

FOXTON COMMUNITY BOARD

First Meeting Following Triennial General Election

Memorandum to: Members, Foxton Community Board

Notice is hereby given that an Ordinary Meeting of the Foxton Community Board will be held on:

Date: Wednesday 30 October 2019
Time: 7.45 pm
Meeting Room: Council Chambers
Venue: 126-148 Oxford St
Levin

Business will be in accordance with the following Agenda.

Note: All Board Members are encouraged to be present for the Horowhenua District Council's inaugural meeting commencing at 7.00 pm.

David Clapperton
Chief Executive

AGENDA

1. WELCOME BY CHIEF EXECUTIVE – PRESIDING
2. APOLOGIES
3. DECLARATION BY MEMBERS

All members individually make their Declaration of Office before the Chief Executive.

This will be done in alphabetical order

4. LEGISLATION AFFECTING MEMBERS OF FOXTON COMMUNITY BOARD

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

- (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
- (v) The Secret Commissions Act 1910

- (vi) The Financial Markets Conduct Act 2013.
- (vii) Health & Safety at Work Act 2015
- (viii) Public Records Act 2005

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

Also appended is Subpart 2 – Community Boards – from the Local Government Act 2002.

5. METHOD OF VOTING FOR CERTAIN APPOINTMENTS

The Board to decide, using a system of open voting, the election of the Chairperson and Deputy Chairperson for the ensuing term of the Board.

Prior to the receiving of a nomination(s) for these positions, the Board will first need to determine the preferred method of voting to be adopted as contained within the Local Government Act 2002 - clauses 24 and 25 of Schedule 7, and as amended by Local Government Act 2002 - Amendment Act 2004 - No. 63. Clause 25 of Schedule 7 of the Local Government Act states:

Clause 25 of Schedule 7 of the Act states:

- (1) *This clause applies to -*
 - (c) *the election or appointment of the chairperson and deputy chairperson of a committee; and*
 - (d) *the election or appointment of a representative of a local authority.*
- (2) *If this clause applies, a local authority or a committee (if the local authority has so directed) must determine by resolution that a person be elected or appointed by using one of the following systems of voting:*
 - (a) *the voting system in subclause (3) (system A);*
 - (b) *the voting system in subclause (4) (system B).*
- (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 to formally declare result of voting system adopted.

6. ELECTION OF CHAIRPERSON

The Chairperson to be elected using the method of voting decided in Item 5 above.

7. DECLARATION BY CHAIRPERSON

The elected Chairperson to make the Declaration of Office before the Chief Executive.

8. ELECTION OF DEPUTY CHAIRPERSON

The Deputy Chairperson to be elected using the method of voting decided in Item 5 above.

9. FIXING OF DATE AND TIME FOR FIRST ORDINARY MEETING OF FOXTON COMMUNITY BOARD

Chief Executive recommending that the first ordinary meeting of the Board be held on Monday, 25 November 2019 commencing at 6.00 pm in the Blue Room, Te Awahou Nieuwe Stroom, 92 Main Street, Foxton.

10. CLOSE OF MEETING

At the conclusion of this meeting elected members and their families are invited to remain for supper.

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 Financial Markets Conduct Act 2013

The Financial Markets Conduct Act 2013 essentially places elected members in the same position as company directors should the Council offer financial products in the retail market (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.

The Health & Safety at Work Act 2015

On 4 April 2016, the Health and Safety at Work Act 2015 came into force. The HSWA provides 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.

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.

One of the significant changes is the introduction of "Officers", who is 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.

For the purposes of the HSWA, elected Council members (which include the Mayor and Councillors but excludes Community Board members) and the Chief Executive are by default identified as "Officers".

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).

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.

The Public Records Act 2005

The Public Records Act's purpose is to provide a framework to keep central and local government organisations accountable by ensuring records are full and accurate, well maintained and accessible. The Public Records Act 2005 provides for the continuity of the National Archives and the role of the Chief Archivist. The Act enables accountability by ensuring that full and accurate records of the affairs of local government are created and maintained. It also provides a framework within which local authorities create and maintain their records and has a role in enhancing public confidence in the integrity of local authority records.

The definition of a record includes information, whether in its original form or otherwise, and is not limited to just written information. The definition also includes (but is not limited to) a signature, a seal, text, images, sound, speech, or data in any medium and recorded or stored by any electronic device or process.

In the conduct of their affairs elected members may receive information directly, for example from constituents. Members will need to consider whether that information meets the definition of a local authority record and if so will need to ensure it is included in the Council's records.

Local Government Act 2002

Subpart 2 – Community boards

49 Establishment of community boards

- (1) A community board must be established for each community constituted, in accordance with Schedule 6, by -
 - (a) an Order in Council made under section 25; or
 - (b) a resolution made by the territorial authority within whose district the community will be situated as a result of a proposal by electors to establish a community; or
 - (c) by resolution made by the territorial authority within whose district the community will be situated as a result of the territorial authority's review of representation arrangements.
- (2) The community board must be described as the “[*name of community*] Community Board”.

Compare 1974 No 66 s 101ZG

Section 49(1)(a): amended, on 5 December 2012, by section of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

50 Membership of community boards

The membership of a community board consists of –

- (a) members elected under the Local Electoral Act 2001; and
- (b) members (if any) of, and appointed in accordance with the Local Electoral Act 2001 by, the territorial authority in whose district the relevant community is situated.

51 Status of community boards

A community board –

- (a) is an unincorporated body; and
- (b) is not a local authority; and
- (c) is not a committee of the relevant territorial authority.

Compare 1974 No 66 s 101ZP

52 Role of community boards

The role of a community board is to –

- (a) represent, and act as an advocate for, the interests of its community; and
- (b) consider and report on all matters referred to it by the territorial authority, or any matter of interest or concern to the community board; and
- (c) maintain an overview of services provided by the territorial authority within the community; and
- (d) prepare an annual submission to the territorial authority for expenditure within the community; and
- (e) communicate with community organisations and special interest groups within the community; and
- (f) undertake any other responsibilities that are delegated to it by the territorial authority.

Compare 1974 No 66 s 101ZY

53 Powers of community boards

- (1) A community board has the powers that are –
 - (a) delegated to it by the relevant territorial authority in accordance with clause 32 of the Schedule 7; or
 - (b) prescribed by the Order in Council constituting its community.
- (2) The powers of a community board prescribed by Order in Council expire at the close of 6 years after the order comes into force.
- (3) Despite subsection (1), a community board may not –
 - (a) acquire, hold, or dispose of property; or
 - (b) appoint, suspend, or remove staff.

Compare 1974 No 66 s 101ZZ, 101ZZA

54 Application of other provisions to community boards

- (1) Part 2 of Schedule 7 applies to community boards.
- (2) Part 1 of schedule 7 (excluding clauses 15 and 33 to 36) applies to community boards, with all necessary modifications, as if they were local authorities.