



AGENDA

Ordinary Council meeting Thursday, 8 May 2025

I hereby give notice that an Ordinary meeting of Council will be held on:

Date: Thursday, 8 May 2025

Time: 9:30 AM

**Location: Hangarau Marae
217 Bethlehem Road
Bethlehem
Tauranga**

Please note that this meeting will be livestreamed and the recording will be publicly available on Tauranga City Council's website: www.tauranga.govt.nz.

**Marty Grenfell
Chief Executive**

Terms of reference – Council

Membership

Chairperson	Mayor Mahé Drysdale
Deputy Chairperson	Deputy Mayor Jen Scoular
Members	Cr Hautapu Baker Cr Glen Crowther Cr Rick Curach Cr Steve Morris Cr Hēmi Rolleston Cr Marten Rozeboom Cr Kevin Schuler Cr Rod Taylor
Quorum	<u>Half</u> of the members present, where the number of members (including vacancies) is <u>even</u> ; and a <u>majority</u> of the members present, where the number of members (including vacancies) is <u>odd</u> .
Meeting frequency	Three weekly or as required

Role

- To ensure the effective and efficient governance of the City.
- To enable leadership of the City including advocacy and facilitation on behalf of the community.
- To review and monitor the performance of the Chief Executive.

Scope

- Oversee the work of all committees and subcommittees.
- Exercise all non-delegable and non-delegated functions and powers of the Council.
- The powers Council is legally prohibited from delegating include:
 - Power to make a rate.
 - Power to make a bylaw.
 - Power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan.
 - Power to adopt a long-term plan, annual plan, or annual report.
 - Power to appoint a chief executive.
 - Power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the local governance statement.
 - All final decisions required to be made by resolution of the territorial authority/Council pursuant to relevant legislation (for example: the approval of the City Plan or City Plan changes as per section 34A Resource Management Act 1991).
- Council has chosen not to delegate the following:
 - Power to compulsorily acquire land under the Public Works Act 1981.
- Make those decisions which are required by legislation to be made by resolution of the local authority.

- Authorise all expenditure not delegated to officers, Committees or other subordinate decision-making bodies of Council.
- Make appointments of members to the council-controlled organisation Boards of Directors/Trustees and representatives of Council to external organisations.
- Undertake all statutory duties in regard to Council-controlled organisations, including reviewing statements of intent and receiving reporting, with the exception of the Local Government Funding Agency where such roles are delegated to the City Delivery Committee. This also includes Priority One reporting.
- Consider all matters related to Local Water Done Well.
- Consider any matters referred from any of the Standing or Special Committees, Joint Committees, Chief Executive or General Managers.
- Review and monitor the Chief Executive's performance.
- Develop Long Term Plans and Annual Plans including hearings, deliberations and adoption.
- For clarity the Council will develop, review, undertake hearings of and deliberations on community submissions to bylaws as well as the adoption of the final bylaw.

Procedural matters

- Delegation of Council powers to Council's committees and other subordinate decision-making bodies.
- Adoption of Standing Orders.
- Receipt of Joint Committee minutes.
- Approval of Special Orders.
- Employment of Chief Executive.
- Other Delegations of Council's powers, duties and responsibilities.

Regulatory matters

Administration, monitoring and enforcement of all regulatory matters that have not otherwise been delegated or that are referred to Council for determination (by a committee, subordinate decision-making body, Chief Executive or relevant General Manager).

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- 1 OPENING KARAKIA**
- 2 APOLOGIES**
- 3 DECLARATION OF ELECTION RESULTS**

ATTACHMENTS

1. **Tauranga City Council 2025 Te Awanui Maori Ward By-election - Final STV Result - A18018438** [↓](#) 

**Tauranga City Council****2025 Te Awanui Māori Ward By-election****DECLARATION OF RESULT**

The final result for the Tauranga City Council by-election that closed on Tuesday, 29 April 2025 is:

Te Awanui Māori Ward (1 vacancy)

ROLLESTON Hēmi		elected
WEBSTER Ange		excluded
BORELL Suaree	Me aro koe ki te hā o Hine-ahu-one	excluded
NGATAI George		excluded
RATIMA TRUST David		excluded

Hēmi ROLLESTON is declared elected.

