



SOUTH WAIRARAPA DISTRICT COUNCIL

Kia Reretahi Tātau

Agenda

**ORDER PAPER FOR THE FIRST MEETING OF THE TRIENNIUM
TO BE HELD IN
Martinborough Hall, Texas Street
Martinborough
ON
30 October 2019**

**MEMBERSHIP OF COUNCIL
HIS WORSHIP THE MAYOR
Mr Alex Beijen**

Cr L Hay
Cr R Fox
Cr A Plimmer
Cr C Colenso
Cr B Jephson

Cr P Maynard
Cr G Emms
Cr B West
Cr R Vickery

**RECOMMENDATIONS IN REPORTS ARE NOT TO BE CONSTRUED AS
COUNCIL POLICY UNTIL ADOPTED BY COUNCIL**



**SOUTH WAIRARAPA
DISTRICT COUNCIL**
Kia Reretahi Tātau

SOUTH WAIRARAPA DISTRICT COUNCIL FIRST MEETING OF THE TRIENNIUM 2019-2022

NOTICE OF MEETING

The first meeting of the triennium will be held in Martinborough Hall, Texas Street, Martinborough on Wednesday 30 October 2019 from 4:00pm. The meeting will be held in public.

The format and business of this meeting is prescribed in Clause 21 of Part I of Schedule 7 of the Local Government Act 2002.

Elected members and members of the public to assemble outside the Martinborough Town Hall

- A. Powhiri

Elected members to sit in first three rows of the public gallery

Chief Executive Officer, Harry Wilson, assumes the Chair

- B. Kuranui College Kapa Haka Performance
C. Apologies
D. Declarations by the Mayor, councillors and community board members
- (Sample Attached)

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His Worship the Mayor assumes the Council Chair

Councillors to take a seat at the table

- F. Business in Accordance with Part 1 of Schedule 7 of the Local Government Act 2002
- F1. Mayoral Appointments (to be tabled)
 - F2. Laws Affecting Elected Members Pages 3-34
 - F3. Fixing of date and time for first ordinary meetings (Adoption of the 2019 Schedule of Ordinary Meetings) Pages 35-39

Councillors return to the public gallery

Chief Executive Officer, Harry Wilson, assumes the Chair

Martinborough Community Board members take a seat at the table

- G. Business in Accordance with Part 1 of Schedule 7 of the Local Government Act 2002
 - G1. Election of Chairperson and Deputy Chairperson Pages 40-43
 - G2. Laws Affecting Elected Members Pages 3-34
 - G3. Fixing of date and time for first ordinary meeting (Adoption of the 2019 Schedule of Ordinary Meetings) Pages 35-39

Martinborough Community Board members return to the public gallery

Chief Executive Officer, Harry Wilson, assumes the Chair

Featherston Community Board members take a seat at the table

- H. Business in Accordance with Part 1 of Schedule 7 of the Local Government Act 2002
 - H1. Election of Chairperson and Deputy Chairperson Pages 40-43
 - H2. Laws Affecting Elected Members Pages 3-34
 - H3. Fixing of date and time for first ordinary meeting (Adoption of the 2019 Schedule of Ordinary Meetings) Pages 35-39

Featherston Community Board members return to the public gallery

Chief Executive Officer, Harry Wilson, assumes the Chair

Greytown Community Board members take a seat at the table

- I. Business in Accordance with Part 1 of Schedule 7 of the Local Government Act 2002
 - I1. Election of Chairperson and Deputy Chairperson Pages 40-43
 - I2. Laws Affecting Elected Members Pages 3-34
 - I3. Fixing of date and time for first ordinary meeting (Adoption of the 2019 Schedule of Ordinary Meetings) Pages 35-39

Greytown Community Board members return to the public gallery



**SOUTH WAIRARAPA
DISTRICT COUNCIL**
Kia Reretahi Tātau

DECLARATION

I *[full name of mayor, councillor or board member]* 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 South Wairarapa district the powers, authorities, and duties vested in or imposed upon me as a member of the **SOUTH WAIRARAPA DISTRICT COUNCIL** by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987 (LGOIMA), or any other Act.

Dated at Martinborough this 30th day of October 2019

Signature.....

Signed in the Presence of:

.....
Harry Wilson, Chief Executive Officer

LAWS AFFECTED ELECTED MEMBERS

Purpose of Report

To provide a general explanation of some of the laws that regulate the conduct of elected members.

Recommendations

Officers recommend that the Council/community boards:

1. *Receive the Laws Affecting Elected Members Report.*
2. *Note the laws and obligations affecting elected representatives.*

1. SIGNIFICANCE

The matters for decision in this report are not considered to be of significance under the Council's Significance and Engagement Policy.

2. BACKGROUND

The Local Government Act 2002 requires that, at the first meeting of the Council following a triennial general election, the chief executive must give or arrange for a general explanation of certain laws affecting elected members.

Below is a summary of the key legislation that is relevant to the conduct of Councillors in relation to legal liability. Summarised are also the Local Government Act 2002 and Local Government Official Information and Meetings Act 1987 where they address with the role and function of the Council and councillors, and with the conduct of meetings.

The governance and management provisions of the Local Government Act, relevant to members' conduct, are in Appendix 2.

3. LAWS AND OBLIGATIONS RELATING TO MEMBERS' LEGAL OBLIGATIONS

There are certain legal provisions that councillors must be aware of because breaching the rules can have the consequence of loss of office, fines, or imprisonment. These provisions are contained in the:

- Secret Commissions Act 1910;
- Crimes Act 1961;
- Local Authorities (Members' Interests) Act 1968;
- Financial Markets Conduct Act 2013;
- Health and Safety at Work Act 2015; and
- Public Records Act 2005.

The following is a summary of these enactments.

3.1 Secret Commissions Act 1910

The Secret Commissions Act 1910 deems every councillor to be an agent of the Council (section 16(1)(b)). It creates offences in relation to accepting inducements or rewards for doing or forbearing to do something in relation to the Council's affairs or showing or having shown favour or disfavour to any person in relation to the Council's affairs or business (section 4(1)).

It is an offence, similarly, to divert, obstruct, or interfere with the proper course of the affairs or business of the Council, or to fail to use due diligence in the prosecution of its affairs or business, with intent to obtain any gift or other consideration from any person interested in the affairs or business of the Council (section 4(2)).

