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**From:** Jonathan Gibbard, Chief Executive Officer, Tāhūhū Rangapū

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**Executive summary/Whakarāpopototanga**

Clause 21(5)(b) of Schedule 7 of the Local Government Act 2002 stipulates that the election of the Chairperson, and the making and attesting of the declaration required of the Chairperson, is business that must be conducted at the first meeting of a local authority following triennial general elections.

This report facilitates the election of the Chairperson.

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**Recommendations**

- That the report 'Election of Chairperson' by Jonathan Gibbard, Chief Executive Officer, Tāhūhū Rangapū, and dated 17 October 2022, be received.
  - That in the event more than one nomination for Chairperson is received, "System A" as specified in Clause 25 of Schedule 7 to the Local Government Act be used for the election of the Chairperson.
  - That \_\_\_\_\_ be elected Chairperson of the Northland Regional Council.
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**Background/Tuhinga**

The Chief Executive Officer will call for nominations for election to the office of Chairperson. A mover and seconder will be required for each nomination. Any nomination that is moved but not seconded, will be deemed to have lapsed.

If only one nomination is received, that person will be declared to be elected. Should more than one nomination be received, the council will be called upon to decide which of the two systems of voting (as specified in Clause 25 of Schedule 7 to the Local Government Act) is to be used to make the appointment. The two systems are as follows:

**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 least 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 a 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.

**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.

It should be noted that resolving by lot will be conducted by putting each person's name on the same size piece of paper and put in a box from which the name is drawn.

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## Considerations

### 1. Options

No.	Option	Advantages	Disadvantages
1	System A	Carries a lesser likelihood that the Chairperson of council could be determined by lot.	More complex.
2	System B	Simple system	Carries a higher likelihood that the Chairperson of council could be determined by lot.

The staff's recommended option is that, in the event more than one nomination be received for Chairperson, System A be applied.

### 2. Significance and engagement

Regional councils must elect a Chairperson and therefore in relation to Section 79 of the Local Government Act 2002 and council policy, this issue is considered to be of low significance.

### 3. Policy, risk management and legislative compliance

This report is submitted for consideration by council pursuant to the statutory requirements of Schedule 7 of the Local Government Act 2002.

Being a purely administrative matter, Climate Impact, Environmental Impact, Community Views, Māori Impact Statement, Financial Implications and Implementation Issues are not applicable.

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## Attachments/Ngā tapirihanga

Nil

**TITLE: Declaration by Chairperson**

**From:** Jonathan Gibbard, Chief Executive Officer, Tāhūhū Rangapū

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**Executive summary/Whakarāpopototanga**

Clause 21(5)(b) of Schedule 7 to the Local Government Act stipulates that the election of the Chairperson, and the making and attesting of the declaration required of the Chairperson, is business that must be conducted at the first meeting of a local authority following the triennial general elections.

This report facilitates the formal declaration to be made by the Chairperson.

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**Recommendation**

That the report 'Declaration by Chairperson' by Jonathan Gibbard, Chief Executive Officer, Tāhūhū Rangapū, and dated 17 October, be received.

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**Background/Tuhinga**

The newly elected Chairperson will be invited to make and sign a declaration to enable them to carry out their duties as Chairperson; as required by law. I will then witness the declaration with my signature. After making their declaration the Chairperson will assume the chair from the Chief Executive and preside over the remainder of the council meeting.

Section 14 of Schedule 7 to the Local Government Act stipulates that the form of the declaration must consist of the following elements:

**Declaration by Chairperson**

"I, [state full name], declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of the Northland region, the powers, authorities and duties vested in, or imposed upon, me as Chairperson of the Northland Regional Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act."

Dated at Whangārei this 25th day of October 2022.

