



Ōtorohanga

District Council

*Ōtorohanga - where kiwi can fly
A dynamic, inclusive and unique district*

OPEN AGENDA

Notice is hereby given that the Inaugural meeting of the Ōtorohanga Community Board will be held in the Council Chambers, Ōtorohanga District Council, 17 Maniapoto Street, Ōtorohanga on Wednesday, 2 November 2022 commencing at 2.00pm.

Tanya Winter
CHIEF EXECUTIVE

28 October 2022

Ōtorohanga Community Board

Community Board Member	Kat Brown-Merrin
Community Board Member	Peter Coventry
Community Board Member	Jo Butcher
Community Board Member	Tori Muller
Ōtorohanga Ward Councillor	To be appointed
Ōtorohanga Ward Councillor	To be appointed

Quorum: A majority of members (including any vacancies)

Meeting frequency: Monthly or as required

All attendees at this meeting are advised that the meeting will be electronically recorded (audio and video) for the purpose of webcasting to the Council's YouTube channel. Every care will be taken to maintain individuals' privacy; however, attendees are advised they may be recorded as part of the general meeting proceedings.

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PLEASE NOTE

The reports attached to this Open Agenda set out recommendations and suggested resolutions only. Those recommendations and suggested resolutions DO NOT represent Ōtorohanga Community Board policy until such time as they might be adopted by formal resolution. This Open Agenda may be subject to amendment either by the addition or withdrawal of items contained therein.

COMMENCEMENT OF MEETING

The Chief Executive will declare the meeting open.

OPENING PRAYER - KARAKIA TIMATANGA**APOLOGIES - TONO AROHA**

The Chief Executive will announce any apologies received, if any.

MAKING AND ATTESTING OF DECLARATION OF COMMUNITY BOARD MEMBERS ELECT

The Local Government Act 2002 (schedule 7 clause 14) states that a person cannot act as a member of a local authority until that have made an oral and written declaration in the form set out in the Act.

The Chief Executive will invite the community board members elect to make their declarations.

PROCESS OF ELECTING A CHAIRPERSON

The Local Government Act 2002 (schedule 7 clause 37(1)) states that a Community Board must have a chairperson. The process of electing of a chairperson is undertaken in accordance with Schedule 7 Clause 25 of the act. The community board must select System A or System B to elect its chairperson.

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.

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

Staff recommendation

That Ōtorohanga Community Board selects System B from Schedule 7, clause 25 of the Local Government Act 2002 to elect its chairperson and deputy chairperson.

ELECTION OF A CHAIRPERSON

The Local Government Act 2002 (schedule 7 clause 37(1)) states that a Community Board must have a chairperson. The Chief Executive will call for nominations for the role of chairperson and will oversee the process and declare the result.

Staff recommendation

That Ōtorohanga Community Board appoints [name] as the chairperson of the Ōtorohanga Community Board.

The elected chairperson will take over from the Chief Executive as chairperson for the remainder of the meeting.

ELECTION OF A DEPUTY CHAIRPERSON

The Chairperson will call for nominations for the role of chairperson and will oversee the process and declare the result.

Staff recommendation

That Ōtorohanga Community Board appoints [name] as the deputy chairperson of the Ōtorohanga Community Board.

ITEM 1: FIXING OF A DATE AND TIME FOR THE FIRST MEETING

The Local Government Act 2002 (Schedule 7 Clause 21(5)(d)) requires Council, at its first meeting after a triennial election, to fix the date and time of the first meeting of the local authority for the new term.

Staff recommendation

That Ōtorohanga Community Board confirm the first meeting of the Board for the 2022-25 Triennium to be held on Monday, 5 December 2022 commencing at 4.00pm.

ITEM 2: GENERAL EXPLANATION OF LAWS AFFECTING ELECTED MEMBERS

TO: THE CHAIRPERSON AND MEMBERS OF ŌTOROHANGA COMMUNITY BOARD

FROM: CHIEF EXECUTIVE

DATE: 1 NOVEMBER 2022

Relevant Community Outcomes

United

Responsible

Enduring



1 PURPOSE

1.1 To provide a general explanation of legislation affecting elected members as required by the Local Government Act 2002.

