

16. 8. 2007

**JOINT REPORT BY THE CHAIRMEN OF THE
AKAROA-WAIREWA COMMUNITY BOARD AND
LYTTELTON-MT HERBERT COMMUNITY BOARD
25 JULY 2007**

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. BANKS PENINSULA COMMUNITY BOARDS - COMMITTEES/SUBCOMMITTEES

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941 8549
Officer responsible:	Legal Services Manager
Authors:	Judith Cheyne, Solicitor, Legal Services Unit; Liz Carter, Akaroa Service Centre Manager, Akaroa/Wairewa Community Board; Peter Dow, Acting Community Board Principal Adviser, Lyttelton/Mt Herbert Community Board

PURPOSE OF REPORT

1. For the Council to consider recommendations from the Akaroa-Wairewa Community Board and the Lyttelton-Mt Herbert Community Board regarding some of the committees and other bodies listed in Appendix 4 of the Memorandum of Understanding (MOU) between the former Banks Peninsula District Council (BPDC) and Christchurch City Council (Council).

EXECUTIVE SUMMARY

2. An intention expressed in the MOU, that the Banks Peninsula Community Boards be responsible for various committees, and powers of appointment to various external bodies, has never formally been resolved on by the Council. At present, the Council still has those responsibilities, because they were responsibilities of the former BPDC.
3. It is considered to be more appropriate for the Banks Peninsula Community Boards to take over these responsibilities, and to confirm any appointments they have already made (on the assumption they had this power already, because of the intention in the MOU).

FINANCIAL IMPLICATIONS

4. There are no financial implications in respect of the appointment of persons to external committees. There are also no financial implications in respect of the committees which it is suggested should be discharged. The Banks Peninsula District Council used to pay \$6,000 per annum to the Road Safety Committee. If the Council discharges this joint committee it will not have this cost in the future, but there may be additional costs for the current Council committee in addressing rural road safety issues in Banks Peninsula. This is an issue to be addressed separately from this report.
5. The only financial implications in respect of the two committees that it is recommended become committees of the Akaroa/Wairewa Community Board appears to relate to the administrative support for these committees. The Community Board already liaises with these committees, and have assumed they are responsible for these committees. These committees do not need any funding other than administrative support, which is currently provided by the Akaroa Service Centre. Therefore, at present, there is not considered to be any additional funding required.

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

6. There is no effect on the 2006-16 budgets.

LEGAL CONSIDERATIONS

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

7. Section 54 of the Local Government Act 2002 (LGA) specifies 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 concerning the code of conduct and employment of staff). Clause 1.1.2 of the Council's Standing Orders states that:

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"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."

8. Clause 30 of Schedule 7 provides that a local authority/community board may appoint, discharge and/or reconstitute the committees, subcommittees 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 [or read, community board], 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)). If the various bodies in appendix 4 were 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, a minimum number of members for a "committee" is 3, and a committee must have an elected member present at a meeting in order for there to be a quorum.
9. If the bodies were 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. If the bodies become committees (or subcommittees) of the Banks Peninsula Community Boards then those Boards will have a direct involvement in bodies that primarily 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.
10. Under the LGA, the Community Boards would have the power to appoint what are current Council committees/subcommittees as its committees, and to appoint the members to those committees. The Community Boards can also provide the committees with direction, such as providing guidelines for the committees, etc. Any guidelines that currently apply to any of the bodies should be reviewed and confirmed or amended by the Community Boards when formally appointing these bodies as its committees. The committees should report to the Community Boards, who, in turn, will report to the Council in respect of the various work being done by the committees.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

11. The report is consistent with the Democracy and Governance section in the LTCCP in that the recommendations contribute to ensuring that Community Board decision making is carried out within delegations. See Our Community Plan 2006-2016 Volume 1 Pages 111 – 115.

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

12. Yes.

ALIGNMENT WITH STRATEGIES

13. No specific strategies involved.

Do the recommendations align with the Council's strategies?

