



19 June 2020

File Ref: LAMIA379

Christchurch City Council
Attn: Ian Thomson, Special Counsel Governance
Legal Services Unit
Via email: Ian.Thomson@ccc.govt.nz

Dear Ian

LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968 – REVIEW OF POLICY FOR THE APPOINTMENT AND REMUNERATION OF DIRECTORS TO COUNCIL ORGANISATIONS

We refer to your letter of 10 June 2020.

On behalf of all members, the Christchurch City Council has requested a declaration under section 6 of the Local Authorities (Members' Interests) Act 1968 (the Act) to enable all Councillors to be involved in decision-making about the Council's Policy for the Appointment and Remuneration of Directors to Council Organisations 2017 (remuneration policy).

For the reasons explained below, we have decided to issue the declaration allowing all Councillors to discuss and vote on the remuneration policy, despite their direct or potential financial interest.

We have issued the declaration on the basis that we are satisfied that it is in the interests of the electors or inhabitants of the area that all members be allowed to participate in the remuneration policy review.

The law

The 'non-participation rule' in section 6(1) of the Act prohibits a member of a local authority or its committees from discussing or voting on a matter before the authority in which the member has a financial interest, other than an interest in common with the public.

Under section 6(4) of the Act, the Auditor-General can grant a declaration that the non-participation rule will not apply to a matter or class of matters if he is satisfied that:

- applying the rule would 'impede the transaction of business of the Council'; or
- it is 'in the interests of the electors or inhabitants of the district of the local authority or of the area under its jurisdiction' that the rule should not apply.

The declaration requested

In your letter of 10 June 2020 you have requested, on behalf of all members, a declaration under section 6(4). The scope of the declaration sought is to enable all Councillors to participate in the discussion and voting on whether or not to amend the remuneration policy. This discussion is scheduled to be held at a Council meeting on 25 June 2020 (June meeting).

Under the current remuneration policy, Councillor-directors appointed to an external organisation¹ of the Council in their capacity as an elected member of the Council do not personally receive any fees for that appointment.² Instead, the external organisations donate equivalent sums to organisations identified by the Council.³

One of the options to be discussed at the June meeting is resetting the remuneration policy to permit Councillor-directors to retain the fees paid by the external organisations.

¹ "External organisations" include Council Organisations, Council-controlled Organisations and Council-controlled Trading Organisations), [Clause 9.12 of the Policy for the Appointment and Remuneration of Directors to Council Organisations].

² Clause 9.10 of the Policy for the Appointment and Remuneration of Directors to Council Organisations.

³ Clause 9.11 of the Policy for the Appointment and Remuneration of Directors to Council Organisations.

You have told us that:

- all members may have a financial interest in the outcome of this discussion given all members could potentially be appointed to an external organisation at some point in the future; and
- the participation of all elected members in the decision-making on the remuneration policy is more important than their individual interests.

Our view

In our view, it is likely that all Councillors have a financial interest in the outcome of the discussion about the remuneration policy. Those councillors who are willing to be appointed as directors of an external organisation have an interest in the policy on the fees paid to those positions. Members who are not currently Councillor-directors could be appointed to the boards of external organisations and entitled to any remuneration payable. Therefore all councillors are potentially affected by any change to the remuneration policy.

This means that all members are potentially prohibited from participating in decision-making about the policy unless we are satisfied that there are grounds to issue a declaration under the Act.

There is an exception in section 6(3)(c) of the Act that applies to the election or appointment of a member of a local authority to any office, even if the member may be remunerated or receive an allowance for that role.

We do not think the exception applies here. It is for the narrower situation of deciding which particular councillors should be appointed to other bodies, rather than the broader issues covered by the remuneration policy (particularly whether or not the member will receive a financial benefit for performing the role).

In this case, the remuneration policy covers significant policy matters concerning Councillors' contributions of their skills, knowledge and experience to guide external organisations. We think that it is in the interests of the community for all councillors to be able to participate in decision-making about the fees payable for Councillor appointments to commercial boards, despite their direct and potential financial interests. We have granted similar declarations for other councils considering their remuneration policies for external organisations.

Declaration

The Auditor-General hereby issues a declaration under section 6(4) of the Act authorising all members of the governing body of the Christchurch City Council to participate in decision-making regarding the Council's 2017 Policy for the Appointment and Remuneration of Directors to Council Organisations, on the grounds that it is in the interests of the electors or inhabitants of the area that they be allowed to do so.

If the 2017 iteration of the Policy for the Appointment and Remuneration of Directors to Council Organisations is amended or superseded, the declaration will not apply to any discussion or voting on the amended or new policy.

We would be grateful if you would inform the mayor and councillors of the contents of this letter.

If you have any queries about this matter please feel free to contact me or Miriam Davie, Senior Solicitor on 021 222 6220.

Yours sincerely



Melanie Webb

Assistant Auditor-General, Legal Policy and Inquiries Group

Copy to: Andy Burns (Appointed Auditor)
 Jonathan Keate, Office of the Auditor-General (Sector Manager)