[Signature]

Signed in the presence of:  
Jonathan Gibbard  
Chief Executive Officer  
Tāhūhū Rangapū

As with the declaration by councillors, the Chair must make their declaration in English and may also choose to make their declaration in Te Reo and sign language. The Te Reo translation is as follows:

*“Ko ahau tēnei, ko ....., e whakapuaki atu nei i taku oati i roto i te pono me te tika, e ai ki ōku pūkenga me ōku whakaaro, kia whakatutukingia, kia hāpaitia hoki, hei painga mō te rohe o Te Taitokerau, ngā mana kaunihera me ngā mahi, kei roto tonu, ka utaina rānei ki runga i a āu e tū nei, te Heamana o te Kaunihera ā-rohe o Te Taitokerau i raro i te maru o te Ture Kāwanatanga ā-Rohe 2002, me te Ture Kāwanatanga ā-Rohe mō te Pārongo Ōkawa me ngā Hui 1987, i raro rānei i tētahi atu ture.”*

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**Attachments/Ngā tapirihanga**

Nil

**TITLE: Election of Deputy Chairperson**

**From:** Jonathan Gibbard, Tumuaki - Chief Executive Officer, Tāhūhū Rangapū

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**Executive summary/Whakarāpopototanga**

Clause 21(5)(e) of Schedule 7 to the Local Government Act 2002 stipulates that the election of the Deputy Chairperson is business that must be conducted at the first meeting of a local authority following triennial general elections.

This report facilitates the election of the Deputy Chairperson.

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**Recommendations**

1. That the report 'Election of Deputy Chairperson' by Jonathan Gibbard, Tumuaki - Chief Executive Officer, Tāhūhū Rangapū, and dated 17 October 2022, be received.
  2. That in the event more than one nomination for the Deputy Chairperson is received, System A as specified in Clause 25 of Schedule 7 to the Local Government Act be used for the election of the Deputy Chairperson.
  3. That \_\_\_\_\_ be elected Deputy Chairperson of the Northland Regional Council.
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**Background/Tuhinga**

Section 17(2) of Schedule 7 to the Local Government Act requires that every Regional Council shall elect one of its members to be its Deputy Chairperson.

The functions of the office of Deputy Chairperson are set out in section 17(3) as follows:

*“(3) The Deputy Mayor or Deputy Chairperson must perform all the responsibilities and duties, and may exercise all the powers, of the Mayor or Chairperson, -*

- (a) With the consent of the Mayor or Chairperson, at any time during the temporary absence of the Mayor or Chairperson:*
- (b) Without that consent, at any time while the Mayor or Chairperson is prevented by illness or other cause from performing the responsibilities and duties, or exercising the powers, of his or her office:*
- (c) While there is a vacancy in the office of the Mayor or Chairperson.*

*(4) In the absence of proof to the contrary, a Deputy Mayor or Deputy Chairperson acting as Mayor or Chairperson is presumed to have the authority to do so.*

*(5) A Deputy Mayor or Deputy Chairperson continues to hold his or her office as Deputy Mayor or Deputy Chairperson, so long as he or she continues to be a member of the territorial authority or regional council, until the election of his or her successor.”*

The procedure for electing the Deputy Chairperson is the same as detailed in Item 5.3 for the election of the Chairperson. Again, it is proposed that “System A” be used as the method of voting.

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## Considerations

### 1. Options

The options are either “System A” or “System B” and the advantages and disadvantages are the same as detailed in Item 5.3 for the election of the Chairperson. The staff’s recommendation is that, in the event more than one nomination be received for Deputy Chairperson, “System A” be applied.

### 2. Significance and engagement

Regional councils must elect a Deputy Chairperson and therefore in relation to Section 79 of the Local Government Act 2002 and council policy, this issue is considered to be of low significance.

### 3. Policy, risk management and legislative compliance

This item is submitted for consideration by council pursuant to the statutory requirements of Schedule 7 of the Local Government Act 2002.

Being a purely procedural matter: Climate Impact, Environmental Impact, Community Views, Māori Impact Statement, Financial Implications and Implementation Issues are not applicable.

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## Attachments/Ngā tapirihanga

Nil

**TITLE: Legislation affecting councillors**

**From:** Jonathan Gibbard, Tumuaki - Chief Executive Officer, Tāhūhū Rangapū

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**Executive summary/Whakarāpopototanga**

This report is in accordance with Clause 21 of Schedule 7 to the Local Government Act 2002 which requires the Chief Executive Officer to provide councillors, at the first meeting following elections, with a general explanation of specified Acts which directly affect them.

