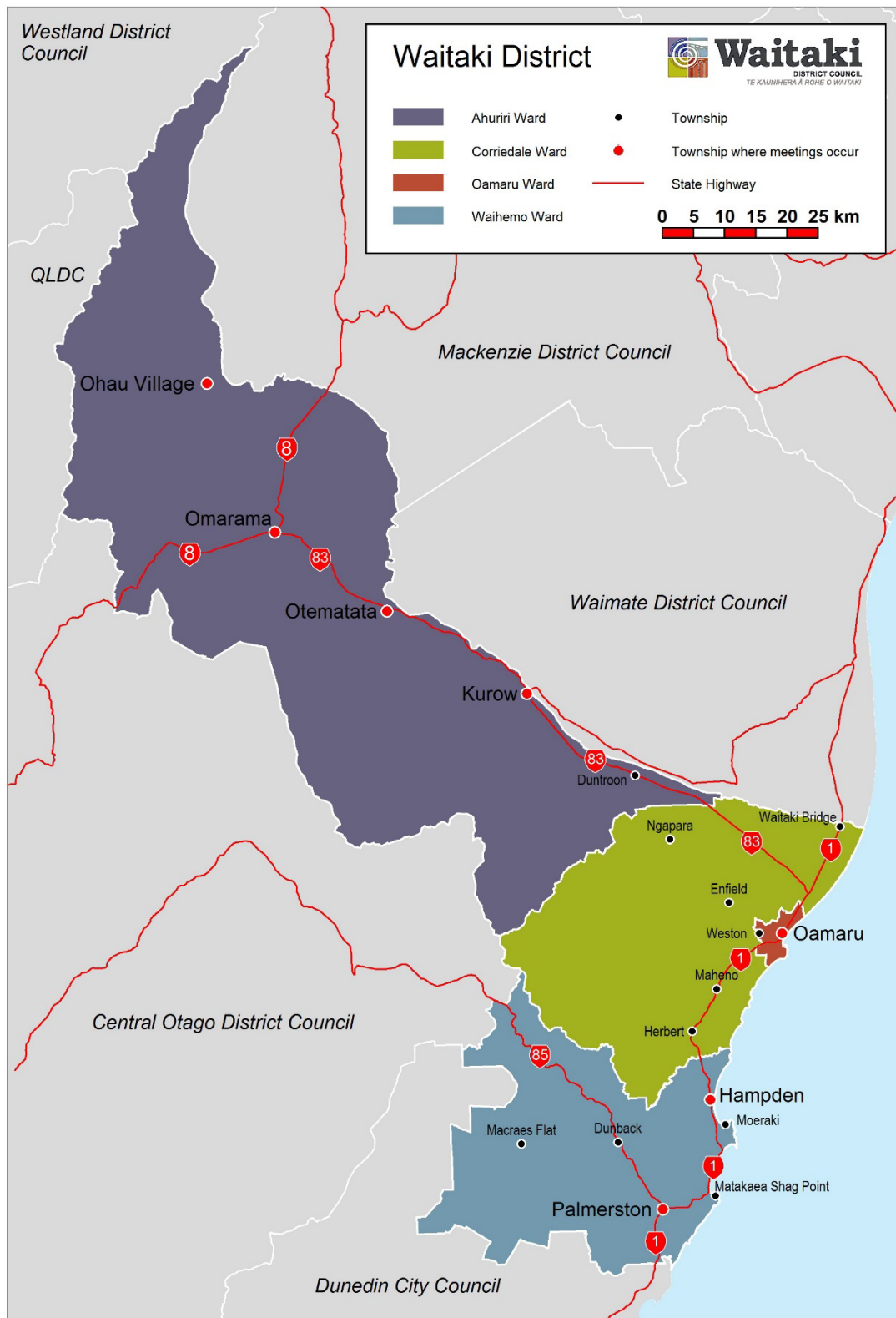
**Date: Tuesday, 25 October 2022**  
**Time: 5.30pm**  
**Location: Auditorium**  
**Oamaru Opera House**  
**Thames Street, Oamaru**

