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**REPORT 2**  
(1215/52/IM)

## **BY-ELECTION TO FILL VACANCY ON THE TAWA COMMUNITY BOARD**

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### **1. Purpose of Report**

To provide advice on the process that is required to fill the vacancy that now exists on the Tawa Community Board and, in the event a by-election is required to fill that vacancy, to seek approval:

- to allow the Electoral Officer to process returned voting documents during the three week voting period prior to 12 noon on election day (Saturday 21 November 2009); and
- for the names of the candidates standing for election to be listed on the voting document in random order of surname.

### **2. Recommendations**

Officers recommend that the Committee:

1. *Receive the information.*
2. *Note that a by-election will be required to fill the vacancy on the Tawa Community Board if more than one nomination is received.*
3. *Note that the cost of running the by-election is estimated to be \$40,000 and will be funded from compensating savings from within Council's operating budget.*
4. *Recommend that Council agree that, if a by-election is required:*
  - (i) *the Electoral Officer be given approval to process returned voting documents during the three week period prior to 12 noon on election day (Saturday 21 November 2009), subject to his strict compliance with the legislative provisions of the Local Electoral Act 2001 and the Local Electoral Regulations 2001.*
  - (ii) *the names of the candidates for the by-election be listed on the voting document in random order of surname.*

### 3. Background

With the untimely death of long-serving board member, Graeme Sutton, a vacancy now exists on the Tawa Community Board.

Prior to the introduction of the Local Electoral Act 2001 (LEA) community boards had the ability to appoint a person to fill a vacancy. However, the legislation now requires that any vacancy, if it occurs more than 12 months before the next triennial election, must be filled by way of a by-election.

Notice of the by-election has therefore been given in accordance with the legislative requirements and nominations for the vacancy close at 12 noon on Friday 2 October 2009. The by-election will be held by postal vote on Saturday 21 November 2009 and, because of the requirement for Council to conduct all its elections under the STV electoral system until at least the 2013 triennial elections, the by-election will be held using the STV system.

If only one nomination is received that person will automatically be appointed to the vacant position and a by-election will therefore not be required.

If no nominations are received the Tawa Community Board has the ability to “determine by resolution that the vacancy will be filled by the appointment by the community board of a person named in the resolution who is qualified to be elected as a member”.

### 4. Discussion

#### 4.1 Funding for the by-election

The cost of running this by-election is estimated to be \$40,000.

It is proposed that funding be met from compensating savings to be found within the Council’s operating budget.

#### 4.2 By-election timetable

Assuming a by-election is required (i.e. more than one nomination is received) the following timetable will apply:

Friday 4 September 2009	Nominations open/Electoral Roll opens for inspection
Friday 2 October 2009	Nominations close (at 12 noon)
Friday 2 October 2009	Electoral roll closes (at close of business)
Friday 30 October - Wednesday 4 November 2009	Voting documents delivered to the electors of the Tawa Community Board
Friday 30 October – Saturday 21 November 2009	Progressive scrutiny of the Roll Special voting available

Monday 2 November - Saturday 21 November 2009	Progressive processing of votes *
Saturday 21 November 2009	Election day
Wednesday 25 November 2009	Public notification of result
Thursday 10 December 2009	New member sworn into office.

\* Subject to Council approval.

### **4.3 Progressive processing of voting documents**

Section 79 of the LEA allows a local authority to process (but not count) completed voting documents that are returned during the three week voting period prior to 12 noon on election day. However, in order to do so, Council approval is required.

The immediate benefit of adopting progressive processing is that much, if not all, of the cumbersome and time-consuming task of opening the envelopes and extracting and checking the voting documents can be undertaken over the three week voting period (under strict security and under the constant supervision of a Justice of the Peace). This means that a provisional result can be announced soon after 12 noon on polling day. It also means that fewer staff have to be employed which in turn will result in some cost savings.

The progressive processing of voting documents is now standard practice for local authority elections and, as far as officers are aware, has been adopted by all local authorities throughout the country. There have been no reported breaches since its introduction in 1998.

If early processing is adopted the procedures that the Electoral Officer must follow are clearly set out in the legislation and these procedures must be strictly adhered to.

The legislation aims to protect the secrecy of voting during the polling period in the following ways:

- (a) Through the appointment of a Justice of the Peace to oversee the processing of voting documents at all times prior to the close of voting on election day.
- (b) The requirement that votes or preferences are not counted or totalled until after the close of voting. The totals are not accessible to any individual, including the Electoral Officer, before the close of voting.
- (c) The presence of any scrutineers during the processing of voting documents, prior to the close of voting, is not permitted.

- (d) The imposition of significant fines on electoral officials and others who disclose information pertaining to voting of electors or give, or pretend to give, information which may disclose the state of the election.

