

21. LOCAL GOVERNMENT ACT 2002 AND LOCAL ELECTORAL AMENDMENT ACT 2002: APPLICATION TO COMMUNITY BOARDS

Officer responsible Legal Services Manager	Author Peter Mitchell, DDI 941-8549
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The purpose of this report is to outline for community boards the provisions in the new Local Government Act 2002 which apply specifically to community boards, and to comment on changes from the provisions in the Local Government Act 1974. The provisions of the Local Government Act 2002 relating to community boards come into force on 1 July 2003.

There are other provisions in the new Act such as decision-making and consultation principles, which apply to the Council as a whole, and those new requirements will be set out in separate reports as new processes are developed.

GOVERNANCE ISSUES

The new Act, for the first time, sets out the legal status of a community board as being an “*unincorporated body*” and continues the current provisions that a community board is not a local authority and is not a committee of a territorial authority.

An “*unincorporated body*” is a legal term for a group of people who come together for a common purpose but the group does not have a corporate existence such as with an incorporated society. I do not see being assigned as an “*unincorporated body*” will have any practical effect for community boards.

ROLE OF COMMUNITY BOARDS

The current purposes of community boards are set out in section 101ZY of the Local Government Act 1974:

“The general purposes of a community board shall be—

- (a) The consideration of and reporting on of all matters referred to it by the territorial authority or any matter of interest or concern to the community board;*
- (b) The overview of road works, water supply, sewerage, stormwater drainage, parks, recreational facilities, community activities, and traffic management within the community;*
- (c) The preparation of an annual submission to the budgetary process of the territorial authority for expenditure within the community;*
- (d) Communication with community organisations and special interest groups within the community;*
- (e) To perform such functions as are delegated to it under the authority of section 101ZZ of this Act.”*

Section 52 of the 2002 Act now sets out the role of a community board, as distinct from the purposes of a community board. Section 52 provides:

“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.”*

It will be noted that new provisions are section 52(a) which provides a role of a community board is to “*represent, and act as an advocate for, the interests of its community*” and section 52(c) where the community board is to “*maintain an overview of services provided by the territorial authority within the community*”.

POWERS OF COMMUNITY BOARDS

As with the Local Government Act 1974, a territorial authority is given wide powers to delegate matters to community boards, but the new Act does not direct a territorial authority to make such delegations.

However, the new Act does place a legal requirement on a council to “... *consider whether or not to delegate to a community board if the delegation would enable the community board to best achieve its role.*” (Clause 6, Schedule 7).

The reference to a board’s role refers to section 52 which is quoted above.

In practical terms I anticipate that this would require a report to be presented before the Council discussing the issue of delegations to community boards with the various options and for the council to make a decision as to the extent of delegations to community boards. Although not required by the Act, such a report could be considered after the triennial election.

With regard to this new requirement, the Local Government and Environment Committee in its report back to Parliament noted:

“We recommend an amendment...to ensure that the parent territorial authority considers responsibilities appropriate for delegation to the community board that would enable a community board to best achieve its role.”

A territorial authority may delegate any of its responsibilities, duties or powers to a community board with a number of stated exceptions such as the power to make a rate, the power to make a bylaw, the power to borrow or purchase or dispose of assets and the power to appoint, spend or remove staff. These exceptions are currently provided in the 1974 Act.

PROCEDURAL MATTERS

As with the 1974 Act, the new Act provides that procedural matters applying to local authorities, such provisions relating to meetings and quorum, also apply to community boards.

The new requirement that territorial authorities have a code of conduct does not apply to community boards so that it is discretionary for a community board to adopt a code of conduct for its members.

Another change is that the chairperson of a community board having a casting vote has been removed so that the chair now only has a deliberative vote as do each of the community board members. The Act now specifically provides that in the case of an equality of vote, the question is defeated and the status quo is preserved.

Regarding the election of the chairperson of the board after each triennial election, the new Act now requires that what was an alternative voting system in the Local Government Act 1974, is now mandatory for the election of chairpersons under the Local Government Act 2002.

The new Act provides that the election of the chairperson must be determined by a system of voting that requires that—

- (a) The person to be elected receives the votes of the majority of the members of the board present and voting; and
- (b) If more than one 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.

Clearly this will only apply where there are more than two candidates for the position of chairperson of the board.

This type of voting system has been used in the past for the election of some community board chairpersons. This voting system is also used for the election of the deputy chairperson of the board and chairpersons of board committees.

LOCAL ELECTORAL AMENDMENT ACT 2002

(a) Board Membership

The other significant changes affecting community boards are to be found in the Local Electoral Amendment Act 2002, which is now in force. The Act continues the former provisions that each community board is to consist of no fewer than four members, no more than 12, must include at least four elected members and may include appointed members.

