

I hereby give notice that an inaugural meeting of the Waiheke Local Board will be held on:

**Date:** Saturday, 2 November 2013  
**Time:** 3.00pm  
**Meeting Room:** Ostend War Memorial Hall  
**Venue:** 76 Ostend Road  
Ostend  
Waiheke Island

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## **Waiheke Local Board OPEN AGENDA**

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### **MEMBERSHIP**

**Chairperson**  
**Deputy Chairperson**  
**Members**

**Becs Ballard**  
**Shirin Brown**  
**John Meeuwsen**  
**Beatle Treadwell**  
**Paul Walden**

(Quorum 3 members)

**Carol McGarry**  
**Democracy Advisor**

**21 October 2013**

Contact Telephone: (09) 373 6210  
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The meeting will be chaired by Doug McKay, Chief Executive, for items 1, 2, 3, 4, 5 and 6. From item 7 onwards, the newly elected Chairperson will chair the meeting. Doug McKay, Chief Executive will administer the members' declarations.

**1 Mihi Whakatau (Welcome)**

Speech of welcome and prayer.

**2 Welcome Address**

Doug McKay, Chief Executive, will address the meeting.

**3 Apologies**

At the close of the agenda no apologies had been received.



## Declaration by Local Board Members Pursuant to Schedule 7, Clause 14, of the Local Government Act 2002

File No.: CP2013/24836

### Purpose

1. In accordance with the provisions of the Local Government Act 2002 (Schedule 7, clause 14) the Chief Executive, is authorised to administer the members' declarations at this meeting.
2. Each Local Board Member will make an oral declaration and sign a written declaration, which will be attested by the Chief Executive.

### Attachments

There are no attachments for this report.

### Signatories

Authors	Carol McGarry - Democracy Advisor
Authorisers	Karen Lyons - Manager Local Board Services Judith Webster - Relationship Manager





## Election of Chairperson

File No.: CP2013/24837

### Purpose

1. In accordance with Schedule 7, clause 21(5)(b) of the Local Government Act 2002, the Chief Executive, will call for nominations for the Chairperson of the Waiheke Local Board.

### Executive Summary

2. The Local Board must elect a member to this position in accordance with Schedule 7, clause 25 of the Act, noting that no member has a casting vote.
3. The Local Board will also need to determine what method they will apply to elect the chairperson.

Schedule 7, Part 1, Clause 25 of the Local Government Act 2002 stipulates that:

#### **25** Voting systems for certain appointments

(1) This clause applies to -

- (a) the election or appointment of the chairperson and deputy chairperson of a regional council; and
- (b) the election or appointment of the deputy mayor; and
- (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, the tie is resolved by lot.

### Recommendation/s

That the Waiheke Local Board:

- a) elects a chairperson for the 2013-2016 political term, utilising either System A or System B of Schedule 7, Part 1, Clause 25 of the Local Government Act 2002.

### Attachments

There are no attachments for this report.

### Signatories

Authors	Carol McGarry - Democracy Advisor
Authorisers	Karen Lyons - Manager Local Board Services Judith Webster - Relationship Manager

## Declaration by Chairperson Pursuant to Schedule 7, Clause 14, of the Local Government Act 2002

File No.: CP2013/24838

### Purpose

1. In accordance with the provisions of the Local Government Act 2002 (Schedule 7, clause 14) the Chief Executive, is authorised to administer the Chairperson's declarations at this meeting.
2. The Chairperson will make an oral declaration and sign a written declaration, which will be attested by the Chief Executive.
3. The Chairperson will assume the chair for the remainder of the meeting.

### Attachments

There are no attachments for this report.

### Signatories

Authors	Carol McGarry - Democracy Advisor
Authorisers	Karen Lyons - Manager Local Board Services Judith Webster - Relationship Manager



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## Address by Chairperson

File No.: CP2013/24839

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### Purpose

1. The newly elected Chairperson will address the Board.

### Attachments

There are no attachments for this report.

