



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF INAUGURAL MEETING

**HENDERSON COMMUNITY BOARD
MASSEY COMMUNITY BOARD
NEW LYNN COMMUNITY BOARD
WAITAKERE COMMUNITY BOARD**

Pursuant to Clause 21 of Schedule 7 of the Local Government Act 2002, I hereby give notice that a combined First Meeting of the 2007-2010 Henderson, Massey, New Lynn and Waitakere Community Boards will be held on:-

DATE: Thursday, 1 November 2007 TIME: 7.00 pm

VENUE: Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere

to witness the Declaration of Community Board Members and receive statutory advice and to take any necessary action connected therewith.

23 October 2007

HV O'Rourke, MNZM, JP
CHIEF EXECUTIVE OFFICER

MEMBERSHIP:

Henderson Community Board

Mr WS Bainbridge
Mrs EAG Grimmer, MNZM
Mr SJ McDonald
Mr LJF Nobile, JP
Ms S Savage

Massey Community Board

Mr JC Carrodus
Mr AE Davies, JP
Ms JA Fletcher
Mr MJ Neeson
Mr JG Riddell

New Lynn Community Board

Mr AK Hartnett
Mrs GPJ Marshall
Ms KS Schwalger
Mrs SL Taylor, JP
Mr P van der Voort, JP

Waitakere Community Board

Ms LE Davies
Mrs EG Francke
Mrs CA Shepherd, JP
Mr EN Taylor
Mr KJP Witten-Hannah, JP

★★★★★★★★★★

(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A MEETING OF THE INAUGURAL COMBINED COMMUNITY BOARDS
TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD,
HENDERSON, WAITAKERE, ON THURSDAY, 1 NOVEMBER 2007,
COMMENCING AT 7.00 PM**

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1	OPENING	1
2	APOLOGIES	1
3	DECLARATIONS BY MEMBERS	1
4	STATUTORY BRIEFING	3

**AGENDA FOR A MEETING OF THE INAUGURAL COMBINED COMMUNITY BOARDS
TO BE HELD AT WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD,
HENDERSON, WAITAKERE, ON THURSDAY, 1 NOVEMBER 2007,
COMMENCING AT 7.00 PM**

1 OPENING

The Chief Executive Officer or his nominee will open the meeting and the Community Board Members will be welcomed.



2 APOLOGIES



3 DECLARATIONS BY MEMBERS

In accordance with the provisions under Clause 14 of Schedule 7, as read with Section 54(2), of the Local Government Act 2002, Members elected to Henderson, Massey, New Lynn and Waitakere Community Boards will be required to come before the Chief Executive Officer or his nominee, accompanied by the Mayor, to make and sign the Declaration.

To ensure complete compliance with the Act, Councillors appointed to respective Community Boards are also required to make and sign the Declaration in the same prescribed form. Councillors will be appointed by the Council at its First Meeting scheduled to be held on Wednesday, 31 October 2007.

Declarations will be made in alphabetical order as follows:

Henderson Community Board

"I,, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of the Henderson Community, the powers, authorities and duties vested in, or imposed upon, me as a Member of the Henderson Community Board by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act."

Wayne Selwyn Bainbridge
Elizabeth Ailsa Grant Grimmer, MNZM
Stephen John McDonald
Leo John Frank Nobilo, JP
Shirley Ann Savage

Councillors: Brenda Ann Brady
Michael Marshall Jolley

(to be appointed to the Henderson Community Board by the Council at its First Meeting scheduled to be held on Wednesday, 31 October 2007)

Massey Community Board

"I,, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of the Massey Community, the powers, authorities and duties vested in, or imposed upon, me as a Member of the Massey Community Board by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act."

Jonathan Cavanagh Carrodus
Allen Edwin Davies, JP
Judith Ann Fletcher
Michael John Neeson
John Godfrey Riddell

Councillors: Man Fai Peter Chan, JP
Linda Ann Cooper, JP

(to be appointed to the Massey Community Board by the Council at its First Meeting scheduled to be held on Wednesday, 31 October 2007)

New Lynn Community Board

"I,, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of the New Lynn Community, the powers, authorities and duties vested in, or imposed upon, me as a Member of the New Lynn Community Board by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act."

