

10. BANKS PENINSULA RESERVE MANAGEMENT COMMITTEES

General Manager responsible:	General Manager Regulation & Democracy Services, DDI 941-8549
Officer responsible:	Ian Thomson, Acting Legal Services Manager, DDI 941-6343
Author:	Judith Cheyne, Solicitor, DDI 941-8649 Richard Holland, Planning and Investigations Team Manager, Transport & Greenspace, DDI 941-8690

PURPOSE OF REPORT

1. To provide background information on the Banks Peninsula Reserve Management Committees (RMCs), and to make recommendations to the Community Boards and the Council in relation to the future status, functions, and management of the RMCs, and their reserves.

EXECUTIVE SUMMARY

2. In accordance with the provisions of the Reserves Act 1977 both the former Banks Peninsula District Council (BPDC) and the Christchurch City Council (Council) had responsibility for various reserves as the administering body of those reserves.
3. The BPDC had various RMCs as sub-committees of the BPDC (many of these RMCs were established many years ago as reserves boards, under much earlier legislation). BPDC delegated various powers to the RMCs to allow them to manage most of the BPDC reserves on behalf of BPDC, most recently by way of the Reserve Management Plans BPDC adopted for most of the reserves. (Attached as Appendix 1 and 2 to this report are the 2002 BPDC General Policies for Reserve Management, and the Guidelines for the RMCs.)
4. The Christchurch City Council (Council) uses a different process for managing its reserves. It delegated, and still does delegate, most of the Council's powers in relation to reserves to its Community Boards.
5. Akaroa-Wairewa and Lyttelton-Mt Herbert Community Boards, by virtue of the delegated powers Council has given them (which are the same as powers of the other Council Community Boards) now have responsibilities for the same reserves that the RMCs administer.
6. When the Reorganisation Order, merging the BPDC with the Council, came into force the RMCs became subcommittees of the Council. The inclusion of the RMCs in Appendix 4 of the Memorandum of Understanding (MOU) did not give the Community Boards responsibility for the RMCs. This means there are two separate Council bodies with various powers in relation to the same reserves, some of which overlap.
7. In a memorandum last year, the Legal Services Unit advised on the status of each reserve administered by the RMCs. That advice is summarised in the table attached to this report as Appendix 3. It is clear that while all the reserves appear to have been properly gazetted, as required under the Reserves Act 1977 (except the Duvauchelle Hall should have its classification amended to "local purpose (Community Buildings) reserve"), certain steps still need to be taken, such as the preparation of the remaining management plans, and ensuring that all the certificates of title for the reserves record the correct vesting and status of the reserves, in line with the Gazette notices.
8. Council staff are responsible for ensuring that things like the completion of reserve management plans and other legal steps are taken in relation to reserves. They also support the management and administration of the Council's reserves, whether it is the Community Board exercising the powers, or the RMCs.
9. The RMCs are providing extremely valuable volunteer services in relation to their reserves, which the Council does not want to lose. There is a need, however, to ensure that each reserve is being run in accordance with the Council's policies, and with the appropriate delegations. Some administrative, higher level matters, which, in the past the RMCs have taken responsibility for, such as entering into leases, should be things that remain under the control of the Community Boards, as already delegated to the Community Boards by the Council. The RMCs more often deal with maintenance and day to day functions anyway, and so it is appropriate for their functions to be limited to these matters.

10. Council staff believe that the best structure, to ensure the smooth functioning of the reserves, is to have the RMCs become subcommittees of the two Banks Peninsula Community Boards. The Community Boards are in the best position to liaise with the RMCs and their members, and this is the most appropriate solution given the delegations already made to the Community Boards by the Council in relation to reserves. A seminar was held with Community Board members and various RMC members, to get their feedback on the options open to Council and the majority of support was in favour of the preferred option/recommendation below.
11. This structure will also assist in providing clarity over who has which responsibilities in relation to reserves. The recommendations also propose limiting the power of the Community Boards to sub-delegate certain of its "reserves" functions, so that the final decision on such matters stays with the Community Boards (with RMC involvement in the process leading to the final decision). This would allow the Community Boards to sub-delegate other functions (not prohibited) which the Community Boards consider should be functions of the RMCs, and which are in accordance with their powers under the reserve management plans.
12. Following this report, and resolutions being made by the Council, the Community Boards will need to appoint the RMCs as Community Board subcommittees and then further work will continue with the Community Boards and RMCs in relation to revising the operational guidelines for the RMCs, continued liaison with Council staff, including the human resources group, and on financial issues (budgeting and reporting processes). The Reserve Management Plans are also required to be kept under review under the Reserves Act, and these changes may make it necessary to update the plans in relation to the current delegations powers for these reserves, as well as other amendments that maybe required as a result of the "new" Council involvement in these reserves.