The implications of these laws, and best practice in dealing with them will be covered in a workshop on 8 November 2022 facilitated by Cochrane Legal Advisory.

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**Recommendation**

That the report 'Legislation affecting councillors' by Jonathan Gibbard, Tumuaki - Chief Executive Officer, Tāhūhū Rangapū, and dated 17 October 2022, be received.

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**Background/Tuhinga**

**Local Government Act 2002**

This is the Act under which all authorities are constituted and which sets their core powers and authorities.

**General principles**

The Act contains detail on the powers of councils, their decision-making, planning and reporting responsibilities, and the setting of charges and making of bylaws, and the operation of Council Controlled Organisations (CCOs).<sup>1</sup> Setting rates is done under the Local Government (Rating) Act 2002.

At a more general level, some principles are laid down for councils as a whole, and you are encouraged to become familiar with sections 10, 11, 12 and 14 as these guide what councils can do, and the way they should do it; accessible via the link:

<https://www.legislation.govt.nz/act/public/2002/0084/latest/DLM170873.html?src=qs>

Of particular note is the purpose of local government, as set out in section 10:

**10 Purpose of local government**

(1) *The purpose of local government is—*

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

Section 12(5) states that a regional council must exercise its powers wholly or principally for the benefit of all or a significant part of its region, and not for the benefit of a single district.

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<sup>1</sup> Northland Inc Ltd is a joint CCO with FNDC and KDC. Marsden Maritime Holdings Ltd is not a CCO, even though NRC holds the majority of the shares. It is listed on the NZX.

Sections 14 and 15 are also of broad significance and are included as **Attachment 1** for ease of reference.

Section 14 sets out the principles that all local authorities must apply in performing their roles.

Section 15 requires all local authorities in the region to enter into a Triennial Agreement specifying how they will communicate with each other and co-ordinate their activities. The agreement must be entered into by 1 March 2023.

### ***Councillors***

Clause 1 of Schedule 7 provides that a person's office as member of a Local Authority is vacated if the person, while holding office as a member of the local authority –

“(a) ceases to be an elector or becomes disqualified for registration as an elector under the Electoral Act 1993; or

(b) is convicted of an offence punishable by a term of imprisonment of two years or more.”

Note that you are disqualified if convicted of that type of offence; it does not matter that you may not be imprisoned.

Absence from four consecutive council meetings without leave means you automatically vacate office; Clause 5(1)(d) of Schedule 7.

### ***Councillor conduct***

Clause 15 of Schedule 7 requires council to have a Code of Conduct. It deals with behaviour between councillors and with staff, media and the public, and a general explanation of relevant law. The current Code of Conduct still applies. However, council will be given the opportunity to review the Code of Conduct in due course.

Clause 27 of Schedule 7 requires councillors to comply with the Standing Orders adopted by the council. The Northland Regional Council has previously adopted a set and these still apply until such time the council elects to amend or adopt a new set of Standing Orders.

You can access copies of the Standing Orders and the Code of Conduct via your mobile devices.

### ***Liability and indemnity of councillors***

Councillors can be indemnified by the council for costs in proceedings arising from actions as a councillor, so long as the councillor has acted in good faith in pursuance of their responsibilities, or they have successfully defended criminal proceedings (section 43 LGA).

On the other hand, councillors can be held personally responsible by the Auditor-General for particular losses (see section 44 of the LGA). This means councillors have to personally pay the amount of the loss to the Crown (section 46 LGA).

### ***Councillors are the collective employer of the Chief Executive***

As the governing body, the Chair and councillors are the employer of the Chief Executive. As the employer, the council has obligations under the Employment Relations Act 2000 (**ERA**), the Act and under the council's Code of Conduct. In all of its dealings with the Chief Executive, the council must act collectively and in accordance with its good employer obligations under the Act, its good faith obligations under the ERA, the implied and express terms of the Chief Executive's employment agreement and the obligations the council owes to its employee.

The Chief Executive is responsible for employing (on behalf of the council) all other employees and negotiating their terms of employment.



Clause 36 of Schedule 7 of the LGA details the council's "good employer" obligations, including operating a personnel policy that includes provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment.