Anthony Kim Hartnett
Gayle Patricia June Marshall
Kelly Sila Schwalger
Sandra Lee Taylor, JP
Leopold (Pim) van der Voort, JP

Councillors: Janet Mary Clews, QSO, JP
Judith Patricia Lawley, JP

(to be appointed to the New Lynn Community Board by the Council at its First Meeting scheduled to be held on Wednesday, 31 October 2007)

Waitakere Community Board

"I,, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of the Waitakere Community, the powers, authorities and duties vested in, or imposed upon, me as a Member of the Waitakere Community Board by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act."

Linda Ellen Davies
Elizabeth Gabriel Francke
Christine Anne Shepherd, JP
Evan Neil Taylor
Kubi Jan Paul Witten-Hannah, JP

Councillors: Penelope Anne Hulse
Paul Gordon Mitchell

(to be appointed to the Waitakere Community Board by the Council at its First Meeting scheduled to be held on Wednesday, 31 October 2007)



4 **STATUTORY BRIEFING**

PURPOSE OF THE REPORT

The purpose of this report is to provide Community Board Members with the statutory briefing required by Clause 21(5)(c) of Schedule 7 of the Local Government Act 2002.

BACKGROUND

At the first meeting of a Community Board following the triennial general election the Chief Executive Officer of the local authority is required to give, or arrange to be given, to Members a general explanation of:

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

Compliance with that requirement will be achieved by the inclusion of this item on the agenda for this meeting, the circulation to Members of a handbook containing materials relating to this issue and attendance by Members at a workshop held before the date of this meeting and arranged by the Chief Executive Officer for, among other things, discussion of this agenda item and related issues.

LOCAL GOVERNMENT OFFICIAL INFORMATION & MEETINGS ACT 1987 (LGOIMA)

As the title to the Act makes clear this statute is concerned with the availability of official information to the public and the conduct of meetings of the local authority.

Information held by a local authority includes information held by its Members and extends to include written information, electronic information and knowledge known to Members. If a request for information is received it must be made available on request unless good reasons exist for withholding disclosure of the information. Sections 6 and 7 of the Act set out the grounds for withholding disclosure of information which include:

- The maintenance of law and order, the protection of people's safety and the prevention of crime;
- The protection of individual privacy, information given in confidence, the avoidance of prejudice or loss to members of the public and maintaining the effective conduct of public affairs through free and frank expressions of opinion;
- Maintaining legal professional privilege;
- The protection of sensitive commercial information or the Council's ability to carry out negotiations.

Where a request for disclosure of information is made, there are statutory time limits within which the request must be dealt with. If disclosure is refused, that decision can be reviewed by the Ombudsman.

The grounds for excluding the public from a meeting under Section 48 of the Act also turn on the provisions of Section 7. Where the public is excluded, the resolution must state the general nature of the matter being discussed, the reasons for excluding the public and identify those persons who may remain at the meeting (other than Members or Council officers) and state the nature of the knowledge which they possess which may be of assistance in relation to the matter under discussion

Where a matter is the subject of a resolution excluding the public, or information is otherwise protected from disclosure under the Act, Members are obliged to respect the decision to withhold that information from disclosure. It may be a breach of the Member's duties to the Council, and to any person with whom the Council may have been dealing, to make an unauthorised disclosure. In the case of a Councillor, and a Community Board Member who is a member of a community board which has agreed to adopt a code of conduct, unauthorised disclosure of information may also amount to a breach of the code of conduct.

Sections 52 and 53 of the Act set out the circumstances of qualified privilege that attach to statements contained in an agenda or minutes of an open meeting of the Council or a Community Board, or made in an oral statement of a local authority meeting. Anything that might be defamatory is protected unless the nature of the statement was predominately motivated by ill will or took improper advantage of the occasion of publication. Oral statements made at a meeting will only be protected if made in accordance with Standing Orders (meeting rules).

THE LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968 - PECUNIARY INTERESTS AND OTHER CONFLICTS OF INTEREST

This Act is concerned with the pecuniary interests of Members arising out of contracts entered into between the Council and a Member, (Section 3) or in respect of matters for discussion before the Council in respect of which a Member may have a direct or indirect pecuniary interest and which is not an interest which the Member holds in common with members of the public (Section 6). Interests held by a Member are extended by deeming provisions to include interests held by the Member's spouse or partner (the reference to "or partner" being added to the statute with effect from 13 October 2007) and any company or trust in which the Member has an interest.