The final absolute majority of votes (final quota) as determined at the last iteration was 485. There were 0 informal votes and 1 blank vote.

The voter return was 11.89%, being 1,086 voting papers.

Warwick Lampp
Electoral Officer - Tauranga City Council
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30 April 2025

Tauranga City Council 2025 Te Awanui Māori Ward By-election

Te Awanui Māori Ward

Result type: Final

Number of vacancies: 1

Quota at first iteration: 543.

Legend...

ITER	The iteration number at which a candidate is elected or rejected
VOTES	The votes received by the candidate at the point of election or exclusion
QUOTA	The quota or the absolute majority determined at the iteration
NTV	The number of non-transferable votes determined at the iteration
KEEP	The candidate's final keep value determined at the last iteration
SURPLUS	The number of transferable votes at the iteration

CANDIDATE	STATUS	ITER	VOTES	NTV	QUOTA	KEEP
ROLLESTON Hēmi	elected	4	544.000000000	116.000000000	485.000000000	1.000000000
WEBSTER Ange	excluded	4	425.000000000	116.000000000	485.000000000	0.000000000
BORELL Suaree	excluded	3	196.000000000	33.000000000	526.000000000	0.000000000
NGATAI George	excluded	2	78.000000000	4.000000000	541.000000000	0.000000000
RATIMA TRUST David	excluded	1	27.000000000	0.000000000	543.000000000	0.000000000

ITER	CANDIDATE	VOTES
1	ROLLESTON Hēmi	464.000000000
1	WEBSTER Ange	340.000000000
1	BORELL Suaree	179.000000000
1	NGATAI George	75.000000000
1	RATIMA TRUST David	27.000000000
2	ROLLESTON Hēmi	469.000000000
2	WEBSTER Ange	347.000000000
2	BORELL Suaree	187.000000000
2	NGATAI George	78.000000000
2	RATIMA TRUST David	0.000000000
3	ROLLESTON Hēmi	488.000000000
3	WEBSTER Ange	368.000000000
3	BORELL Suaree	196.000000000
3	NGATAI George	0.000000000
3	RATIMA TRUST David	0.000000000
4	ROLLESTON Hēmi	544.000000000
4	WEBSTER Ange	425.000000000
4	BORELL Suaree	0.000000000
4	NGATAI George	0.000000000
4	RATIMA TRUST David	0.000000000

Calculator commentary from last iteration...

RATIMA TRUST, excluded at iteration 1, reason: Candidate received the lowest vote count 27

NGATAI, excluded at iteration 2, reason: Candidate received the lowest vote count 78

BORELL, excluded at iteration 3, reason: Candidate received the lowest vote count 196

ROLLESTON, elected at iteration 4, reason: Candidate received 544 votes and absolute majority of votes was 485

WEBSTER, excluded at iteration 4, reason: All available seats were filled

4 BUSINESS

4.1 Opening Remarks by the Mayor

4.2 Declaration by Councillor James Francis (Hēmi) Rolleston

Attested in the presence of the Mayor.

ATTACHMENTS

- 1. Declaration by Member - James Francis Rolleston - A18030367** [↓](#) 



Declaration by Member

I, James Francis Rolleston

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 Tauranga City, the powers, authorities, and duties vested in, or imposed upon, me as Member of the Tauranga City Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Dated at Tauranga this 8th day of May 2025

Signature

Signed in the presence of:

Mahé Drysdale
Mayor

4.3 Address by Councillor Hemi Rolleston

An opportunity for Councillor Rolleston to present an address to the Council.



Ko te whakapuakitanga na Te Kaikaunihera

Ahau nei, a James Francis Rolleston

whakapuaki ana ka whakahaere, ā, ka whakatutuki ahau i āku mana whakahaere, i āku mana whakatau, i āku haepapa ā-tūranga, ā-homaitanga hoki, i roto i te pono, i te tika hei Mema o Te Kaunihera o Tauranga Moana, e riro ai i a Tauranga Moana āna whiwhinga tiketike mā te Ture Kāwanatanga ā-Rohe 2002, mā te Ture Kāwanatanga ā-Rohe (Pārongo Whaimana) me te Ture Huinga 1987, mā tētahi atu ture rānei.

