7. REVIEW OF DELEGATIONS TO COMMUNITY BOARDS

General Manager responsible:	General Manager Regulation and Democracy Services
Officer responsible:	Legal Services Manager
Author:	Vivienne Wilson, Solicitor and Chris Gilbert, Legal Services Unit Manager

PURPOSE OF REPORT

1. The purpose of this report is to submit to each Community Board, for review, the current delegations from the Council. The current delegations are set out in **Attachment A and Attachment B**.

EXECUTIVE SUMMARY

2. On 9 June 2011, the Council resolved to delegate to Community Boards the matters set out in Attachment A. However, the Council also resolved that the Community Boards be asked to review the delegations and bring them back to the Council by November 2011.

3. This report sets out the terms of the current delegations to Community Boards. Each Community Board is asked to review the current delegations and identify any issues they may have with the current provisions.

LEGAL CONSIDERATIONS

4. The Local Government Act 2002 provides that "*… for the purposes of efficiency and effectiveness in the conduct of a local authority's business, a local authority may delegate to a committee or other subordinate decision-making body, community board, or member or officer of the local authority any of its responsibilities, duties, or powers*" except for certain specified responsibilities, duties and powers. The Council is also able to impose any conditions, limitations or prohibitions on any delegations it may make.

5. The Local Government Act 2002 also provides that the Council must consider whether or not to delegate to a Community Board if the delegation would enable the Community Board to best achieve its role.

6. Section 52 of the Act defines the role of Community Boards as follows:

   (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.

7. The Act provides that once a delegation has been made by the Council to a Community Board then that Board is legally able to make a decision within the delegations as if it were the Council itself. This means that decisions made by a Community Board within the delegations legally bind the Council. If a matter or issue does not fall within these delegations, as a default position, a decision on that matter or issue is one for the Council itself.

8. The Act provides that the Council itself cannot rescind or amend a decision made by a Community Board made under delegated authority. However, the Council can at any time amend or revoke a delegation so as to apply any future decisions.

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

9. Yes. The delegations comply with the Local Government Act 2002.

CONSULTATION FULFILMENT

10. Staff from the Legal Services Unit discussed the delegations with the chairs of each Community Board on 22 July 2011 at the Community Board Chair Forum. The Chairs raised a number of issues in relation to delegations set out below. Comments on those issues follow immediately after:

    (a) *From time to time, Community Boards would like the opportunity to make, on their own account, submissions on notified resource consent hearings*. **Comment:** Following legal advice, the Council's position is that Community Boards are not able to make submissions on notified resource consent hearings on their own account unless this power has been delegated to them. The delegations currently provide that Community Boards have the power to make submissions on behalf of the Council, on applications for resource consents, to other territorial authorities or the Canterbury Regional Council, where the application is of particular concern to the local community.

    (b) *Thought needs to be given to the role of Community Boards following the earthquakes, ie Suburban Recovery Planning*. **Comment:** At the 23 June meeting of Council, the Council considered a report outlining a proposed Suburban Centres programme. The aim of the Suburban Centres programme of work is to assist in the recovery and rebuild of earthquake damaged commercial centres through: assisting with planning, design and transport related matters; facilitating discussions with property owners and commercial ventures; and providing contact details for other agencies. The work programme consists of two streams of work:

    - masterplans for the larger, more damaged centres; and
    - case management for smaller centres

    Prior to taking the 23 June report to Council, the Community Boards were individually consulted on the proposed work to ensure they were aware of this initiative and to provide an opportunity for discussion. Their feedback was sought on whether the centres identified in their area should be treated as masterplans or through case management.

    There will be further opportunities for community involvement in the masterplan process. Each masterplan will have an approximately five month project design phase involving community and stakeholder engagement. The project aims to provide the stakeholders (including businesses, community groups and local residents) with information and an opportunity to engage and partake in the rebuild of centres. The process for developing each masterplan includes focus group discussions with key stakeholders, technical workshops, public meetings and elected member presentations. The outputs include an agreed vision and masterplan for each centre, together with an implementation plan.

    (c) *With respect to the Hagley/Ferrymead Community Board, could there be some explanation / justification for the approach of not permitting the Board to exercise its delegated functions in the Central City Area.* **Comment:** the Community Board delegations under the heading of "Roads, Parks and Leases" do not apply to that part of the Hagley/Ferrymead Community Board area situated within the "Central City Area" marked on the plan (Plan A) attached. Delegations for those "Roading and Parks issues" in that "Central City Area" are to be exercised by the Council with reports on those matters coming directly to the Council. Prior to the earthquakes in 2010 and 2011, the rationale for this approach was that the central city area was of metropolitan significance to the well-being and growth of the city as a whole. (This is currently recognised in the City Plan, the Central City Revitalisation Strategy and the Greater Christchurch Urban Development Strategy.) There was therefore a need to both consider issues within this area on a city-wide basis and to be able to respond without undue delay. It was considered that it would quicken the process for dealing with central city issues if matters went directly to the Council without first proceeding to the Board.

(d) *The Community Boards would like to be involved at much earlier stage with respect to proposed Council works in reserves in their local areas. This relates to maintenance, renewals and capital projects*. **Comment:** The delegations currently provide that Community Boards have the powers of the Council (except the hearing of submissions/ objections) in relation to preparation, review and change of management plans for reserves. Under section 41 of the Reserves Act 1977, management plans are to provide for and ensure the use, enjoyment, maintenance, protection, and preservation, as the case may require, and, to the extent that the administering body's resources permit, the development, as appropriate, of the reserve for the purposes for which it is classified. Management plans must also incorporate and ensure compliance with the principles set out in section 17, section 18, section 19, section 20, section 21, section 22, or section 23, as the case may be, of the Reserves Act for a reserve of that classification. .