Payments to a Member under contracts may not exceed \$25,000 including GST in any financial year. A breach of this requirement results in automatic loss of office and a member who continues to act as a Member while disqualified can be liable on conviction to a fine not exceeding \$200 (Sections 4 and 5).

A Member taking part in a discussion, including the decision making process related to that matter, in respect of which the Member has a direct or indirect pecuniary interest commits an offence and is liable on conviction to a fine not exceeding \$100 and is automatically disqualified from office on the entry of that conviction (Section 7).

When a pecuniary interest arises it is not sufficient for a Member merely to declare his or her interest. The Member must not participate in the discussion. If the Member is present when the matter arises, the interest must be disclosed and the minutes should record that the Member took no further part in the discussion and voting, for the protection of both the Member's and the Council's position.

The Auditor-General has the power under the Act, on limited grounds, to grant an exemption from the requirements of Section 3 or Section 6. An application must usually be made and granted before the Member participates in any discussion or voting on a matter.

Having declared an interest the Member should withdraw. Best practice is for the Member to leave his or her seat and to take a seat in the public gallery. The Member may leave the Council Chamber or meeting room, and if this occurs that action should be recorded in the minutes, but leaving the Council Chamber or meeting room may affect the quorum of the meeting. A Member is counted in the quorum while he or she is present, notwithstanding that he or she may not be entitled to vote (Clause 23(1) Schedule 7 of the Local Government Act 2002).

Once the Member has withdrawn, his or her speaking rights are the same as any other Member of the public. In any case where speaking rights are requested by a Member who has declared an interest and withdrawn, and are granted (which will be rare), care must be taken not to exercise influence on decision-making because of the Member's position. If the matter under discussion occurs at the meeting from which the public has been excluded, it also follows that the Member must leave the Council Chamber or meeting room.

The rules relating to pecuniary interests are complex and difficult to apply in practice. Members have been provided with a copy of the current version of the booklet "*Guidance for members of local authorities about the laws on conflicts of interest*" published by the Auditor-General which is an excellent reference material for Members to fully inform themselves as to the issues which arise in relation to not only pecuniary interests but also conflicts of interest generally. The booklet explains the exemption powers of the Auditor-General, the process for seeking an exemption, and also sets out some frequently asked questions and relevant case law.

That booklet also discusses the broader issue of conflict of interest where no pecuniary interest exists. A common example is the circumstances where one of the Members has a personal relationship with a third party who has an interest in the matter before the Council and that interest gives rise to a perception that the Member might in some way be biased in his or her decision making on that matter. Another common example is where the Member has commented on an issue in a way which gives rise to a perception that the member already has a fixed view.

The common law deals with these issues as part of the rules of natural justice. Those rules require that decision makers, whether acting in an administrative or quasi-judicial or judicial context, should independently and impartially exercise decision making powers free from any complications of matters which might be perceived to have an effect on their judgment. The matter is to be judged from the perspective of the public perception of the lack of independence and impartiality rather than the actual position. The fact that somebody may bend over backwards to appear impartial, and to vote against their personal interests, may be morally correct but it will not be legally correct.

As noted above the law relating to pecuniary interests is complex and difficult to apply in practice. That statement is even more true in relation to other, non pecuniary, conflicts of interest. Members have been provided with a copy of another publication by the Auditor-General "*Managing conflicts of interest: Guidance for public entities*" which contains more useful information and examples in relation to this matter. There has also been considerable discussion of these issues at the workshop referred to above.

THE CRIMES ACT 1961

Members of a local authority fall within the definition of an "official" under section 99 of the Crimes Act 1961. Section 105 of the Act provides that every official is liable to imprisonment for a term not exceeding seven years to, whether within New Zealand or elsewhere, corruptly accepts or obtains or agrees or offers to accept, or attempts to obtain, any bribe for himself, herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in an official capacity.

Putting this simply, it is an offence under the Act to seek or to obtain a reward for performing one's official duties as a Member of a local authority.

Section 105A then goes on to make it an offence, again carrying a term of imprisonment of up to seven years, for an official to use any information acquired by him or her in an official capacity to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself, or any other person.

A simple example of an offence under this section would be the circumstances where a Member, knowing that Council was contemplating a decision to rezone land in a particular locality, takes steps to invest in the purchase of that land before the proposal has been publicly notified.