Under section 39(d) and Schedule 7, Clause 36 of the Act, councils are required to be good employers. In examining whether a body acts as a "good employer", matters such as compliance with employer policies, codes and terms of employment, and the good faith provisions of the ERA, are all relevant.

As the Chief Executive's employer, the council has various obligations under the ERA, including to:

- (a) act in good faith at all times;
- (b) not engage in any conduct which unjustifiably disadvantages the chief executive in their employment;
- (c) provide the chief executive with a safe working environment (including not subjecting them to undue or unreasonable levels of stress); and
- (d) not act in a manner that could give rise to potential claims of constructive dismissal.

The obligation of good faith requires that the parties to an employment relationship must:

- (a) deal with each other in good faith;
- (b) not to do anything which could, or is likely to, directly or indirectly mislead or deceive each other; and
- (c) be active and constructive in establishing and maintaining a productive employment relationship including being responsive and communicative.

A mutual obligation of trust and confidence between an employer and employee is implied into an employment relationship. This obligation requires an employer, in the case of an employee, not to act in such a way so as to damage the trust and confidence between the parties.

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

The Local Government (Pecuniary Interests Register) Amendment Act 2022 will come into force on 20 November 2022. It inserts a new set of requirements and obligations into the Local Government Act 2002 (LGA 02), all of which relate to members' pecuniary interests.

You can view the Act using the following link:

<https://www.legislation.govt.nz/act/public/2022/0024/latest/LMS514922.html?src=qs>

The purpose of the new provisions is to increase transparency, trust and confidence in local government by keeping and making publicly available, information about members' pecuniary interests. It is largely modelled on the regime that applies to members of Parliament, but has been tailored to reflect particular aspects of local government.

Moving forward, every council (including all territorial authorities, unitary authorities, and regional councils) will be required to keep a register of its members' pecuniary interests, and to make a summary of it publicly available. Each council must appoint a Registrar to maintain the register, and provide advice and guidance to members. No official guidance from the Auditor General, or others, has been published yet.

Members are obliged to provide annual returns, which are to be included on the registers, and to subsequently advise of any errors or omissions in those returns. Any failure to comply with the new obligations amounts to an offence, and so it is important that members understand and comply with these new provisions, and that they are provided with necessary guidance (including from council staff).

Your first return will be due in mid-February. It will have to include overseas travel, gifts and hospitality, payments received, investments, employment interests in trusts and properties owned.

It is important to note that while there is some potential overlap with the requirements of LAMIA, in practise these are separate processes.

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

One purpose of the Act is to control the making of contracts between councils and councillors, their partners or companies in which they have roles or interests that need not be controlling interests. The Act applies to a contract, contracts or subcontracts with the council to a value of \$25,000 or more each year, in total. It is no excuse that the contract is at arms-length, or on standard terms.

The Act also restricts the actions of councillors when matters in which they have a monetary interest at any level are being considered. The Act imposes restrictions on councillors who are deemed to have a pecuniary interest in matters coming before the council. This affects participation in both discussions and formal voting. You are required by the Act to declare the fact of a pecuniary interest when the matter comes before the council and that your abstention from discussing and voting will be recorded in the minutes.

The Controller and Auditor-General has produced a useful guide to the provisions of this Act; "Guidance for Members of local authorities about the Local Authorities (Members' Interests) Act 1968" which can be accessed using the link:

<https://oag.parliament.nz/2020/lamia>

The Act permits the Controller and Auditor General to grant exemptions from its provisions. That must be sought in advance because consent after the event is very difficult to get. Hence, councillors are urged to advise the Chief Executive Officer of their financial interest in any entity or a disqualifying contract so that the appropriate exemption can be sought, if possible.

Local Government Auditors request each year to see a register of councillors' interests, so it is essential that councillors complete the "Declaration of Interests" form, making a declaration (nil or otherwise) and provide the Chief Executive Officer with details. Councillors will be asked to complete the declaration of interests form at the legislative workshop on 8 November when Cochrane Legal Advisory will be present to answer any questions.

From 21 November 2022 additional requirements for a statutory register of pecuniary interests take effect. Details of the new requirements are set out later in this report.