## **Updated Agenda**

### **Inauguration and Council Meeting**

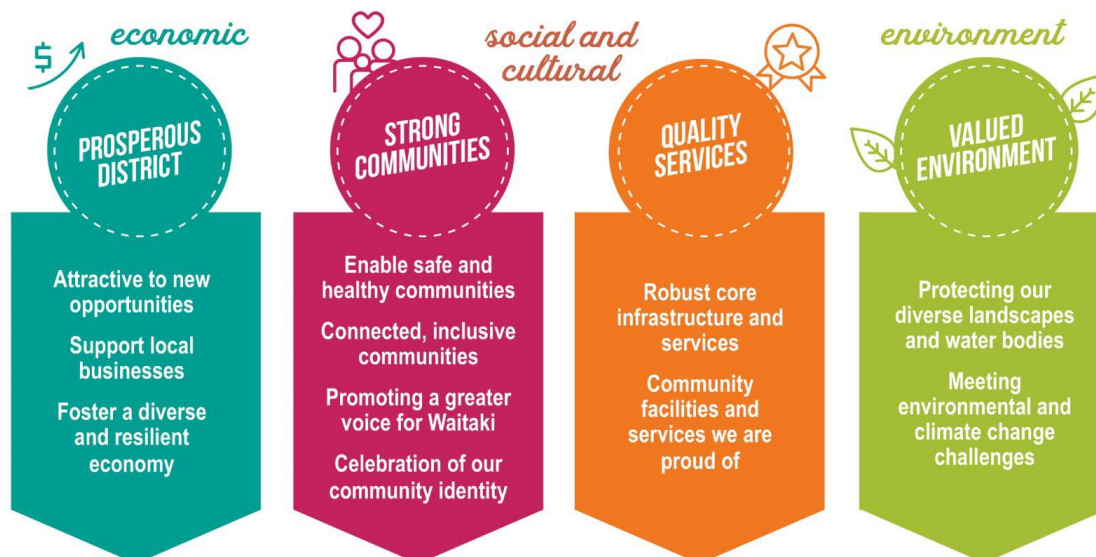
### **25 October 2022**

**Alex Parmley**  
**Chief Executive**





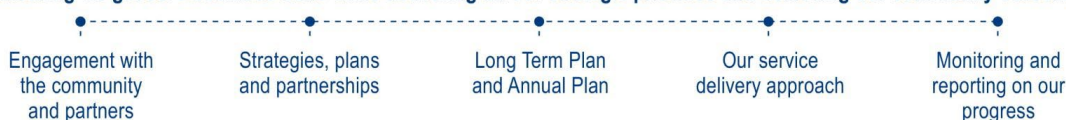
### COMMUNITY OUTCOMES



### STRATEGIC PRIORITIES



Ensuring we get core business done while delivering on our strategic priorities and achieving our community outcomes



## Agenda Items

**Please note: Agenda Items will be taken out of numerical order for this Inauguration and Meeting. The actual order of agenda items will be as set out below.**

### The first part of the meeting – Declarations

<b>3</b>	<b>Decision Reports .....</b>	<b>6</b>
3.1	Declaration of the 12th Waitaki District Council .....	6

*Intermission*

### The second part of the meeting - Other Agenda Items

<b>1</b>	<b>Apologies</b> (the Chair will call for apologies if required in the second part of the meeting)	
<b>2</b>	<b>Declarations of Interest</b> (the Chair will call for Declarations of Interest as required in the second part of the meeting)	
<b>4</b>	<b>Memorandum Reports.....</b>	<b>20</b>
4.1	Explanation of Legislation by the Chief Executive .....	20
<b>3</b>	<b>Decision Reports (continued) .....</b>	<b>6</b>
3.2	Address by the Mayor for Waitaki.....	10
3.3	Appointment of Deputy Mayor .....	11
3.4	Confirmation of Date and Time of First Meeting of the 12th Waitaki District Council - Tuesday, 1 November 2022, from 9.00am.....	17
<b>5</b>	<b>Meeting Close .....</b>	<b>30</b>

- 1 APOLOGIES (SECOND PART OF THE MEETING – AS REQUIRED)**
- 2 DECLARATIONS OF INTEREST (SECOND PART OF THE MEETING – AS REQUIRED)**

### 3 DECISION REPORTS

#### 3.1 DECLARATION OF THE 12TH WAITAKI DISTRICT COUNCIL

**Author:** Ainslee Hooper, Governance and Policy Advisor

**Authoriser:** Alex Parmley, Chief Executive

#### RECOMMENDATION

That Council receives the information.

#### PURPOSE AND SUMMARY

Pursuant to the provisions of Clause 14, Schedule 7 of the Local Government Act 2002, Gary KIRCHER (Mayor-elect for Waitaki) and ten Councillors-elect Tim BLACKLER, Brent COWLES, Hana Melania HALALELE, Jeremy HOLDING, Jim HOPKINS, Courtney LINWOOD, John MCCONE, Guy PERCIVAL, Rebecca RYAN, and Jim THOMSON, were declared elected in the “2022 Triennial Elections – Declaration of Result” by Anthony Morton, Electoral Officer for the Waitaki District Council, on 14 October 2022.

The Mayor and Councillors will make and sign a declaration in the first part of this Inaugural Meeting following which they will be known collectively as the 12<sup>th</sup> Waitaki District Council for the 2022-2025 triennium.

#### DECLARATIONS

The Chief Executive will open the Inaugural Meeting at 5.30pm on Tuesday 25 October 2022. As part of the official proceedings, the Mayor-elect will make his declaration first (refer Appendix 1).

#### DECLARATION OF MAYOR

Date	Name	Office
25 October 2022	Gary Kircher	Mayor for Waitaki

The declarations from the ten Councillors-elect will then make their declarations (refer Appendix 2) individually to the new Mayor for Waitaki.