14. Not applicable

CONSULTATION FULFILMENT

15. Internal consultation has taken place and the two Banks Peninsula Community Boards have been consulted on this matter. Public consultation is not considered to be required, given the relatively low significance of this matter.

Community Board views

16. The above issues were discussed with the two Community Boards at a seminar on 2 May 2007, where the background to these issues and the proposed recommendations to the Council were presented.

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17. The Community Boards were in general agreement with the proposals that are being put to the Council, and the Akaroa/Wairewa Community Board was happy to take over responsibility for the two Akaroa committees, and make them their subcommittees.

The Community Boards commented on the following matters:

- (a) That the appointments of a Council representative to both the Rural Canterbury Primary Health Organisation and the Banks Peninsula Pest Liaison Committee, should be appointments made jointly by the two community boards;
 - (b) That Banks Peninsula is a body that no longer exists in its previous form, so there is no need for anyone to make appointments to these bodies;
 - (c) That the two Community Arts Councils were formerly delegated responsibility by BPDC for distributing Creative New Zealand funds. This no longer occurs under the Council so there is no need for an elected representative to be appointed to these bodies;
 - (d) That we investigate whether the Pohatu Marine Reserve Committee, although not in appendix 4, is an external body with a Council representative, for which the Akaroa/Wairewa Community Board should have a power of appointment (Eric Ryder is the current Council representative on that Committee);
 - (e) That we investigate the situation around the membership of the Orton Bradley Park Board, which is covered by a local Act of Parliament; and
 - (f) An issue which is separate from, but related to, the delegated authority to appoint persons to the Harvey Page Trust/Corsair Bay Advisory Committee – whether the appropriate signing authority for the Trust has been put in place (it was suggested that it was meant to be the Chief Executive of the Council, but that may not be happening).
18. The last three matters above are discussed in further detail in the background section below. The recommendations by staff have been amended from those originally proposed, in order to deal with issues raised by the Community Boards, as appropriate.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Discharge the following committees/subcommittees of the Council (the former Banks Peninsula District Council) in accordance with Clause 30(4) of Schedule 7 of the Local Government Act 2002:
 - Tourism and Economic Development Board, from the date of this resolution
 - Road Safety Committee, from 30 June 2007
- (b) Discharge the following committees/subcommittees as committees/subcommittees of the Council, on the understanding that the Akaroa/Wairewa Community Board resolves to appoint them as its subcommittees, with the discharge taking effect from the date the Community Board appoints them as its subcommittees:
 - (i) Akaroa Design & Appearance Advisory Committee
 - (ii) Akaroa Museum Advisory Committee
- (c) Delegate to the Akaroa/Wairewa Community Board the power to appoint a member of the Community Board, or other person, to the following bodies, as the Council's representative on that body:
 - (i) Akaroa Library Committee
 - (ii) Akaroa-Wairewa Community Development Trust
 - (iii) Halswell River District Rating
 - (iv) Okains Bay Maori & Colonial Museum Trust

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(Note: Although the Wairewa Community Development Trust, Akaroa Community Arts Council and Safer Banks Peninsula – Akaroa appear in Appendix 4, it appears these bodies no longer exist or there is no longer a need to appoint an elected representative, so no appointment power is required)

- (d) Delegate to the Lyttelton/Mt Herbert Community Board the power to appoint a member of the Community Board, or other person, to the following bodies, as the Council's representative (or one of the Council's representatives) on that body:
- (i) Diamond Harbour & Districts Health Support Group
 - (ii) Lyttelton Museum
 - (iii) Orton Bradley Park Trust Board

(Note: Although the Lyttelton District Community Arts Council and Safer Banks Peninsula – Lyttelton appear in Appendix 4, it appears these bodies no longer exist or there is no need to appoint an elected representative, so no appointment power is required);