FINANCIAL IMPLICATIONS

13. There are financial issues to consider in relation to each of the options recommended below.

Option 1: Abolish RMCs

Costs of maintaining the reserves would fall solely on Council. However, Council would not incur the costs of monitoring the activities of the RMCs.

Option 2: Do not involve Community Boards with RMCs.

Risk of duplicative/inefficient allocation of reserves funding between two bodies charged with managing reserves.

Option 3: Keep RMCs as subcommittees of Council, with Community Board involvement.

Minimizes overlap, but may not be the most effective method to support RMCs should they require additional funding.

Option 4 (Preferred): Establish RMCs as subcommittees of Community Boards

Community Boards have oversight of reserve funding in their respective communities, have their own discretionary funding which may be allocated to RMCs if warranted, and would be able to guide the RMCs through the LTCCP/Annual Plan budgeting process.

14. During the 2005 and 2006 financial years the RMCs generated revenue of approximately \$250,000 per year, incurred expenses of approximately \$170,000 p.a., and managed capital assets with a book value of \$1.3m.
15. The RMCs maintain approximately 125 Ha of reserve land. The approximate cost for regular maintenance of the 25 Ha managed by the RMCs other than Lyttelton RMC is estimated to be between \$80,000 & \$90,000. However, there is no detailed asset inventory or condition assessment information available, so it is difficult to establish a more accurate cost. Lyttelton RMC manages over 100 Ha (Whata Raupo, Reserve 68 and 74 Reserve Terrace). The financial cost to maintain these reserves is negligible.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

16. The recommendations in this report do not affect the 2006-16 LTCCP budgets.

LEGAL CONSIDERATIONS

17. Last year the Legal Services Unit advised on the status of each reserve administered by the RMCs. That advice is summarised in the table attached to this report as Appendix 3. While all the reserves appear to have been properly gazetted as required under the Reserves Act 1977 (except the Duvauchelle Hall should have its classification amended to "local purpose (Community Buildings) reserve"), certain steps still need to be taken, such as the preparation of the remaining management plans, and ensuring that all the certificates of title for the reserves record the correct vesting and status of the reserves, in line with the Gazette notices. Work will continue to be done by the Greenspace Unit (with LSU assistance as requested) on these matters.

Have you considered the legal implications of the issue under consideration?

Legal Structure

18. Clause 30 of Schedule 7 of the Local Government Act 2002 provides that a local authority may appoint, discharge and/or reconstitute the committees, sub-committees and any other subordinate decision-making bodies it considers appropriate. Any committee, subcommittee or other subordinate decision-making body "*is subject in all things to the control of the local authority and must carry out all general and special directions of the local authority given in relation to the committee or other body or the affairs of the committee or other body*" (clause 30(3)). The Community Boards also have these same powers. (Section 54 LGA02 provides that the whole of Schedule 7 relating to powers, obligations and administration of local authorities is applied to community boards except for certain excluded provisions relating to the code of conduct and employment of staff.)
19. The MOU describes the RMCs as subcommittees of the BPDC, despite their "committee" label. If the RMCs are committees of the Council (or the Community Boards), then Schedule 7 of the LGA prescribes that they would need to have at least one elected member appointed to each committee. In addition, an elected member must be present at a meeting in order for there to be a quorum of a committee.
20. If the RMCs are subcommittees of the Council (or the Community Boards) then the requirements are not as onerous, as an elected member is not required to be appointed or to be present for there to be a quorum. It is more likely that the RMCs are subcommittees of the Council (and were of the former BPDC) because there are/were no elected members on the RMCs.
21. The standing orders may also apply to subcommittees, as follows:

Clause 1.1.2
"A community board is not a committee of the territorial authority. However, these standing orders, and the other provisions of Schedule 7 of the Act relating to Procedural and Organisational Matters, apply to community boards as if they were a local authority and to any committees of community boards, except where clearly otherwise."