Date	Name	Office
25 October 2022	Tim Blackler	Councillor
25 October 2022	Brent Cowles	Councillor
25 October 2022	Hana Halalele	Councillor
25 October 2022	Jeremy Holding	Councillor
25 October 2022	Jim Hopkins	Councillor
25 October 2022	Courtney Linwood	Councillor
25 October 2022	John McCone	Councillor
25 October 2022	Guy Percival	Councillor
25 October 2022	Rebecca Ryan	Councillor
25 October 2022	Jim Thomson	Councillor

**ADJOURNMENT AND CONTINUATION OF MEETING**

The meeting will then be adjourned for a short intermission.

The meeting will be reconvened by the Mayor, as Chair of Council, for discussion on the remaining agenda items.

**Appendix 1: Declaration of the Mayor-elect**



**Declaration made Pursuant to the Provisions of the  
Local Government Act 2002, Schedule 7, Part 1, Clause 14**

"I, Gary Malcolm Kircher, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of the Waitaki District, the powers, authorities, and duties vested in, or imposed upon, me as Mayor of the Waitaki District Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act."

Dated at Oamaru this 25<sup>th</sup> day of October 2022.

Signed by:

Witnessed by:

.....  
Gary Malcolm Kircher  
**Mayor for Waitaki**

.....  
Alex Parmley  
**Chief Executive**



**Appendix 2: Declarations by Councillors-elect**



**Declaration made Pursuant to the Provisions of the  
Local Government Act 2002, Schedule 7, Part 1, Clause 14**

"I, *[full name of each Councillor-elect]*, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of the Waitaki District, the powers, authorities, and duties vested in, or imposed upon, me as a member of the Waitaki District Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act."

Dated at Oamaru this 25<sup>th</sup> day of October 2022.

Signed by:

Witnessed by:

.....  
[full name of each Councillor]  
**Elected Member**

.....  
Alex Parmley  
**Chief Executive**

**4.2 ADDRESS BY THE MAYOR FOR WAITAKI**

**Author:** Gary Kircher, Mayor-elect for Waitaki

**RECOMMENDATION**

That Council receives the Address by the Mayor of the 12<sup>th</sup> Waitaki District Council.

**SUMMARY**

The Address by the Mayor will be presented verbally at the meeting.

The contents of the Address will be included in the Minutes of this Inauguration and Meeting.

### 3.3 APPOINTMENT OF DEPUTY MAYOR

**Author:** Ainslee Hooper, Governance and Policy Advisor

**Authoriser:** Lisa Baillie, People and Transformation Group Manager

#### RECOMMENDATIONS

That Council:

- (a) Records as part of the meeting resolution for this agenda item, the decision of the incoming Mayor relating to options to choose whether to appoint the Deputy Mayor pursuant to section 41A(3)(a) of the Local Government Act 2002, or to decline to exercise those powers and to choose instead to elect the Deputy Mayor under Clause 17(1), Schedule 7 and Clause 25, Schedule 7 of the Local Government Act 2002; and
- (b) Follows the process chosen by the Mayor in order to effect the appointment of the Deputy Mayor at this inaugural meeting of the new Council, and records as part of the meeting resolution the decision taken as part of that process; and
- (c) Confirms the name of the Councillor chosen to be the Deputy Mayor for the 2022-2025 triennium, as decided at this meeting, as part of this meeting resolution.

#### DECISION OBJECTIVE

The purpose of this report is to provide information, choices, and options under section 41A(3)(a) of the Local Government Act 2002 regarding the appointment of the Deputy Mayor.

#### SUMMARY

As a result of amendments to the Local Government Act in December 2012, the Mayor has the power to appoint the Deputy Mayor, establish committees, and appoint the chairperson of each committee. These powers seek to strengthen the leadership role of the Mayor. Effectively, the Mayor has the following choices:

1. Agrees to appoint the Deputy Mayor in accordance with section 41A(3)(a)

OR

2. Declines to exercise the powers to appoint a Deputy Mayor and undertakes to elect the Deputy Mayor under Clause 17(1), Schedule 7 and Clause 25, Schedule 7 of the Local Government Act 2002.

Although the Mayor has the option of appointing the Deputy Mayor, section 41A(4) notes that nothing limits or prevents Council from removing a Deputy Mayor appointed by the Mayor under section 41A(3).

#### DECISION-MAKING EXPECTATIONS

Governance Decision-Making:

Decisions relating to the appointment of the Deputy Mayor

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Operational Decision-Making:

None

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Communications	Media Releases – contributed to by officers and Elected Members
	Media/public enquiries regarding governance decision-making topics above can be addressed by governance
	Media/public enquiries regarding operational decision-making topics above can be addressed by officers

## SUMMARY OF DECISION-MAKING CRITERIA

	No/Moderate/Key		No/Moderate/Key
Policy/Plan	No	Environmental Considerations	No
Legal	Key	Cultural Considerations	No
Significance	Moderate	Social Considerations	No
Financial Criteria	No	Economic Considerations	No
Community Views	No	Community Board Views	No
Consultation	No	Publicity and Communication	Moderate

## BACKGROUND

The Local Government Act 2002 states that “a territorial authority must appoint 1 of its members to be its deputy mayor in accordance with Clause 25 (Clause 17, Schedule 7) at its first meeting following the triennial election. As set out in the summary, changes to the Local Government Act in December 2012 mean that the Mayor has a greater role in the appointment of the Deputy Mayor, establishment of committees, and appointment of chairpersons.

