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Committee Secretariat

Governance and Administration Committee

Parliament Buildings

Wellington

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Tēnā koutou katoa

Local Government (Management of Local Authorities) Amendment Bill

1. The Kāpiti Coast District Council (Council) thanks the Committee for this opportunity to comment on the proposed **Local Government (Management of Local Authorities) Amendment Bill**.
2. Overall, our Council supports any clarification of roles between the governing body and the chief executive, that enable positive relationships between Local Authority Organisations and their governing bodies. Council is not convinced that a legislative remedy is required, or is sufficient by itself:
 - 2.1. While there have been occasions where relationships between governing bodies and chief executives have become strained, these appear to be specific and isolated cases, and
 - 2.2. In light of the 24 years since the Local Government Act 2002 (LGA) came into force, and the more than 80 councils that have continued to carry out their important stewardship role for their communities under the existing framework caution is needed before applying a broad legislative remedy.
 - 2.3. While recognising that councils have some board-like features, we note that corporate and not-for-profit analogies are not a complete fit for elected local government and suggest the Minister/ministry model may be a better fit.
 - 2.4. We would note that concerns raised with respect to elected members access to information are already being addressed in [the Local Government \(System Improvements\) Amendment Bill](#).
 - 2.5. We would raise that addressing the underlying issues that cause relationship challenges between elected members and a council organisation is likely to require a

broader suite of remedies such as training and practical mechanisms for seeking advice or support on governance processes or issues that arise.

3. Our specific comments on new or amended clauses, to the Local Government Act 2002, proposed by the Bill follow.

New section 41B(1): chief executive management subject to governing body direction or supervision

- 3.1. Council supports the clause as potentially strengthening democratic accountability and confirming that elected representatives retain ultimate oversight of council activities; however, we believe that tighter wording is required to avoid inconsistent interpretation across councils.
- 3.2. We are concerned that as currently worded the clause may:
 - 3.2.1. Blur the governance-management boundary. The Bill must ensure that any governing body power does not extend to the day-to-day management of council operations.
 - 3.2.2. Create operational interference risks and constrains the chief executive's capacity to provide professional and politically neutral management advice.

Council **recommends** that changes to the clause be made as follows:

- a. New section 41B(1) define "direction or supervision" as direction given by formal resolution of the governing body, rather than by individual members, and limits such direction or supervision to strategic, policy, priority-setting, performance, and accountability matters.
- b. Implementation is aided by statutory guidance or model protocols explaining how elected-member oversight should interact with delegations, staff management, regulatory independence, and chief executive employer obligations.

New section 41B(2): governing body powers to direct and supervise management

- 3.3. Council can support the clause as a practical accountability tool where management activity is misaligned with elected priorities or community expectations. However, we have concerns with the breadth of "all powers necessary", which could increase legal uncertainty, politicise operational decisions (particularly in the regulatory sphere of operations), and intensify conflict between elected members and staff.
 - 3.3.1. Understanding that the "all powers necessary" has been used to better align local authority governance with that of the corporate and not-for-profit sectors, Council would caution that councils are public bodies with legislative requirements that in some instances, require the independence of the chief executive. We highlight that:
 - 3.3.1.1. Unlike corporate entities and their boards, elected members of the governing body are not required to have any specific skills or capabilities in

the underlying legislative and public administration frameworks underpinning local authority rights, powers and responsibilities.

3.3.1.2. While the governing body is elected and accountable to its communities, and should drive the direction of council's business, a safeguard for the chief executives is required around actioning matters that are contrary to legislative requirements. Currently, the Bill does not explicitly cover this important facet.

3.3.1.3. Greater direction and supervision by the governing body would require a broader suite of remedies, including practical training and upskilling of elected members, and mechanisms for, and access to, practical, real world advice.

Council **recommends** that changes to the clause be made as follows:

- a. "all powers necessary" is replaced with a more targeted formulation, such as *powers reasonably necessary to exercise governance oversight and hold the chief executive accountable for implementation of governing body decisions*.
- b. the clause also expressly preserves statutory functions requiring independence, such as chief executive employer responsibilities, lawful delegations, procurement controls, privacy and confidentiality obligations, and regulatory decision-making processes, and
- c. an explicit safeguard is included providing for the chief executive not being required to follow direction contrary to legislative requirements, even by omission.

Section 42 amended by new subsection 42(3A): chief executive subject to governing body direction and supervision

3.4. Section 42 of the LGA already makes the chief executive accountable to the local authority for implementing decisions, advising members, managing the organisation effectively and efficiently, and maintaining appropriate systems.

3.5. Council will support a clause if it further clarifies that the chief executive must give effect to lawful governance direction and elected priorities. However, a more critical assessment of the current proposal is that the existing LGA framework already enables this direction through council decisions, delegations, performance expectations, and review, and that additional wording may duplicate or confuse existing accountability mechanisms.

3.6. The Bill as currently worded shifts accountability for defined responsibilities to an express supervisory relationship with the governing body. In practice, it is likely that this change could raise some risk in operational and policy matters. For example:

3.6.1. The Bill's broader policy rationale appears to be to align local authority governance and management more closely with corporate and not-for-profit models. This is problematic given that councils are public bodies with democratic mandates, consultation obligations, transparency

requirements, Treaty-related responsibilities, regulatory functions, and community accountability.