THE SECRET COMMISSIONS ACT 1910

This Act applies where a Member uses his or her position in return for some gift or other consideration to influence the Council's actions or decisions so as to benefit any person. The Act applies to any Member or officer of any local authority and deems that person to be the agent of the local authority.

Section 3 of the Act makes it an offence to corruptly give or offer anything to the agent as an inducement or reward for acting in a particular way. It is also an offence for the agent to accept a gift or other consideration (Section 4).

Section 5 requires an agent making a contract on behalf of a principal to disclose to the principal any pecuniary interest which the agent has and which is not already known to the principal. Section 8 makes it an offence to obtain a secret commission for procuring the award of a contract.

The penalties for breach of the provisions of the Secret Commissions Act 1910 can be fine up to \$1,000 and imprisonment for two years. A conviction for an offence under the Secret Commissions Act 1910 would result in disqualification from office under Clause 1 of Schedule 7 of the Local Government Act 2002.

SECURITIES ACT 1978

Clause 21 of Schedule 7 of the Local Government Act 2002 refers to this Act but the circumstances where the provisions of the Act may be relevant to Members of Waitakere City Council and all Community Boards are not particularly common. The Act deals with issues surrounding the accuracy of statements made in formal documentation accompanying an issue of share securities or debt securities to the public.

The circumstances where a local authority is involved in a public share issue are rare.

In recent years it has not been common for a local authority to issue debt securities to the public but there is presently a Bill before Parliament to amend the Act so that it will be less onerous for local authorities to do so and recourse to the market for loan raising may therefore become increasingly more common in the future.

In circumstances where a public issue of share or debt securities is made a prospectus and an investment statement complying with the requirements of the Act, and any relevant regulations, must be prepared. The Act makes provision for civil liability and criminal offences where a member of the public relies on untrue statements made in any advertisement, a registered prospectus or investment statement. In addition there are general offences where there is a failure to otherwise comply with the requirements of the Act in respect of the public issue of shares or debt securities.

Since the Act deems Members of a local authority to be "directors" for its purposes, Members are therefore potentially personally liable to investors if an advertisement, a registered prospectus or investment statement contains an untrue statement. Members may also be liable for conviction of criminal offences if statutory requirements are not met. Where the information published is wrong or misleading a civil claim may also lie. If an offence is committed the penalties are severe (up to five years imprisonment and a fine up to \$300,000 and if the offence is a continuing offence, a fine not exceeding \$10,000 for every day). Again, conviction of an offence of this magnitude will result in disqualification from office.

If the Council is involved in a public issue of shares in a company in which the Council is a shareholder then there is the potential for Members to fall foul of the prohibitions against tipping and insider trading contained in the Securities Markets Act 1988, through passing on sensitive information which is not otherwise available to members of the public or other shareholders. If the rules are broken the insider trader or tipster can be liable for financial penalties.

PROTECTED DISCLOSURES ACT 2000

This Act is perhaps better known as the 'whistleblowers' Act. It is the legislation which protects a whistleblower from name disclosure, and from civil and criminal proceedings, when making a disclosure of information alleging serious wrongdoing in any organisation, including a public sector organisation such as a local authority.

To obtain the benefit of the protection provided by the Act in relation to information disclosed each of the matters below must be satisfied. These requirements are cumulative, if any one of these requirements is not satisfied then the Act will not apply:

- the information must relate to 'serious wrongdoing' in or about the organisation. The phrase 'serious wrongdoing' is extensively defined in the Act and is primarily concerned with unlawful, corrupt or unsafe practices and matters which are either an offence under a statute or grossly negligent. An informant seeking the protection of the act must be careful to ensure that the information relates to something which falls within this definition;
- the informant must believe on reasonable grounds that the information is true or likely to be true;

- the disclosure must be made for the purpose of enabling investigation of the alleged serious wrongdoing. If the informant wishes to make an allegation of serious wrongdoing but does not wish that allegation to be investigated then the protection of the Act will not be available;
- the informant, at the time of making the disclosure, makes it clear that he or she wishes the disclosure to be protected.

The Act requires the Council to adopt internal procedures for receiving and dealing with information about serious wrongdoing. The Council's internal procedures can be found on the Intranet at [HR/personnel policies/use of information/Protected Disclosures](#). The internal procedure must be followed, or the disclosure must be made to the "head of the organisation" if the informant wishes to claim the protection of the Act.