### Signatories

Authors	Carol McGarry - Democracy Advisor
Authorisers	Karen Lyons - Manager Local Board Services Judith Webster - Relationship Manager



## Election of Deputy Chairperson

File No.: CP2013/24840

### Purpose

1. In accordance with Schedule 7, clause 21(5)(e) of the Local Government Act 2002, the Chairperson will call for nominations for the Deputy Chairperson of the Waiheke Local Board.

### Executive Summary

2. The Local Board must elect a member to the Deputy Chairperson position in accordance with Schedule 7, clause 25 of the Act, noting that no member has a casting vote.
3. The Local Board will also need to determine what method they will apply to elect the Deputy Chairperson.

Schedule 7, Part 1, Clause 25 of the Local Government Act 2002 stipulates that:

#### **25** Voting systems for certain appointments

(1) This clause applies to -

- (a) the election or appointment of the chairperson and deputy chairperson of a regional council; and
- (b) the election or appointment of the deputy mayor; and
- (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, the tie is resolved by lot.

### Recommendation/s

That the Waiheke Local Board:

- a) elects a Deputy Chairperson for the 2013-2016 political term, utilising either System A or System B of Schedule 7, Part 1, Clause 25 of the Local Government Act 2002.

### Attachments

There are no attachments for this report.

### Signatories

Authors	Carol McGarry - Democracy Advisor
Authorisers	Karen Lyons - Manager Local Board Services Judith Webster - Relationship Manager



## General Explanation of Local Government Legislation

File No.: CP2013/24841

### Purpose

1. The attachment to this report (Attachment A) provides a general explanation of the laws affecting local board members including:
  - i) the Local Government Official Information and Meetings Act 1987;
  - ii) the Local Authorities (Members' Interests) Act 1968;
  - iii) sections 99, 105 and 105A of the Crimes Act 1961;
  - iv) the Secret Commissions Act 1910;
  - v) the Securities Act 1978;
  - vi) parts of the Local Government Act 2002; and
  - vii) parts of the Local Government (Auckland Council) Act 2009.
2. All local board members have attended legislative briefing sessions, run by the council's Legal Services team. Member requests for legal advice or assistance on council matters can be directed to the Relationship Manager and/or the council's General Counsel.

### Recommendation/s

That the Waiheke Local Board:

- a) notes the general explanation of laws affecting local board members.

### Attachments

No.	Title	Page
A	Laws Affecting Local Board Members	19

### Signatories

Authors	Nicolette Butler - Senior Solicitor Governance and Local Boards
Authorisers	Judith Webster - Relationship Manager



## LAWS AFFECTING LOCAL BOARD MEMBERS

### Executive Summary

At the first meeting of each local board after the three-yearly general election, local board members receive a general explanation of laws that affect them as local board members.<sup>1</sup> These laws include:

- the Local Government Official Information and Meetings Act 1987;
- the Local Authorities (Members' Interests) Act 1968;
- sections 99, 105 and 105A of the Crimes Act 1961;
- the Secret Commissions Act 1910; and
- the Securities Act 1978.

This report also summarises relevant provisions from the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009.

### Preliminary comments: Auckland Council

Before turning to the legal requirements, it is important to remember that the Local Government (Auckland Council) Act 2009 (**LGACA**) creates "Auckland Council" as a "*two-tier governance structure comprising the governing body and the local boards*", with decision-making responsibilities shared between the governing body and the local boards.<sup>2</sup> That is, the governing body and the local boards collectively comprise the "Auckland Council" entity. The powers, functions and responsibilities of the governing body and local boards, respectively, are discussed below.

### Legislative Overview

#### Meetings and Official Information

The Local Government Official Information and Meetings Act 1987 (**LGOIMA**) generally applies to the use and release of official information (that is, information held by council). The fundamental principle in LGOIMA is that official information is publicly available, unless one or more withholding grounds (listed in LGOIMA) apply.

LGOIMA also applies to council meetings, including meetings of local boards. Relevant to meetings:

- LGOIMA states the grounds when the public can be excluded from a meeting, for example, when "good reason" to withhold information exists.<sup>3</sup> The public can also be excluded where there is a right of appeal on the particular decision being discussed.
- To exclude the public, the local board must make a resolution stating the subject of each matter to be considered while the public is excluded, and must give the reasons for excluding the public, referring to the statutory grounds in LGOIMA.