Section 5 of the Act makes it an offence for a member not to disclose to the Council his or her pecuniary interest (which includes the pecuniary interest of a parent, spouse/partner, or child) in a contract when making a contract on behalf of the Council (see also the discussion of the Local Authorities (Members' Interests) Act 1968 below). Section 9 of the Act makes it an offence to aid or abet, or to be in any way directly or indirectly concerned in, or privy to, the commission of any offence against the Act.

Conviction of an offence under the Act carries with it the possibility of imprisonment for up to two years, or a fine not exceeding \$1,000. Such conviction may also have the consequence of loss of office, in terms of clause 1 of Schedule 7 of the Local Government Act 2002.

3.2 Crimes Act 1961

The Crimes Act 1961 is relevant to Councillors as it deals with bribery and corruption. Councillors are within the definition of an "official" in section 99 of the Crimes Act. Section 105 of that Act provides that every official is liable to imprisonment for a term not exceeding seven years who, whether within New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for him or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in an official capacity.

Putting this simply, it is an offence against this section to seek or obtain a reward for performing one's official duties as a councillor.

Section 105A then goes on to make it an offence, once again carrying a term of imprisonment of up to seven years, for an official to use any information acquired by him or her in an official

capacity to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself, or any other person.

3.3 Local Authorities (Members' Interests) Act 1968

The Local Authorities (Members' Interests) Act 1968 is an important statute governing the conduct of councillors. It has two main aspects. The first is the prohibition of certain contracts between local authorities and their members. The second prevents voting on or discussing questions in which a member has a pecuniary interest.

As to the first aspect, the Act provides that no-one may be elected or appointed or be a member of a local authority or of any committee of it, if the total payments to be made by the Council in respect of contracts made by it with that person exceeds \$25,000 (GST incl) in any year (section 3(1)).

The Act covers contracts made by the Council directly with the person concerned, and also contracts made by the Council in which the councillor is concerned or interested. Special provisions deal with companies in which a member or his or her spouse/partner is interested either as a shareholder, or as a member of the company, or by virtue of certain management positions.

There are a number of exceptions to this rule but, in case of any doubt, a councillor should refer the matter to the Office of the Auditor-General or seek independent legal advice. The penalty for breach of these provisions (which are contained in section 3 of the Act) is immediate loss of office (section 4) and there is also the possibility of a fine being imposed (section 5).

Section 6(1) of the Act prohibits a member of a local authority or of a committee of it from voting on, or taking part in the discussion of any matter before the governing body of that local authority or before that committee in which he or she has, directly or indirectly, any pecuniary interest, other than an interest in common with the public. Once again, there are special provisions dealing with a pecuniary interest in the context of the interests of the member or his or her spouse/partner in a company.

The Office of the Auditor-General is empowered to declare that the rule will not apply with respect to any specified matter or specified class of matter on particular occasions. In doing so, it must act in the interests of the electors or inhabitants of the district. The penalty for discussing or voting when there is a pecuniary interest is, once again, loss of office, but only upon conviction of an offence (section 7).

Related to these statutory provisions is the common law principle of natural justice, which includes obligations to listen to both sides and not to be a judge in one's own cause.

3.4 Securities Act 1978

The Council has wide borrowing powers under Part 6 of the Local Government Act 2002. One of the ways the Council can borrow is by issuing stock or other forms of debt instruments. If such debt instruments are offered to the public, the Council must comply with the Securities Act.

What constitutes “offering to the public” is given a very wide meaning (section 3 of the Securities Act). The Securities Act regulates the offering of securities to the public. Local authority debt instruments are securities for the purposes of the Act. If the Council intends offering its debt instruments to the public it will have to produce a prospectus and an investment statement complying with the requirements of the Securities Act and the Securities Regulations 1983.

In addition, any advertisements relating to the offer will have to comply with certain requirements imposed by the Securities Act governing the advertising of public offers of securities. Certificates would also have to be issued to investors, and certain information relating to the Council and the securities would have to be sent periodically to the holders of the Council’s securities.

The Securities Act contains wide provisions establishing civil liability and criminal offences where a member of the public purchasing securities relies on untrue statements made in an advertisement (including an investment statement) or in a registered prospectus. In addition, there are general offences which apply to persons who do not otherwise comply with the provisions of the Act.

Elected members are deemed “directors” of the local authority for the purposes of the Securities Act and the Regulations made under it. As such, they are potentially personally liable to investors if a registered prospectus or an investment (including an investment statement) contains an untrue statement. Members may also be criminally liable if the requirements of the Act or Regulations are not met. Some offences carry penalties that would also give rise to disqualification from office.

3.5 Financial Markets Conduct Act 2013

Under the Financial Markets Conduct Act 2013 elected members are essentially 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. Elected members may also be liable if the requirements of the Act are not met in relation to offers of financial products.

3.6 Health and Safety at Work Act 2015

The Health and Safety at Work Act 2015 sets up a regime for protecting the health and safety of people in work places that is quite different to the previous legislation. Under the Act elected members are “officers” and as such have obligations and responsibilities which are the same as the Chief Executive (also an “officer” under the act). While Councillors do not have the same liabilities (i.e. penalties if they do not meet those obligations) it is important that Councillors make themselves aware of the measures the organisation has in place for managing health and safety and satisfies themselves that the council organisation is doing what is appropriate to meet the requirements of the Act.

Elected members have been given a briefing on Health and Safety at Work Act in their induction.

3.7 Public Records Act 2005

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.

4. COUNCILLORS' PERSONAL LIABILITY

Generally speaking, councillors are indemnified in respect of their actions as a councillor. Section 43 of the Local Government Act 2002 provides for this indemnity (by the Council) in relation to:

- civil liability (both for costs and damages) if the councillor is acting in good faith and in pursuance (or intended pursuance) of the responsibilities or powers of the Council; and
- costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a councillor.

However, there is a potential personal exposure on the part of councillors in certain circumstances - where the Auditor-General has reported on a "loss" incurred by the Council, for which the Council has not been compensated (sections 44 to 46). The loss must arise out of one of the following actions or omissions:

- money belonging to, or administrable by, the Council being unlawfully expended; or
- an asset being unlawfully sold or otherwise disposed of by the Council; or
- a liability being unlawfully incurred by the Council; or
- the Council intentionally or negligently failing to enforce the collection of money it is lawfully entitled to receive.

