



HOROWHENUA DISTRICT COUNCIL

First Meeting Following Triennial General Election

Memorandum for: His Worship the Mayor and Councillors, Horowhenua District Council

Notice is hereby given: That an Extraordinary Meeting of the Horowhenua District Council will be held in the Council Chambers, 126-148 Oxford Street, Levin on Wednesday, 27 October 2010 commencing at 7:00pm.

Business will be according to the following Agenda.

David Ward
Chief Executive Officer

AGENDA

1. WELCOME BY CHIEF EXECUTIVE OFFICER - PRESIDING:

2. APOLOGIES

3. PERFORMANCE - ST JOSEPH'S PRIMARY SCHOOL

4. DECLARATION BY HIS WORSHIP THE MAYOR

His Worship the Mayor, Mr Brendan Duffy, to make his declaration of Office before the Chief Executive Officer.

5. DECLARATION BY COUNCILLORS

All Councillors to individually make their Declaration of Office before His Worship the Mayor. This will be done in alphabetical order.

6. LEGISLATION AFFECTING MEMBERS OF COUNCIL

Chief Executive Officer to give a general explanation of the following legislation, and how it affects members of Council and Foxton Community Board and staff.

- (i) The Local Government Official Information and Meetings Act 1987
- (ii) The Privacy Act 1993
- (iii) The Local Authorities (Members Interest) Act 1968
- (iv) Sections 99, 105 and 105A of the Crimes Act 1961
- iv) The Secret Commissions Act 1910
- (vi) The Securities Act 1978.

A summary of the scope and application of each of the above Acts is **appended**. Each Councillor is independently and directly responsible for understanding and complying with the requirements of each Act.

7. METHOD OF VOTING FOR CERTAIN APPOINTMENTS

Clause 25 of Schedule 7 of the Local Government Act 2002 sets out the method of voting to be used for certain appointments, including the election or appointment of the Deputy Mayor and Councillor to be appointed to the Foxton Community Board. The Clause states:

- (1) *This clause applies to -*
 - (b) *the election or appointment of the deputy mayor; and*
 - (d) *the election or appointment of a representative of a local authority*

- (3) **System A-**
 - (a) *requires that a person is elected or appointed if he or she receives the votes of a majority of the members of the local authority or committee present and voting; and*
 - (b) *has the following characteristics:*
 - (i) *there is a first round of voting for all candidates; and*
 - (ii) *if no candidate is successful in that round there is a second round of voting from which the candidate with the fewest votes in the first round is excluded; and*
 - (iii) *if no candidate is successful in the second round there is a third, and if necessary subsequent, round of voting from which, each time, the candidate with the fewest votes in the previous round is excluded; and*
 - (iv) *in any round of voting, if 2 or more candidates tie for the lowest number of votes, the person excluded from the next round is resolved by lot.*

- (4) **System B-**
 - (a) *requires that a person is elected or appointed if he or she receives more votes than any other candidate; and*
 - (b) *has the following characteristics:*
 - (i) *there is only 1 round of voting; and*
 - (ii) *if 2 or more candidates tie for the most votes, and tie is resolved by lot."*

Chief Executive Officer to formally declare result of voting system adopted.

8. APPOINTMENT OF DEPUTY MAYOR

The Council to decide, using system of open voting, the election of the Deputy Mayor for the ensuing term of Council.

The method of voting to be used will be as determined in Item 7 above.

9. DETERMINATION OF APPOINTMENT TO FOXTON COMMUNITY BOARD

Chief Executive Officer advising that pursuant to Section 50 of the Local Government Act 2002, and sections 19F and 19R of the Local Electoral Act 2001, Council is required as soon as is practicable after the triennial general election to appoint a councillor to the Foxton Community Board.

The number of appointed members must not at any time be more than half the number of members of the Board ie a maximum of 3 appointed members.