- (e) Delegate to the Akaroa/Wairewa Community Board and the Lyttelton/Mt Herbert Community Board jointly, the power to appoint a member of one of these two Community Boards to the Rural Canterbury Primary Health Organisation and the Banks Peninsula Pest Liaison Committee, as the Council's representative on those bodies.
- (f) Confirm and approve the following appointments already made by the Community Boards or the former Banks Peninsula District Council to the following bodies, for the remainder of the current local authority triennial term:
- | | |
|--|---|
| (i) Akaroa Library Committee | Steve Lowndes |
| (ii) Halswell River District Rating (for the Wairewa section of the river) | Stewart Miller |
| (iii) Okains Bay Maori & Colonial Museum Trust | Steve Lowndes |
| (iv) Rural Canterbury Primary Health Organisation | Steve Lowndes |
| (v) Lyttelton Museum | Ann Jolliffe |
| (vi) Harvey Page Trust/Corsair Bay Advisory Committee | Arthur Erdman and
Jeremy Agar |
| (vii) Orton Bradley Park Board | Messrs B Bowater,
G Finlay, J Rentoul,
and Claudia Reid |

BOARDS' DISCUSSIONS

At their respective meetings on 18 and 25 July 2007, the Akaroa-Wairewa and Lyttelton-Mt Herbert Community Boards considered this report and resolved to recommend to the Council the adoption of the staff recommendation above.

BOARDS' RECOMMENDATIONS

That the staff recommendation be adopted.

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BACKGROUND (THE ISSUES)

19. 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*”. In respect of BPDC committees 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. These Committees are detailed in Appendix 4.” [Appendix 4 is **attached** to this report.]

20. When the Reorganisation Order came into effect all of the former committees and subcommittees of BPDC became subcommittees and committees of the Council, and any BPDC representatives on external committees, and the power of appointment of those representatives, became the responsibility of the Council. The MOU on its own, because it did not create any legal relationship, could not give the Community Boards responsibility for or control of these committees and appointments. If the Community Boards are to have that responsibility then the Council must pass a resolution to that effect.
21. Appendix 4 of the MOU has 4 paragraphs. Paragraph 1 lists the BPDC subcommittees, which are now Council subcommittees. Paragraph 2 lists the Reserve Management Committees. Paragraphs 3 and 4 list the bodies to which BPDC made appointments. The bodies listed in paragraph 4 of the MOU already have a Council representative on them, so they do not need to have an additional representative appointed by the Council or the Banks Peninsula Community Boards. The other 3 paragraphs of Appendix 4 are considered in further detail below.

Paragraph 1 - Subcommittees

22. It is appropriate for the Akaroa Design and Appearance Advisory Committee and the Akaroa Museum Advisory Committee, which were BPDC committees/subcommittees, to become Community Board committees. The Akaroa/Wairewa Community Board has already assumed it is responsible for these bodies, as evidenced by the Community Board’s actions in relation to the appointment of members on both committees. The reports of both committees are also currently going to the Community Board, not the Council. Both of these committees carry out functions solely in Akaroa, which means they are more easily managed by the Akaroa/Wairewa Community Board than the Council. The Takapuneke Reserve Committee is discussed below.
23. It is considered that the other two subcommittees listed in paragraph 1 are not now required as subcommittees of the Council or the Community Boards. These are the Tourism and Economic Development Board and the Road Safety Committee.
24. Tourism and economic development was described in the BPDC LTCCP as follows:

“...focused upon managing tourism growth, developing stakeholder relationships, destination management, destination marketing and strategic planning for economic growth. The Banks Peninsula District is experiencing high growth in visitor numbers which requires the coordination of its information network. Industry liaison is also a core focus whereby closer communication between various business and promotion groups is encouraged. Coordinated branding and marketing of the District is undertaken and new and existing opportunities for economic growth are identified and strategies developed to enable such growth on a sustainable basis....”

25. This subcommittee is no longer meeting, and the type of activities it carried out, as noted above, are now co-ordinated through Christchurch and Canterbury Tourism (CCT). Since July 2006, CCT has had a Banks Peninsula Tourism Manager (Frank Ash), and two of the former Tourism and Economic Development Board members, Paul Bingham and Peter Clark, were also on the CCT Board. Currently, Paul Bingham is the chair of the CCT Board. Given the involvement of CCT in the Banks Peninsula area and the fact that this subcommittee no longer meets, it is recommended that the Council formally discharge the Tourism and Economic Development Board.