<sup>1</sup> Clause 21(5)(c) Schedule 7 Local Government Act 2002

<sup>2</sup> Section 7 LGACA

<sup>3</sup> Section 48 LGOIMA

- The chairperson at a meeting can require a member of the public to leave a meeting if the behaviour of the person concerned is likely to prejudice or continue to prejudice the orderly conduct of the meeting.<sup>4</sup>
- If a local board member's conduct prevents the orderly conduct of the meeting, that local board member can also be asked to leave by the chairperson under the council's standing orders.
- Where a meeting is open to the public, and an agenda / minutes are made available, then any defamatory matter published in this way will be treated as privileged, unless the publication was predominantly motivated by ill will.<sup>5</sup> Oral statements made at meetings of the local board are also privileged, unless the statement is shown to be predominantly motivated by ill will.<sup>6</sup>
- Items which are not on an agenda for a meeting can still be dealt with if the meeting resolves to do so; and the chairperson explains in open meeting why the item is not on the agenda and why the matter cannot be delayed to a subsequent meeting.<sup>7</sup> Minor matters relating to the general business of the local board can be discussed without a resolution to do so, so long as the chairperson explains at the beginning of the meeting, when it is open to the public, that the item will be discussed. In that case no resolution, decision or recommendation can be made except to refer the item to a subsequent meeting for further discussion.<sup>8</sup>

Local boards can hold workshops or seminars without allowing the public to attend. This is because workshops or seminars are not treated as formal council meetings (as no decisions are made), and so they are not subject to LGOIMA.

### Members' Interests

The Local Authorities (Members' Interest) Act 1968 deals with financial conflicts of interest - it applies to situations where your personal interests impinge, or could be seen as impinging, on your duties as an elected local board member.

There are two key rules:

- You will be disqualified from office as an elected member if you are concerned or interested in contracts under which payments made by or on behalf of the local board exceed \$25,000 in any financial year.
- As an elected member, you are also prohibited from participating in any council discussion or voting on any matter where you have a financial interest, other than an interest in common with the general public. (When describing financial interests, the Act uses the term "pecuniary" interest.)

The same rules can apply where your spouse, partner, company (depending on shareholding levels or your position in the company) and possibly family trust, is concerned or interested in a contract, or has a financial interest.

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<sup>4</sup> Section 50 LGOIMA

<sup>5</sup> Section 52 LGOIMA

<sup>6</sup> Section 53 LGOIMA

<sup>7</sup> Section 46A(7) LGOIMA

<sup>8</sup> Section 46A(7A) LGOIMA

As an elected member, you may contact the Audit Office for guidance on whether you have a financial interest and, if so, may seek an exemption to participate or vote on a particular issue in which you may have a financial interest. (This must be done before the discussion or vote.) The chief executive must also seek approval from the Audit Office for contractual payments to members, their spouses, partners or others (as outlined above) that exceed the \$25,000 annual limit.

Failure to observe these requirements could leave you open to prosecution and you could also be disqualified from office.

### **Crimes of Bribery and Corruption**

The Crimes Act 1961 makes it an offence for you to corruptly seek or accept a bribe or reward for doing, or not doing, something in your official capacity as an elected member.<sup>9</sup> This includes gifts, money, a job, or anything else that benefits you directly or indirectly.<sup>10</sup>

It is also an offence to obtain any advantage or financial gain from information that you receive in your role as an elected member.<sup>11</sup>

If convicted, you could be imprisoned for up to seven years. You would also be disqualified from office.

### **Secret Commissions**

The Secret Commissions Act 1910 makes it an offence for you to take bribes, or use your position as an elected member for improper gain (either for you, or someone else). For example, you cannot:

- accept a gift or something valuable for doing, or not doing, something that affects the council's business;
- interfere with council business, in the hope of getting some reward (eg a gift or something valuable); or
- help someone else commit an offence under the Act.

It is also an offence under the Secret Commissions Act not to disclose if you have a direct or indirect financial interest in a council contract.

If convicted, you could be imprisoned for up to two years or receive a fine of up to \$1,000. You would also be disqualified from office.