At present, reserve management plans are not in place for all reserves in the district, or some reserve management plans are at a high level. As reserve management plans are prepared or reviewed, there is scope for the plans to provide in more detail for proposed works. However, capex and opex expenditure are considered as part of the Annual Plan and Long Term Plan processes. Recent management plans have indicated that developments mentioned in the plans are dependent on the Long Term Plan process.

(e) *Boards have the responsibility to make submissions on the Annual Plan. Six years ago, it was the practice for Boards to have input into the draft of the Annual Plan before it was consulted on. Can that be specified in the delegations?* **Comment:** There is a very tight timeframe each year for the preparation of the Annual Plan. It would be difficult to build in extra time for Community Boards to comment on the draft Annual Plan before it is signed off by the Council to start the formal consultation process. Once the special consultative procedure starts, Community Boards are able to participate fully in making a submission and providing quality feedback to the Council on the draft Annual Plan. It is acknowledged that under section 52(d) of the Local Government Act 2002, the role of Community Boards includes preparing an annual submission to the Council for expenditure within the community. However, it is considered that this role is ordinarily provided for in the current Annual Plan process.

(f) *With abundance of local Reserve Management Committee on the peninsula, there is the opportunity when reserve planning takes place to involve all stakeholders – the Council, the Community Board and land owners. In general a clearer pathway is needed for consultation.* **Comment:** The Community Boards have specific delegated powers for local projects but not all local projects. This means that not all local projects will be referred to Community Boards for a decision. However, there is scope within the current delegations dealing with reserves and reserve management plans for discussions about reserve planning in the future, as discussed at paragraph (d) above.

(g) *When matters are considered in public excluded before the Community Board, Board members are subsequently excluded from the public excluded part of the meeting when the matter comes before Council. Could this be clarified?* **Comment:** As you will be aware, under section 48 of the Local Government Official Information and Meetings Act 1987, the Council (and Community Boards) may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on one a number of specified grounds. Under section 48(5), any such resolution may provide for one or more specified persons to remain after the public has been excluded if that person, or persons, has or have, in the opinion of the local authority, knowledge that will assist the authority. Section 48(6) states that the resolution must state the knowledge possessed by that person or those persons which will be of assistance in relation to the matter to be discussed and how it is relevant to that matter. It would be open to the Council to resolve that members of a Community Board may stay in the public excluded part of the meeting if this is appropriate.

11. The comments from each Community Board will in due course be reported back to the Council. It is anticipated that before the Council considers the report with the Community Board comments there will be a workshop between the Councillors and Community Board members.

STAFF RECOMMENDATION

It is recommended that the Community Board consider each of its current delegations and indicate whether it would like to see any amendments.

CHAIRPERSON'S RECOMMENDATION

For discussion.

BACKGROUND (THE ISSUES)

12. After each local authority election, it is the practice of the Council to reconsider and resolve the delegations it makes to the Community Boards. Following the disruption caused by the earthquakes on 4 September 2010 and 22 February 2011, the Council delegated various responsibilities, duties and powers to the Community Boards on 9 June 2011. However, the Council also resolved that the Community Boards be asked to review the delegations and bring them back to the Council by November 2011.

13. It should be noted that even though the Council did not resolve the delegations until 9 June 2011, the previous delegations continued in force over that period. There was no question that, in the interim, the Boards acted without delegated authority.

14. The current delegations, as set out in Attachment A, cover a wide range of matters, including financial delegations, roads, sale of liquor, resource management, parks, leases and other miscellaneous matters. There are some specific provisions relating to the Hagley/Ferrymead Community Board, the Lyttelton/Mt Herbert Community Board, and the Akaroa/Wairewa Community Board.

15. It should be noted that it has been the Council's procedure for many years that any exercise of the Board delegations must be within any policies or standards set by the Council. So if the Council has resolved a particular position then it is not open to a Community Board to make a decision which conflicts with that Council position.

16. Experience has also shown it is not feasible to write delegations which cover every permutation of a subject. The question may arise as of whether a matter falls within a Board's delegated authority.

17. To assist in these situations a decision on whether or not a Board has delegated authority on a particular matter will be a matter for joint decision by the General Manager, City Environment (as most matters are considered to be delegated are operational issues that fall within that group) and the General Manager Regulation and Democracy Services Manager. This is provided for in Attachment A.

18. Where there is a matter outside a Board delegation, such as a metropolitan facility which has a city wide impact but is situated in a particular Community Board area, and where the Board historically has taken an interest in the activities on that facility within their community, the issue has been addressed in the following way: a report on a particular matter involving the metropolitan facility is forwarded to the Community Board for comment before referring the final report to Council.

19. Following the report to Council on 9 June 2011, it has come to the attention of staff that there are some further delegations that have been made by the Council to Community Boards that have not been reflected in Attachment A. These delegations relate to the Council's Road Stopping Policy and are set out in **Attachment B**. The road stopping delegations were made on 9 April 2009 and are still in force. However, it would be desirable for these delegations to be contained in the Council's Delegation Register with the other delegations.

THE OBJECTIVES

20. The purpose of the review is to provide an opportunity for each Community Board to consider and comment on their current set of delegations with respect to any issues that they may have.

THE OPTIONS

21. There are two options;

    Option 1 – consider the current set of delegations but provide no comments.

    Option 2 - consider the current set of delegations and provide comments to the Council with respect to any issues the Board may have.

THE PREFERRED OPTION

22. The preferred option is option 2. The Council has expressed a desire for the Community Boards to review their current delegations and provide feedback to the Council.