I tohua, ki Tauranga Moana i tēnei rā te 8 o ngā rā o Mei, 2025

Waitohu: _____

I waitohua i mua i a:

Mahé Drysdale
Mea

4.4 Legislative Advice for the Te Awanui Māori Ward Councillor

File Number: A18018536

Author: Coral Hair, Manager: Democracy and Governance Services

Authoriser: Marty Grenfell, Chief Executive

PURPOSE OF THE REPORT

1. This report provides the Te Awanui Māori ward councillor with a general understanding of the legislation that applies to them when they come into office.

RECOMMENDATIONS

That the Council:

- (a) Receives the report "Legislative Advice for the Te Awanui Māori Ward Councillor".
- (b) Notes the process for the Te Awanui Māori Ward Councillor to declare any personal or financial interests that may at times conflict with their role as an elected member.

EXECUTIVE SUMMARY

2. This report contains an overview of legal provisions that all elected members must be aware of, and abide by, to avoid a risk of disqualification from office. It is appropriate that this information is provided to the Te Awanui Māori Ward Councillor Hēmi Rolleston at this meeting where he is sworn in as an elected member.
3. This report is the same report that was presented to the Mayor and Councillors at their Inaugural meeting on 2 August 2024.

BACKGROUND

4. The Local Government Act 2002 (Clause 21 of Schedule 7) requires the Chief Executive to highlight key aspects of specific legislation at the Inaugural Council meeting. As this is the Inaugural meeting for the Te Awanui Māori Ward Councillor it is appropriate that the information is provided at this meeting.
5. The key pieces of legislation that elected members need to be aware of include:
 - Local Government Official Information and Meetings Act 1987
 - Local Authority (Members' Interests) Act 1968
 - Crimes Act 1961 – Sections 99, 105 and 105A
 - Secret Commissions Act 1910
 - Financial Markets Conduct Act 2013.
6. Also included is information on the Local Government Act 2002 and the Health and Safety at Work Act 2015 in Appendix, 1 as these are key pieces of legislation.

7. A range of information has been made available to elected members (Stellar library portal under 'Administration' ' Documents' section), which covers this material in more depth including:
- Good Governance Guide – Local Government New Zealand publication
 - Tauranga City Council Code of Conduct (which includes a summary of key legislation)
 - Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968 – Office of the Auditor General publication
 - Managing conflicts of interest: A guide for the public sector

LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

8. [The Local Government Official Information and Meetings Act 1987 \(LGOIMA\)](#) provides for all local government activities to take place in an open and transparent environment. It also specifies that, generally, all information held by the council in any form should be available to the public. The purpose of LGOIMA is to enable more effective participation by the public in the actions and decisions of local authorities and to promote the accountability of local authority members and officials, with a view to enhancing respect for the law and promoting good local government in New Zealand.
9. At the heart of LGOIMA is the principle of availability, which states that the information should be made available unless there is good reason for withholding it. There are two aspects to this Act:
- Access to local authority information; and
 - Local authority meetings.

An overview of these provisions is provided in the following paragraphs.

Access to local authority information

10. Generally, all information held by a local authority in any form should be available to the public. However, the LGOIMA does state that certain material does not constitute "information" for the purposes of the Act such as library or museum material.
11. It also sets out certain reasons that a Council might rely on to withhold information, such as the protection of privacy or to protect the Council during commercial negotiations.
12. LGOIMA provides for anyone to have the right to request information held by the Council and if that request is refused the applicant has the right of appeal to the Ombudsman. The Ombudsman will then consider the request; the nature and content of the information and the grounds relied on for refusing to provide it. If the Ombudsman believes that some or all the information should be released, they will recommend a course of action to the Council. It is then up to the Council to decide what to do. The Council's decision is reviewable by the High Court.
13. Under LGOIMA the Council must publish a document outlining its functions and giving a general description of the information held by it. This material is published through the Local Governance Statement which is required to be updated within six months following each election. The Local Governance Statement is publicly available on the Tauranga City Council website.
14. LGOIMA specifically provides that there will be no liability on elected members for any information released in good faith under the legislation. However, the Privacy Act 2020 places strict limitations on the council in respect of the release of information relating to private individuals.