And clause 1.2.1
"These standing orders shall, so far as applicable, extend to the proceedings of all local authority meetings and of all committees of the local authority, including public excluded sessions."
22. "Committee" is defined in the LGA02 (and the standing orders) as including a subcommittee of a committee. It is not clear whether a subcommittee that is a subcommittee of the Council or the Community Board directly, rather than a subcommittee of another committee comes within the definition of "committee" or not, so that the standing orders would also apply by virtue of clause 1.1.2 or 1.2.1. However, the current guidelines for the RMCs provide:

"vi) Operation of Reserve Management Committees

- *Once approved by the Banks Peninsula District Council Reserve Management Committee's shall become a subcommittee of the Council and as such shall be bound by the various Acts and Regulations governing the operation of a Local Authority and **also subject to its standing orders.***

- *Each Reserve Management Committee is to keep a true and correct record of all meetings entered into a minute book which are to be made available to any member of the public who so requests....”*
23. If the RMCs become subcommittees of the Banks Peninsula Community Boards then those Boards will have a direct involvement in bodies that have the Banks Peninsula community as its focus. This supports the Council’s intentions, as evidenced by the MOU, that Community Boards be responsible for local projects and issues. It is also in keeping with the Community Board’s role under s52 of the LGA02 (in particular its role in s52(e) to “*communicate with community organisations and special interest groups within the community*”).
 24. However, it would be onerous for the Christchurch City Council standing orders to apply to the RMCs. Although they have to keep minutes of their meetings, it is difficult for them to give public notice of their meetings, etc, when they are often held “as matters arise” for the RMC. This problem can be dealt with by the Community Boards, when appointing the RMCs as Community Board subcommittees, by specifying that the public notice (and any other) provisions of the standing orders will not apply, so that, for the RMCs, it becomes an “except where clearly otherwise” situation as set out in clause 1.1.2. It should also be noted that under clause 30(7), committees, subcommittees and subordinate decision making bodies are deemed to be discharged at the next triennial general election unless specified otherwise by the Council or Community Board. The Community Board may also wish to provide for this when appointing the RMCs.

Delegations

25. The Reserves Act 1977 does not prevent the delegation of Reserves Act powers and responsibilities. A large number of the Council’s Reserves Act powers have been delegated to the Community Boards. This now includes the Lyttelton-Mt Herbert and Akaroa-Wairewa Community Boards, in relation to reserves in their wards. This therefore includes reserves managed by the RMCs, in accordance with the applicable reserve management plans. The BPDC also delegated certain of its powers in relation to reserves to the RMCs, either directly or via the reserve management plans. The powers delegated are largely very general, in relation to the management of the reserves. However, the guidelines (attached as appendix 2) indicate that the management required to be done by the RMCs is not at a high level: it is to “*make all the necessary arrangements for the **day to day running, maintenance and management of Reserves in accordance with the Reserves Act 1977 and any amendments thereto.***” Higher level decisions under the Reserves Act 1977 were still clearly in the control of the Council. For example, the preparation of the reserve management plans was not done by the RMCs but was done by the BPDC (this is something which this Council has delegated to the Community Boards).
26. The Council can use whichever structure it considers is appropriate to exercise its delegated authority in relation to reserves. It should be noted, however, that the powers of Community Boards (and therefore Community Board subcommittees) are limited by s53(3) in that:
 - “*a community board may not—*
 - (a) acquire, hold, or dispose of property; or*
 - (b) appoint, suspend, or remove staff”.*
27. Some RMCs have appointed caretakers to manage camping grounds, etc. As subcommittees of the Community Boards the employing of staff must now be taken over by the human resources group of the Council (even if they were subcommittees of the Council, this would still be a function to be carried out by the human resources group).
28. Depending on the structure the Council decides to use, it may need to review the delegations it currently has in place in relation to reserves, particularly in relation to the power given to the Community Boards to further delegate any responsibilities given to it by the Council. Clause 32(3) of Schedule 7 provides:
 - “*A committee or ... Community Board ... may delegate any of its responsibilities, duties, or powers to a sub-committee or person, subject to any conditions, limitations, or prohibitions imposed by the local authority or by the committee or body or person that makes the original delegation.*”

29. The recommendations below include a proposal that the Council prohibit the Community Boards from sub-delegating to the RMCs a number of powers delegated to the Community Boards. It is considered more appropriate for the final decision on these higher level administrative functions to remain with the Community Boards.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

30. Not applicable

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

31. Not applicable

ALIGNMENT WITH STRATEGIES

32. The concept of having community groups (such as RMCs) managing local assets is consistent with the Strengthening Communities Strategy (this Draft Strategy was considered by Council on Thursday 12 July).