Council can only make an appointment from the elected members of the Territorial Authority representing the ward or wards in which the Board is situated. The Foxton Community Board is located entirely within the Kere Kere Ward of Council. Councillors Allan and Hunt are the

two elected representatives from this ward and either may be appointed to the Board. Council resolved at the time of the previous election to appoint both elected members from Kere Kere Ward to the Board.

The appointment should be made at this meeting of Council.

10. PERFORMANCE - BY COBURN JANE, WAIIOPEHU COLLEGE STUDENT

11. FIXING OF DATE AND TIME FOR FIRST ORDINARY MEETING OF COUNCIL

Chief Executive Officer recommending that the first ordinary meeting of Council be held on Wednesday, 10 November 2010 commencing at 4.15pm in the Council Chambers, 126-148 Oxford Street, Levin.

12. CLOSE OF MEETING

This meeting will be immediately followed by the First Meeting Following Triennial General Elections of the Foxton Community Board.

The Local Government Official Information and Meetings Act 1987

This Act makes official information held by local authorities more freely available, providing for proper access by each person to official information relating to that person which is held by local authorities, to provide for the admission of the public to meetings of local authorities, to protect official information held by local authorities and the deliberations of local authorities to the extent consistent with the public interest and preservation of personal privacy, and to establish procedures for the achievement of these purposes.

Official Information (Parts I to VI of the Act)

This Act regulates access by the public to official information held by the Council. There is a general principle that official information will be made available unless there is “good reason” for withholding the information (section 5).

The Act sets out what constitutes “good reason” for withholding information and this is contained in sections 6, 7, 17, 17A and 17B. If information is withheld the reason for doing so must be given (section 18).

Decisions on official information requests must be made within 20 working days of receipt of the request (section 13).

In some cases, the provisions of the Act must be read in conjunction with the Privacy Act 1993, which protects personal information. The Privacy Act also contains special rules relating to the release of information from public registers. The rate records, valuation roll and electoral roll are public registers for the purposes of the Privacy Act (Part VII of the Privacy Act 1993).

Local Authority Meetings (Part VII of the Act)

In addition to providing for official information requests, The Local Government Official Information and Meetings Act provides for the public notification of Council meetings (section 46), the availability of agendas and reports associated with the meetings (section 46A), and the admission of the public to meetings of the Council (Section 47)

Part VII is generally concerned with access to and information arising from local authority meetings. More specific provisions for the conduct of local authority meetings are found in Schedule 7 of the Local Government Act 2002 and in Council’s adopted Standing Orders (NZS 9202:2001).

THE PRIVACY ACT 1993

This Act also has relevance as it applies, and LGOIMA will not, to some requests for information i.e. those where, in broad terms, the issue is one of personal privacy affecting the individual who is making the request.

The purpose of the Act is to protect the privacy of individuals and in particular:

- To limit the extent to which personal information about one person may be disclosed to others; and
- To enable individuals to have access to information about themselves (and to correct such information if it proves to be wrong in any detail).

The Act also imposes restrictions on the collection of personal information and the uses to which such information may be put.

Local Authorities (Members' Interests) Act 1968

This Act regulates the involvement of members in Council business in which they have a conflict of interest. It deals with two types of interest:

- Disqualifying interests in contracts with the Council (section 3); and
- Pecuniary interests in matters discussed by the Council (section 6).

Disqualifying Interest

A member will be disqualified from being a member of the Council if that member is "concerned or interested" in a contract with the Council exceeding \$25,000 in any financial year. "Concerned or interested" does not necessarily require a pecuniary interest in the contract, and can extend to situations where a spouse is "concerned or interested" in the contract.

There are exceptions to the general rule set out in section 3(3) of the Act. One of the exceptions is if Audit Office approval is obtained.

It is an offence against the Act to do anything as a member of a local authority while incapacitated pursuant to section 3 (see section 5). Where a member becomes incapacitated under section 3 an extraordinary vacancy is created.

Comment

The Act regulates the activities of members of authorities, not the actions of the authorities themselves. Members, not authorities, may be prosecuted for breaches of the Act. Consequently as a member, you are responsible for ensuring that you comply with the Act - from the time you consider election or appointment to the conclusion of your term of office.

