

NOTICE IS HEREBY GIVEN THAT THE STATUTORY MEETING OF THE MATAURA COMMUNITY BOARD WILL BE HELD IN THE ELDERLY CITIZENS CENTRE, McQUEEN AVENUE, MATAURA, ON MONDAY 19 NOVEMBER 2007, AT 5:30 pm

**Steve Parry
CHIEF EXECUTIVE**

13 November 2007

AGENDA

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STATUTORY MEETING AGENDA – MATAURA COMMUNITY BOARD

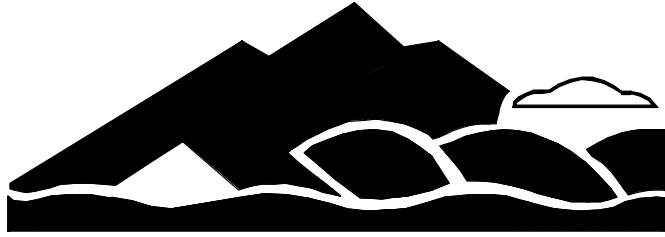
NOVEMBER 2007

1. MAKING AND ATTESTING OF DECLARATIONS

(Memo from Chief Executive – 01.11.07)

The making and attesting of the declaration required by members under Clause 14, Part 1, Schedule 7 of the Local Government Act 2002.

A copy of the declaration is attached. These will be made before His Worship the Mayor, Mr Tracy Hicks.



**GORE DISTRICT COUNCIL
MATAURA COMMUNITY BOARD
DECLARATION BY MEMBER**

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

Dated at Mataura this 19th Day of November 2007

.....

full name
Member

Signed in the presence of

.....

J T Hicks JP
Mayor

2. ELECTION OF CHAIRPERSON

(Memo from Chief Executive – 01.11.07)

Clause 25 of Part 1 to Schedule 7 of the Local Government Act 2002 provides that every community board shall elect one of its members to be its Chairperson.

If more than one nomination for the position is received, one of the following voting processes applies. Please note that notwithstanding the wording in this section, the process is applicable to Community boards by virtue of Section 54 of the Local Government Act 2002.

(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 a system of voting that requires that---

(a) the person to be elected or appointed receives the votes of a majority of the members of the local authority or committee present and voting; and

(b) if more than 1 round of voting is required, the least successful candidate in a round of voting may not be a candidate in the next round of voting.

(3) If the system of voting described in subclause (2) is adopted,---

(a) clause 24(1)(b) does not apply; and

(b) every equality of votes that is not to be determined by a further round of voting must be determined by lot in the manner that the local authority or committee determines.

3. ELECTED MEMBERS' REMUNERATION

(Memo from Chief Executive – 01.11.07)

The Remuneration Authority has set an interim determination for the annual remuneration of members of the Council, including the Maitua Community Board. This interim determination will continue in force until 30 November 2007. At its Statutory Meeting held on 24 October, the Council resolved to continue with its existing Committee structure with the addition of a new Committee.

The original rates for Maitua Community Board members were set by the Remuneration Authority in 2003. Since that time, rates for Board members have been adjusted in line with the growth in the remuneration pool determined by the Authority. The recommended rates set out below are the same as those paid to Board members before the October election.

The Remuneration Authority will soon issue a new determination, and those new salaries will be backdated to the date that the new Board was officially declared elected.

Community Board Chair	\$2,630
Community Board member	\$750

A copy of the Gore District Council Reimbursement of Elected Members Expenses Policy is attached, for the information of the Board.

RECOMMENDATION

THAT the information be received.



REIMBURSEMENT OF ELECTED MEMBERS EXPENSES POLICY

Elected members are entitled to claim a remuneration which is set by the Remuneration Authority. There are salaries payable to the Mayor, Councillors and Committee Chairpersons. The Mayor and Councillors are also entitled to claim mileage and actual expenses incurred.

The Gore District Council pays honoraria and salaries on a fortnightly basis. Each quarter, mileage and any other reimbursements are paid out.

Claim Form

Each month with Committee agendas, a claim form will be circulated. Elected members should submit this on a monthly basis, preferably after the Council meeting. This streamlines the payment process and keeps reimbursements up to date.