The Controller and Auditor-General has produced a useful guide which councillors are encouraged to read entitled "Managing conflicts of interest: Guidance for public entities" which is accessible via the link:

<http://www.oag.govt.nz/2007/conflicts-public-entities>

The Act addresses only pecuniary interests in contracts. You may well have other interests that reasonable observers might reasonably conclude could affect your decision making. Please be alert to the risk of that perception occurring and address how you should act before issues arise.

### **Local Government Official Information and Meetings Act 1987 (LGOIMA)**

This Act provides that information held by local authorities is to be made publicly available unless there are good reasons, in terms of the Act, for withholding it. The reasons specified for the

withholding of information also apply to the exclusion of members of the public from meetings of the council and its committees (with one exception, being free and frank discussion).

The relevant extracts from Sections 6 and 7 of the Act are as follows:

***“6. Conclusive reasons for withholding official information –***

*Good reason for withholding official information exists, if the making available of that information would be likely –*

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

***7. Other reasons for withholding official information –***

- 1. Where this section applies, good reason for withholding official information exists, for the purpose of section 5, unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.*
- 2. Subject to sections 6, 8 and 17 of this Act, this section applies if, and only if, the withholding of information is necessary to –*
  - a. Protect the privacy of natural persons, including that of deceased natural persons; or*
  - b. Protect information where the making available of the information –*
    - i. Would disclose a trade secret; or*
    - ii. Would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; or*
  - ba. In the case only of an application for a resource consent, or water conservation order, or a requirement for a designation or heritage order, under the Resource Management Act 1991, to avoid serious offence to tikanga Māori, or to avoid the disclosure of the location of waahi tapu; or*
  - c. Protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information -*
    - i. Would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or*
    - ii. Would be likely otherwise to damage the public interest; or*
  - d. Avoid prejudice to measures protecting the health or safety of members of the public; or*
  - e. Avoid prejudice to measures that prevent or mitigate material loss to members of the public; or*
  - f. Maintain the effective conduct of public affairs through –*
    - i. The free and frank expression of opinions by or between or to members or officers or employees of any local authority, or any persons to whom section 2(5) of this Act applies, in the course of their duty; or*
    - ii. The protection of such members, officers, employees, and persons from improper pressure or harassment; or*

- g. Maintain legal professional privilege; or*
- h. Enable any local authority holding the information to carry out without prejudice or disadvantage, commercial activities; or*
- i. Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or*
- j. Prevent the disclosure or use of official information for improper gain or improper advantage.”*

Section 17 gives some other grounds for refusing to disclose information including that disclosure would be in breach of another law, the information will soon be public anyway, or it cannot be made available without substantial work.

Section 13(5) of the Act requires that decisions on information requests be made by the Chief Executive Officer (or an officer or employee authorised by that Chief Executive). If you receive a request personally, you should send it promptly to the Chief Executive to ensure it is processed appropriately; and you may tell the requester you are doing that. Please do not give the requester any informal assurances that the information exists or will be provided. It is quite likely that at the point the request is made, you may not be aware of all the relevant circumstances.

Be aware that:

- (1) Your copies of council papers, including your own annotations on them, are official information, and may be requested.
- (2) Exclusion of the public from a meeting or workshop does not mean that the papers for or generated at the meeting or workshop are automatically able to be withheld. The Act still applies; often the reason for confidentiality may have passed.
- (3) Some draft documents are official information. There is no special exemption for draft documents.

### ***Public excluded meetings***

Unless one or more of the grounds in Sections 6 or 7 apply, then the council cannot exclude the public from a meeting. Every resolution to exclude the public from a meeting is required to state:

- a. The general subject of each matter to be considered;
- b. The reason why the matter is considered to be confidential; and
- c. The grounds in the Act under which the resolution is based.

Any items deemed by the Chief Executive Officer to be confidential are included at the back of the council agenda and are excluded from copies provided to the public. A suggested resolution to comply with the above requirements is also provided in the non-confidential part of the agenda.

Workshops are routinely closed to the public, except people who are invited to attend for a specific purpose.

