

Mayor and Councillors
COUNCIL

27 OCTOBER 2010

Meeting Status : Public

Purpose of Report: For Information

EXPLANATION OF LEGISLATION AFFECTING ELECTED MEMBERS

PURPOSE OF REPORT

- 1 Legislation requires the Chief Executive, or his nominee, to inform elected members of laws relevant to their office in accordance with the requirements of Schedule 7, Clause 21 of the Local Government Act 2002.

SIGNIFICANCE OF DECISION

- 2 The Council's Significance Policy is not triggered by this report.

BACKGROUND

- 3 The Local Government Act 2002 requires the Chief Executive to give a general explanation to Elected Members of relevant statutory obligations which include the provisions relating to meetings and official information, members' financial interests and disclosure duties, offences relating to corruption and secret commission prohibitions.
- 4 Further to the explanation of these legal responsibilities, it is recommended that members familiarise themselves with the "Elected Members' Survival Kit 2010": which has been distributed for your information under separate cover.

CONSIDERATIONS

Issues

- 5 **The Local Government Official Information and Meetings Act (LGOIMA) 1987** applies to every local authority in New Zealand and has two main aspects. The first concerns "Official Information", its availability and the means of making it available. The second aspect deals with meetings of local authorities and their committees and in particular the rights of the public to attend such meetings. The Act is about open government and accountability.
- 6 Official Information – Official information which includes virtually all information held by a local authority, or by any of its members, or staff in their official capacities, should be made available unless there are good reasons for withholding it. "Good reasons" for withholding information are detailed in the Act and can be summarised as follows:

- Providing the information would contravene legal requirements, including:
 - breaching legal privilege;
 - prejudicing the maintenance of the law; or
 - endangering the health or safety of any persons.
 - The need to protect the privacy of natural persons;
 - To prevent material loss to members of the public or improper commercial exploitation of information held, whether related to the authority's activities or those of another party;
 - To protect the public interest;
 - To enable a local authority to conduct its affairs effectively without improper pressure or harassment;
 - The information requested is not available or is trivial;
 - Substantial collation or research would be required to provide the information.
- 7 Decisions made by Council regarding withholding information may be reviewed by the Ombudsman. The Chief Executive is delegated the powers relating to requests for Official or Personal Information (and there are specific rules dealing with these) as it would not be practical for Council to consider all such requests.
- 8 Meetings – Meetings of Council, its Committees and Community Boards are open to the public and Council must publish a list of all meetings, with times and place, in advance, each month. Agendas must also be available to the public before the meeting. The public may on occasion be excluded from all or part of a meeting for reasons essentially the same as the ones for withholding official information, as summarised above.
- 9 Secret Commissions Act 1910 – It is an offence for a Councillor or committee member to accept or attempt to obtain for themselves (or any other person) a gift, inducement or reward for doing or not doing something.
- 10 Crimes Act 1961 – Sections of the Crimes Act (99,105, 105A) make it a crime for any official to corruptly accept or obtain any bribe for themselves or another person for doing, or failing to do, an action within their official capacity; or to corruptly use information gained in their official capacity for their own gain.
- 11 The Securities Act 1978 – Provisions of this Act requires any entity raising funds from the public (including local authorities) to prepare, register and distribute a prospectus and an accompanying investment statement. The Council must ensure that it considers and complies with the Securities Act requirements if it decides to undertake retail fund-raising.
- 12 The Public Audit Act 2001 – this provides for the audit of public sector organisations and public entities (which includes local authorities) by the Controller and Auditor-General.

- 13 **Public Finance Act 1977** – This Act makes Councils and Councillors individually accountable for:
- Any unlawful expenditure;
 - Any liability incurred illegally;
 - Any wilful or negligent failure on the part of Council to collect money it is lawfully entitled to receive.
- 14 The defence against this charge is where a member can prove that the act or failure to act occurred:
- Without the member’s knowledge; or
 - If with the member’s knowledge, then against the member’s written protest made at, or before, the time when the action occurred, and delivered to the local authority, or recorded by the chairperson or clerk or secretary of the local authority; or
 - Being a party to the action, the member acted in good faith and in accordance with the written advice of the solicitors of the local authority.
- 15 It should be noted that according to the Local Authorities’ Loans Act 1956, where any voting on a matter under that Act is carried without division it shall be assumed that the voting thereon was unanimous.
- 16 **Local Authorities (Members’ Interests) Act 1968** – The two particularly significant sections of this Act relate to Contracting and Pecuniary Interests. A third consideration is Conflict of Interest. It is important to note that these provisions also relate to a member’s spouse or partner. (The Office of the Auditor General produces a booklet “Guidance for members of local authorities about the law on conflicts of interest”. You should have received a copy of this booklet.)
- 17 **Contracting** – Section 5 of this Act disqualifies a person from being elected or appointed to membership of a Council or Committee if they have an interest in contracts to be let by that Council or Committee above \$25,000, without the approval of the Audit Office.
- 18 **Voting and Discussion on Issues** – Regarding discussing and voting, an elected or appointed member may not take part in discussions, or vote on any matter if they have a direct or indirect financial interest. Failure to observe this requirement is considered an offence and conviction leads to disqualification from office. You must declare to the meeting that you have an interest (though you do not have to say why your interest exists) and it is the responsibility of the elected member to act on this matter.
- 19 **Conflict of Interest** – Situations sometimes arise where an elected member does not have a pecuniary interest but does have an interest greater than the public at large, for example, membership of a club or organisation which is to benefit in some way by a council decisions.
- 20 A Register of Members’ Interests is held at Council (coordinated by the Democratic Services Team Leader), and you will be asked every six months to

declare those interests which you feel should most appropriately be included in this Register.

Financial Considerations

21 There are no financial considerations associated with this report.

Legal Considerations

22 This report meets the provisions of the Local Government Act 2002 (Clause 21 of Schedule 7).

23 If any elected member is in doubt now, or in the future, about any of these matters, please feel free to seek clarification from the Chief Executive in the first instance.

Other Considerations

24 There are no consultation or policy considerations.

Publicity Considerations

25 The media is likely to be interested in any non-compliance by Elected Members in relation to the matters discussed in this report.

RECOMMENDATION

26 That members note the general explanation by the Chief Executive of laws affecting them pursuant to Schedule 7, Clause 21 of the Local Government Act 2002; that they abide by the provisions of those laws and that they familiarise themselves with the contents of the “Guidance for members of local authorities about the law on conflicts of interest” by the Office of the Auditor General and the Elected Members’ Survival Kit 2010 by Local Government New Zealand.

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