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26. The Road Safety Committee was a joint committee between BPDC and Selwyn District Council. This committee looks after rural road safety issues in the Selwyn and Banks Peninsula areas, with the Road Safety Co-ordinator for the committee being based at the Selwyn District Council. The Banks Peninsula representatives on this committee are Claudia Reid (Lyttelton/Mt Herbert Community Board) and Eric Ryder (Akaroa/Wairewa Community Board). This Committee still meets, however, the Council has its own road safety initiatives: the Road Safety Strategy (although this addresses urban rather than rural issues) and the Christchurch Road Safety Coordinating Committee (CRSCC).
27. Although no specific initiatives have been discussed as yet, by the CRSCC in relation to Banks Peninsula, funding from LTNZ has been applied for through the CRSCC for the Banks Peninsula area, and it makes sense for the CRSCC to take over from the joint committee rather than continue with two committees. In any event, Selwyn District Council has decided that a joint committee is no longer required as a result of the amalgamation and intends that the joint committee will be disbanded as at 30 June 2007. (Selwyn District Council will continue with its own committee or subcommittee independently.) Selwyn District Council consider that the Council should also formally discharge this committee from 30 June 2007.

Paragraph 2 – Reserve Management Committees

28. There are some complex issues surrounding the Reserve Management Committees, which are still being investigated by Council staff through a specific Reserve Management Committees Officer Working Party.
29. The Reserve Management Committees were subcommittees of the BPDC and are generally self funding. At present, it is appropriate that these bodies remain as Council subcommittees, while the various issues around these bodies and their relationship to the Council and the reserves are being analysed.
30. The Takapuneke Reserve Committee has not been set up in the same way as the Reserve Management Committees, but it is still a Council subcommittee that is involved in the management of reserves. It will also be included in the review.

Paragraph 3 – Appointments to other committees

31. There is a clear intention in the MOU to allow the Banks Peninsula Community Boards to make the appointments to these bodies: *“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.”* (page 3 of the MOU). There is also a clear indication in the MOU that the Community Boards will be the “voice” of their communities, as evidenced by the following quote, also 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.”

32. If the Council retained control in respect of the appointments to these local bodies and committees it may not provide the best representation on behalf of the Banks Peninsula community. On the other hand the Banks Peninsula Community Boards have the relevant background knowledge and experience in relation to the issues being addressed by the various committees.
33. Based on the intent in the MOU, the Banks Peninsula Boards have in fact already made appointments to some of these bodies. Should the Council resolve to delegate to the Boards the power to make appointments to the bodies and committees listed in Paragraph 3 of Appendix 4, it will also need to retrospectively approve the appointments already made. Some appointments were made by the former BPDC and those appointments should continue for the remainder of the triennial term. To avoid doubt, these appointments should also be confirmed by the Council.

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Pohatu Marine Reserve Advisory Committee

34. The Pohatu Marine Reserve was declared to be a marine reserve under the Marine Reserves Act 1971, as from 4 July 1999. It is managed by the Department of Conservation. The Pohatu Marine Reserve Advisory Committee is an advisory committee of the Canterbury-Aoraki Conservation Board, that has been appointed by the Minister of Conservation to operate under the agency of the Board in accordance with powers in the Conservation Act 1987.
35. Although Mr Eric Ryder had been appointed as a representative of the Council to that committee his appointment was not made by the BPDC, but was made by the Minister of Conservation. No delegation of this power of appointment is therefore required.

Appointment to the Orton Bradley Park Trust Board

36. This power of appointment is, as the Community Board has alerted us to, something which is governed by the R O Bradley Estate Act 1972 (ROBEA), which is a private Act of Parliament. Section 4 of the ROBEA identifies the members of the Board (which is set up under the Act), and they include:

“ ...