15. Under LGOIMA the authority to make decisions on whether information should be released is delegated to the Chief Executive. Information contained in the open section of any agenda is already in the public domain. Any information marked “public excluded” or “confidential” should not be released or discussed outside the meeting concerned. If, as an elected member, you are asked to provide that information to a third party you should refer the request to either the Chief Executive or to the General Manager responsible for the report. Should an elected member release confidential information and should the council suffer any loss as a result, the member may become personally liable for the council’s loss if it can be shown that the member was not acting in good faith.

Local authority meetings

16. LGOIMA provides that all meetings of Council, which includes meetings of its committees, shall be open to the public, unless certain specified reasons can be satisfied for excluding them. These reasons are basically the same as for withholding information and are set out within Section 48 of the Act. It is necessary for the meeting to be satisfied that any one or more of these reasons exist before the public is excluded.
17. LGOIMA also enables the Mayor (or Chairperson in the case of committees), to introduce an item that is not on the agenda as long as there is a clear reason why the item is not on the agenda and why it cannot wait until the next meeting. A formal resolution, including reasons, must then be passed to receive and consider the item. This relates to major and urgent matters only. Council is still subject to the requirements of the decision-making processes as set out in the Local Government Act 2002 (LGA).
18. Agendas for Council and committee meetings must be made available to the public two clear working days before the day of the meeting. The agendas are published on council’s website.
19. Other provisions of the LGOIMA require meetings to be publicly notified and provide that any matters, including defamatory matter published in any agenda, or oral statements made at any meeting, are privileged unless proven to have been made with malice. This type of privilege is known as qualified privilege. It is a protection afforded by the law on certain occasions to a person acting in good faith and without any improper motive who makes a defamatory statement about another person. It is established in law that meetings of local authorities are privileged occasions. The reason given by the courts is that those who represent local government electors should be able to speak freely on any matter they believe affects the interests of their residents. The situation regarding statements made outside a formal meeting is not so clear and the protections afforded by sections 52 and 53 may not necessarily extend outside a meeting. What is required for qualified privilege to apply is a positive belief in the truth of what is said, and that there is no suggestion of personal spite or ill-will by the maker.
20. The Chairperson at a meeting can require a member of the public to leave a meeting if the behaviour of the person concerned is likely to prejudice the orderly conduct of the meeting. If an elected member’s conduct prevents the orderly conduct of the meeting, that member can also be asked to leave by the Chairperson under Council’s Standing Orders.

LOCAL AUTHORITY (MEMBERS’ INTERESTS) ACT 1968

21. The [Local Authority \(Members’ Interests\) Act 1968](#) (LAMIA) helps to protect the integrity of local authority decision-making by ensuring that elected members are not affected by personal motives when they participate in council decision-making and that they cannot use their position to obtain preferential access to contracts. This Act deals with two forms of “interest”, pecuniary interest and non-pecuniary interest.
22. The two specific rules in the LAMIA are that members cannot:
 - (a) Enter into contracts with their local authority worth more than \$25,000 (including GST) in a financial year unless the Auditor-General approves the contracts (referred to as the contracting rule). Breach of this rule results in automatic disqualification from office.

- (b) Participate in matters before Council in which they have a pecuniary interest, other than an interest in common with the public (referred to as the participation rule). Breach of this rule is a criminal offence and conviction results in automatic disqualification from office.
23. A pecuniary interest is one that involves money. This could be direct or indirect. It is sometimes difficult to decide whether an interest in a matter is pecuniary or some other kind. It is always the responsibility of each elected member to make this decision, to declare any interest when appropriate and to ensure that as an elected member you always comply with the Act's requirements.
24. The LAMIA also provides that an "interest" exists where a member's spouse is involved and/or where a member or their spouse is a major shareholder or have control or management of a company which contracts with the council or where the company has a pecuniary interest in the decision. It may also apply where your family trust has a contract with the council. The LAMIA does provide for the Office of the Auditor General to give approval to a member to enter into a contract with the council, in which case the provisions of the Act will not disqualify the councillor from remaining in office. The approval needs be gained before the contract is entered into and each contract or interest must be pre-approved.
25. The LAMIA also requires that a member shall not vote or take part in the discussion of any matter in which they have any pecuniary interest, other than an interest in common with the public. This interest is required to be declared by the member and is noted in the minutes. The Office of the Auditor General oversees this legislation, and it also has the responsibility and power to institute proceedings against any member. The Act does not define pecuniary interest, however the Office of the Auditor-General uses the following test:
- "Whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned."*
26. In deciding whether you have a pecuniary interest you should consider the following factors:
- What is the nature of the decision being made?
 - Do I, or a member of my immediate family, have a financial interest in that decision – do I, or my family, have a reasonable expectation of gain or loss of money as a result of making that decision?
 - Is my financial interest one that is in common with the public?
 - Do any of the exceptions in the Act apply to me?
 - Could I apply to the Auditor-General for approval to participate?
27. Further guidance is provided in the booklet ["Guidance for members of local authorities about the Local Authorities \(Members' Interests\) Act 1968"](#) which has been provided to elected members. It is important that you pay attention to the contents of this booklet as this is one of the few areas of council's business where staff do not set out to provide pro-active advice and members are personally liable for compliance with the provisions of this Act.