## SUMMARY OF OPTIONS CONSIDERED

The options and choices for the appointment of the Deputy Mayor are presented in the diagram on the following page. Each of the two options includes two sub-options which relate to either the appointment or election of the Deputy Mayor.

### Option 1 – Mayor Appoints Deputy Mayor

Under Option 1, the Mayor elects to appoint the Deputy Mayor as set out under section 41A(3)(a) of the Local Government Act 2002. While not specifically set out in the Local Government Act, under option one Council will have the option of resolving to support the nomination.

There are two other choices available to the Mayor under Option 1:

**Option 1.1:** The Mayor appoints the Deputy Mayor at this meeting or at the First Council Meeting proposed for 1 November 2022 (or any alternate date for that meeting that is agreed at this inaugural meeting).

**Option 1.2:** The Mayor workshops the appointment with Councillors before appointing the Deputy Mayor at the Council Meeting proposed for 1 November 2022 or at another future Council meeting.

While the Mayor has the power to appoint the Deputy Mayor, Council still retains the power by majority to remove the appointee at the meeting or at a future meeting subject to the conditions being met in clause 18, 3-6, schedule 7 of the Local Government Act.

### **Option 2 – Election of Deputy Mayor**

Under Option 2, the Mayor declines to exercise the power to appoint a Deputy Mayor, and instead opts for the election using one of the election systems set out in Clause 25 of Schedule 7 of the Local Government Act 2002. The preferred voting system needs to be agreed by Council as a resolution. The two systems set out in the Local Government Act include:

#### **Voting System A – Clause 25, Schedule 7 (3)**

- (a) Requires that a person is elected or appointed if he/she receives the votes of a majority of the members of the local authority; 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 round and, if necessary, subsequent rounds of voting, with the candidate with the fewest votes in the previous round being excluded before the commencement of the subsequent round; and
  - iv. In any round of voting, if two or more candidates tie for the lowest number of votes, the person excluded from the next round is excluded by lot.

#### **Voting System B – Clause 25, Schedule 7 (4)**

- (a) Requires that a person is elected or appointed if he/she receives more votes than any other candidate; and
- (b) Has the following characteristics:
  - i. There is only one round of voting; and
  - ii. If two or more candidates tie for the most votes, the tie is resolved by lot.

### **Implementation of the Preferred Option**

As set out in the changes to the Local Government Act in December 2012, the decision on either the appointment or election of the Deputy Mayor remains a choice for the new Mayor. It is understood that conversations about the process for appointing the Deputy Mayor have been held between the incoming Mayor and Councillors in advance of this inaugural meeting. Officers will be available to provide advice and support to Council with either option at the meeting.

## **ADDITIONAL DECISION-MAKING CONSIDERATIONS**

### **Legal Considerations**

#### **Local Government Act 2002 extracts:**

##### **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)

##### **Clause, 18, Schedule 7 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, Schedule 7, 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).