If the Auditor-General has made such a report, then that loss is recoverable as a debt due to the Crown (which in turn must be paid back to the Council) from each councillor jointly and severally. Therefore, elected members should always be alert to ensure that their decision-making is within the bounds of the law. However, a councillor has a defence to such a claim if he or she can prove that the act or failure giving rise to the loss occurred:

- without the councillor's knowledge; or
- with the councillor's knowledge but against his or her protest made at or before the time when the loss occurred; or
- contrary to the manner in which the councillor voted on the issue at a meeting of the Council; or
- in circumstances where, although being a party to the act or failure to act, the councillor acted in good faith and in reliance on reports, statements, financial data, or other information prepared or supplied, or on professional or expert advice given, by any Council officer or professional advisor in relation to matters which the councillor believed on reasonable grounds to be within that person's competency.

5. CODE OF CONDUCT

The Council has a Code of Conduct for Councillors (as required by clause 15 of Schedule 7 of the Local Government Act 2002). The Code of Conduct sets out (amongst other things) understandings and expectations about the manner in which councillors may conduct themselves while acting as councillors, including behaviour toward one another, staff, the public, and the disclosure of information. Under clause 15(4), councillors must comply with the Code.

The Council will consider the Code of Conduct following the induction.

6. NON-PECUNIARY CONFLICTS OF INTEREST

While the Local Authority (Members' Interests) Act 1968 deals with pecuniary interests, there are also legal rules about conflicts of interest, more generally, which apply to non-pecuniary conflicts of interest. Of key significance is the matter of bias – this is not limited to actual bias, but also relates to the appearance or possibility of bias. Situations of non-pecuniary bias commonly involve predetermination of a matter before hearing all relevant information or a close relationship or involvement with an individual or an organisation affected by the matter.

Detailed guidance on the laws on conflict of interest is contained in the Controller and Auditor-General's publication *Guidance for members of local authorities about the law on conflicts of interest*.

At the commencement of each meeting councillors are expected to declare any conflicts of interest. A declaration may be in relation to a pecuniary interest (other than an interest in common with the public) or a non-pecuniary interest giving rise to a risk of bias. Councillors

are advised to read Order Papers before a meeting to see whether they have an interest in any matters that are to be discussed or voted on. If there are, councillors should, if possible, advise the relevant chairperson before the meeting starts that they are going to declare an interest in a particular matter. Once a conflict is declared, the councillor will be required to abstain from discussion and voting and should leave the meeting for that item. In declaring a conflict of interest, a councillor is not required to inform the meeting about the nature of the interest or why it exists.

7. OFFICIAL INFORMATION

The Local Government Official Information and Meetings Act 1987 governs the custody and release of official information. The fundamental principle in the Act is that information held by the Council is publicly available, unless one or more specified withholding grounds apply.

The Act also deals with local authority meetings, in Part VII. There are a number of important points in this latter part of the Act, namely:

- The Act states the grounds upon which the public may be excluded from meetings (section 48). That may generally only occur when good reason to withhold information exists, and there is a statutory definition of that concept in sections 6 and 7 of the Act. In addition, the public may be excluded where the subject matter of discussion is one in respect of which a right of appeal exists to any Court or Tribunal against the decision made by the Council (section 48(2)).
- In excluding the public, the Council must make a resolution (in the form set out at Schedule 2A to the Act) stating the subject of each matter to be considered while the public is excluded, and the reasons must be given for excluding the public, in terms of the statutory grounds.
- Chairpersons at meetings may require members of the public to leave a meeting if the behaviour of the person concerned is likely to prejudice or continue to prejudice the orderly conduct of the meeting (section 50).
- If a meeting is open to the public, and an agenda is supplied to a member of the public or the minutes of a meeting are produced for inspection by any member of the public after the conclusion of the meeting, any defamatory matter which is published in this way is to be treated as privileged, unless the publication was predominantly motivated by ill will (section 52). Oral statements made at meetings of the Council are also privileged, unless the statement is proved to be predominantly motivated by ill will (section 53). Ordinarily, a statement that is “privileged” cannot support a cause of action for defamation (even though that statement might be untrue or misleading).
- Items which are not on an agenda for a meeting may be dealt with if the meeting resolves to do so and the chairperson explains in open meeting why the item is not

on the agenda and why consideration of it cannot be delayed to a subsequent meeting (section 46A(7)).

If the item is a minor matter relating to the general business of the Council then it may be discussed without the meeting having resolved to do so, so long as the chair explains at the beginning of the meeting, and when it is open to the public, that the item will be discussed; but in that case no resolution, decision or recommendation may be made except to refer the item to a subsequent meeting for further discussion (section 46A (7A)).

8. PURPOSE, ROLE AND POWERS OF THE COUNCIL

Because it underpins everything that the Council, and thus the elected members do, it is useful to briefly describe the general statutory framework within which the Council operates. Relevant sections of the Local Government Act are in Appendix 1.

8.1 General statutory framework

The Local Government Act 2002 sets out the following purpose of local government (section 10):

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and*
- (b) to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.*

In this context, good-quality, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are—

- efficient; and
- effective; and
- appropriate to present and anticipated future circumstances.

The Council's role is to give effect to that purpose of local government in relation to its district and to perform the duties and exercise the rights conferred on it by law (section 11). The Council is responsible and democratically accountable for the decision-making of the local authority (section 41(3)).

Except where another law provides otherwise, the Council has full capacity to carry on or undertake any activity or business, or do any act, or enter into any transaction (section 12(2)). However, the Council must exercise its powers wholly or principally for the benefit of the district (section 12(4)). That does not prevent two or more councils engaging in joint or co-operative activities (section 12(6)).

In performing its role, a Council must act in accordance with certain principles in section 14 of the Local Government Act 2002. In addition, section 39 of that Act sets out governance principles that apply to councils.

The text of sections 14 and 39 is attached to this report.

When making decisions, the Council must comply with the decision-making requirements set out in Part 6 of the Act. Under Part 6, local authorities are required to confirm their mandate from their communities through various forms of consultation, especially in relation to the Long Term Plan and Annual Plan process and for other significant decisions.

8.2 Comparative Roles of the Council and the Chief Executive/Council staff

This is a brief summary of the legal provisions relevant to the respective roles of the Council and the Chief Executive.