When claiming for actual expenses, tax invoices must be submitted.

Travel Expenses

A travel allowance can be claimed for any meeting or function that Councillors attend in their official capacity as an elected member. This includes any informal meetings of the Council or outside organisation. The rate paid is as set by the Inland Revenue Department - 62 cents for the first 3,000 kilometres and 19 cents per kilometre thereafter.

Withholding tax at the rate of 33% will be deducted from all travel claims made.

Steve Parry
CHIEF EXECUTIVE

August 2007

Revised and adopted at a meeting of the Gore District Council held on 28 August 2007

4. MEETING SCHEDULE

(Memo from Chief Executive – 01.11.07)

It is suggested that the Community Board continue to meet every second month, on the third Monday. If further meetings are required, they can be scheduled as required.

The following meeting schedule is proposed for 2008:

January 2008

Monday 28 January (4th Monday)

March 2008

Monday 17 March

May 2008

Monday 19 May

July 2008

Monday 21 July

September 2008

Monday 15 September

November 2008

Monday 17 November

RECOMMENDATION

THAT the above schedule be adopted.

5. STATUS, ROLE AND POWERS OF COMMUNITY BOARDS

(Memo from Chief Executive – 01.11.07)

It is important that Board members understand the status, role and powers of the Maitua Community Board. The following excerpts from the Local Government Act 2002 are provided to assist with this understanding:

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.

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.

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 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.

Mataura Community Board

In addition to the limitation contained in the Local Government Act 2002, the Gore District Council resolved at its meeting on 24 April 2003 to delegate the following specific authority to the Mataura Community Board:

“THAT the Board be delegated power to act, subject to any limitations contained within the Local Government Act 2002, in regard to those Council activities that are exclusively funded from within the Mataura Community Ward,

AND THAT the Board be delegated power to recommend in regard to those activities that are not exclusively funded from the Mataura Ward.”

For the information of Board members, I can advise that with the formation of a combined urban rating area for Gore and Mataura in 205, there are currently no activities that are exclusively funded from the Mataura Ward.

RECOMMENDATION

THAT the report be received.

6. MODEL STANDING ORDERS

(Memo from Chief Executive – 01.11.07)

It is a requirement of Clause 27 (1), Schedule 7 of the Local Government Act 2002, that every Community Board adopt a set of standing orders for the conduct of its meetings.

The Council has previously operated from Standing Orders NZS9202:2003. A copy of Standing Orders is enclosed. It should be noted that the Standing Orders (refer to 3.14.1) do not make provision for the Chairperson to have a casting vote.

However, the enactment of the Local Government Act 2002 Amendment Act 2004 (a very cumbersome title!) introduced inter alia, the right of Councils to exercise a casting vote at meetings provided the Standing Orders of the local authority concerned make provision for this.

The Council has previously resolved to retain the casting vote for chairpersons. The rationale behind this decision was that whilst the casting vote ideally should be a rarely used mechanism, it is necessary when there are deep-seated and divergent views on an issue within a Council which circumstances demand prompt resolution.

The aforementioned amending statute to the Local Government Act 2002, also clarified a number of anomalies.

These anomalies are:

Voting

- (a) A decision at a meeting is now decided by the majority of voting members, rather than the majority of members present (refer 2.5)
- (b) There is not more detail provided in the amended statute in terms of how voting systems for certain appointments will operate (refer 2.6.1)

Delegations

The “New SO” allows a Committee, Community Board, member or officer to sub-delegate any of its/his/her powers unless specifically prohibited from doing so.

(The “Old SO” constrained a Committee, Community Board, member or officer from sub-delegating its/his/her powers unless specifically authorised to do so).

Under the new provision, if a Community, Community Board, member or officer is given a delegated power, the delegation carries with it the automatic right to sub-delegate unless the delegation includes a clause prohibiting sub-delegation.