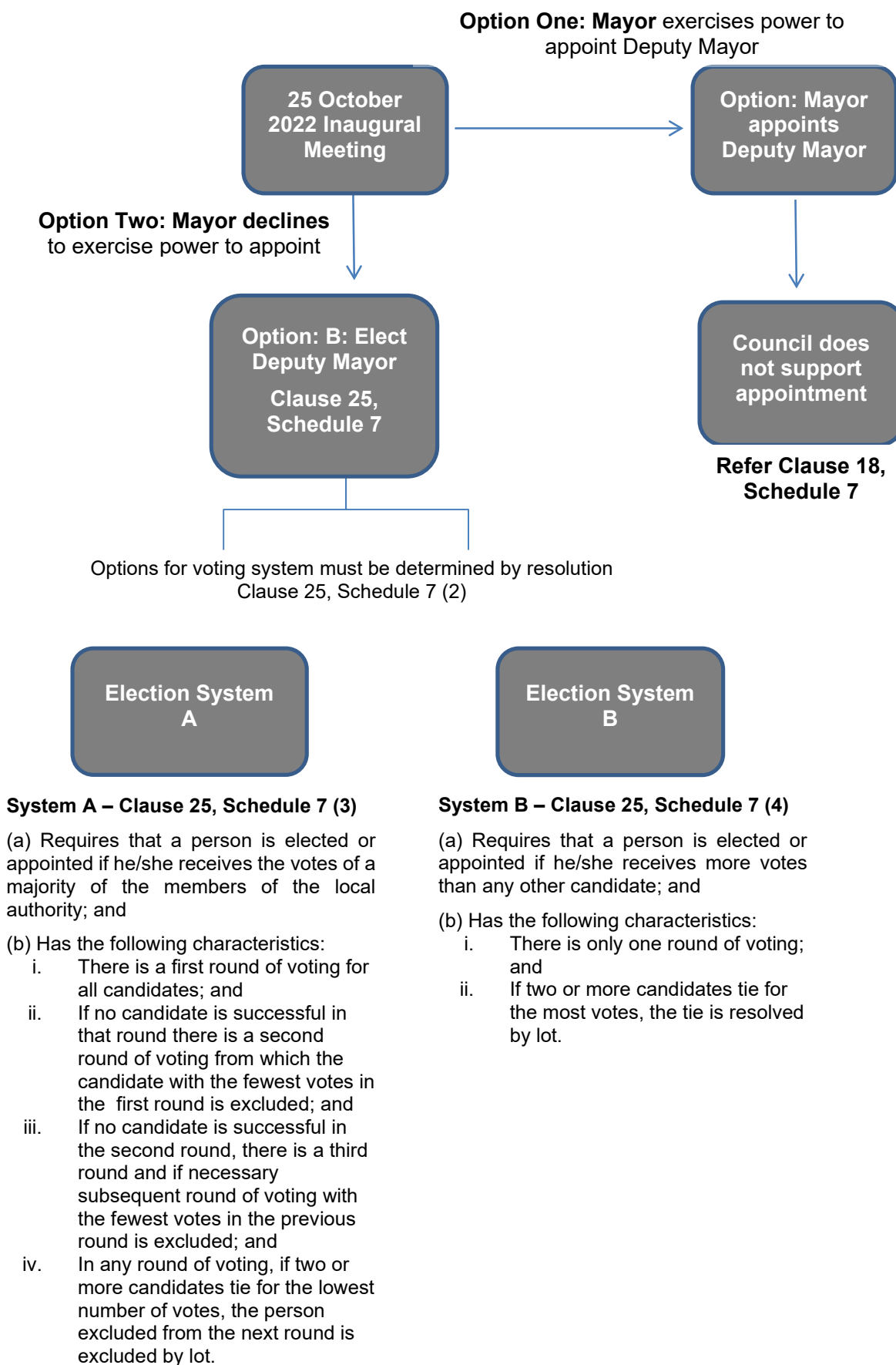
(3) System A—

- (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 two 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 one round of voting; and
  - (ii) If two or more candidates tie for the most votes, the tie is resolved by lot.

Appendix 1: Flowchart – Appointment of Deputy Mayor





**3.4 CONFIRMATION OF DATE AND TIME OF FIRST MEETING OF THE 12TH WAITAKI DISTRICT COUNCIL - TUESDAY, 1 NOVEMBER 2022, FROM 9.00AM**

**Author:** Ainslee Hooper, Governance and Policy Advisor

**Authoriser:** Lisa Baillie, People and Transformation Group Manager

**RECOMMENDATION**

That Council agrees to set the date and start time of the First Council Meeting of the 2022-2025 triennium as Tuesday, 1 November 2022, from 9.00am.

**PURPOSE**

The purpose of this report is to obtain Council's agreement to the date and time of the first meeting of the local authority following the Local Elections 2022 in accordance with statutory requirements.

**SUMMARY AND BACKGROUND**

Section 21(5)(d) of the Local Government Act 2002 requires Council to "*fix the date and time of the first meeting of the local authority, or adoption of a schedule of meetings*" at the first (ie inaugural) meeting following the triennial general election. Subject to Council agreeing the recommendation in this report, further advice, and a proposed meeting schedule for the remainder of calendar year 2022 will be presented for consideration at that First (full) Council Meeting as agreed at this inaugural meeting.

**DECISION-MAKING EXPECTATIONS**

Governance Decision-Making:	To agree on the date and time of the First Meeting of the 12 <sup>th</sup> Waitaki District Council in the 2022-2025 triennium.
Operational Decision-Making:	To publicly notify, and prepare and distribute agenda papers for, that First Council Meeting in accordance with statutory requirements.
Communications	Media Releases – contributed to by officers and Elected Members  Media/public enquiries regarding governance decision-making topics above can be addressed by governance  Media/public enquiries regarding operational decision-making topics above can be addressed by officers

## SUMMARY OF DECISION-MAKING CRITERIA

	No/Moderate/Key		No/Moderate/Key
Policy/Plan	No	Environmental Considerations	No
Legal	Key	Cultural Considerations	No
Significance	No	Social Considerations	No
Financial Criteria	No	Economic Considerations	No
Community Views	No	Community Board Views	No
Consultation	No	Publicity and Communication	No

## BACKGROUND

The recommendation within this report is within the scope of the purpose and amendments to Local Government Act 2002 to enable democratic local decision-making and action by, and on behalf of, communities; and 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.