CONSULTATION FULFILMENT

33. Council staff, from different parts of Council, as part of a Banks Peninsula Reserve Management Committees working party, have consulted with the relevant Banks Peninsula Boards and the RMCs. A seminar/presentation was held on 28 June 2007 with Community Board and RMC members to discuss the issues and options for the Council, which are the options also discussed in this report.
34. The RMC members present at the seminar were generally in support of the simplest option, and recognised the need to clear up the overlaps. It was considered that by coming under the Community Board they would have additional support, and the Community Board could also apply for Council funding, where necessary, on behalf of the RMCs. The ability for the RMCs to have input into decisions made by the Community Boards was seen as important. The view was that the Community Boards would be standing in the place that the former BPDC had stood in relation to the RMCs. Option 4 generally appeared to be the preferred option, although one RMC member was uncertain that the structure proposed, in terms of the delegations to be given to the RMCs would suit all of the RMCs, and that there should be recognition of different abilities of RMCs by way of different delegations as appropriate. Most RMC members wanted to take the matter back to their committees to discuss, so any further feedback was sought from the RMCs by 20 July.
35. The Community Board members present at the seminar were in support of option 4, for the reason that there should not be a duplication of decision making powers; there should be a clear structure in place. It was considered that all the RMCs should operate under the same structure at the same level/with the same delegations, but there was recognition that there may be a different degree of involvement of Council staff with different RMCs.
36. Consultation with the wider community is not considered necessary because the recommendation is to change the legal structure of the RMCs, not the work they or the Community Boards carry out. If option 1 or 2 is preferred by the Council then further consultation with the community may be necessary, before a final decision can be made by the Council.
37. Further feedback was subsequently received from 5 RMCs, all in favour of option 4, with some further comments made as to future relationships/delegations, which can be considered by the Community Boards at future stages of this process.

STAFF RECOMMENDATION

It is recommended that the Community Boards recommend to the Council that it:

- (a) Discharge the Reserve Management Committees appointed by the Banks Peninsula District Council, as subcommittees of the Council, with the discharge taking effect from the date the Akaroa-Wairewa Community Board and the Lyttelton-Mt Herbert Community Board resolve to appoint the following Reserve Management Committees as their subcommittees:

Akaroa- Wairewa Community Board

Ataahua Reserve Management Committee
Awa-iti Reserve Management Committee
Duvauchelle Reserve Management Committee
Le Bons Bay Reserve Management Committee
Little Akaloa Reserve Management Committee
Okains Bay Reserve Management Committee
Pigeon Bay Reserve Management Committee
Robinsons Bay Reserve Management Committee

Lyttelton-Mt Herbert Community Board

Allandale Reserve Management Committee
Lyttelton Reserves Management Committee (operating as "Lyttelton Reserves Committee")
Lyttelton Recreation Ground Reserve Management Committee

- (b) Recommend to the Akaroa-Wairewa Community Board and the Lyttelton-Mt Herbert Community Board that on appointing the above Reserve Management Committees as their subcommittees they also resolve that they are not discharged on the coming into office of the members of the Community Board elected or appointed at, or following, each triennial general election, and that they specify which parts of the standing orders do or do not apply to the Reserve Management Committees.
- (c) Confirm that the delegations in relation to reserves made to the Akaroa-Wairewa and Lyttelton-Mt Herbert Community Boards are the same as the Council's delegations to all its Community Boards.
- (d) Resolve to prohibit the following delegations in relation to reserves, , from being sub-delegated by the Akaroa-Wairewa Community Board or the Lyttelton-Mt Herbert Community Board to a reserve management committee or any other body or person. The power of the Council to:
- Declare land reserve.
 - Exchange reserves for other land.
 - Change of classification or purpose or revocation of a reserve.
 - Prepare, review and change Reserve Management Plans for parks and reserves held under both the Reserves Act and Local Government Act.
 - Grant rights-of-way and other easements over reserves.
 - Grant licences and leases under the Reserves Act (and the power to approve an assignment, sublease, mortgage or to vary licences or leases). This includes any recreation and commercial leases.
 - Accept tenders for stall licences on reserve sites.
 - Make submissions on relevant resource consents applications, on behalf of Council, to other authorities.

BACKGROUND (THE ISSUES)

Reserve Management Committees – Background

The 1989 Local Government reform included provisions which made the new Local Authorities responsible and accountable for the administration of areas formerly under the control of Reserve Boards (more commonly known as Domain Boards).

