

7. EXTRAORDINARY VACANCY

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PURPOSE OF REPORT

1. The purpose of this report is to advise the Community Board that an extraordinary vacancy has arisen in the office of elected member of the Board, as a consequence of the resignation of Winston McKean.

EXECUTIVE SUMMARY

2. Resignations which occur during the triennium are treated as extraordinary vacancies, which are dealt with under sections 117-120 of the Local Electoral Act 2001. If the vacancy occurs within 12 months of the next triennial local government elections (being 13 October 2007) then the Community Board has two options. It can either leave the vacancy unfilled, or it can appoint a person to fill the vacancy for the balance of the current triennium. A by-election cannot be held within 12 months of a triennial election.

PERSONS ELIGIBLE TO BE APPOINTED TO FILL EXTRAORDINARY VACANCY

3. To be eligible for appointment as a member of the Board, the candidate must:
 - (a) Be a New Zealand citizen.
 - (b) Enrolled as a Parliamentary elector somewhere in New Zealand (it is not necessary for the candidate to be enrolled as a Parliamentary elector in Christchurch).
4. Persons who are currently members of a regional council are also ineligible for appointment to the Board.
5. As the number of candidates standing for election in the Akaroa subdivision of the Akaroa-Wairewa community did not exceed the number of vacancies to be filled, no election was necessary for this issue when the Christchurch City (Banks Peninsula) elections for the remaining issues were held on 25 February 2006. In any event, it is not necessary for a proposed appointee to have been a candidate at the previous election.

DISCUSSION

6. Should the Board decide to make an appointment, then it is open to the Board to identify a proposed appointee at its present meeting, in which case it will then be necessary for the requisite public notice to be given before such appointment can be confirmed at the Board's subsequent meeting. The appointed person would take office once they had taken their declaration as a Board member.
7. On the other hand, if the Board is of the view that the extraordinary vacancy should be left unfilled, then it will be possible for a final decision to this effect to be adopted at the present Board meeting.

OPTIONS

8. The Board has two options open to it, as set out in the two alternative draft resolutions set out below:
 - (a) That the Board resolve, pursuant to section 117(3)(b) of the Local Electoral Act 2001, to leave unfilled the extraordinary vacancy created by the resignation of Winston McKean, and that the Chief Executive Officer immediately give public notice of that decision; or

- (b) That the Board resolve, pursuant to section 117(3)(a) of the Local Electoral Act 2001:
- (i) That the vacancy created by the resignation of Winston McKean be filled by the appointment of *(insert name of proposed appointee)*.
 - (ii) That for the purpose of section 118(1)(b) of the Local Electoral Act 2001, the criteria by which *(insert name of proposed appointee)* was selected for appointment are that *(insert criteria by which proposed appointee was selected)*.
 - (iii) That the Council give public notice of the above resolution.

FINANCIAL IMPLICATIONS

9. There are no direct financial implications. The salary paid to Mr McKean ceased as from the date of his resignation. If the Board decides to make an appointment to fill the resulting extraordinary vacancy, the salary payable to the new member will not commence until after the appointee's appointment has been confirmed, following the giving of the requisite public notice.

LEGAL CONSIDERATIONS

10. Section 117 of the Local Electoral Act provides:

- "(2) If a vacancy occurs in the office of a member of a local authority or in the office of an elected member of a community board 12 months or less than 12 months before the next triennial general election, the principal administrative officer of the local authority concerned must notify the local authority or community board of the vacancy immediately.*
- (3) On receiving notice under subsection (2), the local authority or community board must, at its next ordinary meeting or, if that is not practicable, at its next subsequent ordinary meeting, determine by resolution---*
- (a) that the vacancy will be filled by the appointment by the local authority or community board of a person named in the resolution who is qualified to be elected as a member; or*
 - (b) that the vacancy is not to be filled.*
- (4) If for any reason the person specified in the resolution is unavailable, or otherwise unable to be notified of the appointment, a further vacancy occurs in that office."*

11. Section 118 provides as follows in respect of any decision to make an appointment to fill an extraordinary vacancy:

"118 Notice of intention to fill vacancy by appointment

- (1) If, under section 117(3)(a), a local authority or community board resolves that a vacancy will be filled by the appointment of a person by the local authority or community board, it must immediately, unless the vacancy is for the office of Mayor, give public notice of---*
- (a) the resolution; and*
 - (b) the process or criteria by which the person named in the resolution was selected for appointment.*
- (2) The local authority or community board must, at a meeting held not later than the expiry of the prescribed period, by resolution confirm the appointment described in the resolution under subsection (1); and the person appointed is for all purposes to be treated as having been elected to fill the vacancy on the date on which that resolution is made.*

(3) *For the purposes of subsection (2), the expiry of the prescribed period is 30 days after the date of notification of the resolution under subsection (1).*

(4) *If for any reason the person specified in the resolution is unavailable or otherwise unable to be confirmed in the appointment, a further vacancy occurs in that office.”*

12. If the Board resolves to leave the extraordinary vacancy unfilled, immediate public notice must be given of that decision.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

13. Page 111 of the LTCCP refers to all elections, polls, and other related decisions being held or made in full compliance with the relevant legislation.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council’s strategies?

14. Not relevant.

CONSULTATION FULFILMENT

15. No formal consultation is required in this instance. However, if the Board decides that the extraordinary vacancy should be filled by appointment, then that decision will need to be publicly notified before the appointment can be confirmed.

STAFF RECOMMENDATION

It is recommended that the Board adopt one of the resolutions set out under paragraph 8 of this report, and, if option (b) is adopted, specify the name of the proposed appointee and the criteria by which s/he was selected.