RECOMMENDATION

THAT the New Zealand Model Standing Orders NZS 9202:2003 be adopted as the Gore District Council's Standing Orders, effective from 24 October 2007, subject to the following amendments:

Clause 2.5.1(a)(ii) shall be amended to include the words "*and voting*" and shall read "*the majority of members that are present and voting*" (Clause 24(1), Schedule 7, LGA)

Clause 3.14.1 shall be amended to include the words "*and voting*" and the last line shall read "... *and the majority of members that are present and voting.*" (Clause 24(1), Schedule 7, LGA)

Clause 2.5.2 shall be amended by the deletion of the word "*not*" and the deletion of the last sentence therein, and shall now read "... *the Mayor or Chairperson ... presiding at the meeting has a deliberative vote and in the case of equality of votes, does have a casting vote.*" (Clause 24(1)(b), 2(a) and 4(b), Schedule 7, LGA)

Clause 2.6 be amended by deleting all words after "*determine by resolution that a person [to whom this Standing Order applies] be elected or appointed ...*" and replace with "*by using one of the following systems of voting*:

- (a) *The existing system described as System A.***
- (b) *The voting system described as System B.***

System A –

- "(a) *requires that a person is elected or appointed if he or she received 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 two 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 one round of voting; and*
 - (ii) if two or more candidates tie for the most votes, the tie is resolved by lot.”*

(Clause 25, Schedule 7, LGA)

Clause 3.14.2 shall be amended by the deletion of the word “not” and the deletion of the last sentence therein, and shall now read “ ... the Chairperson at any meeting has a deliberative vote and in the case of equality of vote, does have a casting vote.” (Clause 24(1)(b), 2(a) and 4(b), Schedule 7, LGA)

Clause 2.10.1 (3) shall be amended by the addition of the words “... provided that where an officer has delegated a responsibility to another officer, the latter officer shall not have the power to further delegate the responsibility.” (Clause 32(1), (2) and 3, and Clause 32B(1), Schedule 7, LGA)

7. GENERAL EXPLANATIONS

(Memo from Chief Executive – 01.11.07)

Clause 21 to Part 1 of Schedule 7 of the Local Government Act 2002 requires that at the first meeting of the Board following the election, a general explanation must be given of the Local Government Official Information and Meetings Act 1987, and appropriate provisions of:

- (a) The Local Authorities (Members' Interests) Act 1968;
- (b) Sections 99, 105 and 105A of the Crimes Act 1961;
- (c) The Secret Commissions Act 1910; and
- (d) The Securities Act 1978.

The purpose of this report is to provide the general explanation of these Acts as required by Clause 21.

LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

General Principle

The stated purpose of this Act is to make official information held by local authorities more freely available, to provide for access to that information, to provide for admission to meetings of local authorities and to protect official information held by local authorities consistent with the public interest and preservation of personal privacy.

The Act is very broad. It does not define the word "information". It sees official information as any item of information held by a local authority. So official information is not limited to documents like letters, reports, memoranda or files but includes sound tapes, video tapes, computer tapes and discs, maps, films, photographs and plans.

The heart of the Act is contained in the "principle of availability" set out in Section 5 of the Act:

*"The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act **and the principle that the information shall be made available unless there is good reason for withholding it**".*

So the fundamental principle of the Act is that information must be made available unless there is “good reason” under the Act to withhold it.

Requests

Anyone can make a request for official information.

If the information sought is not held by the Council or a Council officer believes the request to be more closely connected with another organisation then the officer must, within 10 working days transfer the request.

Where the Council holds information a decision on whether to release the information must be made within 20 working days of receipt of a request. Charges may be made for supplying information.

Where the information sought is large or consultations necessary for a proper response are needed then the Chief Executive or an authorised officer may extend the time limit for a “reasonable period”. The requester must be told the period of extension, the reasons for the extension and the fact that the extension can be referred to the Ombudsman.

Every request must be dealt with on its merits and a decision whether to refuse is made on the circumstances of each case.

Generally, where the information is released then it must be released in the manner requested.

Refusals

In considering a refusal of a request for official information the Act fixes the responsibility on the Chief Executive or an officer authorised by him. While the statutory responsibility is placed on the Chief Executive, that officer is not prevented from consulting the Council or any other person in relation to a decision to refuse.

The Act sets out approximately 25 “good reasons” why official information can be refused. If the grounds for refusal do not fall within one of these “good reasons” the information **must** be released.