It appears that the original Domain Boards were established under the Public Reserves Act 1881 and subsequent legislation relating to reserves, including the Reserves and Domains Act 1953 and the Reserves Act 1977, which is the current relevant legislation. Research has shown one of the earliest Boards (Wainui Domain Board) was established by an Order in Council which appeared in the New Zealand Gazette in November 1902.

The Gazette Notice for the Wainui Domain Board included the names of the Board members, stipulations as to how it would operate and a requirement for an annual report (including financial transactions) to be sent to the Minister of Lands. The Schedule attached to the Gazette Notice described the land that the Board would administer. This appears to be the same land located in Wainui Valley Road, that is used as a recreation reserve today. That reserve is a Crown Reserve vested in the Council. It is currently maintained by the Wainui Residents Association, which has grazed it since it ceased being used for sport.

It is probable that all of the Domain Board's were established in a similar manner to that of the Wainui Board. Colloquially it is reported that most of the Board's were established and functioning by the late 1930's. Over the years some of the Board's have ceased to function and the relevant Local Authority has taken over responsibility for the reserve(s) in question. This situation continued until 1989 when special provision was made as part of the Local Government reform for some of the Board's to be incorporated into the new authorities.

In the 1989 Reorganisation Order relating to the BPDC, it states:

"In this Part of this order "the former authorities" means:.....

- (e) The Le Bons Bay Reserve Board; and*
- (f) The Little Akaloa Reserve Board; and*
- (g) The Okains Bay Reserve Board; and*
- (h) The Pigeon Bay Reserve Board....."*

It is unclear why the Reorganisation Order did not refer to all of the Board's operating at that time, however that question is somewhat academic as the newly created BPDC resolved to continue with a "Reserve Board" system. Prior to the 1989 reorganisation, the Transitional Committee for Banks Peninsula did not have an opportunity to consult with the existing Boards to establish management procedures, but the Committee did recommend to the District Council that Reserve and Domain Boards be given maximum delegation in so far as statute permitted. The new BPDC called the new Board's Reserve Management Committees (RMCs).

The BPDC adopted general guidelines in respect of the RMCs (appendix 2), which included the following clause:

"Where possible the Council intends to adopt a "hands off" and flexible approach and encourage the continuance of local involvement. The Reserve Committee shall make all the necessary arrangements for the day to day running, maintenance and management of Reserves in accordance with the Reserves Act 1977 and any amendments thereto."

The RMC's established from the existing Board's at that time were:

Allandale Reserve Management Committee
Ataahua Reserve Management Committee
Awa Iti Reserve Management Committee
Duvauchelle Reserve Management Committee
Le Bons Bay Reserve Management Committee
Little Akaloa Reserve Management Committee
Okains Bay Reserve Management Committee
Pigeon Bay Reserve Management Committee

The following additional RMC's were established during the time of the BPDC:

Lyttelton Reserves Management Committee
Lyttelton Recreation Ground Reserve Management Committee
Robinsons Bay Reserve Management Committee

It appears that the Robinsons Bay RMC was not correctly established (by Council resolution) so that is something that can also be addressed by this process (and will be automatically taken care of if the Community Boards are to appoint the RMCs as its subcommittees).

All of the RMCs have continued to function to the current day, albeit with varying degrees of independence from BPDC (and the Council), and with hugely varying resources from which to operate.

The BPDC relied on the following to manage and interact with the RMCs:

1. Reserves Act 1977
2. Draft "General Policies for Reserves Management" – 2002 (**attached** as appendix 1)
3. Guidelines for Reserve Management Committees (**attached** as appendix 2)

In summary, the Guidelines established rules around the composition and operation of the RMCs, including:

- Electing members
- Recording minutes
- Provision of prospective and historic financial information
- The appointment of BPDC officers as liaison persons for the RMCs
- Resolving of disputes

Reserve Management Committees - Current Status and the MOU

The former BPDC RMCs included in paragraph 2 of appendix 4 of the BPDC/CCC Memorandum of Understanding (MOU) are:

Allandale Reserve Management Committee
Ataahua Reserve Management Committee
Awa-iti Reserve Management Committee
Duvauchelle Reserve Management Committee
Le Bons Bay Reserve Management Committee
Little Akaloa Reserve Management Committee
Lyttelton Reserves Management Committee (responsible for Whaka Raupo, Reserve 68 and 74 Reserve Terrace)
Lyttelton Recreation Ground Reserve Management Committee
Okains Bay Reserve Management Committee
Pigeon Bay Reserve Management Committee
Robinsons Bay Reserve Management Committee

The MOU between the Council and BPDC states that it is "*not intended to create any legal relationship*" but "*is intended to set out the key issues and provide guidance on how the two Councils wish to work together on this merger as a result of the abolition and inclusion process*".