A protected disclosure can also be made to:

- an 'appropriate authority', which includes the Commissioner of Police or an Ombudsman, if the person making the disclosure believes on reasonable grounds that the 'head of the organisation' may be involved in the wrongdoing or that action is justified by reason of urgency;
- a Minister of the Crown or an Ombudsman, if the disclosure has already been made to the organisation in accordance with the internal procedures but no progress has been made in relation to investigation of the matter and the informant still believes on reasonable grounds that the information disclosed is true or likely to be true.

At the date of the preparation of this report a Member making a disclosure of information relating to serious wrongdoing is not entitled to the benefit of the Act since a Member is not an 'employee' of the Council. However, the Protected Disclosures Amendment Bill is presently before Parliament. This Bill will amend the definition of 'employee' to include 'a person who is a member of the board or governing body of the organisation'. This language appears to be broad enough to ensure that Councillors would fall within the definition of 'employee' but there is doubt whether the language would extend far enough to include the member of the community board. There is also concern over use of the phrase 'head of the organisation' for a member of staff that is clearly the Chief Executive Officer but the position is not so clear for a councillor where it might refer to the Mayor.

The Council will be making a submission to the Bill seeking further clarification of these points.

LIABILITY OF COMMUNITY BOARD MEMBERS

Section 43 of the Local Government Act 2002 provides that "*a member of a local authority (or a committee, community board, or other subordinate decision-making body of that local authority)*" is not personally liable for the debts or liabilities incurred by the Council except as set out in Sections 46 and 47. However, any Member (or officer) who incorrectly represents that he or she has Council authority to enter into a commitment on Council's behalf may face a claim for breach of warranty of authority if the Council does not subsequently ratify the unauthorised Act. The claim for breach of warranty of authority will be for the losses suffered by the other party as a consequence of that party's inability to enforce its contractual obligations against the Council.

Sections 46 and 47 of the Local Government Act 2002 are commonly referred to as the 'surcharge' provisions. In the circumstances set out in those sections, Community Board Members will personally liable for losses incurred where:

- money is unlawfully expended;
- an asset is unlawfully sold;
- a liability is unlawfully incurred; or
- there is a failure to enforce the collection of money lawfully owing to the Council.

Defences are available where the Community Board Members have relied upon professional expert advice or a senior employee of the local authority or where the actions which have caused the loss occur:

- without the Community Board Member's knowledge;
- with the Community Board Member's knowledge but against the Community Board Member's protests;
- contrary to the manner in which the Community Board Member voted when the matter came before the local authority.

The liability of Community Board Members who are the subject of a surcharge is joint and several. A Community Board Member who is required to make full payment of the surcharge is entitled to contribution from the other liable Community Board Members, to the extent (if any) of the financial ability of the others to make that contribution.

A Community Board Member who is concerned that a decision of the Council may give rise to the potential for a surcharge and who has voted against the matter should ensure that his or her vote is recorded in the minutes of the meeting in relation to that matter.

GENERAL DUTIES

The Council's powers and obligations are contained in a large number of statutes, but principally the Local Government Act 2002 and the remnants of the Local Government Act 1974. These Acts set out the purposes and structure of local government and the range of activities which local authorities are authorised to undertake.

A decision of a local authority may be struck down if it is outside the powers of a local authority (*ultra vires*), if relevant considerations were ignored or irrelevant considerations were taken into account or the decision reached was 'irrational', in the public law sense of that word (i.e. that no other public body properly informed and acting properly could have reached that decision).

A Council delegates most of its decision-making to Committees, Community Boards, the Chief Executive Officer and, through the Chief Executive Officer, to other employees. Individual Councillors or Community Board Members do not have the power to make decisions or otherwise bind the Council. Your oath of office requires that you place the interests of the community ahead of your personal interests, beliefs, opinions and party politics. You may not blindly follow one point of view and disregard other factors.

Members are expected to hold views on issues and may express those views in appropriate circumstances. However, the oath of office may mean that on occasion your obligation to the community will require you to exercise circumspection, or at times to keep your views to yourself. In particular, you should be careful always to ensure that you take a position on a matter which may not later be used to show bias or predetermination on your part. You must always retain an open mind and be prepared to consider other points of view.

RECOMMENDATION

That the Statutory Briefing report be received.

Report prepared by Denis Sheard, Manager: Legal Services.