The New Zealand Society of Local Government Managers has developed a *Code of Good Practice for the Management of Local Authority Elections and Polls* which sets out practices and procedures which should be followed by Electoral Officers when processing voting documents prior to election day.

Specific provisions in the Code include:

- **Premises** – the premises to be used must be lockable, private (so that processing cannot be viewed through windows or open doors), and clearly signposted so that only authorised persons will enter.
- **Systems** – the relevant electoral software will operate independently of other applications within a mainframe system or on a stand alone system, and only the Electoral Officer and authorised staff will have restricted access to it. Progressive backups will be taken at regular intervals and the software used will include:
  - (a) a time lock to prevent access by anyone to any calculation of votes prior to the close of voting.
  - (b) Dual passwords, one of which is allocated to the Electoral Officer, the other to some other appropriate person (e.g. a Justice of the Peace).
- **Staff** – will be required to complete a statutory declaration, will be selected because of their experience of working on elections wherever possible, and will be chosen to avoid any potential conflict of interest such as being a close associate or relative of any person who is a candidate.

The Council has approved the progressive processing of voting documents since the 1998 triennial elections and it is recommended that it be agreed to again for this by-election.

#### **4.4 Order of candidates' names on voting documents**

Prior to the enactment of the Local Electoral Regulations (LER) in June 2001 candidates' names had to be listed on the voting documents in alphabetical order, by surname.

Clause 31(1) of the LER now allows the Council to decide whether the candidates' names are to be listed in alphabetical order of surname, pseudo-random order or random order on the voting documents. In the absence of any Council resolution, the candidates' names must be arranged in alphabetical order of surname.

The features of each arrangement are described as follows:

### **Option 1    Alphabetical order of surname**

This is the order that was used at all local authority elections prior to 2004, and is self explanatory.

### **Option 2    Pseudo-random order**

Under this option the candidates' names are drawn from a hat, or similar receptacle, with the candidates' names being listed on all voting documents in the order in which they are drawn.

If the Council decides that candidates are to be listed in pseudo-random order, the Electoral Officer must give public notice of the date, time and place at which the order of the candidates' names will be drawn and any person, including the candidates, is entitled to attend the draw.

### **Option 3    Random order**

Under this option, the order of candidates' names is randomly generated by computer for each individual voting document. The computer software permits the names of the candidates to be laser printed in a different order on each paper.

### **Comparative cost of each option**

The cost of printing the voting documents using either the alphabetical or pseudo random options are identical as the voting documents will be pre-printed. If random order is the preferred option some minimal additional costs will be incurred (approximately \$1,050) as the voting documents need to be individually laser printed.

It can be argued that the random order option is the fairest to all candidates. It ensures that each candidate has an equal chance to be listed at or near the top of the list on each voting document.

In its submission (dated 22 February 2005) to the Justice and Electoral Committee on its inquiry into the 2004 local authority elections, the Council recommended that the current legislation be amended "so that all other options are removed and candidates' names are required to be listed on the voting document in random order".

The Council listed its candidates in random order for the 2007 triennial elections and for the Tawa and Makara/Ohariu Community Board by-elections held in April 2005 and June 2006 respectively. This decision resulted in some positive feedback from a number of electors and no complaints were received. It is therefore recommended that the Council agree to the candidates' names being listed in random order on the voting document if a by-election is necessary to fill the current vacancy on the Tawa Community Board.

## **5. Conclusion**

If more than one nomination is received the Council will be required to hold a by-election to fill the vacancy that now exists on the Tawa Community Board.

In the event a by-election is required the report seeks the Council's approval to allow the Electoral Officer to progressively process voting documents returned during the three week prior to election day.

A decision is also required on the order in which the candidates' names are to be listed on the voting document (i.e. alphabetical, random or pseudo-random). If no decision is made in this regard, the candidates' names will be arranged in alphabetical order.

Contact Officer: *Ross Bly, Special Projects and Electoral Officer.*

## Supporting Information

### **1) Strategic Fit / Strategic Outcome**

*This project supports Outcome 7.2.B – More actively engaged: Wellington City Council will operate an open and honest decision making process that generates confidence and trust in the democratic system*

### **2) LTCCP/Annual Plan reference and long term financial impact**

*Relates to C534: Elections, Governance and Democratic Process*

### **3) Treaty of Waitangi considerations**

*There are no Treaty of Waitangi considerations.*

### **4) Decision-Making**

*This is not a significant decision.*

### **5) Consultation**

#### **a) General Consultation**

*Council is not required to consult on this matter.*

#### **b) Consultation with Maori**

*Not required.*

### **6) Legal Implications**

*There are no legal implications.*

### **7) Consistency with existing policy**

*This report is consistent with existing Wellington City Council policy.*