Paragraph 2 of the MOU lists the RMCs. The Takapuneke Reserve Committee is included in paragraph 1. It was not set up in the same way as the other RMCs, as it had more input from BPDC and the administration for this committee was done by BPDC. It also had Council appointees and Ngai Tahu representatives on the Committee. However, it is currently in recess while work is being carried out in regard to the reserve. The area is known as Greens Point and staff are investigating how to gazette the area as a reserve (it is currently endowment land). For this reason the Takapuneke Reserve Committee has been excluded from this report.

In respect of BPDC committees generally the MOU provides on page 3 that:

"The Banks Peninsula District Council has a number of Committees. Christchurch City Council will work with Banks Peninsula District Council to incorporate them into the enlarged organisation. There are also a number of appointments to external Committees. The

appointments to the bodies listed in paragraph 3 of Appendix 4 will be made from the relevant Banks Peninsula Community Board."

When the Reorganisation Order came into effect all of the former committees and subcommittees of BPDC became subcommittees and committees of the Council. The MOU on its own, because it did not create any legal relationship, could not and did not give the Community Boards responsibility for or control of RMCs. If the Community Boards are to have that responsibility then the Council must pass a resolution to that effect. The RMCs (despite being called "committees") appear to have been subcommittees of the BPDC, as there was no elected member on these committees.

There is an indication in the MOU that the Community Boards will be the "voice" of their communities, as evidenced by the following quote, from page 3 of the MOU:

"The two Banks Peninsula Community Boards, with the support of the Banks Peninsula Ward Councillor will play a key role in ensuring the "voice" and needs of the smaller scale Peninsula communities, and those of the rural areas, are presented effectively to the enlarged Christchurch City Council. The Christchurch City Council seeks to empower and respect the role of the Banks Peninsula Community Boards to the full extent of their delegations in this important work by conferring on the Peninsula Community Boards the same delegations as conferred on the City Community Boards."

Council's Delegations to Community Boards, and the RMC delegations

In respect of reserves across the city the Council has delegated to the Community Boards various powers, as follows:

"Parks

1. The powers of the Council (except the hearing of submissions/objections) in relation to:
 - (a) Declaration of land as a reserve (s.14 Reserves Act 1977).
 - (b) Exchange of reserves for other land (s.15 Reserves Act).
 - (c) Change of classification or purpose or revocation of a reserve (s.24 and 24A Reserves Act).
 - (d) Preparation, review and change of management plans for reserves (s.41 Reserves Act).
 - (e) Granting of rights-of-way and other easements over reserves (s.48 Reserves Act).
 - (f) The granting of licences on reserves pursuant to s.48A of the Reserves Act 1977.
 - (g) Granting of leases or licences on reserves pursuant to ss.54, 56, 58A, 61, 73 and 74 of the Reserves Act.
 - (h) Afforestation of reserves by the Council (s.75 Reserves Act).
 - (i) The power to approve an assignment, sublease or mortgage of the lease of land under the Reserves Act where the lease provides such consent will not be unreasonably withheld (ss.114 and 115 of the Reserves Act 1977).
 - (j) Preparation review and change for management plans for parks held under s.138 of the Local Government Act 2002.
2. The power to grant leases for a maximum term of 20 years (less 1 day) to voluntary organisations over land held under s.138 of the Local Government Act 2002 for the erection of pavilions and other buildings and structures associated with and necessary for the use of the land for outdoor sports games and other recreational activities.
3. The power to issue leases or licences for the carrying on of any trade, business or occupation on land (excluding public road) held under s.138 of the Local Government Act 2002 for terms not exceeding five years and at rentals not exceeding \$20,000.

4. Power to make decisions as to alterations and/or additions to any building, fence or structure or construction of the same on any reserve land leased by the Council (administered by the Greenspace Unit) where the lease specifies the requirement of Council consent.
5. The acceptance of tenders for stall licences on reserve sites.
6. To plant, maintain and remove trees on reserves, parks and roads under the control of the Council within the policy set by the Council.
7. To approve the design of landscape plans on reserves, parks and roads provided the design is within the policy authorised by the relevant community board.”

The BPDC RMCs generally have the following delegations (as outlined in the various Reserve Management Plans):

1. Powers under the Reserve Management Plans to administer and manage the reserves. The elected committee is to be made up representatives from the community, domiciled sports clubs and community facilities groups.
2. Powers to manage the reserve and provide open space facilities for the community and clubs in the locality to use.