Section 42(1) of the Local Government Act 2002 requires the Council to appoint a Chief Executive. The Chief Executive's responsibilities are set out in subsection (2), as follows:

- i. implementing the Council's decisions;
- ii. providing advice to members of the Council;
- iii. ensuring that all responsibilities, duties and powers delegated to him or her or to any person employed by the Council, or imposed or conferred by an Act, regulation or bylaw are properly performed or exercised;
- iv. ensuring the effective and efficient management of the Council's activities;
- v. maintaining systems to enable effective planning and accurate reporting of the Council's financial and service performance;
- vi. providing leadership for the Council's staff;
- vii. employing staff, on behalf of the Council; and
- viii. negotiating the terms of employment of the Council's staff.

The Council's role is limited to the appointment of the Chief Executive; all other appointments are for the Chief Executive to make, on the Council's behalf.

Overall, section 42 demonstrates a legislative intent that the Chief Executive should be responsible for managing, with the staff he or she appoints, the affairs of the Council. Although the dividing line will sometimes be difficult to draw, the Council's role should be in governance and in particular the establishment of policy and associated decision-making. Actual implementation of Council decisions, administration, and management should be in the hands of the Chief Executive and staff.

8.3 The Council's Planning Process and Consultation

The Local Government Act 2002 requires the Council to adopt a number of planning and other policy and financial management documents.

The principal planning document is the long term plan (LTP) which covers a period of at least 10 years and is reviewed every three years. The LTP can be amended at any time, but this requires use of the special consultative procedure (see below). In addition, prior to the beginning of each financial year the Council must have adopted an annual plan for that year (although for those years where a new LTP is adopted, the financial statement and funding impact statement included in the LTP in relation to the first year is the annual plan (section 95(4)).

Under section 97 of the Local Government Act 2002, certain decisions may only be made if they are provided for in the LTP. These are:

- (a) a decision to alter significantly the intended level of service provision for a significant activity carried out by or on behalf of the Council (including a decision to commence or cease any such activity);
- (b) a decision to transfer the ownership or control of a strategic asset to or from the Council;
- (c) a decision to construct, replace, or abandon a strategic asset; and
- (d) a decision that will, directly or indirectly, significantly affect the capacity of the Council, or the cost to the Council, in relation to any activity identified in the LTP.

Strategic assets are defined in the Act, partly by reference to assets listed in the Council's policy on significance.

The LTP must set out any steps that the Council intends to take to develop Māori capacity to contribute to the decision making process over the period covered by the plan (Schedule 10, section 5).

The LTP and the annual plan, as well as some other formal policy documents must be adopted using the special consultative procedure (SCP). This procedure is also required for, amongst other things, the adoption or amendment of bylaws, and where there is a proposed change in the mode of delivery of certain significant activities. The SCP involves:

- preparation of a statement of proposal, which must be included on the agenda for a meeting of the Council;
- preparation and distribution of a summary of that proposal;
- public notice;
- the opportunity for the public to make submissions and to be heard in relation to that submission; and
- deliberation and the making of a final decision on the proposal.

Court decisions relating to "consultation" have stressed that bodies or persons having a statutory obligation to consult must go into the process with an open mind, that is, a mind capable of persuasion having fairly considered the submissions.

In addition, and quite apart from those decisions requiring use of the SCP, the Local Government Act 2002 contains detailed provisions which govern more generally the Council's required approach to decision-making and consultation. These include the requirement to consider community views (section 78), and to encourage Māori contributions to the decision-making process (section 81).

9. Appendices

Appendix 1: Sections 9 – 19 Local Government Act 2002

Appendix 2: Sections 38 – 48 Local Government Act 2002

Contact Officer: Harry Wilson, Chief Executive

**Appendix 1 - Sections 9 – 19 Local Government Act
2002**

Part 2 Purpose of local government, and role and powers of local authorities

9 Outline of Part

This Part—

- (a) states the purpose of local government; and
- (b) states the role and powers of local authorities.

Subpart 1—Purpose of local government

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.

Subpart 2—Role of local authorities and related matters

11 Role of local authority

The role of a local authority is to—

- (a) give effect, in relation to its district or region, to the purpose of local government stated in section 10; and
- (b) perform the duties, and exercise the rights, conferred on it by or under this Act and any other enactment.

12 Status and powers

- (1) A local authority is a body corporate with perpetual succession.
- (2) For the purposes of performing its role, a local authority has—
 - (a) full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction; and
 - (b) for the purposes of paragraph (a), full rights, powers, and privileges.

- (3) Subsection (2) is subject to this Act, any other enactment, and the general law.
- (4) A territorial authority must exercise its powers under this section wholly or principally for the benefit of its district.
- (5) A regional council must exercise its powers under this section wholly or principally for the benefit of all or a significant part of its region, and not for the benefit of a single district.
- (6) Subsections (4) and (5) do not—
 - (a) prevent 2 or more local authorities engaging in a joint undertaking, a joint activity, or a co-operative activity; or
 - (b) prevent a transfer of responsibility from one local authority to another in accordance with this Act; or
 - (c) restrict the activities of a council-controlled organisation; or
 - (d) prevent a local authority from making a donation (whether of money, resources, or otherwise) to another local authority or to a person or organisation outside its district or region or outside New Zealand—
 - (i) if the local authority considers, on reasonable grounds, that the donation will benefit its district or region, or the communities within its district or region; or
 - (ii) if the local authority considers, on reasonable grounds, that a benefit will be conferred on the local government sector as a whole; or
 - (iii) for emergency relief; or
 - (e) prevent a local authority from making a donation (whether of money, resources, or otherwise) to a local government body outside New Zealand to enable it to share its experience and expertise with that body.

13 Performance of functions under other enactments

Sections 10 and 12(2) apply to a local authority performing a function under another enactment to the extent that the application of those provisions is not inconsistent with the other enactment.

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).

Subpart 3—Co-ordination of responsibilities of local authorities

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.

16 Significant new activities proposed by regional council

- (1) This section applies if,—
- (a) in the exercise of its powers under section 12(2), a regional council proposes to undertake a significant new activity; or
 - (b) a regional council-controlled organisation proposes to undertake a significant new activity; and
 - (c) in either case, 1 or more territorial authorities in the region of the regional council—
 - (i) are already undertaking the significant new activity; or
 - (ii) have notified their intention to do so in their long-term plans or their annual plans.
- (2) When this section applies, the regional council—
- (a) must advise all the territorial authorities within its region and the Minister of the proposal and the reasons for it; and
 - (b) must include the proposal in the consultation document referred to in section 93A.
- (3) A proposal included in the consultation document referred to in section 93A must include—
- (a) the reasons for the proposal; and
 - (b) the expected effects of the proposal on the activities of the territorial authorities within the region; and
 - (c) the objections raised by those territorial authorities, if any.