## SUMMARY OF OPTIONS CONSIDERED

**Option 1** – Council sets the date and start time of the first meeting as Tuesday 1 November 2022 from 9.00am, pursuant to Section 21(5)(d) of the Local Government Act 2002. Option one is consistent with the dates and information already distributed to members of the incoming Council. **(Recommended)**

**Option 2** – Council sets a date and start time of the first meeting *other* than that which is proposed for Tuesday 1 November 2022 from 9.00am. This option is not recommended as Councillors have been notified of this proposed meeting date and time within the Elected Member Induction Programme and can be expected to have made arrangements to attend the meeting on that date and at that time. Identifying another date and time for that meeting when everyone can be available to attend may not be able to be determined or agreed at this inaugural meeting, which would place the incoming Council at risk of not meeting the requirements of Section 21(5)(d) of the Local Government Act 2002.

## ASSESSMENT OF PREFERRED OPTION

Should Council agree on Option 1, officers will prepare further advice on a schedule of meetings for consideration at the First Council meeting on 1 November 2022. This, along with other officer reports, will be prepared and circulated to Elected Members in accordance with the requirements of the Local Government Official Information and Meeting Act (LGOIMA) 1987.

## CONCLUSION

Setting the date and time of the first Council Meeting is a statutory requirement for the incoming Council at its Inaugural Meeting under Section 21(5)(d) of the Local Government Act 2002. The recommended date and time – of Tuesday 1 November 2022 from 9.00am – has been identified as the most appropriate option within the induction and other work commitments of the incoming Council and the availability of incoming members on that date has been confirmed.

## **ADDITIONAL DECISION-MAKING CONSIDERATIONS**

### **Outcomes**

We keep our district affordable

We enable opportunities for new and existing business

We provide and enable services and facilities so people want to stay and move here

We understand the diverse needs of our community

Waitaki's distinctive environment is valued and protected

We maintain the safest community we can

### **Legal Considerations**

Section 21(5)(d) of the Local Government Act 2002 requires Council to fix the date and time of the first meeting of the local authority, or adoption of a schedule of meetings at the first meeting following the triennial general election.

## **4 MEMORANDUM REPORTS**

### **4.1 EXPLANATION OF LEGISLATION BY THE CHIEF EXECUTIVE**

**Author:** Ainslee Hooper, Governance and Policy Advisor

**Authoriser:** Lisa Baillie, People and Transformation Group Manager

#### **RECOMMENDATION**

That Council receives and notes the information.

#### **PURPOSE**

The purpose of this report is to provide a summary of the key pieces of legislation that are of importance to elected members at this inaugural meeting of the new Council for the 2022-2025 triennium, as required under the Local Government Act 2002.

#### **SUMMARY**

To report on legislation as set out in Section 48 and Clause 21(5)(c) of Schedule 7 of the Local Government Act 2002.

#### **BACKGROUND**

The Local Government Act 2002 ("the Act") requires that, at the first meeting of the Council following the triennial general election, a general explanation must be given of the Local Government Official Information and Meetings Act 1987 (LGOIMA 1987) and appropriate provisions of:

- (a) The Local Authorities (Members' Interests) Act 1968;
- (b) Sections 99, 105 and 105A of the Crimes Act 1961;
- (c) The Secret Commissions Act 1910; and
- (d) The Financial Markets Conduct Act 2013.

An explanation of the Health and Safety at Work Act 2015 and the Public Records Act 2005 as it applies to Council and elected members has also been provided.

#### **LOCAL GOVERNMENT ACT 2002 (LGA)**

The LGA 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 purpose of local government is defined in section 10 of the LGA as:

- 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 wellbeing of communities in the present and for the future.

Although couched as a single purpose, there are two purposes to local government: the enabling of community democracy and addressing the four broad areas of community wellbeing.

The role of a local authority is to:

- a. give effect, in relation to its district or region, to the purpose of local government; and
- b. perform the duties, and exercise the rights, conferred on it by or under this Act and any other enactment.

The LGA is based on the principle of general competence that 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.

As elected members, 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 act in accordance with the key principles set out in Section 14 of the LGA (refer Appendix 1).

If any of these principles, or any aspects of wellbeing referred to in section 10 are in conflict in any particular case, then the Council should resolve the conflict in accordance with the first key principle – by conducting its business in an open, transparent, and democratically accountable manner.

### **Personal Liability of Elected Members**

Section 43 of the LGA provides an indemnity (by the Council) for elected members 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 LGA provides for a theoretical personal exposure for 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:

- a. the Council unlawfully spends money;
- b. the Council unlawfully sells or disposes of an asset;
- c. the Council unlawfully incurs a liability; or
- d. the Council intentionally or negligently fails to enforce the collection of money it is lawfully entitled to receive.

The loss is recoverable as a debt due to the Crown and must be paid back to the Council from each elected member jointly and severally.

However, as a member of the Council, you have a defence if you can prove that the act or failure which led to the loss occurred:

- a. without your knowledge; or
- b. with your knowledge but against your protest made at or before the time when the loss occurred; or
- c. contrary to the manner in which you voted on the issue at a meeting of the Council; or
- d. 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.

## LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987 (LGOIMA)

### (a) General Principle

The stated purpose of this Act is to make official information held by local authorities more freely available, to provide for access to that information, to provide for admission to meetings of local authorities and to protect official information held by local authorities consistent with the public interest and preservation of personal privacy.

The Act is very broad. It does not define the word “information”. It sees official information as any item of information held by a local authority. So official information is not limited to documents like letters, reports, memoranda, or files, but includes also sound tapes, video tapes, computer tapes and discs, maps, films, photographs and plans.

The heart of the Act is contained in the “principle of availability” set out in Section 5 of the Act:

*“The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it.”*

Therefore, the fundamental principle of the Act is that information must be made available unless there is “good reason” under the Act to withhold it.

### (b) Requests

Anyone can make a request for official information.

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

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

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

Every request must be dealt with on its merits and a decision whether to refuse or not is made on the circumstances of each case.

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

### (c) Refusals

In considering a refusal of a request for official information, the Act fixes the responsibility on the Chief Executive, or an officer authorised by him/her. While the statutory responsibility is placed on the Chief Executive, that officer is not prevented from consulting the Council or any other person in relation to a decision to refuse.

The Act sets out approximately 25 ‘good reasons’ why official information can be refused. If the grounds for refusal do not fall within one of these “good reasons”, the information **must** be released.

'Good reasons' include:

- (i) Protecting the privacy of natural persons;
- (ii) Maintaining the effective conduct of public affairs through free and frank expressions of opinions by or between elected members and officers;
- (iii) Enabling a local authority to carry out, without prejudice or disadvantage, commercial activities;
- (iv) Enabling a local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); and
- (v) To maintain legal professional privilege.

All of the reasons outlined above are subject to a "public interest" test; that is, even if the information sought falls within one of the refusal categories, it must be released where the withholding of the information is outweighed by other considerations rendering it desirable in the public interest that the information be released.

The Act also contains a number of administrative grounds as to why a request can be refused. These include the fact that:

- (i) The information is or will soon be publicly available;
- (ii) The information requested cannot be made available without substantial collation and research.

If a request is refused, the Council must give the requester:

- (i) The reason for its refusal;
- (ii) The grounds in support of that refusal; and
- (iii) Advice as to the right to apply to the Ombudsman to seek a review of the refusal.

#### **(d) Ombudsman's Investigation**

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

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

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

#### **(e) Other Rights of Access**

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

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

- (i) The findings on material issues of fact;
- (ii) A reference to the information on which the findings were based; and
- (iii) The reasons for the decision or recommendation.

**(f) Access to Meetings**

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

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

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

**(g) Order Papers (also known as Agenda Papers)**

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

**(h) Order at Meetings**

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

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

**(i) Qualified Privilege**

Sections 52 and 53 of the Act provide **that written or oral** statements on any matter before a meeting of the Council, Committee or Community Board is privileged unless the statement is proved to be motivated by ill-will. This type of privilege is known as qualified privilege.

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

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

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

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



## LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968 (LAMIA)

This Act contains provisions relating to contracts between elected members and the Council and provisions relating to elected members voting on matters where they have a pecuniary interest.

### (a) **Contracts**

The Act provides that no person can be an elected member if the total of all contract payments made or to be made by the Council in which that person is 'concerned or interested' exceeds \$25,000 in any financial year. Contracts include sub-contracts.

There are provisions regarding contracts between the Council and a company in which an elected member or spouse has an interest. Generally, a person will be concerned or interested in a contract where that person or spouse holds 10% or more of the issued capital of the company or a controlling company, or the member or spouse is a shareholder and is either a managing director or general manager.

Certain exclusions are provided for, such as where the member and spouse are living apart, or the member did not know and had no reasonable opportunity of knowing the spouse was a shareholder and managing director or general manager.

The limit of \$25,000 may be extended by the Office of the Auditor General in special cases. Such approval can be given retrospectively.

Provision is made for contracts entered into by the Council before an election and for continuing contracts.

If a person breaches the \$25,000 limit, that person is disqualified from holding office and an extraordinary vacancy arises. The disqualification remains until the next triennial election. Where a disqualified person acts as a member, an offence is committed with a maximum fine of \$200.

### (b) **Pecuniary Interest**

The Act provides that no elected member shall vote on or take part in the discussion of any matter in which that person has, directly or indirectly, any "pecuniary interest" other than an interest in common with the public.

The prohibition applies where the member's spouse has a pecuniary interest and where the member or spouse holds 10% or more of the shares in a company or a controlling company which has a pecuniary interest, or either person is a shareholder and is managing director or general manager of the company.

Members who are prohibited under the Act from voting on or discussing a matter are under a duty to declare to the meeting their pecuniary interest and their abstention from discussion or voting must be recorded in the minutes.