### ***Meeting procedures***

LGOIMA also regulates and sets out the procedural requirements for meetings of local authorities; including the notification of meetings, the publication of agendas and access by the public to the minutes of meetings.

Of particular importance for the roles and conduct of elected members is the fact that the Chair has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- create a disturbance or a distraction while another councillor is speaking
- be disrespectful when they refer to each other or other people
- use offensive language about the council, other councillors, any employee of the council or any member of the public.

Unlike MPs, elected members of councils do not have absolute privilege for what they say at council meetings. There is a form of qualified privilege, but it is lost if you are proved to have been predominantly motivated by ill will, or took improper advantage of the situation; sections 52 and 53 LGOIMA.

Think of the defences as being available if you make a mistake. Attacking someone in the belief that the defences will protect you is a very high risk strategy.

### ***Things you should not do***

As well as not attempting to deal with official information requests (discussed above), as elected members you should not:

- become engaged in employment issues, other than the employment of the Chief Executive. You appoint the Chief Executive. The Chief Executive hires, fires, disciplines, and promotes the other employees; and is accountable to you for how this is done.
- become engaged in prosecution decisions. Elected members should set prosecution guidelines. Individual decisions on whether or not to prosecute should be made by officers at the appropriate level, implementing your guidelines.

Generally, avoid statements that suggest you have predetermined an issue. In most cases, significant council decisions have to be made by following a process that includes consultation and allowing people to tell you their views. Predetermination can mean you cannot participate in a decision process on something you feel strongly about. There is a world of difference between:

“I will never require boaties to pay for fan worm control”; or

“I am totally opposed to off-leash dog exercise areas in council reserves”

AND

“I understand fan worm spreads in various ways. I’m not convinced that boaties should be charged for its control, but we need to assess the options”; or

“I can see there are health and safety issues with dogs off-leash and children both using reserves. I will need to be satisfied that child safety can be assured before I will agree”.

### **The Crimes Act 1961**

Sections 99, 105 and 105A of the Crimes Act 1961 relate to acceptance of bribes by “officials”.

The definition of an “official” in Section 99 of the Act includes any member or employee of a local authority. A ‘bribe’ means “any money, valuable consideration, office or employment, or any benefit whether direct or indirect.”

*Sections 105 creates an offence of accepting or trying to obtain a bribe in respect of your official capacity; penalty up to 7 years jail.*

*Section 105A creates an offence with the same penalty for corruptly using or disclosing information obtained in an official capacity to obtain advantage or gain for yourself or anyone else.*

### **Secret Commissions Act 1910**

This Act makes it an offence for any officer or member of a local authority to offer or receive gifts, favours or inducement in relation to the affairs of the local authority including the granting of contracts. The same applies to their agents and offers to them.

Any gift or other consideration given or offered to any parent, husband, wife, child, partner, “clerk or servant” of the councillor or staff member is also caught within the provisions of this Act. The receipt of gifts is also prohibited.

Penalties for conviction or indictment includes fines of up to \$1,000 and imprisonment for up to two years.

The Act is old and archaic, but is very much alive, and there have been some high profile convictions in recent years.

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

This Act prohibits trading in listed securities (broadly shares or bonds) by an information insider. Typically this is called insider trading, and the prohibitions include not trading (buying or selling) by the insider, no disclosing to others likely to trade, and no encouraging of trading by others (even if the information itself is not disclosed).

Inside information is not just information about listed securities held by the council e.g. Marsden Maritime Holdings, or council’s listed company investments. It can include information about companies with which council is dealing (for example, advance notice of an application for a consent that suggests a big development is planned).

Inside information is material information not generally available to the market; and which the person knows or ought reasonably to know was material information not generally available and would have a material effect on the price of the quoted stock.

The source of information, the motive of the councillor, and whether he or she makes no profit is irrelevant.

The rules are enforced by the Financial Markets Authority and it is assiduous about protecting the integrity of the stock market. Enforcement is most likely to be against an individual councillor or councillors, not the council.

There are some technical exceptions. One that can be relevant is for redemption of managed investment products in managed investment schemes.

There are some defences, for example the use of blind trusts, but generally councillors should avoid any conduct that means they are likely to need to rely on the exceptions or defences. Councillors are encouraged to take expert advice personally at an early stage if they suspect an insider trading situation may arise.