Requirement to keep a register of Elected Members' pecuniary interests

28. In November 2022, the Local Government Act 2002 (LGA) was amended¹ to require local authorities to keep a register of the pecuniary interests of their elected members.
29. "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.
30. The Council must make publicly available a summary of the information contained in the register. The summary should provide sufficient information for the public to identify relevant

interests, but without providing excessive details about an elected member's personal affairs.

Difference between LGA pecuniary interest requirements and LAMIA

31. LAMIA and the new LGA provisions relating to the pecuniary interest register have separate requirements that need to be met by Members and the main differences are set out in the table below:

LAMIA	LGA pecuniary interest requirements
A member or a member's spouse/partner or dependents pecuniary interests.	A member's pecuniary interests e.g. Director of a company, employment, interests in trust
A member's spouse/partner property interests	A member's property interests
Contracts with the council in which a member is interested	Member of an organisation that has applied for funding from the council
Direct and indirect financial interests that a member or their spouse/partner has in a matter before the Council	Organisation the member appointed to as an elected member
Applies to appointed members of Council committees and sub-committees	Gifts including hospitality and donations
Members to report new interests as they arise	Payments received for activities member involved in
	Travel to overseas countries where travel and accommodation costs paid in full or part by others (excluding family)
	Does not require ongoing reporting of new interests as they arise between annual returns

32. To ensure elected members' compliance with both the LGA pecuniary interests and LAMIA staff will combine the requirements of both Acts in Council's Pecuniary Interests Return Form with Section 1 relating to the LGA pecuniary interest's requirements and Section 2 relating to LAMIA. Forms are required to be completed 120 days after the members come into office and then the last day of February in subsequent years.

Non-pecuniary interest

33. Non-pecuniary interest is any interest the member may have in an issue that does not involve money. A common term for this is "bias". Rules about bias operate not only to ensure that there is no actual bias, but also so there is no appearance or possibility of bias. The principle is that justice should not only be done, but it should be seen to be done. Bias may be exhibited where:
- By their statements or conduct a member may indicate that they have predetermined the matter before hearing or considering all the relevant information on it (including the Council's debate); or
 - The member has a close relationship with an individual or organisation affected by the matter.
34. Non-pecuniary interest is a difficult issue as it often involves matters of perception and degree. The question you need to consider, drawn from case law, is:

“Is there, to a reasonable, fair-minded and informed observer, a real indication of bias on the part of a member of the decision-making body, in the sense that they might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?”

35. If there is, the member should declare their interest and withdraw from the debate. The law about bias does not put you at risk of personal liability but the validity of Council’s decision could be challenged.
36. Further guidance is provided in by the Office of the Auditor-General in their guide [“Managing conflicts of interest: A guide for the public sector”](#) which has been provided to elected members.
37. While the Registrar will help elected members who seek advice on the pecuniary interest register but does not provide definitive advice on the application of the new provisions for every situation. Practically I would suggest that if you feel that you may have an “interest” in any matter before the Council or a committee of which you are a member, then you should discuss the issue with your lawyer (at no cost to the council), the Mayor, the Committee Chair or myself as Chief Executive before the meeting. While this will not relieve you of your obligations under the LGA pecuniary interests provisions or LAMIA, it will provide you with some independent guidance.