- 3.6.2. While this shift may clarify useful board-governance concepts, those concepts must be adapted to the public law setting of local government, specifically to the regulatory role that sits with the chief executive purposely to avoid real or perceived political interference. Any change in the character of the relationship between the governing body and chief executive needs to explicitly acknowledge this.
 - 3.6.3. The Bill should be explicit that any new or more clearly defined oversight relationship applies to the governing body collectively, and not to any individual council member, whether an ordinary councillor, committee chair, or the Mayor.
 - 3.6.4. The Bill as currently worded does not make any clear distinction between elected members who are members of the governing body, and elected members who may belong to a local board or community board. This distinction needs to be noted, as the right to direct and supervise the chief executive, if the proposal is to proceed, must only sit with the council itself, as the governing body or a group of elected members acting within their appropriate delegated authority from the governing body.
- 3.7. Council requests that the proposed wording be tested against employment law, chief executive performance management arrangements, and the collective role of the governing body.

Council **recommends** that changes to the clause be made as follows:

- a. If retained, subsection 42(3A) should specify that direction and supervision are exercised collectively by the governing body (or formally delegated subgroups thereof) through lawful decisions, agreed performance expectations, and documented delegations, and
- b. The clause state that it does not authorise individual members, of local boards or community boards and their members, to direct or supervise the chief executive or council staff and does not alter the chief executive's statutory responsibility for staff employment, organisational management, regulatory oversight and

Section 42 amended by new subsection 42(3B): elected members obtaining advice from others

- 3.8. From an integration perspective across the two main elements of the Bill, if the intent is to strengthen the governing body's ability to direct and supervise the activities of a local authority, the legislation should also make clear that elected members are entitled to receive information reasonably necessary to perform their governance responsibilities, subject to lawful restrictions relating to confidentiality, privacy, legal privilege and other statutory obligations.
- 3.9. The right should not extend to operational direction or management of staff. Rather, it should ensure that elected members are able to properly scrutinise proposals,

make informed decisions and hold the chief executive and organisation accountable.

3.10. However, Council notes that the Local Government (Systems Improvement) Amendment Bill already proposes amendments to the Local Government Act 2002 that appear to provide this strengthening. This raises questions about whether the current Bill is necessary.

3.11. At present, section 42 of the Local Government Act 2002 (LGA) identifies the chief executive's responsibility to advise members and local boards. We understand that currently:

3.11.1. Elected members are not excluded from seeking independent advice; or requesting that the Chief Executive procure independent advice on any matter.

3.11.2. Any Mayor of a governing body may set a budget for such matters. In Kāpiti for instance, there is budgetary provision for independent advice or advice to be shared with clear guidance around confidentiality and privilege.

3.11.3. Where information is legitimately withheld, the reasons for withholding it should be clearly identified and, where appropriate, the decision should be reviewable through an established process.

3.12. Council acknowledges that the proposed provision would make explicit a member's ability to seek advice outside the chief executive channel. Our Council agrees that independent advice can strengthen scrutiny, reduce over-reliance on a single official source, and help elected members test complex proposals. However, we are concerned that uncoordinated advice may:

3.12.1. Increase costs, which will not be budgeted for, and therefore impact rates in a period where rates capping discussions are also underway.

3.12.2. Fragment the advice base, and complicate decision-making.

3.12.3. Undermine officer accountability.

3.12.4. Create risks where independent advice is not quality-assured or available to all decision-makers.

3.12.5. Undermine the relationship the governing body has with the council organisation and staff.

3.13. As the proposal set out is current practice within our Council, we could support the clause, providing additional protocols are set out, or included in a schedule to the Act or in Regulation, to cover:

3.13.1. Procurement and cost control (who pays or authorises expenditure).

3.13.2. Conflicts of interest.

3.13.3. Confidentiality (independence and impartiality).

3.13.4. Legal privilege, and how advice is shared for decision-making.

3.14. Our Council requests that should this Bill proceed, that:

3.14.1. It is made clear that any new information or advice obtained by an individual elected member of the governing body, or a body making a decision, must be made available to all elected members, or members of the decision-making body, before decisions are made.

3.14.2. Where the information or advice is confidential under the Local Government Official Information and Meetings Act 1987 (LGOIMA), all elected members should be required to maintain that confidentiality.

3.14.3. Where the information or advice is not confidential, it should be made publicly available through appropriate meeting processes, such as inclusion in the relevant agenda, report, or minutes.

3.14.4. The LGOIMA should also be reviewed and amended as necessary to ensure it supports clear, consistent, and transparent handling of independently obtained advice.

4. The legislation (or supporting regulation) specifies who may commission and pay for the information or advice, and how payment is managed, to ensure it does not create any perceived proprietary or partisan advantage.

Council **recommends** that changes to the clause be made as follows:

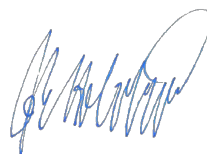
- a. The Bill retain the principle that elected members of the governing body may independently access external advice, but require each local authority to adopt a policy governing that access,
 - a. the policy cover who may commission advice, budget approval, procurement requirements, conflicts of interest and confidentiality, and
 - b. whether legal advice is privileged, how that advice is recorded and shared, and how competing advice is presented to the governing body, or decision-making body, before decisions are made.

5. We are happy to discuss our feedback on this matter.

Nāku iti nei, nā



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