### **Health and Safety at Work Act 2015 (HSWA)**

The Health and Safety at Work Act 2015 (HSWA) imposes health and safety duties on "persons conducting a business or undertaking" (PCBU). The council is a PCBU under HSWA. Under s 36 a

PCBU has the primary duty of care to ensure so far as is reasonably practicable the health and safety of:

- workers (a wider group than just employees) who work for the PCBU
- workers whose activities are influenced or directed by the PCBU, while the workers are carrying out the work (e.g. contractors)
- other persons are not put at risk from work carried out as part of the business of undertaking e.g. visitors, customers, members of the public

HSWA has also introduced the concept of an “officer”. An officer of a PCBU must exercise due diligence to ensure that the PCBU complies with its duties. Councillors and the Chief Executive are officers under HSWA.

The officer's duty is personal and cannot be discharged by others. An officer must exercise the care, diligence, and skill that a reasonable officer would exercise in the same circumstances, taking into account (without limitation):

- the nature of the business or undertaking; and
- the position of the officer and the nature of the responsibilities undertaken by the officer.

Officers of high-risk PCBUs and/or officers who have more responsibility and more control over the PCBU's activities will be expected to do more in order to discharge their due diligence duty. Officers have one duty under HSWA and that is to exercise due diligence, to understand the council's operations and health and safety risks and to ensure that these are managed so that the council complies with its duties under HSWA. This includes taking reasonably practicable steps:

- (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 process 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 may not be personally liable for the health and safety failings of the PCBU provided they have exercised due diligence adequately.

A member of the governing body of a local authority (or local board or community board) who is appointed or elected under the Local Electoral Act 2001 does not commit an offence, when acting in that capacity, for failure to comply with the duty of an officer. However, elected members will have the duties of an officer when acting in their capacity as an officer of a CCO.

Governance guidelines for officers on their health and safety responsibilities have been developed to provide a framework for how officers can lead, plan, review and improve health and safety. It is an essential resource for governing bodies, providing information on responsibilities, the role of


governing bodies in health and safety, diagnostic questions and actions as well as case studies and a checklist. These will assist officers to identify whether their health and safety systems are effective at minimising risk. The guide has been updated to cover some of the key concepts in the Health and Safety at Work Act 2015 that are particularly relevant to directors – officers due diligence duty, officers' liability and worker engagement and participation requirements. The guidance was reviewed in 2016 by WorkSafe and Institute of Directors. Councillors should read these as if they were directors.

The guidelines for good governance are accessible via the link:

<https://worksafe.govt.nz/managing-health-and-safety/businesses/guidance-for-business-leaders>

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### **Attachments/Ngā tapirihanga**

Attachment 1: Sections 14 and 15 of the Local Government Act 2002 [↓](#) 



## Sections 14 and 15 of the Local Government Act 2002

### 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).

Section 14(1)(c)(iii): replaced, on 14 May 2019, by [section 7\(1\)](#) of the Local Government (Community Well-being) Amendment Act 2019 (2019 No 17).

Section 14(1)(e): replaced, on 8 August 2014, by [section 8\(1\)](#) of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 14(1)(fa): inserted, on 27 November 2010, by [section 6](#) of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 14(1)(g): replaced, on 8 August 2014, by [section 8\(2\)](#) of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 14(1)(h)(i): amended, on 14 May 2019, by [section 7\(2\)](#) of the Local Government (Community Well-being) Amendment Act 2019 (2019 No 17).

Section 14(2): amended, on 14 May 2019, by [section 7\(3\)](#) of the Local Government (Community Well-being) Amendment Act 2019 (2019 No 17).