- (4) If, after complying with subsection (2), the regional council indicates that it intends to continue with the proposal, but agreement is not reached on the proposal among the regional council and all of the affected territorial authorities, either the regional council or 1 or more of the affected territorial authorities may submit the matter to mediation.
- (5) Mediation must be by a mediator or a mediation process—
 - (a) agreed to by the relevant local authorities; or
 - (b) in the absence of an agreement, as specified by the Minister.
- (6) If mediation is unsuccessful, either the regional council or 1 or more affected territorial authorities may ask the Minister to make a binding decision on the proposal.
- (7) Before making a binding decision, the Minister must—
 - (a) seek and consider the advice of the Commission; and
 - (b) consult with other Ministers whose responsibilities may be affected by the proposal.
- (8) This section does not apply to—
 - (a) a proposal by a regional council to establish, own, or operate a park for the benefit of its region; or
 - (b) a proposal to transfer responsibilities; or
 - (c) a proposal to transfer bylaw-making powers; or
 - (d) a reorganisation application under Schedule 3; or
 - (e) a proposal to undertake an activity or enter into an undertaking jointly with the Crown.
- (9) For the purposes of this section,—

affected territorial authority means a territorial authority—

 - (a) the district of which is wholly or partly in the region of a regional council; and
 - (b) that undertakes, or has notified in its long-term plan or annual plan its intention to undertake, the significant new activity

annual plan—

- (a) means a report adopted under section 223D of the Local Government Act 1974; and
- (b) includes such a report that section 281 applies to

new activity—

- (a) means an activity that, before the commencement of this section, a regional council was not authorised to undertake; but
- (b) does not include an activity authorised by or under an enactment

regional council-controlled organisation means a council-controlled organisation that is—

- (a) a company—
 - (i) in which equity securities carrying 50% or more of the voting rights at a meeting of the shareholders of the company are—
 - (A) held by 1 or more regional councils; or
 - (B) controlled, directly or indirectly, by 1 or more regional councils; or
 - (ii) in which 1 or more regional councils have the right, directly or indirectly, to appoint 50% or more of the directors of the company; or
- (b) an organisation in respect of which 1 or more regional councils have, whether or not jointly with other regional councils or persons,—
 - (i) control, directly or indirectly, of 50% or more of the votes at any meeting of the members or controlling body of the organisation; or
 - (ii) the right, directly or indirectly, to appoint 50% or more of the trustees, directors, or managers (however described) of the organisation.

17 Transfer of responsibilities

- (1) A regional council may transfer 1 or more of its responsibilities to a territorial authority in accordance with this section.
- (2) A territorial authority may transfer 1 or more of its responsibilities to a regional council in accordance with this section.
- (3) A transfer of responsibilities under this section must be made by agreement between the local authorities concerned and may be on the terms and conditions that are agreed between them.

- (4) A local authority may not agree to transfer a responsibility or agree to accept a transfer of a responsibility under this section unless it is satisfied, following consultation in accordance with section 82, that the benefits of the proposed transfer to its district or region will outweigh any negative impacts of the proposal.
- (5) A local authority must notify the Minister of its intention to transfer a responsibility or accept a transfer of responsibility under this section.
- (6) From the time a transfer takes effect, the responsibilities and powers of the local authority receiving the transfer are extended as necessary to enable the local authority to undertake, exercise, and perform the transferred responsibilities.
- (7) If a transfer of responsibilities has been made, either local authority that was a party to the transfer may, through the process set out in subsections (3) to (6), initiate—
 - (a) a variation of the terms of the transfer; or
 - (b) the reversal of the transfer.
- (8) In this section, responsibility means any responsibility, duty, or legal obligation except a responsibility, duty, or legal obligation conferred by or under any other Act, and includes—
 - (a) a responsibility that has previously been transferred under this section; and
 - (b) any powers associated with the responsibility, duty, or legal obligation.
- (9) Nothing in this section limits the ability of a local authority to—
 - (a) delegate the exercise of any responsibility to another local authority; or
 - (b) enter into a contractual agreement with another local authority for the performance of any activity or function.

17A Delivery of services

- (1) A local authority must review the cost-effectiveness of current arrangements for meeting the needs of communities within its district or region for good-quality local infrastructure, local public services, and performance of regulatory functions.
- (2) Subject to subsection (3), a review under subsection (1) must be undertaken—
 - (a) in conjunction with consideration of any significant change to relevant service levels; and

- (b) within 2 years before the expiry of any contract or other binding agreement relating to the delivery of that infrastructure, service, or regulatory function; and
 - (c) at such other times as the local authority considers desirable, but not later than 6 years following the last review under subsection (1).
- (3) Despite subsection (2)(c), a local authority is not required to undertake a review under subsection (1) in relation to the governance, funding, and delivery of any infrastructure, service, or regulatory function—
- (a) to the extent that the delivery of that infrastructure, service, or regulatory function is governed by legislation, contract, or other binding agreement such that it cannot reasonably be altered within the following 2 years; or
 - (b) if the local authority is satisfied that the potential benefits of undertaking a review in relation to that infrastructure, service, or regulatory function do not justify the costs of undertaking the review.
- (4) A review under subsection (1) must consider options for the governance, funding, and delivery of infrastructure, services, and regulatory functions, including, but not limited to, the following options:
- (a) responsibility for governance, funding, and delivery is exercised by the local authority:
 - (b) responsibility for governance and funding is exercised by the local authority, and responsibility for delivery is exercised by—
 - (i) a council-controlled organisation of the local authority; or
 - (ii) a council-controlled organisation in which the local authority is one of several shareholders; or
 - (iii) another local authority; or
 - (iv) another person or agency:
 - (c) responsibility for governance and funding is delegated to a joint committee or other shared governance arrangement, and responsibility for delivery is exercised by an entity or a person listed in paragraph (b)(i) to (iv).
- (5) If responsibility for delivery of infrastructure, services, or regulatory functions is to be undertaken by a different entity from that responsible for governance, the entity that is responsible for governance must ensure that there is a contract or other binding agreement that clearly specifies—
- (a) the required service levels; and

- (b) the performance measures and targets to be used to assess compliance with the required service levels; and
 - (c) how performance is to be assessed and reported; and
 - (d) how the costs of delivery are to be met; and
 - (e) how any risks are to be managed; and
 - (f) what penalties for non-performance may be applied; and
 - (g) how accountability is to be enforced.
- (6) Subsection (5) does not apply to an arrangement to the extent that any of the matters specified in paragraphs (a) to (g) are—
- (a) governed by any provision in an enactment; or
 - (b) specified in the constitution or statement of intent of a council-controlled organisation.
- (7) Subsection (5) does not apply to an arrangement if the entity that is responsible for governance is satisfied that—
- (a) the entity responsible for delivery is a community group or a not-for-profit organisation; and
 - (b) the arrangement does not involve significant cost or risk to any local authority.
- (8) The entity that is responsible for governance must ensure that any agreement under subsection (5) is made publicly available.
- (9) Nothing in this section requires the entity that is responsible for governance to make publicly accessible any information that may be properly withheld if a request for that information were made under the Local Government Official Information and Meetings Act 1987.