This includes:

- Provision and maintenance of sports grounds. Maintain sports turf and different code requirements such as lighting and provision of sports goal posts.
 - Provision and maintenance of passive areas for recreation including activities such as walking and picnicking.
 - Control and eradication of pest plants and animals.
 - Tree maintenance including felling or removing any trees dead diseased or dying.
 - Providing park furniture such as seating, picnic tables, fences and signs.
 - Maintain vegetation.
 - Control certain activities on the reserve to protect the reserve and users.
 - Allocate areas of the reserve for clubs and organisations to operate.
 - Provide areas for driveways and car parking.
 - Maintain any buildings on the reserve.
 - Hire halls and buildings to the public. This does not include buildings owned by clubs and other organisations such as preschool groups.
 - Maintain toilets and assist in developing new facilities.
3. Health and safety ensuring the reserves are safe for all visitors and all buildings and structures are maintained in a safe condition. The committee must keep a hazard register to eliminate, isolate, or minimise any hazards identified.
 4. Reserves are to be managed under the Reserves Act 1977 including leasing, how they should be managed, classification and purpose, and public consultation. The Reserve Committees need to be aware of the legislation and the responsibilities to work within the provisions of the Act and the Management Plans.
 5. Meet the five key values of the former Banks Peninsula Reserves Strategy being the provision of amenities on the reserves, identify and preserve the values of landscape, culture, heritage, ecology and recreation. Ensure the development of the reserve is sympathetic to other users and the environment and is at an appropriate scale so as to compliment the amenity and other values.

The areas where the Existing Community Board and RMC delegations clearly overlap is as follows:

1. Approve the afforestation of reserves.
2. Power to make decisions as to alterations and or additions to any building, fence, or structure or construction of the same on any reserve land leased by the Council where leases specifies the requirement of Council consent.
3. To plant maintain and remove trees on reserves, parks and roads under the control of the Council within policy set by Council.
4. To approve the design of landscape plans on reserves, parks, and roads provided the design is within the policy authorised by the relevant Community Board.

The matters which are the subject of existing Community Board delegations for which it is not appropriate for the RMCs to exercise powers in respect of (it is not entirely clear whether or not the Reserve Management Plans would allow the RMCs to exercise these powers in any event) are:

1. Prepare, review and change Reserve Management Plans for parks held under both the Reserves Act and Local Government Act.
2. Granting under the Reserves Act licences and leases and assign or sublease. Includes recreation and commercial leases. Also to vary leases if it does not include an extension to the existing leased area.
3. Declare land reserve.
4. Exchange reserves for other land.
5. Change of classification or purpose or revocation of a reserve.
6. Granting rights-of-way and other easements over reserves.
7. The acceptance of tenders for stall licences on reserve sites.
8. Make submissions on resource consents applications, on behalf of Council to other authorities.

The Reserves Act 1977

The Reserves Act contains various requirements for administering bodies of reserves. The Council is such an administering body in relation to the reserves looked after by the RMCs. These requirements include matters in relation to the vesting, classification and gazetting of reserves. In advice provided last year the Legal Services Unit analysed the legal status of various reserves. That advice is summarised in the table attached as appendix 3.

Section 40 of the Reserves Act charges an administering body "*with the duty of administering, managing, and controlling the reserve under its control and management in accordance with the appropriate provisions of this Act and in terms of its appointment and the means at its disposal...*". Section 41 of the Act requires the administering body to prepare management plans for the reserves under its control, management, or administration. Most management plans need to be submitted to the Minister for his approval, except for a recreation reserve vested in a local authority (or where a local authority is appointed to control and manage the recreation reserve), unless the terms of vesting or of appointment to control and manage the reserve require that it be submitted to the Minister.

Section 41(4) provides that:

"The administering body of any reserve shall keep its management plan under continuous review, so that, subject to subsection (3) of this section, the plan is adapted to changing circumstances or in accordance with increased knowledge; and the Minister may from time to time require the administering body to review its management plan, whether or not the plan requires the approval of the Minister under this section."