- (a) *A person appointed by the Governor-General on the advice of the Minister of Lands the appointee to be the Chairman of the Board:*
- (b) *A person appointed by the Christchurch City Council:*
- (c) *A person appointed by the Lyttelton Borough Council: **or such other local body or bodies for the time being administering the area at present administered by the Lyttelton Borough Council:***
- (d) *A person appointed by the Mount Herbert County Council **or such other local body or bodies for the time being administering the area at present administered by the Mount Herbert County Council:***
- (e) *A person appointed by the Akaroa County Council **or such other local body or bodies for the time being administering the area at present administered by the Akaroa County Council:...***”

37. There are also five other appointees listed in section 4(f) to (j) (the appointee in section 4(k), which had a limited time provided for, has now expired). No amendments to the ROBEA were made as part of the Local Government (Banks Peninsula District) Reorganisation Order 2005. The membership of bodies under the Canterbury Museum Trust Board Act 1993, and the Summit Road (Canterbury) Protection Act 2001 were dealt with in the Reorganisation Order, but the membership of the Orton Bradley Park Trust Board was not included in that Order.
38. The Reorganisation Order from 1989, when the Lyttelton, Mt Herbert, Akaroa, and Wairewa Councils all became the Banks Peninsula District Council also does not provide specifically for the ROBEA and/or membership of the Board.
39. The 1989 Reorganisation Order states that the functions, duties and powers of the BPDC “*shall be the functions, duties and powers of a territorial authority under ...**any other public Act relating to the Banks Peninsula District Council or any of the former authorities; and any local Act relating to the Banks Peninsula District Council or any of the former authorities...***”. Private Acts, such as the ROBEA, are not specifically mentioned in the 1989 Reorganisation Order. However, that may not have been considered necessary, for the ROBEA in particular, because of the wording used in section 4, which covers an appointment being made by a particular Council “*or such other local body or bodies for the time being administering the area at present administered by*” the particular Council.
40. The Christchurch City Council already has a power to appoint a representative to the Board, under section 4(b). In February 2005, the Council appointed the “*Greenspace Manager or nominee*”, as the Council’s appointee to the Board.

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41. The wording of section 4 seems to mean that the Council would now be able to appoint three other members to the Board: appointees 4(c) to (e), because the Christchurch City Council is now the local body administering the same area as those 3 former Councils.
42. The former BPDC appointed four representatives to the Board on 29 October 2004, all appointments being made for a three year term, unless changed as a result of the Local Government Commission's deliberations. The appointments are recorded as follows:

"Mayor Parker advised that Council's current representatives are: Mr Graeme Finlay, Mr B Bowater and Mr John Rentoul. He said that Mr Bowater has advised that he is available for re-appointment should this be Council's wish. He said that there are usually three Council nominees on the Board of Orton Bradley Park Board but following discussion with the Orton Bradley Park Board a suggestion has been made that Council re-appoint its three current representatives and in addition, nominate a Councillor to further strengthen Council's links with the Orton Bradley Park Board and fill the vacancy created recently. He said that Cr Claudia Reid has expressed a desire to fill this role as she has had a previous association with the Park Board. Mayor Parker emphasised that there would be a requirement on Cr Reid should she be appointed to report to Council on a six monthly basis as well.

It was resolved that Banks Peninsula District Council's representatives on the Orton Bradley Park Board be Mr B Bowater, Mr G Finlay and Mr J Rentoul, plus Cr Claudia Reid and that Cr Reid be asked to report to council on a six monthly basis;..."

43. Section 7(4) of the ROBEA protects any decision made by the Board even though there may have been some informality in the appointment of a member. It provides: "*The powers of the Board shall not be affected by any vacancy in its membership, and the validity of any act of the Board shall not be affected or called into question by reason of any defect or informality in the appointment of any member of the Board.*" Therefore, although the appointment of Ms Reid may not have been in accordance with the strict appointment terms of the ROBEA, it does not have any affect on the Board's powers.
44. Until there is an amendment to the ROBEA, the Council should treat this Act as providing it with the power to appoint four persons to the Board. It would be appropriate for the four appointments already made by the former BPDC (and the appointment by the Christchurch City Council) to continue for the remainder of the three year period, until the local body elections.