“Good reasons” include:

- (a) protecting the privacy of natural persons;

- (b) maintaining the effective conduct of public affairs through free and frank expressions of opinions by or between elected members and officers;
- (c) enabling a local authority to carry out, without prejudice or disadvantage, commercial activities;
- (d) enabling a local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); and
- (e) to maintain legal professional privilege.

All of the reasons outlined above are subject to a “public interest” test, that is, even if the information sought falls within one of the refusal categories it must be released where the withholding of the information is outweighed by other considerations rendering it desirable in the public interest that the information be released.

The Act also contains a number of administrative grounds as to why a request can be refused. These include the fact:

- (a) the information is or will soon be publicly available;
- (b) the information requested cannot be made available without substantial collation and research.

If a request is refused the Council must give the requester:

- (a) the reason for its refusal;
- (b) the grounds in support of that refusal; and
- (c) advice as to the right to apply to the Ombudsman to seek a review of the refusal.

Ombudsman’s Investigation

Under the Act the Ombudsman can investigate any refusal by the Council to provide information and can investigate the charges made by the Council.

If the matter cannot be resolved during the investigation the Ombudsman may make a recommendation to the Council. The Council is under a public duty to observe that recommendation unless, within 21 working days of receiving the recommendation, it resolves not to accept it.

A decision not to accept an Ombudsman’s recommendation must be notified to the applicant and the Ombudsman and published in the New Zealand Gazette together with the Council’s reasons for its decision. The applicant may apply to the High Court for a review of the Council’s decision. Whatever the result of the High Court hearing, the applicant’s legal costs

must be paid by the Council unless the Court is satisfied the application was not reasonably or properly brought.

Convention and respect dictate that in most circumstances the Ombudsman's recommendation would be accepted.

Other Rights of Access

The Act also gives every person a right of access to any document, including manuals which the Council holds containing policies, rules, or guidelines by which decisions or recommendations are made. There are limited rights of refusal available to the Council.

Section 22 of the Act provides that where the Council makes a decision or recommendation in respect of any person in that person's personal capacity, that person has the right on request to have within a reasonable time a written statement from the Council of:

- (a) the findings on material issues of fact;
- (b) a reference to the information on which the findings were based; and
- (c) the reasons for the decision or recommendation.

Access to Meetings

The Act provides the public and media have a right of access to all meetings of the Council, committees, sub-committees (with power to act) and community boards unless the meeting resolves to exclude the public. Copies of meeting agendas must be available for the public and the media.

The grounds for excluding the public and the media from a meeting can only be those provided in the Act and essentially are the same grounds as for withholding official information. A motion to exclude must state the subject matter of the "non-public" matter and the specific reason provided in the Act.

Even where a meeting has resolved to exclude the public a person can request a copy of the minutes of the meeting and that request must be treated in the same way as a request for official information and subject to review by an Ombudsman.

Order Papers

Order Papers for meetings must be publicly available at least two working days before the meeting. Supplementary reports cannot be dealt with unless agreed to by the meeting and unless

the Chairperson explains why the report was not in the Order Paper and why the subject cannot wait until the next meeting.

Order at Meetings

Section 50 of the Act provides that the Chairperson of a meeting may require a member of the public to leave the meeting if the Chairperson believes on reasonable grounds that person's behaviour is "likely to prejudice or continue to prejudice" the orderly conduct of the meeting.

The Chairperson may call on a police constable or Council officer to remove a person from the meeting.

Qualified Privilege

Sections 52 and 53 of the Act provide **that written or oral** statements on any matter before a meeting of the Council, committee or community board is privileged unless the statement is proved to be made with malice. This type of privilege is known as qualified privilege.

Qualified privilege is a protection afforded by the law on certain occasions to a person acting in good faith and without any improper motive who makes a statement defamatory about another person.

It is established law that meetings of local authorities are privileged occasions. The reason given by the Courts is that those who represent local government electors should be able to speak freely on any matter they believe affects the interests of their residents.

The situation regarding statements made outside a formal meeting is not so clear. Certainly the statutory protection of sections 52 and 53 would not extend outside a meeting.

If malice can be established by the maker of a statement then the privilege is lost. With the question of malice, motive can be crucial. If it is established the maker of the statement had some other dominant and improper motive then malice will be established. Generally speaking, malice is a desire to injure the defamed person and this desire must be the dominant motive for the statement. The maker should guard against making reckless statements.