18 Responsibilities, powers, and duties of Minister

(1) The responsibilities, powers, and duties conferred or imposed on the Minister of Internal Affairs by any of the Acts specified in [Schedule 1](#), or by any regulations, rules, orders, or bylaws made under any of those Acts, must be exercised or performed by the Minister.

(2) The Governor-General may, by Order in Council, amend [Schedule 1](#) to add or delete any Act.

19 Secretary

The responsibilities, powers, and duties conferred on the Secretary for Internal Affairs by any of the Acts specified in [Schedule 1](#), or by any regulations, rules, orders, or bylaws made under any such Act, must be exercised or performed by the Secretary for Local Government.

Appendix 2 - Sections 38 – 48 Local Government Act 2002

38 Outline of Part

This Part—

(a) identifies the principles and requirements for the governance and management of local authorities; and

(b) provides for the establishment of community boards and their governance arrangements.

Subpart 1—Local authorities

Governance and management

39 Governance principles

A local authority must act in accordance with the following principles in relation to its governance:

(a) a local authority should ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community; and

(b) a local authority should ensure that the governance structures and processes are effective, open, and transparent; and

(c) a local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relation to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities; and

(d) a local authority should be a good employer; and

(e) a local authority should ensure that the relationship between elected members and management of the local authority is effective and understood.

40 Local governance statements

(1) A local authority must prepare and make publicly available, following the triennial general election of members, a local governance statement that includes information on—

(a) the functions, responsibilities, and activities of the local authority; and

(b) any local legislation that confers powers on the local authority; and

(ba) the bylaws of the local authority, including for each bylaw, its title, a general description of it, when it was made, and, if applicable, the date of its last review under [section 158](#) or [159](#); and

(c) the electoral system and the opportunity to change it; and

(d) representation arrangements, including the option of establishing Māori wards or constituencies, and the opportunity to change them; and

(e) members' roles and conduct (with specific reference to the applicable statutory requirements and code of conduct); and

(f) governance structures and processes, membership, and delegations; and

(g) meeting processes (with specific reference to the applicable provisions of the [Local Government Official Information and Meetings Act 1987](#) and standing orders); and

(h) consultation policies; and

(i) policies for liaising with, and memoranda or agreements with, Māori; and

(j) the management structure and the relationship between management and elected members; and

(ja) the remuneration and employment policy, if adopted; and

(k) equal employment opportunities policy; and

(l) key approved planning and policy documents and the process for their development and review; and

(m) systems for public access to it and its elected members; and

(n) processes for requests for official information.

(2) A local authority must comply with subsection (1) within 6 months after each triennial general election of members of the local authority.

41 Governing bodies

(1) A regional council must have a governing body consisting of—

(a) members elected in accordance with the [Local Electoral Act 2001](#); and

(b) a chairperson elected by members of the regional council in accordance with [clause 25](#) of Schedule 7.

(2) A territorial authority must have a governing body consisting of members and a mayor elected in accordance with the [Local Electoral Act 2001](#).

(3) A governing body of a local authority is responsible and democratically accountable for the decision-making of the local authority.

(4) A chairperson of a regional council, or a mayor of a territorial authority, is a Justice of the Peace during the time that he or she holds the office of chairperson or mayor.

(5) An employee of a local authority who is elected to be a member of the local authority's governing body must resign from his or her position as an employee of the local authority before taking up his or her position as a member of the local authority.

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), and, for that purpose, a mayor—

(i) may make the appointment before the other members of the committee are determined; and

(ii) may appoint himself or herself.

(4) However, nothing in subsection (3) limits or prevents a territorial authority from—

(a) removing, in accordance with [clause 18](#) of Schedule 7, a deputy mayor appointed by the mayor under subsection (3)(a); or

(b) discharging or reconstituting, in accordance with [clause 30](#) of Schedule 7, a committee established by the mayor under subsection (3)(b); or

(c) appointing, in accordance with [clause 30](#) of Schedule 7, 1 or more committees in addition to any established by the mayor under subsection (3)(b); or

(d) discharging, in accordance with [clause 31](#) of Schedule 7, a chairperson appointed by the mayor under subsection (3)(c).

(5) A mayor is a member of each committee of a territorial authority.

(6) To avoid doubt, a mayor must not delegate any of his or her powers under subsection (3).

(7) To avoid doubt,—

(a) [clause 17\(1\)](#) of Schedule 7 does not apply to the election of a deputy mayor of a territorial authority unless the mayor of the territorial authority declines to exercise the power in subsection (3)(a):

(b) [clauses 25](#) and [26\(3\)](#) of Schedule 7 do not apply to the appointment of the chairperson of a committee of a territorial authority established under subsection (3)(b) unless the mayor of the territorial authority declines to exercise the power in subsection (3)(c) in respect of that committee.

42 Chief executive

(1) A local authority must, in accordance with [clauses 33](#) and [34](#) of Schedule 7, appoint a chief executive.

(2) A chief executive appointed under subsection (1) is responsible to his or her local authority for—

(a) implementing the decisions of the local authority; and

(b) providing advice to members of the local authority and to its community boards, if any; and

(c) ensuring that all responsibilities, duties, and powers delegated to him or her or to any person employed by the local authority, or imposed or conferred by an Act, regulation, or bylaw, are properly performed or exercised; and

(d) ensuring the effective and efficient management of the activities of the local authority; and

(da) facilitating and fostering representative and substantial elector participation in elections and polls held under the [Local Electoral Act 2001](#); and

(e) maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority; and

(f) providing leadership for the staff of the local authority; and

(g) employing, on behalf of the local authority, the staff of the local authority (in accordance with any remuneration and employment policy); and

(h) negotiating the terms of employment of the staff of the local authority (in accordance with any remuneration and employment policy).