Harvey Page Trust/ Corsair Bay Advisory Committee

45. The following minute records the appointments to the Harvey Page Trust, made at the BPDC meeting on 29 October 2004. All the appointments were stated to be for a three-year term, unless there was any change as a result of the Local Government Commission's deliberations (but there was no mention of this Trust or the Committee in the 2005 Reorganisation Order):

"11.5 HARVEY PAGE TRUST

Mayor Parker advised that Council's previous representatives were: Cr Bryon Porteous, Mr Arthur Erdman, and the Chief Executive. He said that Mr Erdman has been contacted and is more than happy to continue in his role on this Trust. Ann Jolliffe explained the background to this appointment.

Council resolved that Banks Peninsula District Council's representative on the Harvey Page Trust be Mr Arthur Erdman, Cr Jeremy Agar and the Chief Executive."

46. At the same meeting Cr Jeremy Agar was also appointed to the Corsair Bay Advisory Committee.
47. From discussions with Community Board members, from old BPDC records, and from other sources, the following information about the Trust and the Committee has emerged:

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- The Advisory Committee was established in 1993 by the Council, and on 29 June 1994 was confirmed to be a working party of the Council (not a Council committee or sub-committee, despite its name), with one Councillor and other local people making up the membership. The Advisory Committee looked after the maintenance and development of Corsair Bay and administered the bequest by the late Mr Harvey Page.
- Also on 29 June 1994, the following decision of Council is recorded: "*Subject to the provisions of the H F Page bequest the District Manager, Cr B Porteous, Mr A Erdman (representing the Lyttelton Rotary Club) be appointed "trustees" to the H F Page bequest with authority to approve expenditure within the parameters of the bequest.*" In 1994 the Council did not seem to be referring to the bequest from Harvey Page as a "trust", but had termed the persons who were looking after the approval of the bequest expenditure as "trustees"
- However, Council resolutions from 23 July 1997, provide: "*That the trustees of the Harvey Page Trust be three, with one being the General Manager of the Banks Peninsula District Council. That regarding expenditure incurred by the Corsair Bay Advisory Committee in relation to the Harvey Page Trust:*
 - *that expenditure be in accordance with an annual budget approved buy the trustees of the Harvey Page Trust*
 - *that any variation to the approved budget within the financial year should be approved by the trustees*
 - *that day to day authorisation of expenditure be the responsibility of the General manager, Banks Peninsula District Council and one of the other trustees jointly.*"
- Although Jeremy Agar was appointed in 2004 to the Trust and the Committee, he has never been to a meeting, and he has never seen any Committee minutes.
- A memorandum from Claudia Reid to the Mayor, dated 14 April 2004, provides some background to the "Corsair Bay Advisory Board", noting that it was formed to administer a \$50,000 plus legacy left to the Council by Harvey Page. The original committee comprised various local representatives and Council and Community Board representatives, and development plans were drawn up, as well as further funding obtained from TrustBank. No elections take place for the Board/Committee; people are simply replaced when they stand down. Meetings and processes have become very informal. The memorandum records that the current balance in hand is \$12,000, but that recent plans have been scotched by a lack of funds.
- It appears that the closing balance as at 30 June 2005 of the BPDC special funds reconciliation shows, from an original amount of \$10,000, that the sum of \$5882.66 was spent, with \$4117.34 remaining. This remaining sum appears to have been "cleared" at the end of January 2006 (prior to the merger of the two Councils) and transferred to the BPDC General Ratepayers Equity Fund (seemingly because the fund had not been called upon for a number of years). When CCC took over funds from BPDC, there was no separate fund relating to the Harvey Page Trust.