What is required for qualified privilege to apply is a positive belief in the truth of what is said, and that there is no suggestion of personal spite or ill-will by the maker.

LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968

This Act contains provisions relating to contracts between elected members and the Council and provisions relating to elected members voting on matters where they have a pecuniary interest.

(a) Contracts

The Act provides that no person can be an elected member if the total of all contract payments made or to be made by the Council in which that person is "concerned or interested" exceeds \$25,000 in any financial year. Contracts include sub contracts.

There are provisions regarding contracts between the Council and a company in which an elected member or spouse has an interest. Generally a person will be concerned or interested in a contract where that person or spouse holds 10% of the issued capital of the company or a controlling company, or the member or spouse is a shareholder and is either a managing director or general manager.

Certain exclusions are provided for such as where the member and spouse are living apart, or the member did not know and had not reasonable opportunity of knowing the spouse was a shareholder and managing director or general manager.

The limit of \$25,000 may be extended by the Audit Office in special cases. Such approval can be given retrospectively.

Provision is made for contracts entered into by the Council before an election and for continuing contracts.

If a person breaches the \$25,000 limit that person is disqualified from holding office and an extraordinary vacancy arises. The disqualification remains until the next triennial election. Where a disqualified person acts as a member an offence is committed with a maximum fine of \$200.

(b) Pecuniary Interest

The Act provides that no elected member shall vote on or take part in the discussion of any matter in which that person has, directly or indirectly, any "pecuniary interest" other than an interest in common with the public.

The prohibition applies where the member's spouse has a pecuniary interest and where the member or spouse holds 10% or more of the shares in a company or a controlling company

which has a pecuniary interest, or either person is a shareholder and is managing director or general manager of the company.

Members who are prohibited under the Act from voting on or discussing a matter are under a duty to declare to the meeting their pecuniary interest and their abstention from discussion or voting must be recorded in the minutes.

The prohibition against discussion or voting on a matter does not apply in certain situations, such as:

- (i) members' remuneration where the maximum rate has already been fixed;
- (ii) election or appointment of any member to a Council, or community board, office notwithstanding that remuneration is payable; and
- (iii) the preparation, approval, or review of a district scheme or district plan, unless the matter relates to any variation or change or departure from a district scheme or district plan or to the conditional use of land.

The Audit Office has the power to declare that the prohibition shall not apply in respect of any particular matter if the Office is satisfied the prohibition would impede the business of the Council or that it is in the interest of the electors that the prohibition not apply.

Any member who contravenes the prohibition commits an offence liable to a fine of \$100. Upon conviction the member vacates office and an extraordinary vacancy is created.

SECTIONS 99, 105 AND 105A CRIMES ACT 1961

(a) Section 99

Section 99 defines, for the purposes of the Crimes Act 1961, an "official" as any member or employee of any local authority. Member here would include a community board member.

(b) Section 105

Section 105 provides that it is an offence punishable by seven years imprisonment for an "official" to corruptly accept or obtain, or to attempt to obtain, any bribe in respect of anything done or omitted to be done by the official in an official capacity.

A person making or attempting to make the bribe is liable to three years imprisonment.

(c) **Section 105A**

Section 105A provides that every official is liable to seven years imprisonment who corruptly uses any information acquired in an official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for the official or any other person.

SECRET COMMISSIONS ACT 1910

This Act puts in legislation the principle that a person holding a position of trust, such as elected members, should not make a profit through their office.

The Act provides that elected members and officers are “agents” of the Council and that every agent commits an offence who corruptly accepts or obtains or solicits, for themselves or any other person, any gift or other consideration as an inducement or reward for doing or not doing any act in relation to the Council’s affairs, or for having shown favour or disfavour to any person in relation to the Council’s affairs.

Any agent who diverts, obstructs or interferes with the proper course of the Council’s business, or fails to use due diligence in the prosecution of such business with intent to obtain for themselves or any other person any gift or other consideration shall be deemed to have corruptly solicited a consideration.

While “gift” is not defined, “consideration” is. It includes discounts, commissions, rebates, bonuses, deductions, percentages, employment and money (including loans). Generally trade practices or customary gifts do not constitute a defence to a charge under the Act.