Pecuniary Interest

A member must not vote on or take part in the discussion of any matter before the Council in which he/she has, directly or indirectly, any pecuniary interest, other than an interest in common with the public (section 6(1)). The member must declare his or her interest when the matter is raised, and the declaration and the abstention from discussion and voting will be recorded in the minutes (section 6(5)).

The Act sets out certain situations where a member will be deemed to have a pecuniary interest (section 6(2), (2A)), and some exceptions to the rule (section 6(1A), (2B), (3)).

The Audit Office has the power to declare that the general rule shall not apply to either a specified matter or a specified class of matter (section 6(4)).

It is an offence against the Act for a member to discuss or vote on a matter in which he or she has a pecuniary interest. On conviction the member will be deemed to have been granted leave of absence, and that leave of absence may result in the member's office on the council being vacated (section 7).

Some examples of conflict of interest are:

- A local authority is planning a roading improvement project. A member of the local authority has a close relative who owns a property that is in the way of the project.
- A community organisation approaches a local authority for financial support. A member of the authority is a member or unpaid office holder of the community organisation.
- A member of an authority is also an employee of a company that has a large contract with the local authority. The local authority is considering whether the contract should be renewed.

CRIMES ACT 1961

ss 99, 105 and 105A Bribery and Corruption

A member of a local authority is an “official” for the purposes of sections 105 and 105A of the Crimes Act relating to bribery and corruption.

A member will be liable to imprisonment for a term not exceeding 7 years if he/she corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe in respect of any act done or omitted to be done by him or her in his or her official capacity (see section 105).

A member will be liable to imprisonment for a term not exceeding 7 years if he/she corruptly uses or discloses any information, acquired by him/her in his/her official capacity, to obtain, directly or indirectly, an advantage or pecuniary gain for him/herself or any other person (see section 105A and 105B).

Secret Commissions Act 1910

Every officer or member of a local authority is deemed to be an “agent” of the local authority for the purposes of this Act (section 16).

It is an offence for an agent to receive a gift or other consideration as a reward or other inducement for doing or forbearing to do any act in relation to the principal’s affairs or business (whether such act is within the scope of the agent’s authority or the course of his/her employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal’s affairs or business (section 4).

It is an offence for an agent not to disclose to the principal his or her pecuniary interest in any contract when making a contract on behalf of the principal (section 5). This provision has some parallels with the requirements of the Local Authorities (Members’ Interests) Act relating to the disclosure of interests.

The Securities Act 1978

When does the Securities Act 1978 Apply to the Council?

The Council has wide borrowing powers under Part 6 of the Local Government Act 2002 (Section on "Borrowing and Security"). One of the ways the Council can borrow is by issuing stock. If stock is offered to the public the Council must comply with the Securities Act. What constitutes "offering to the public" is given a very wide meaning (see section 3 of the Act - "Construction of References to offering securities to the public").

What Does the Securities Act Require?

The Securities Act regulates the offering of securities to the public. Local authority stocks are securities for the purposes of the Act.

If the Council intends offering its stock to the public it will have to produce a prospectus and an investment statement complying with the requirements of Part II of the Act and the Securities Regulations 1983. In addition, the offer will have to be made in, or accompanied by, an "authorised advertisement", certificates would have to be issued, and certain information relating to the securities would have to be sent periodically to the holders of the Council's securities.

What is the penalty for non-compliance with the Securities Act?

The Securities Act provides wide provisions for civil liability and criminal offences for untrue statements made in an advertisement or in a registered prospectus on which a member of the public has relied in purchasing securities. In addition, there are general offences which apply to persons who do not otherwise comply with the provisions of the Act.

Elected members are deemed "directors" of the local authority for the purposes of the Act and Regulations. As such they are potentially personally liable to investors if a registered prospectus or investment statement contains an untrue statement. Members may also be criminally liable if the requirements of the Act or Regulations are not met.