48. The Harvey Page Trust appears to be an informal trust that the Council has created. There is no trust deed and Harvey Page's will does not provide for such a trust or trustees. The will is dated 1992, and appoints the Public Trustee as executor and trustee of the will. The bequest in the will to the Council is as follows:

*"(11) To transfer 5 shares ("my domain restorations fund") to THE BANKS PENINSULA DISTRICT COUNCIL for domain work. **Without creating a legally binding trust,** I request that the Council use this gift in replanting the domain in the Magazine Bay to Corsair Bay area, but not in clearing damaged trees from that area,*

I further request that the Council:

(a) Endeavours to use the offices of the local Lions, Jaycees and Rotary Clubs or any other like organisation to raise funds to be added to my domain restoration fund.

(b) Remodels the domain in a manner similar to the Akaroa Domain, having a planted area with tracks and viewpoints.

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(c) Considers either establishing a nursery or buying seedlings to enable the replanting and maintenance of the domain, primarily with indigenous trees and shrubs, but with some exotic specimens other than pinus radiata.

(d) Encourages the school children in the District to assist in the replanting, maintenance and protection of the Domain as an annual conservation exercise.

Receipts

7. I direct that a receipt appearing to my trustee to be given on behalf of a beneficiary named in clauses 4.4 and 6.2(11) will be a complete discharge to my trustee for the benefit which is given to that beneficiary."

49. There are clearly issues that still need to be investigated in relation to the "informal" Trust, the working party/Advisory Committee and the remaining funds. However, it appears that, as the bequest was given with no intention that it create a legally binding trust, the BPDC possibly went further than was required of it in creating this informal trust. Its intentions to are to be applauded, however, the spending of the bequest was entirely in the hands of the BPDC, and it appears to have been spent as requested in the will. It is also not clear whether the remaining \$4,117.34, which was "cleared" to the general account, comprises any of the original bequest funds anyway, or whether these are moneys from TrustBank or other fundraising.
50. In the meantime, as the BPDC had appointed members for a 3 year term those appointments remain intact, and the Council should simply confirm those appointments. The Council's confirmation of the earlier BPDC appointments do not have any effect on whether or not the Trust and Committee are meeting or functioning.
51. Going forward, it may be that neither the informal trust/trustees, nor the Committee are required to continue, as there may be none of the original bequest funds remaining. The Council's various units will be responsible for the continued development and maintenance of this area in any event, with input from the Community Board.

THE OBJECTIVES

52. To ensure that the Council and the Banks Peninsula Community Boards, in the interests of the efficient and effective conduct of business, have appropriate committees/ subcommittees operating under them, and that the Community Boards are delegated appropriate powers of appointment in respect of bodies operating in their wards.

THE OPTIONS

53. There are three options for the Council (all of which could include the option of discharging any committees seen as no longer necessary or applicable to the Council):
 - (a) The bodies listed in Appendix 4 of the MOU could remain Council committees and subcommittees and the Council could retain the power of appointment to the various external bodies. This would not reflect the intentions in the MOU.
 - (b) The second option is for the Banks Peninsula Community Boards to take responsibility for certain former BPDC committees by resolving to make them committees of the Community Boards, and for them to have the power of appointment of Council's representative to certain external bodies that function in the Banks Peninsula community.
 - (c) The third option would be a combination of the first two options; the Council retains control of some committees, and some of the appointment powers, while giving the rest to the Community Boards.

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THE PREFERRED OPTION

54. The third option above is preferred, while the Council's Transport and Greenspace Unit continues to work through the issues relating to the Reserve Management Committees. The Council will retain control of these committees, but should make a resolution:
- (a) discharging two of the former BPDC committees (the Tourism and Economic Development Board, and Road Safety Committee) on the basis they are no longer necessary or applicable to the Council;
 - (b) discharging two former BPDC committees as Council committees on the basis they will become committees of the Akaroa/Wairewa Community Board (the Akaroa Design & Appearance Advisory Committee and the Akaroa Museum Advisory Committee); and
 - (c) give the two Community Boards the power to appoint members to the various external committees listed in paragraph 3 of Appendix 4 of the MOU, as noted in the recommendation above.