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Tēnā koe Wendy

Official Information Act 1982 request, reference OIA2223-0042

I am responding to your email of 17 July 2023 to the Ministry of Transport. Your request was transferred to Te Tari Taiwhenua | the Department of Internal Affairs on 24 July 2023. You requested the following information under the Official Information Act 1982 (the Act):

“When a district council wishes to allocate some purpose other than transport to road reserve, and some purpose other than footpath or cycleway to road margin within the road reserve, what process does it have to follow? Please briefly state the principles and identify the statutes. Local roads are paid in part from rates. Therefore, there is a public interest in what uses are made of road reserve land.

- 1. Under what LEGISLATION can a district council provide use of road reserve to a commercial corporation n?*
- 2. Under what TERMS can a district council provide use of road reserve to a commercial corporation? (sell? lease?)*
- 3. Does the public have the right to request information regarding terms?*
- 4. What legislation protects public interest in road reserve land?”*

I respond to each of your questions below. It is important to understand however that these are general responses related to the local government legislative framework and practices. You may need to seek legal advice to address your specific concerns.

Question one

I can advise that part 21 of the Local Government Act 1974 (LGA74) allows for councils to set temporary uses of roads and other matters. This includes closing roads or a part of a road to certain types of traffic, for example, limiting vehicle access for events or for road construction. In exercising any part of the LGA74, a Council must also have regard to core elements of the Local Government Act 2002 (LGA02) including the purpose, role, powers and principles related to local authorities (s10-14), the decision-making framework (s76-81), and other matters.

Question two

Councils may also make bylaws under the Local Government Act 2002 to permit certain activities in the road corridor. Depending on the situation, permanent changes to roads such as selling or changing the use or function of roading assets could fall under local government legislation, or under other enactments such as the Public Works Act 1981 or the Government Roothing Powers Act 1989. The terms that would be appropriate would depend on the circumstances, such as whether the proposed use would be exclusive or whether it would restrict or prevent other uses.

Question three

The public has the right to request information from councils under the Local Government Official Information and Meetings Act 1987 (LGOIMA). You can do this by contacting a council directly and making a request for information. Councils have powers under that Act to withhold certain information that may be legally privileged or commercially sensitive.

LGOIMA includes a very clear principle of availability - that the information shall be made available unless there is good reason for withholding it. The Act contains both conclusive reasons for withholding official information, and also other reasons which can be weighed against the public interest to make that information available. LGOIMA also includes a framework you to seek a review by the Ombudsman of a Council decision to refuse a request.

Question four

When making decisions, including the use of land, councils need to follow the requirements of the Local Government Act 2002. These requirements include giving “consideration to the views and preferences of persons likely to be affect by, or to have an interest in, the matter” (section 78). As well as following the requirements and principles of consultation set out in sections 82 and 83 of the Local Government Act 2002 when engaging with their communities. These sections do not require councils to undertake any particular consultation process but do provide a framework to assist councils determine how significant a decision is to their communities and then, decide what level, if any, engagement is required before making a decision.

You have the right, under section 28(3) of the Act, to seek a review of my decision by the Office of the Ombudsman. The postal address of the Office of the Ombudsman is PO Box 10152, Wellington. Alternatively, you can phone 0800 802 602 or email info@ombudsman.parliament.govt.nz.

Nāku noa, nā



Jeremy Cauchi

Director Ministerial, Monitoring, and Capability