CRIMES ACT 1961: SECTIONS 99, 105 & 105A

38. Under this Act it is unlawful for an elected member (or officer) to:
 - Accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of the Council.
 - Use information gained in the course of their duties for their, or another person’s monetary gain or advantage.
39. [Section 99 of the Crimes Act 1961](#) defines a member or employee of a local authority as an official. For the purposes of the Crimes Act 1961 this means that each elected member of Council is an official of the council. Section 99 also defines a “bribe” as being “any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect”. The words “or indirect” open this definition considerably, e.g. an offer of employment to a son or a daughter could be construed as amounting to being a bribe so members need to be aware of their exposure under this Act through other family members.
40. [Section 105](#) and [105A](#) provide: -

105. Corruption and bribery of official—

 1. *Every official is liable to imprisonment for a term not exceeding 7 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 himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.*
 2. *Everyone is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him in his official capacity.*

105A. Corrupt use of official information— Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly uses [or discloses] any information, acquired by him in his official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or any other person.
41. As elected members you are deemed to be “officials” for the purposes of this Act, and you are subject to these penalties if you are found to be in breach of them. A conviction would also have the consequences of loss of office in terms of Clause 1 of Schedule 7 of the Local Government Act 2002 (which disqualifies a member who is convicted of an offence punishable by a term of imprisonment of two years or more).

SECRET COMMISSIONS ACT 1910

42. The [Secret Commissions Act 1910](#) states that you must not use your office for improper gain. It specifically establishes offences relating to the giving, receiving, or soliciting of gifts or other consideration as an inducement or reward for doing or not doing something in relation to the affairs of the Council, or showing or having shown favour or disfavour to any person in relation to the Council's affairs or business (section 4(1)).
43. In summary it is an offence for an agent (for the purposes of the Act an elected member is deemed to be an "Agent") to:
- Receive a secret commission
 - Accept a bribe (a gift for doing or not doing something)
 - Aid and abet (encourage or refuse to act)
44. Prosecutions made for offences under this Act require the approval of the Attorney-General who has the power to decide whether any such prosecution shall be dealt with as an indictable offence or as one punishable on summary conviction. An indictable offence penalty for individuals includes up to two years imprisonment or a fine of up to \$1,000.00. A conviction would also have the consequences of loss of office in terms of Clause 1 of Schedule 7 of the Local Government Act 2002. For a summary offence the penalties include a period of up to 3 months imprisonment or a fine of up to \$100.00.

FINANCIAL MARKETS CONDUCT ACT 2013

45. The [Financial Markets Conduct Act 2013](#) (FMC Act) replaced the Securities Act 1978. The purpose of the FMC Act is to promote and facilitate the development of fair, efficient and transparent financial markets, and to promote the confident and informed participation of businesses, investors and consumers. The FMC Act works to reform the regulation of financial conduct and governs the way financial products are offered, promoted, issued and sold. This includes the on-going responsibilities of those who offer, issue, manage, supervise, deal in and trade financial products. The FMC Act also regulates the provision of certain financial services.
46. The FMC Act essentially places elected members 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.

STRATEGIC / STATUTORY CONTEXT

47. This report outlines legislative matters that apply to elected members, as required by the Local Government Act 2002.

LEGAL IMPLICATIONS / RISKS

48. This report contains an overview of legal provisions that members must be aware of, and abide by, to avoid a risk of disqualification from office.

SIGNIFICANCE

49. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
50. In making this assessment, consideration has been given to the likely impact, and likely consequences for:

- (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by, or interested in, the matter.
 - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
51. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the matter of elected members' legal obligations is of medium significance, however the decision proposed in this report (to receive the report), is of low significance.

ENGAGEMENT

52. Taking into consideration the above assessment, that the decision is of low significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

NEXT STEPS

53. An induction programme is planned which will provide further information about the roles and responsibilities of elected members, the Tauranga City Council Code of Conduct, and decision-making processes under the Local Government Act 2002.

ATTACHMENTS

1. **Local Government Act 2002 and Health and Safety at Work Act 2015 - A16212055** [↓](#) 

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 amended¹ 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.

5 CLOSING KARAKIA