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**REPORT 7**  
(1215/12/IM & 1225/05/03)

## **VACANCY: TAWA COMMUNITY BOARD**

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

To advise the Board of Penny Devine's resignation as an elected member of the Tawa Community Board and to outline the options available to the Board in either filling or leaving the position vacant and the process that must be followed in notifying the Board's decision.

### **2. Executive Summary**

Penny Devine, an elected member of the Tawa Community Board, has tendered her resignation from the Board effective from 17 January 2007, thereby creating a vacancy on the Board.

Because the vacancy has occurred less than 12 months before the next triennial election, the Local Electoral Act 2001 requires the Board to make a decision on whether to appoint someone to fill that vacancy or to leave the position vacant.

### **3. Recommendations**

It is recommended that the Board:

1. *Receive the information.*
2. *EITHER*
  - (a) *Agree that the elected member vacancy on the Tawa Community Board be filled by the appointment of (name of person to be determined by the Board) to the position for the balance of the current triennium and that the required public notice be given of the decision to make an appointment and the process or criteria by which the person was selected for appointment to the position.*

*OR*

- (b) *Agree that the vacancy on the Tawa Community Board not be filled and that the required public notice be given of this decision.*

## 4. Background

The Chief Executive has received the written resignation of Penny Devine as an elected member of the Tawa Community Board. Her resignation took effect from 17 January 2007, the date on which her resignation was received.

## 5. Discussion

### 5.1 *Legislative requirements*

The Local Electoral Act 2001 (clause 117) requires any vacancy that occurs in the office of an elected member of a community board more than 12 months before the next triennial election to be filled by way of an election.

However, because the resignation occurred less than 12 months before the next local authority elections, the legislation provides the Board with two options insofar as the vacancy is concerned.

Having been notified of the resignation by the Chief Executive, the Board is now required at its next ordinary meeting or, if that is not practicable, at its next subsequent ordinary meeting, to determine by resolution:

- that the vacancy is to be filled by the appointment (by the Board) of a person named in the resolution who is qualified to be elected as a member of the Board; or
- that the vacancy is not to be filled.

The legislation does not specify who can or should be appointed to the vacancy other than to require that the person appointed to the position must be “qualified to be elected as a member” (i.e. the person must be a parliamentary elector, living anywhere in New Zealand, and must be a New Zealand citizen).

On a number of previous occasions where a vacancy has been filled by way of appointment, the person appointed to the position has been the highest polling unsuccessful candidate at the most recent election. This assumes that that person is still interested in serving as a member. If that is not the case there is also a precedent where the second highest polling unsuccessful candidate has been appointed to fill the vacancy.

The highest polling unsuccessful candidate at the by-election held on 9 April 2005 (to fill the vacancy created by the resignation of David Barnard) was Vicki Beachen.

There is nothing in the legislation that would prevent the Board from calling for expressions of interest from people who are “qualified” for appointment and

then choosing one of those applicants based on a set of criteria identified by the Board. However this process is perhaps not as transparent as the appointment of a person who stood as a candidate for election to the office and who was supported by a significant number of electors at the time.

## **5.2 Notification of appointment**

If the Board decides that the vacancy is to be filled by the appointment of a person qualified to be elected to the position it must immediately give public notice of:

- the resolution; and
- the process or criteria by which the person named in the resolution was selected for appointment.

Having given public notice of its decision the Board must, at a meeting held not later than 30 days after the date of its public notification, confirm by resolution the appointment of the person specified in the resolution. The person appointed to the vacancy is, for all purposes, to be treated as having been elected to fill the vacancy on the date on which that resolution is made. The term of office of the member appointed to the vacancy will expire at the end of the current triennium.

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 the office.

## **5.3 Notification of decision to carry the vacancy**

If the Board decides not to fill the vacancy it is also required to give public notice of its decision.

## **6. Conclusion**

The Local Electoral Act 2001 requires the Board to decide, at its meeting on 8 February 2007, whether it will fill or carry the vacancy created by the resignation of Penny Devine.

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 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 implications*

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

*This is not a significant decision*

### **5) Consultation**

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

*Not required*

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

*Not required*

### **6) Legal Implications**

*Nil*

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

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