There is a new provision that the number of appointed members is to be less than half the total number of members and in the Christchurch City context this will now enable the Council to appoint all ward councillors as members of a community board. The former requirement that appointees must be from a ward in which a community is situated is continued.

(b) Electoral Review

Regarding the triennial electoral review, there is a significant change regarding community boards.

Under the former provisions in the Local Government Act 1974, the Council could abolish or alter the boundaries of a community only with the consent of the community board affected, and where the Council and community board were not in agreement by a determination of the Local Government Commission. Similarly, the Council had an obligation to review the number of elected members of a community board but could only alter that number with the consent of the community board.

The Local Electoral Amendment Act 2002 now provides that the electoral review by the territorial authority (which must include a review of community boards) can be carried out in either 2003 or 2006, and subsequently at least once every six years after the first determination.

When the Council passes a resolution initiating a review, then it must determine whether there should be communities and community boards, and if so, the nature of any community board.

The review would also include alteration of community boundaries, the number of members of community board, the number of members who should be elected and those who should be appointed, and whether the members of the community board are to be elected—

- (a) by the electors of the community as a whole; or
- (b) by the electors of 2 or more subdivisions; or
- (c) if the community comprises 2 or more whole wards, by the electors of each ward.

The ability to have an election by electors of a community as a whole is new.

As previously a Council resolution regarding an electoral review would be publicly notified and open for objections. A community board, as with any other person, could make objections to any proposal if it wished to do so. The Council is obliged to hear all objections and then any person (including a community board) who has made submissions on a resolution may lodge a written appeal against the Council's decision with the Local Government Commission. The Commission would then determine those appeals and objections.

The Act provides that factors that are appropriate for determining electoral matters relevant to community boards are that the election of members of the community board will provide effective representation of communities of interest within the community and fair representation of the electors.

If any resolution proposes a change to the basis of election of a community board or to community boundaries which applied at the last triennial general election, then the Council's resolution must also include an explanation of the reasons for the proposed change.

(c) No Dual Election as a Councillor and a Community Board Member

The Act provides that, except at the triennial general election, a councillor cannot be a candidate for election as a member of a community board.

Where the same person is elected to both the Council and a community board at a triennial election, then the person declared to be elected to both offices must be treated as having vacated the office as a member of the community board.

What happens then depends on whether the election is run under the first past the post electoral system or the single transferable voting electoral system. If the election is under the FPP system the Electoral Officer gives an amended declaration declaring the highest polling unelected candidate at the election in the ward (at which the person elected as a councillor was also elected as a member of the community board) to be elected with the Electoral Officer ignoring any unelected candidate for community board who was also elected as a councillor.

If the STV system is used then the Electoral Officer must determine the unelected candidate who would have been declared to be elected (again at the election in the ward at which the person who is elected as a councillor was also elected as a community board member) if the person elected as a councillor had not stood at that election, and must treat all persons who are elected as councillors as if they had never stood for election as members of the community board.

If a situation arises where there is no other candidate who may lawfully be declared to be elected by the Electoral Officer, then an extraordinary vacancy in the office of the member of the community board is to be treated as having occurred on the date of the Electoral Officer's declaration, and in that situation a by-election must be held.

If, at any by-election for council, a community board member is declared to be elected as a councillor, then that community board member must be treated as having vacated office as a member of the community board, an extraordinary vacancy is created and a by-election is held to fill that community board vacancy.

(d) Extraordinary Vacancies

Regarding extraordinary vacancies on community boards, if the vacancy occurs more than 12 months before the next triennial general election, then the vacancy must be filled by a by-election.

If the vacancy occurs less than 12 months before the next triennial general election, then the community board, at its next meeting, may determine that the vacancy will be filled by appointment, or that the vacancy will not be filled. If the vacancy is to be filled by appointment, then the board must give public notice of its resolution and the process or criteria by which the person named in the resolution was selected for appointment. The board must then pass a resolution at a subsequent meeting confirming the appointment, and at that date the person is treated as having been elected to fill the vacancy.

If a by-election is held and the vacancy is unable to be filled, then the board may (instead of having a further by-election) resolve that the vacancy will be filled by appointment.

Staff

Recommendation: That the information be received.

The Community

Advocate comments: As this report is for information only, Peter Mitchell will not be attending the Board meeting. However, Peter welcomes any questions that the Board may have. These questions can be noted at the Board meeting and forwarded to Peter. Peter has indicated that he will then prepare a further report covering Board members' questions.

If, after the upcoming Local Government Act "Know How" Seminars, the Board feels it requires further training on the new legislation, this training can then be arranged.

Chairperson

Recommendation: That in light of the upcoming Local Government Act Seminars, that the information be received.