2 EXECUTIVE SUMMARY

2.1 Clause 21(5)(c) of Schedule 7 to the Local Government Act 2002 requires Council to include in the business to be conducted at its first meeting a general explanation of the Local Government Official Information and Meetings Act 1987 and other legislation affecting elected members.

2.2 In addition to these core legal requirements affecting elected members, there are many other statutes relevant to council decisions (for example the Resource Management Act 1991 and the Reserves Act 1977). Elected members will receive further advice from staff as part of their general induction over the coming weeks, and on a case-by-case basis to ensure that they understand their legal obligations when making decisions.

3 SUGGESTED RESOLUTION

That Ōtorohanga Community Board receive the report titled ‘General explanation of laws affecting elected members’ (document number 658307) from Tanya Winter, Chief Executive.

4 DISCUSSION

Local Government Official Information and Meetings Act 1987 (‘LGOIMA’)

Access to Local Authority information

4.1 LGOIMA enables members of the public to request ‘official information’ from Council.

- 4.2 Official information is any information held by a local authority. This can include hard copies of documents, electronic data (including emails and text messages) and audio and audio-visual material.
- 4.3 Council is required to make a decision on the request as soon as possible and in any event no later than 20 working days after the day on which the request was received.
- 4.4 LGOIMA is based on the principle that if a person requests information from a local authority the information “*shall be made available unless there is good reason for withholding it*”.
- 4.5 LGOIMA also recognises that not all information should be made available, and provides for its protection, where necessary, and sets out an exhaustive list of grounds for withholding information.
- 4.6 All responses by Council are reviewable by the Office of the Ombudsman.
- 4.7 Any information provided in good faith and in accordance with Council’s duties does not give rise to legal remedies.

Local Authority Meetings

- 4.8 LGOIMA requires meetings of Council, its committees, subcommittees, and community boards to be publicly notified and for agendas and reports to be available to the public at least two working days before every meeting.
- 4.9 Anyone may attend meetings, but Council has the right to exclude the public for the whole or any part of the meeting if there are grounds under the Act to do so. The Chief Executive may exclude from the public reports that are reasonably expected to be discussed with the public excluded.
- 4.10 Matters not on the agenda may be dealt with as supplementary items if the meeting resolves to do so, and the chairperson explains why the matter was not on the agenda and why it cannot be left for another meeting.
- 4.11 The Act also contains provisions that apply when a meeting is open to the public, including the maintenance of order. If the behaviour of any member of the public is likely to prejudice the orderly conduct of the meeting, the chairperson has the right to require that person to leave.
- 4.12 The publication of defamatory material contained in publicly available agendas or minutes is privileged, unless it can be proven that Council was predominantly motivated by ill will or took improper advantage of the occasion of publication.

LOCAL AUTHORITIES (MEMBERS’ INTERESTS) ACT 1968

Contracting Rule

- 4.13 A member is automatically disqualified from office if they are ‘concerned or interested’ in contracts with Council worth more than \$25,000 (including GST) in any financial year (“Contracting Rule”).
- 4.14 The Contracting Rule does not apply

- if the Auditor General has provided prior approval or, in limited cases, retrospective approval to the contract;
- if the contract was entered into by a Council committee or a Council officer acting under delegation, and the member is not a member of that committee and did not know, and had no reasonable opportunity of knowing, about the contract at the time it was made; or
- to certain exempted contracts e.g. a lease granted to the Council.

4.15 If a member breaches the Contracting Rule, the member will be disqualified from holding office as a member of Council (or any committee) and is disqualified from being elected as a member (or appointed to a committee) until the next election. It is a criminal offence for a person to act as a member of Council (or committee) while disqualified.

Non-Participation Rule

4.16 A member may not discuss or vote on any matter before Council or a Council committee in which they have a direct or indirect financial interest, other than an interest in common with the public (“Non-Participation Rule”).

