

Council Briefing Meeting Minutes

Date: Thursday, 5 December 2019
Time: 9:00 a.m.
Location: Council Chamber
Forum North, Rust Avenue
Whangarei

In Attendance

Her Worship the Mayor Sheryl Mai
(Chairperson)
Cr Gavin Benney
Cr Vince Cocurullo
Cr Nicholas Connop
Cr Ken Couper
Cr Tricia Cutforth
Cr Shelley Deeming
Cr Phil Halse
Cr Greg Innes
Cr Greg Martin
Cr Anna Murphy
Cr Carol Peters
Cr Simon Reid

Not in Attendance Cr Jayne Golightly

Scribe Jennie Thomas (Democracy Adviser)

1. Apologies

Cr Golightly

Cr Murphy arrived at 9.07am during Ms Candy's introduction to the briefing.

2. Reports

2.1 Elected Member Code of Conduct Review 2019

Her Worship the Mayor convened the meeting and advised that Kathryn Candy (Senior legal Adviser) would be running the presentation.

Ms Candy advised that today's briefing would be to review the current Elected Member Code of Conduct. This review occurs after every election. Today the current code would be compared to the new Local Government New Zealand

(LGNZ) template. Feedback from elected members would provide guidance on whether to keep or update the current code or use/update the LGNZ template. Today's discussion would result in a report being taken to December's Council meeting or, if more work was needed, to February's Council meeting.

The Code of Conduct is a legislative requirement under the Local Government Act 2002. It helps build the public's trust and confidence in Council and assists with effective working relationships to enable good decision making.

Ms Candy outlined the LGNZ template and highlighted changes to the current Code of Conduct. The major changes in the LGNZ template include:

- Media – in particular social media rules
- Information received as an elected member
- Gift value
- Creating a supportive and inclusive environment
- Breaches – process of investigation

Discussion

Several deletions of words were suggested to better align the Code with the governance structure for the Whangarei District Council including removing Local Board and Chair where not applicable.

Clause 4.2 - there was discussion on the need to have the role of the Chief Executive (CE) included in the Code. Views expressed included that this was an Elected Members' Code and to include the CE would cause confusion. Other views expressed, that including the role indicates good governance and highlights the complimentary roles.

Clause 7.2 – there was discussion on information received in capacity as an elected member and the implications of the official information act. Elected members were reminded that confidential information they receive can be requested under a LGOIMA. Each request would be examined on a case by case basis, Council operates transparently but legislation does allow for circumstances where information remains confidential. The Ombudsman works with this same legislation.

There was discussion on the value a gift accepted by an elected member should be before it should be disclosed to the CE for inclusion in the publicly available register or interests. The general view seemed to be that the value of \$50 suggested in the LGNZ was too low but the \$500 in the current code was too high.

It was clarified that the staff code has the value of \$100 but in practice nearly all gifts to staff are registered. Ms Candy counselled that the perception of the public should be considered and declaring gifts provides protection and transparency. If elected members are in any doubt regarding what constitutes a gift the legal team can provide advice.

Clause 12 – Breaches of the Code – The present code allows for members of the public to make complaints directly to be independently investigated, in contrast to the LGNZ Code where only elected members and the CE may make a direct complaint.

There was discussion on the implications of removing the ability for the public to make a complaint directly. The public would still be able to make a complaint to another elected member or the CE. The Code is self regulating and elected members would become gatekeepers. Elected members have a duty to act in accordance with the Code of Conduct and if an allegation is made it is their duty to follow it up. The public still have the right to take the complaint to the Ombudsman. It was suggested that the process for complaints for the public should be freely accessible e.g. available on Council's website. It was also requested to have complaints referred directly to the CE rather than the Mayor in the first instance.

Ms Candy clarified that there is already a two stage approach under the current code that allows the independent investigator to weed out any malicious or vexatious complaints.

It was also clarified that if a staff member were to make a complaint regarding an elected member it would be the same process as for a member of the public. The staff have their own Code of Conduct.

Where to from here:

Staff will bring an amended Code to Council, with highlighted sections being taken in parts for decision. Each change to the code requires 75% support.

Advice will be sought on whether any elected member can be made to withdraw from any confidential meeting as a penalty for not withholding to the Code of Conduct.

2.2 Appointments to Outside Organisations

Tracey Schiebli (Manager Democracy and Assurance) advised that today's presentation would be on the appointment of elected members to outside organisations and what the role for elected members, within them, are. A lot of work has gone into investigating why there have been certain appointments and what is the mandate for each. Appointments to outside organisations have been categorised and provided as an attachment to the agenda report.

Council does have a policy on appointments, but this only covers Council Controlled Organisations (CCO's). This policy is out of date and not fit for purpose. It has been identified that it needs to be reviewed and to also look at the scope of the organisations to be included.

Guidance from the Office of the Controller and Auditor General (OAG) is that elected members should only be appointed to the CCOs in exceptional circumstances, and that where an elected member is appointed, they should have the requisite skills,

knowledge and experience. The LGA amendment now also requires Council to consider whether tikanga Maori is relevant to the governance of the organisation.

Staff will do more work on the draft policy position and bring it back to Council in the New Year in the form of a briefing. In the interim it was suggested Council decide on any necessary appointments, where we must in the founding document, or we have made an agreement to do so. The framework for appointments should include the reason and term of the appointment and what occurs over the transition over the election period.

A policy position will provide clarity and certainty to roles and responsibilities of the member as an appointee and for the organisation. It will provide criteria to determine whether an elected member should be appointed following a request for them to do so. It will allow for the benefits to be considered in line with Council's objectives.

Discussion

It was stated that communication needed to take place with the organisations before any changes were made regarding appointments of elected members and the relationship of that organisation now with Council.

It was queried whether a staff member could be a nominee for a trust. The advice from the Auditor General is to move away from have staff in a directive/trustee role. Council practice in New Zealand varies widely as to what role staff and elected members play in council organisations.

It was asked if there was going to be any examination of the organisations we have at present as CCOs and whether they should remain CCOs. The response was that with the exception of the Northland Events Centre Trust, through the governance review, this has not been considered to date, but is something Council could consider.

There was discussion on the confidentiality of information obtained by staff or elected members in their capacity as an appointee to an outside organisation. It is currently not clear what the responsibilities are. It was thought that clarity was needed on this and around roles and responsibilities. It was suggested that elected members should do due diligence when requests were made from entities, for example to request trust deeds to gauge the purpose of the organisation and the restraints and risks this could convey to Council.

Comment was made that it would be useful to have advice on what the risks for elected members involve in relation to outside organisations and to cover points such as trustee liability insurance.

It was stated that there was a risk that established organisations such as Residents and Ratepayers Associations may feel that Councillors are diminishing an established relationship if these are not approved formally through Council. The response was that this does not diminish the importance of the relationship, rather it

would be streamlining the process as Council is not required to formally approve ward Councillors activity which occurs at multiple levels. It was noted that Councillors engage with many community groups in addition to Resident and Ratepayer Associations.

It was clarified that elected members have the ability to claim expenses for attending meetings of organisations where they are not formally appointed as directors or trustees for example ratepayer groups and internal working parties, as long as they are on Council business.

Where to from here:

At the December meeting Council will be asked to approve elected member appointments to the organisations where this is deemed necessary in the immediate term.

A draft policy will be worked through with Council in the New Year.

Communication will occur with organisations where there will be change made in the process for confirming the Councillor liaison contact points.

3. Closure of Meeting

The meeting concluded at 11.37am.