Section 14(2): amended, on 5 December 2012, by [section 8\(3\)](#) of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

### 15 Triennial agreements

- (1) Not later than 1 March after each triennial general election of members, all local authorities within each region must enter into an agreement under this section covering the period until the next triennial general election of members.
- (2) An agreement under this section must include—
  - (a) protocols for communication and co-ordination among the local authorities; and
  - (b) a statement of the process by which the local authorities will comply with [section 16](#) in respect of proposals for new regional council activities; and
  - (c) processes and protocols through which all local authorities can participate in identifying, delivering, and funding facilities and services of significance to more than 1 district.
- (3) An agreement under this section may also include—
  - (a) commitments by local authorities within the region to establish or continue 1 or more joint committees or other joint governance arrangements to give better effect to 1 or more of the matters referred to in subsection (2); and
  - (b) the matters to be included in the terms of reference for any such committees or arrangements, including any delegations.
- (4) An agreement under this section may be varied by agreement between all the local authorities within the region.
- (5) An agreement under this section remains in force until it is replaced by another agreement.
- (6) If a decision of a local authority is significantly inconsistent with, or is expected to have consequences that will be significantly inconsistent with, the agreement under this section that is currently in force within the region, the local authority must, when making the decision, clearly identify—
  - (a) the inconsistency; and
  - (b) the reasons for the inconsistency; and
  - (c) any intention of the local authority to seek an amendment to the agreement under subsection (4).
- (7) As soon as practicable after making any decision to which subsection (6) applies, the local authority must give to each of the other local authorities within the region notice of the decision and of the matters specified in that subsection.

Section 15: replaced, on 8 August 2014, by [section 9](#) of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

**TITLE: Fixing the date of the first ordinary meeting of council**

**From:** Jonathan Gibbard, Chief Executive Officer, Tāhūhū Rangapū

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**Executive summary/Whakarāpopototanga**

This report gives effect to Schedule 7, Clause 21(d) of the Local Government Act 2002, which stipulates that ‘the fixing of the date and time of the first meeting of the local authority, or the adoption of a schedule of meetings’ is business that must be conducted at the inaugural meeting.

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**Recommendations**

1. That the report ‘Fixing the date of the first ordinary meeting of council’ by Jonathan Gibbard, Chief Executive Officer, Tāhūhū Rangapū, and dated 17 October 2022, be received.
  2. That the ordinary meetings of the Northland Regional Council for the remainder of the 2022 be held at the council offices, 36 Water Street, Whangārei on Tuesday 22 November 2022 and Tuesday 13 December 2022 commencing at 10.30am.
  3. That a full meeting schedule (including the meeting dates of council’s subordinate bodies) be presented to council for its consideration once the governance structure has been confirmed.
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**Background/Tuhinga**

The Local Government Act 2002, Schedule 7, Clause 19 contains general provisions for the calling of meetings. In particular there is provision [Clause 19(6)] for the local authority to adopt a schedule of meetings that:

- May cover any future period that the local authority considers appropriate; and
- May be amended.

Furthermore, council has previously found that setting a schedule has been an efficient way to plan for meetings listed for that period, noting that there will be amendments required to meet changing circumstances.

It is anticipated that council will give consideration to preferred meeting days and its governance structure as a matter of priority. Based on the outcome of these discussions, staff will develop a meeting schedule for both council and its subordinate bodies.

The meeting dates proposed in this report are based on the previous council’s preference, being the fourth Tuesday of the month with the exception being December when the meeting is brought forward, however it is noted that the new council may wish to change this.

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## Considerations

### Options

No.	Option	Advantages	Disadvantages
1	Approve the proposed dates.	<p>This meets council's obligations under the Local Government Act and provides certainty until such time council has confirmed its preferred meeting dates and governance structure.</p> <p>The dates have been selected to avoid clashes with other induction or cross council commitments.</p>	None apparent
2	Approve alternate meeting dates.	The alternate dates may be better aligned with councillors' commitments.	There is the potential for clashes with other induction or cross council commitments. The current dates have been selected to avoid this.

The staff's recommended option is 1.

### 2. Significance and engagement

This is a procedural matter required by law. Hence when assessed against council policy is deemed to be of low significance.

### 3. Policy, risk management and legislative compliance

This item is submitted for consideration by council pursuant to the statutory requirements of Schedule 7 of the Local Government Act 2002.

Being a purely procedural matter; Climate Impact, Environmental Impact, Community Views, Māori Impact Statement, Financial Implications and Implementation Issues are not applicable.

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## Attachments/Ngā tapirihanga

Nil