



50-64 Customhouse Quay  
PO Box 2791  
Wellington  
New Zealand  
Tel No +64 4 472 6289  
Fax No +64 4 472 7429  
DX SP20002 Wgtn  
Email wellington@  
phillipsfox.com

20 June 2001

**By email: ted.maguire@wrc.govt.nz**

Ted Maguire  
Wellington Regional Council  
PO Box 11646  
WELLINGTON

Adelaide Brisbane Canberra  
Melbourne Perth Sydney  
Auckland Wellington  
Hanoi Ho Chi Minh City

Phillips Fox is certified to  
ISO-9001 in all New Zealand  
and Australian offices

[www.phillipsfox.co.nz](http://www.phillipsfox.co.nz)

Dear Ted

**Wellington Regional Stadium Trust - elected members as trustees and term of appointment issues**  
**Our ref: WN709471**

I refer to our telephone conversation of 15 June 2001.

You have asked me to consider 2 issues:

- when does the term of an elected member who has been appointed as a trustee of the Wellington Regional Stadium Trust come to an end?
- what is the position of those elected members who have been appointed as trustees of the Wellington Regional Stadium Trust following the respective Wellington Regional Council and Wellington City Council elections?

**Term of appointment of a trustee who is appointed in their capacity as an elected member**

As you are aware, clause 22.11 of the trust deed provides that:

the City Council and the Regional Council may each independently, subject to clause 22.4, appoint one elected member of their respective councils as a trustee. . . .

I note that by the certificate of the 2 councils dated 10 November 2000, both councils confirmed their joint decision to appoint Ian Buchanan and Robert Armstrong as trustees of the Trust. Their appointments were expressed to be 'for a term ending on the date of the

---

This message has been sent to you by Phillips Fox Wellington. Please advise by telephone Wellington +64 4 472 6289 or return e-mail if there is a problem with this transmission.

If this e-mail has been sent to you by mistake, please ring us or notify us by return e-mail. This e-mail may contain information which is confidential or which is subject to client legal privilege. Therefore, you must not use the e-mail, or the information in it, in any way. Any confidentiality or privilege between solicitor and client is not waived or lost because this e-mail has been sent to you by mistake.

formal declaration of results' of, respectively the 2001 Wellington Regional Council elections and the 2001 Wellington City Council elections.

We therefore need to consider when the 'formal declaration of results will occur'.

The Local Electoral Act 2001 came into force on 29 May 2001.

Section 116 of the act provides:

Every member of a local authority . . . unless vacating office sooner, vacates office:

- (a) in a case where the member's office is the subject of an election, when the members elected at the next election come into office.
- (b) in a case where provision is made by any enactment to fill a vacancy by appointment, when the member's successor comes into office.

Section 115 sets out when members come into office:

- (1) A candidate at a triennial general election who is declared to be elected **before** polling day comes into office **on polling day**
- (2) In any other case, a candidate at any election comes into office on the day **after** the day on which the candidate is **declared to be elected**

Section 63 provides that:

- (1) If, at the close of nominations for an election, the number of candidates does not exceed the number of vacancies to be filled, the electoral officer must, as soon as practicable after the close of nominations, declare all nominated candidates to be elected.
- (2) A declaration under subsection (1) must be given by public notice in the prescribed manner.

Section 86 of the act provides that:

The electoral officer conducting an election or poll must give public notice declaring the official result of the election or poll in the prescribed manner as soon as practicable after:

- (a) the scrutiny of the roll has been completed; and
- (b) the validity of all special votes has been determined; and
- (c) all valid votes have been counted.

In practice this means that unless a candidate has been declared to be elected **before** polling day there may be a delay between the date of the election and the date that the electoral officer is in a position to declare the **official** result.

The practical consequences for the trustees that are elected members, is that their term of appointment as trustees will come to an end on the day they officially vacate office as an elected member. In most cases this will be the day following the date of the public notice declaring the official result as required by section 86.

The reference in the November certificate to the term of appointment ending on the date of the 'formal declaration of results of the 2001 . . . elections' must now be read in light of

sections 63 and 86 of the Local Electoral Act 2001, which requires the electoral officer to give public notice declaring the official result in the prescribed manner. In most cases the 'formal declaration of result' will now be the notice given under section 86.

**What is the position following the elections?**

If Ian Buchanan or Robert Armstrong are declared to be elected **before** the polling day ( if for example they are candidates and the number of candidates does not exceeded the number of vacancies), their new position as elected members will be effective from the polling day. In regard to their position as trustees of the Trust it could be argued that because the effective date of their election is the polling day (by virtue of section 115(1)) that date should be considered as the date of the formal declaration of results for the purpose of fixing the end of their term as a trustee. However it could also be argued that their term as trustee of the Trust ends on the date of the formal declaration of results, which in this case could also be the date that the electoral officer completes a declaration under section 63. In these circumstances this will be a date **before** the polling day.

If they are not declared to be elected before the polling day then their term of appointment as trustees will come to an end at midnight on the day of the public notice declaring the official result, irrespective of whether they are re elected to their respective Councils.

This is in line with the **settlors' certificate** dated 10 November 2000 which confirms that their respective terms end on the date of the formal declaration of result of the 2001 Wellington City Council elections and the 2001 Wellington Regional Council elections.

Whether the same individuals or others are appointed as trustees will be a matter for the newly elected Council as **settlor**.

I hope this letter addresses the issues that you wished to have clarified. Please let me know if you wish me to expand on any of the points raised by this letter.

Kind regards

**Linda Going**

**Partner**

Direct Line: (04) 917 3252

E-mail: [linda.going@phillipsfox.com](mailto:linda.going@phillipsfox.com)

W:\DOCS\LMG\016033.DOC