(2A) In the case of a unitary authority for a district that includes 1 or more local board areas, a chief executive appointed under subsection (1) is also responsible to the unitary authority for—

(a) implementing the decisions of each local board within the district of the unitary authority; and

(b) implementing each local board agreement; and

(c) providing advice to each local board and its members; and

(d) providing the administrative and other facilities for each local board that are necessary for the board to carry out its functions and perform its duties.

(3) A chief executive appointed under subsection (1) is responsible to his or her local authority for ensuring, so far as is practicable, that the management structure of the local authority—

(a) reflects and reinforces the separation of regulatory responsibilities and decision-making processes from other responsibilities and decision-making processes; and

(b) is capable of delivering adequate advice to the local authority to facilitate the explicit resolution of conflicting objectives.

(4) For the purposes of any other Act, a chief executive appointed under this section is the principal administrative officer of the local authority.

43 Certain members indemnified

(1) A member of a local authority (or a committee, community board, or other subordinate decision-making body of that local authority) is indemnified by that local authority, whether or not that member was elected to that local authority or community board under the [Local Electoral Act 2001](#) or appointed by the local authority, for—

(a) costs and damages for any civil liability arising from any action brought by a third party if the member was acting in good faith and in pursuance (or intended pursuance) of the responsibilities or powers of the local authority (or committee, community board, or other subordinate decision-making body of that local authority); and

(b) costs arising from any successfully defended criminal action relating to acts or omissions in his or her capacity as a member.

(2) Subsection (1) does not apply to a member's liability for a loss under [section 46](#).

(3) To avoid doubt, a local authority may not indemnify a director of a council-controlled organisation for any liability arising from that director's acts or omissions in relation to that council-controlled organisation.

44 Report by Auditor-General on loss incurred by local authority

(1) For the purposes of this section and [sections 45](#) and [46](#), a local authority is to be regarded as having incurred a loss to the extent that any of the following actions and omissions has occurred and the local authority has not been fully compensated for the action or omission concerned:

(a) money belonging to, or administrable by, a local authority has been unlawfully expended; or

(b) an asset has been unlawfully sold or otherwise disposed of by the local authority; or

(c) a liability has been unlawfully incurred by the local authority; or

(d) a local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

(2) If the Auditor-General is satisfied that a local authority has incurred a loss, the Auditor-General may make a report on the loss to the local authority, and may include in the report any recommendations in relation to the recovery of the loss or the prevention of further loss that the Auditor-General thinks fit.

(3) The Auditor-General must send copies of the report to the Minister and every member of the local authority.

45 Local authority to respond to Auditor-General

(1) On receipt of a report from the Auditor-General, the local authority must, within 28 days, respond in writing to the Auditor-General, and send a copy of the response to the Minister.

(2) The local authority's response must—

(a) respond to each of the Auditor-General's recommendations; and

(b) include a statement as to what action, if any, the local authority intends to take in respect of the loss.⁽³⁾

The Minister may extend the period of time within which the local authority must forward its response.

(4) An individual member of the local authority may respond to the Auditor-General—

(a) by making a separate response to the Auditor-General, and sending a copy to the local authority and the Minister, within the time required for the local authority's response; or

(b) with the consent of the local authority, by incorporating that member's response in the local authority's response.

(5) The local authority must, as soon as practicable after the expiry of the time for forwarding its response, table in a meeting of the local authority that is open to the public a copy of the Auditor-General's report, the local authority's response, and any response of an individual member of the local authority not incorporated in the local authority's response.

46 Members of local authority liable for loss

(1) If the Auditor-General has made a report on a loss to a local authority under [section 44](#), then, without limiting any other person's liability for the loss, the loss is recoverable as a debt due to the Crown from each member of the local authority jointly and severally.

(2) If the members of the local authority or any other person or persons do not pay the amount of the loss to the Crown or the local authority within a reasonable time, the Crown may commence proceedings to recover the loss from any or all of those members.

(3) Any amount recovered by the Crown under subsection (2), less all costs incurred by the Crown in respect of the recovery, must be paid by the Crown to the local authority concerned.

(4) It is a defence to any proceedings under subsection (2) if the defendant proves that the act or failure to act resulting in the loss occurred—

(a) without the defendant's knowledge; or

(b) with the defendant's knowledge but against the defendant's protest made at or before the time when the loss occurred; or

(c) contrary to the manner in which the defendant voted on the issue at a meeting of the local authority; or

(d) in circumstances where, although being a party to the act or failure to act, the defendant acted in good faith and in reliance on reports, statements, financial data, or other information prepared or supplied, or on professional or expert advice given, by any of the following persons:

(i) an employee of the local authority whom the defendant believed on reasonable grounds to be reliable and competent in relation to the matters concerned:

(ii) a professional adviser or expert in relation to matters that the defendant believed on reasonable grounds to be within the person's professional or expert competence.

47 Members may be required to pay costs of proceeding in certain cases

(1) This section applies if, in a proceeding commenced by the Attorney-General, the local authority is—

(a) held to have—

(i) disposed of, or dealt with, any of its property wrongfully or illegally; or

(ii) applied its property to any unlawful purpose; or

(iii) permitted the reserves that it must manage to be used for purposes not authorised by law; or

(b) restrained from acting in the ways referred to in paragraph (a).

(2) If subsection (1) applies, costs and other expenses arising out of the proceeding or incurred in doing the things to which the proceeding relates—

(a) must not be paid out of general revenues by the local authority; and

(b) must be paid, by order of the court, by the members of the local authority who, by voting or otherwise, assented to the acts concerned.

(3) The court must not make an order under subsection (2) against a member of the local authority if the member proves that, in doing the act concerned,—

(a) the member acted in good faith and in accordance with the written advice of the solicitor to the local authority; or

(b) the member acted honestly and reasonably and, having regard to all the circumstances of the case, the member ought fairly to be excused.

48 Further provisions of Schedule 7

The following activities of local authorities must be carried out in accordance with [Part 1](#) of Schedule 7:

(a) vacation of office by members:

(b) remuneration of members:

(c) conduct of members:

(d) election and removal of chairperson, deputy chairperson, and deputy mayor:

(e) calling of meetings:

(f) conduct of meetings:

(g) procedures at meetings:

(h) subordinate decision-making structures:

(i) delegations:

(j) employment of staff:

(k) adoption of a remuneration and employment policy.