### **Securities and Insider Trading**

The Securities Act 1978 essentially places elected members in the same position as company directors whenever the council offers stock to the public. You may be personally liable if investment documents contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

If any council debt securities are listed on a registered stock exchange, then any elected member cannot use (or benefit from) information that is not generally available to the public.

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<sup>9</sup> Section 105 Crimes Act

<sup>10</sup> Section 99 Crimes Act

<sup>11</sup> Section 105A Crimes Act

## Natural Justice

In addition to these statutory requirements, the common law principles of natural justice also apply to local board members. This means that when making decisions as an elected member, you must not be biased (ie treat anyone with fear or favour); you must not have made up your mind about an issue without listening to all the evidence, views and preferences; and you must not be a judge in your own cause.

The exact natural justice requirements will depend on the circumstances.

## Personal Liability of Local Board Members

Generally speaking, you are indemnified in respect of your actions as a member of the local board. This indemnity (by the council) covers:

- costs and damages for any civil liability if you are acting in good faith and carrying out the responsibilities or powers of the local board; and
- costs arising from any successfully defended criminal action relating to acts or omissions in your capacity as a local board member.<sup>12</sup>

Local board members can also be indemnified if the council has incurred loss due to actions of the local board. This only applies to situations when the local board:

- unlawfully spends money;
- unlawfully sells or disposes of an asset;
- unlawfully incurs a liability; or
- intentionally negligently fails to enforce the collection of money it is lawfully entitled to receive.<sup>13</sup>

Where the Auditor-General has reported on one of these situations as a “loss”, then that loss is recoverable as a debt due to the Crown. This debt must be paid back to the council from each local board member (the debt is recoverable jointly and severally). However, as a local board member, you have a defence if you can show that the act or failure which led to the loss occurred:

- without your knowledge;
- with your knowledge but against your protest made at or before the time when the loss occurred;
- contrary to the manner in which you voted on the issue at a meeting of the local board; or
- in circumstances where you acted in good faith and relied on information or professional/expert advice given by a council officer or professional advisor on matters which you reasonably believed were within that person’s competency.<sup>14</sup>

## Purpose, Role and Powers of the Council

The Local Government Act 2002 (**LGA 02**) and the Local Government (Auckland Council) Act 2009 (**LGACA**) underpin a lot of what the council does.

<sup>12</sup> Section 43 LGA 02

<sup>13</sup> Section 44 LGA 02

<sup>14</sup> Section 46 LGA 02

The LGA 02 sets out the purpose of local government:

- to enable democratic local decision-making and action by, and on behalf of, communities; and
- to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

(Here, “good-quality” means infrastructure, services, and performance that are efficient; and effective; and appropriate to present and anticipated future circumstances.)<sup>15</sup>

Local boards are required to give effect to this purpose in their local board area.<sup>16</sup> Local boards will do this when exercising their powers. Local board powers are either conferred by statute (through LGACA); allocated by the governing body; or delegated by the governing body (or Auckland Transport).<sup>17</sup>

LGACA also imposes specific limits on what local boards may do. A local board cannot acquire, hold or dispose of property; or appoint, suspend or remove staff. In addition, some matters may not be delegated to local boards including the powers to make a rate; to make a bylaw; or appoint a chief executive.<sup>18</sup>

### Legal advice

If you require legal advice or assistance on any council matter, please contact your Relationship Manager and/or the council’s General Counsel.

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<sup>15</sup> Section 10 LGA 02

<sup>16</sup> Section 10 LGACA

<sup>17</sup> Sections 13 and 16 LGACA

<sup>18</sup> Sections 12 and 31(1) LGACA





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## First Business Meeting of the Waiheke Local Board

File No.: CP2013/24842

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### Purpose

1. Pursuant to the requirements of clauses 21(5)(d) and 22(1)(a) of Schedule 7 of the Local Government Act 2002, a date has to be set for the first business meeting of the Waiheke Local Board.

### Recommendation/s

That the Waiheke Local Board:

- a) confirms the date for its first business meeting.

### Attachments

There are no attachments for this report.

### Signatories

Authors	Carol McGarry - Democracy Advisor
Authorisers	Karen Lyons - Manager Local Board Services Judith Webster - Relationship Manager