If any review carried out is comprehensive then the administering body **must** follow the processes in section 41(5) and (6) and give public notice and all submissions received must be considered, but if it is not a comprehensive review then the administering body **may** follow the public notice, etc procedures. Minor changes to the reserve management plans arising out of the reorganisation order and change in structure of the RMCs may not require public notice to be given if the Community Board “thinks fit” (since the Community Board has been delegated the Council’s power to prepare, review and change management plans under section 41). It should also be noted that some of the local purpose reserves may not require management plans as section 41(16) provides that:

“This section shall not apply in respect of any Government purpose reserve or local purpose reserve unless the reserve is vested in an administering body or an administering body is appointed to control and manage the reserve, and the Minister in the notice of vesting or notice to control and manage directs that this section is to apply in respect of the reserve.”

Most of the RMCs’ reserves are recreation reserves or local purpose reserves. General powers of the Crown and administering bodies are set out in sections 42-52 of the Act. For recreation reserves, more specific powers of the administering body are set out in sections 53 (powers other than leasing), 54 (leasing powers), and 73 (leasing for farming, grazing etc) and for local purpose reserves, section 61. The powers under section 53 include such things as establishing camping grounds with the prior consent of the Minister, and prohibiting or prescribing the games, sports, or other activities for public recreation or enjoyment which may take place in the reserve.

THE OBJECTIVES

To clarify the status, functions and management of the RMCs and their reserves to provide for the continued successful operation of the Banks Peninsula reserves.

THE OPTIONS

- **1: No RMCS, only BP Community Boards involved with reserves:** Council controls and manages the reserves itself through the Greenspace Unit, and discharges the RMCs. Delegations to the Community Boards remain or are amended as may be considered necessary, and would need to prohibit sub-delegation to any other body. This would mean the valuable volunteer resource of the RMCs would be lost and may destroy the community input and trust in the Council’s activities in relation to reserves.
- **2: Keep RMCs, but no BP Community Board involvement in reserves:** Council retains the RMCs as subcommittees of Council, and the RMCs manage the reserves on behalf of the Council. Delegations in relation to reserves to the Banks Peninsula Community Boards would need to be revoked and given to the RMCs instead, subject to the Council reviewing whether it should retain some powers itself instead of delegating the power to the RMCs. This would not be in accordance with the Council’s structure for all its other Community Boards. If the Council decided that it should not delegate all the same powers to the RMCs that it delegates to the Community Boards, then this would make the management of the BP reserves less efficient, in comparison to other reserves.
- **3: Keep RMCs and BP Community Boards involved with reserves, through RMCs being a subcommittee of the Council:** Council confirms the RMCs as its subcommittees. Council revises the reserves delegations to the BP Community Boards by removing some of their delegations and giving these to the RMCs. Although this is a better option than the previous one, because it retains some Community Board involvement in reserves, it is still not the same structure for the BP Community Boards as it is for all Council’s other Community Boards. As the RMCs and Community Boards would be on a similar level in terms of both having powers delegated directly to them by the Council, there is still the potential for issues to arise in respect of who should be carrying out a certain function, and as neither would have “control” over the other, with both coming under the Council, the Council may be required to “sort it out”.
- **4: Keep RMCs and BP Community Boards involved with reserves, through RMCs being a subcommittee of the Community Boards:** Council discharges the RMCs as its subcommittees on the basis that the RMCs become subcommittees of the BP Community Boards. Council prohibits the sub-delegation of certain powers by the Community Boards by stating what matters it cannot sub-delegate to the RMCs, and therefore allows non-prohibited powers to be sub-delegated.
This is the preferred option for the reasons below.

THE PREFERRED OPTION

Keep RMCs and BP Community Boards involved with reserves, through RMCs being a subcommittee of the Community Boards: Council discharges the RMCs as its committees on the basis that the RMCs become subcommittees of the BP Community Boards. Council limits the delegations to the Community Boards by stating what matters it cannot sub-delegate to the RMCs, but certain day to day and maintenance powers can be sub-delegated by the Community Boards, which align with the functions of the RMCs under the Reserve Management Plans, and is in accordance with the current guidelines.

This option will retain the valuable work of both the RMCs and the Community Boards in their wards, and in matters of local interest. It also retains the current Council delegations to Community Boards, and means that all Council's Community Boards have the same reserves delegations. It provides a more appropriate hierarchical structure, instead of having the BP Community Boards and RMCs sitting alongside each other in relation to reserves. A structure that allows the Community Boards to have control over the higher level decisions in relation to reserves, and over the reserves generally, provides better clarity than the option of retaining the RMCs as Council subcommittees.

If the preferred option is adopted the Community Boards can then work with the RMCs (and staff) on updating the guidelines for the RMCs, and in conjunction with staff, and with input from the RMCs, make any necessary changes to the reserve management plans.