The prohibition against discussing or voting on a matter does not apply in certain situations, such as:

- (i) Members' remuneration where the maximum rate has already been fixed;
- (ii) Election or appointment of any member to a Council, or community board, office notwithstanding that remuneration is payable; and
- (iii) The preparation, approval, or review of a district scheme or district plan, unless the matter relates to any variation or change or departure from a district scheme or district plan or to the conditional use of land.

The Audit Office has the power to declare that the prohibition shall not apply in respect of any particular matter if the Office is satisfied the prohibition would impede the business of the Council or that it is in the interest of the electors that the prohibition not apply.

Any member who contravenes the prohibition commits an offence liable to a fine of \$100. Upon conviction, the member vacates office, and an extraordinary vacancy is created.

#### **CRIMES ACT 1961: SECTIONS 99, 105 AND 105A**

**(a) Section 99**

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

**(b) Section 105**

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

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

**(c) Section 105A**

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

#### **SECRET COMMISSIONS ACT 1910**

This Act puts in legislation the principle that a person holding a position of trust, such as elected members, should not make a profit through their office.

The Act provides that elected members and officers are ‘agents’ of the Council and that every agent commits an offence who corruptly accepts or obtains or solicits, for themselves or any other person, any gift or other consideration as an inducement or reward for doing or not doing any act in relation to the Council’s affairs, or for having shown favour or disfavour to any person in relation to the Council’s affairs.

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

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

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

Section 5 of the Act provides that the agent, who makes a contract on behalf of Council, must disclose to the Council any pecuniary interest in the contract. This provision is similar to that contained in the Local Authorities (Members’ Interests) Act 1968.

Also, it is an offence to advise the Council with intent to induce it to enter into a contract with a third person and receive any gift or consideration from the third person, without disclosing to the Council the fact of payment.

Upon conviction for any offence under the Act, an agent is liable to a maximum fine of \$2,000 or two years imprisonment and would vacate their office.

### **FINANCIAL MARKETS CONDUCT ACT 2013 (FMCA)**

Waitaki District Council does not currently offer any financial products to the public. If Council was, in the future, to decide to venture into the area of retail fund-raising, it would have to comply with the requirements of the Financial Markets Conduct Act 2013.

The main purpose of the Financial Markets Conduct Act 2013 is to promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and to promote and facilitate the development of fair, efficient, and transparent financial markets. The Act also provides for timely, accurate, and understandable information to assist in making decisions about financial products and the provision of financial services; and to ensure that appropriate governance and monitoring arrangements apply to financial products and services.

The Act 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. Members may also be liable if the requirements of the Act are not met in relation to offers of financial products.

### **HEALTH AND SAFETY AT WORK ACT 2015 (HSWA)**

On 4 April 2016, the Health and Safety at Work Act 2015 (HSWA) came into force. The HSWA provides a significant change to New Zealand's 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) (ie 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 that, if a PCBU has failed to meet its duty but the Officers exercised due diligence, then they may not be personally liable for the health and safety failings.

#### **PUBLIC RECORDS ACT 2005 (PRA)**

The Public Records Act's purpose is to provide a framework to keep central and local government organisations accountable by ensuring records are full and accurate, well maintained, and accessible. The Public Records Act 2005 provides for the continuity of the National Archives and the role of the Chief Archivist. The Act enables accountability by ensuring that full and accurate records of the affairs of local government are created and maintained. It also provides a framework within which local authorities create and maintain their records and has a role in enhancing public confidence in the integrity of local authority records.

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.

**Appendix 1: LGA Part 2, section 14: Principles relating to local authorities**

- (1) In performing its role, a local authority must act in accordance with the following principles:
  - (a) a local authority should—
    - (i) conduct its business in an open, transparent, and democratically accountable manner; and
    - (ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner;
  - (b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and
  - (c) when making a decision, a local authority should take account of—
    - (i) the diversity of the community, and the community's interests, within its district or region; and
    - (ii) the interests of future as well as current communities; and
    - (iii) the likely impact of any decision on each aspect of well-being referred to in section 10;
  - (d) a local authority should provide opportunities for Māori to contribute to its decision-making processes;
  - (e) a local authority should 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; and
  - (f) a local authority should undertake any commercial transactions in accordance with sound business practices; and
  - (fa) a local authority should periodically—
    - (i) assess the expected returns to the authority from investing in, or undertaking, a commercial activity; and
    - (ii) satisfy itself that the expected returns are likely to outweigh the risks inherent in the investment or activity; and
  - (g) a local authority should ensure prudent stewardship and the efficient and effective use of its resources in the interests of its district or region, including by planning effectively for the future management of its assets; and
  - (h) in taking a sustainable development approach, a local authority should take into account—
    - (i) the social, economic, and cultural well-being of people and communities; and
    - (ii) the need to maintain and enhance the quality of the environment; and
    - (iii) the reasonably foreseeable needs of future generations.
- (2) If any of these principles, or any aspects of well-being referred to in section 10, are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).

**5 MEETING CLOSE**