SOUTH WAIRARAPA DISTRICT COUNCIL

30 OCTOBER 2019

AGENDA ITEM F3, G3, H3, I3

ADOPTION OF THE 2019 SCHEDULE OF ORDINARY MEETINGS

Purpose of Report

To inform Council and community boards of the requirements for fixing the date and time of the first ordinary meeting/adoption of a schedule of meetings for 2019 and 2020.

Recommendations

Officers recommend that the Council/community board:

1. *Receive the Adoption of the 2019 Schedule of Ordinary Meetings Report.*
2. *Adopt the revised 2019 schedule of ordinary meetings for Council, community boards and committees.*
3. *To delegate to the Chief Executive the authority to alter the schedule of ordinary meetings following consultation with the Chair.*

1. Background

The Local Government Act 2002, Schedule 7 Clause 21 states that, at the first meeting of a local authority following a triennial general election of members, the business that must be conducted at the meeting must include:

- (d) *the fixing of the date and time of the first ordinary meeting of the local authority, or the adoption of a schedule of ordinary meetings.*

2. Discussion

Council are asked to consider a meeting cycle for the remainder of 2019 which best suits their needs. Attached in Appendix 1 is a meeting calendar for the remainder of 2019 showing the proposed meeting dates for Council, community boards, and other committees. LGNZ and Wairarapa combined council meetings are also shown on the calendar for completeness.

A draft meeting calendar for 2020 will be tabled as Appendix 2 and a formal adoption decision will be sought at the next ordinary meeting of the Council and community boards.

2.1 Meeting Day and Times

Proposed meeting times for Council, community boards and committees for 2019 are as follows:

	Cycle	Date	Day	Start Time First Ordinary Meeting (December)
Council	6-weekly	20 Nov 19	Wednesday	10:00am
Featherston Community Board	6-weekly	3 Dec 19	Tuesday	7:00pm
Martinborough Community Board	6-weekly	5 Dec 19	Thursday	6:00pm
Māori Standing Committee	6-weekly	9 Dec 19	Monday	6:30pm
Finance, Audit and Risk Committee	Quarterly	11 Dec 19	Wednesday	9:00am
Assets and Services Committee	6-weekly	11 Dec 19	Wednesday	11:00am
Planning and Regulatory Committee	6-weekly	11 Dec 19	Wednesday	1:00pm
Greytown Community Board	6-weekly	11 Dec 19	Wednesday	7:00pm

It is proposed that the Council meeting day remain a Wednesday, but that the meeting start time be moved to 10am. The change in time is to allow Council briefings by outside organisations prior to the formal meeting.

The community board meetings and Māori Standing Committee meetings have been split across two weeks so governance staff can better prepare for and service the meetings.

2.2 Proposed Schedule of Ordinary Meetings for the remainder of 2020

A draft calendar of meetings for 2020 has been tabled for your information. An adoption decision will be sort at the next ordinary meeting to allow for modifications as the Council structure is further developed.

3. Appendices

Appendix 1 – Proposed Schedule of Ordinary Meetings for the Remainder of 2019

Appendix 2 – Draft 2020 Schedule of Ordinary Meetings (to be tabled)

Contact Officer: Suzanne Clark, Committee Advisor

Reviewed By: Harry Wilson, Chief Executive

Appendix 1 – Proposed Schedule of Ordinary Meetings for the Remainder of 2019

Appendix 2 – Draft 2020 Schedule of Ordinary Meetings (to be tabled)

ELECTION OF CHAIR AND DEPUTY CHAIR OF THE COMMUNITY BOARD 2019-2022 TRIENNIUM

Purpose of Report

This report sets out the process for electing the Chair and Deputy Chair of the Community Boards in the event that there is more than one nomination for each of the positions, under the provisions of the Local Government Act 2002 ('the Act').

Recommendations

Officers recommend that the Council:

1. *Receive the Election of Chair and Deputy Chair of the Community Board 2019-2022 Report.*
2. *That the Community Board adopts System A or B as outlined in clause 25 of Schedule 7 of the Local Government Act 2002 for the election of the Board's Chair and Deputy Chair for the 2016-2019 Triennium.*

1. Background

Section 54(2) of the Local Government Act says that "Part 1 of Schedule 7 (excluding clauses 15 and 33 to 36) applies to community boards, with all necessary modifications as if they were local authorities". This being so, then clauses 25 and 37(1) apply to the election of Chair and Deputy Chair roles.

2. Issues and Options

2.1 Issues

Under the provisions of the Act a community board must determine by resolution that a person be elected or appointed by a system of voting being either System A or System B as outlined below (see Appendix 1).

2.2 Options – System A

Under System A, a candidate is successful if he or she receives the votes of the majority of the members of the community board present and voting. If no candidate is successful in the first round there is a second round of voting from which the candidate with the fewest votes in the first round is excluded. 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 number of votes in the previous round is excluded until a candidate is successful. In any round of voting if two or more candidates tie for the lowest number of votes the person to be excluded from the next round is resolved by lot.

2.3 Options – System B

System B is first past the post except that a tie for the most votes is resolved by lot.

2.4 Process

In terms of process the Board needs to:

1. Resolve to using either system A or system B to elect the Chair and Deputy Chair; and then use that system to effect the elections for both roles.

3. Considerations

3.1 Policy considerations

There are no policy considerations.

3.2 Legal considerations

There are no additional legal considerations.

3.3 Financial considerations

The chair of a community board receives an increase in remuneration in return for extra duties and responsibilities.

4. Significance and Engagement

4.1 Degree of significance

As this is a process mandated through legislation the matter has a low level of significance under Council policy.

4.2 Publicity

There will be community interest in the community board decisions so a media release will be prepared.

5. Appendices

Appendix 1 – Clause 25, Schedule 7, Local Government Act 2002

Contact Officer: Suzanne Clark, Committee Advisor

Reviewed By: Harry Wilson, Chief Executive Officer

**Appendix 1 – Clause 25, Schedule 7,
Local Government Act 2002**

EXTRACT FROM LEGISLATION, LOCAL GOVERNMENT ACT 2002

25 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 2 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 1 round of voting; and
 - (ii) if 2 or more candidates tie for the most votes, the tie is resolved by lot.

Clause 37, Schedule 7

- (1) A community board must have a chairperson
- (2) Clause 25 applies to the election of chairpersons of community boards