Appendix 1 - Local Government Act 2002 and Health and Safety at Work Act 2015

Local Government Act 2002

1. The Local Government Act 2002 (LGA 2002) defines local government's purpose, its general powers, its specific by-law making powers and the principles and processes that councils must abide by when making decisions. The LGA 2002 is based on the principle of general competency, which enables a council to do whatever is necessary to fulfil its role. Within this framework, there is a considerable degree of flexibility in deciding what activities are undertaken and how they are carried out.

   The purpose of local government is defined in section 10 of the LGA 2002:

   (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.*

2. In addition to general powers the Council has many specific statutory powers in more than 30 statutes which provide councils with regulatory powers. Councils also have specific bylaw making powers which are separate from their general power.

3. The Local Government Act 2002 sets out high-level principles and requires the Council to act in accordance with these when exercising its powers. These can be summarised as follows:

   The Council must:

   - Act with transparency and openness and be democratically accountable
   - Consider the views of the community
   - When making decisions, consider the diversity of the community and the interests of future as well as current communities and the likely impact of any decision on these interests
   - Provide opportunities for Māori to contribute to its decision-making processes
   - Collaborate and co-operate with other local authorities
   - Act in accordance with sound business practices
   - Periodically review the returns from investing in or undertaking commercial activities
   - Ensure prudent stewardship and the efficient and effective use of resources in the interests of the city including planning for the future management of its assets
   - In taking a sustainable development approach, consider the social, economic, and cultural interests of the people and communities, the need to maintain and enhance the quality of the environment and the needs of future generations

4. If any of the principles are in conflict, the Council must resolve that conflict in an open, transparent and democratically accountable manner. These principles are helpful in determining the governance structure as they are indicative of the spirit and intent of the LGA 2002 and govern the way in which the Council undertakes decision-making.

5. A Council that is seen to act in conflict with these principles can be subject to judicial review. Every decision made by the Council, including a decision not to take any action, must be made in accordance with sections 77, 78, 80, 81 and 82 of the LGA 2002. A higher standard of compliance with the decision-making process is required when the Council is making a significant decision. The definition of "significance" is defined in the Act and in the Council's Policy on Significance and Engagement.

Personal Liability of Elected Members

6. Elected Members are indemnified in respect of their actions as a member of the Council. Section 43 of the LGA 2002 provides for this indemnity (by the Council) in relation to:

   (a) civil liability (both for costs and damages) if the Member is acting in good faith and in pursuance of the responsibilities or powers of the Council.

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

7. The LGA 2002 provides for a theoretical personal exposure on the part of elected members in certain circumstances if the Council has incurred loss due to actions of the Council (section 44 LGA 02). The loss must arise out of one of the following situations:

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

8. If the Auditor-General has reported on a "loss", then that loss is recoverable as a debt due to the Crown. This must be paid back to the Council from each elected member jointly and severally. However, as a Member of Tauranga City Council, you have a defence (section 46 LGA 02) if you can prove that the act or failure which led to the loss occurred:

   - without your knowledge; or
   - with your knowledge but against your protest made at or before the time when the loss occurred; or
   - contrary to the way you voted on the issue at a meeting of the Council; or
   - in circumstances where you acted in good faith and relied on information or professional or expert advice given by a Council officer or professional advisor on matters which you reasonably believed were within that person's competency.

Register of Elected Members' pecuniary interests

9. In November 2022, the Local Government Act 2002 (LGA) was amended[1] to require local authorities to keep a register of the pecuniary interests of their elected members, including community and local board members.

10. "Pecuniary interest" is defined as "a matter or activity of financial benefit to the member". Under the LGA, it is mandatory for members to declare their pecuniary interests (make a "pecuniary interest return") by certain dates containing prescribed information. Failing to do so is an offence. The local authority must make publicly available a summary of the information contained in the register.

[1] Local Government (Pecuniary Interests Register) Amendment Act 2022.

Health and Safety at Work Act 2015 (HSWA)

11. On 4 April 2016, the Health and Safety at Work Act 2015 came into force. The HSWA provided a significant change to New Zealand's current health and safety legislation and is a response to the scrutiny placed on New Zealand's health and safety practices following the Pike River tragedy.

12. The Act allocates duties to those people who are in the best position to control risks to health and safety as appropriate to their role in the workplace, and for the person conducting a business or undertaking (PCBU) (i.e. the Council) to ensure, as far as is reasonably practicable, the safety of workers and others who may be impacted by the work the business undertakes.

13. The Act introduces the role of "Officers", who are defined as any person occupying a position in relation to the business or undertaking, that allows the person to exercise significant influence over the management of the business or undertaking.

14. For the purposes of the HSWA, elected Council members (which include the Mayor and Councillors) and the Chief Executive are by default identified as "Officers". The Council has resolved that the General Managers are also to be identified as "Officers".

15. Officers have obligations of due diligence, which are:

    (a) to acquire, and keep up-to-date, knowledge of work health and safety matters; and

    (b) to gain an understanding of the nature of the operations of the business or undertaking of the PCBU, and generally of the hazards and risks associated with those operations; and

    (c) to ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and

    (d) to ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and

    (e) to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and

    (f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

16. The duties of the Officers and of the PCBU are independent of each other. This means if a PCBU has failed to meet its duty, but the Officers exercised due diligence then they would not be personally liable for the health and safety failings.

17. The Council has implemented a Due Diligence programme to help ensure its Officers meet their obligations under the Act, involving regular inspections by the Executive Team of all work areas which are included in the monthly Health and Safety reports. Reporting is through the relevant Council Committee.