4.17 The Non-Participation Rule does not apply:

- If the Auditor-General has approved an exemption to that requirement; or
- If certain exemptions apply e.g. a member is appointed by Council to represent a particular activity or organisation, and the member’s pecuniary interest is no different from the interest of that activity or organisation.

4.18 If a member has a financial interest in a matter that is before Council, or a committee, that member must:

- declare the existence of the financial interest;
- abstain from discussion and voting on the matter; and
- ensure the disclosure and abstention is recorded in the minutes.

4.19 It is a criminal offence if a member breaches this rule. If convicted, the member becomes incapable of continuing to hold office and a vacancy is created.

Direct/Indirect Interests Apply

4.20 The Contracting Rule and Non-Participation Rule apply to direct and indirect contracts/financial interests including those involving:

- the member or the member’s spouse/partner directly;
- a company in which the member (or their partner/spouse) owns 10% or more of the shares;

- a company in which the member (or their partner/spouse) is a member and a managing director or general manager;
- another party where the member has a personal connection or where the member could personally benefit from that contract e.g. family trust in which the member (or their partner/spouse) is a beneficiary.

CRIMES ACT 1961

4.21 Under sections 105 and 105A of this Act, it is a crime for any elected member – as an ‘official’ – to:

- corruptly accept, obtain or offer to accept any bribe for the member (or anyone else) for acting, or not acting, in that member’s official capacity;
- use or disclose information acquired in that member’s official capacity to obtain (directly or indirectly) an advantage of a pecuniary gain for himself or herself or any other person.

4.22 These offences carry a maximum sentence of seven years’ imprisonment and a conviction for either of these offences would result in an elected member being disqualified from office.

SECRET COMMISSIONS ACT 1910

4.23 This Act prohibits:

- an agent from corruptly accepting or obtaining or soliciting any gift or other consideration (including to the member’s close relatives or associates) as an inducement or reward for doing, or not doing, something or showing favour or disfavour to any person in relation to Council’s affairs or business.
- an agent from entering into a contract on behalf of Council and failing to disclose the existence of any pecuniary interest the agent has in the contract (including those of the member’s close relatives or associates).
- an agent from providing Council with a receipt, invoice, or account (or similar document) in relation to the business or affairs of Council which the agent knows to be materially false or defective, or likely to mislead Council, and which omits to state the fact of any commission, or other consideration having been received by or promised to the agent.

4.24 Under this Act, every Council officer or member is deemed to be an agent of Council.

4.25 Any person who commits an offence against the Act is liable to imprisonment for a term not exceeding 7 years and a conviction for any of these offences would result in an elected member from being disqualified from office.

FINANCIAL MARKETS CONDUCT ACT 2013

- 4.26 This Act governs how financial products are created, promoted and sold, which includes shares, debt securities and derivatives.
- 4.27 In the event that Council may wish at some point to raise capital through the issue of debt securities, compliance with this Act will be relevant to elected members.
- 4.28 Elected members are in a similar position as company directors, as they could be personally liable for breaches of provisions under this Act.

LOCAL GOVERNMENT ACT 2002

- 4.29 Sections 44 to 47 of the Local Government Act 2002 relates to financial loss incurred by local authorities, as a result of unlawful expenditure of money, the unlawful sale of an asset, a liability having been unlawfully incurred, or intentional or negligent failure to collect money the local authority is lawfully entitled to receive.
- 4.30 If the Auditor-General is satisfied that such a financial loss has been incurred, the loss is recoverable as a debt due to the Crown from each member of the local authority jointly and severally.
- 4.31 An elected member may have a defence (and not be liable) if they can prove the act (or failure to act) that resulted in the loss:
- occurred without their knowledge,
 - with their knowledge but against their protests made at or before the time when the loss occurred,
 - contrary to the manner in which they voted on the issue at the meeting, or
 - in circumstances where they acted in good faith and relied on reports, information or professional/expert advice given by a council staff member or a professional adviser or expert on matters that the elected members reasonably believed were within the person's competency.

Tanya Winter
CHIEF EXECUTIVE

CLOSING PRAYER - KARAKIA WHAKAMUTUNGA