

24. 11. 2011

## 6. REVIEW OF DELEGATIONS TO COMMUNITY BOARDS



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**PURPOSE OF REPORT**

1. To report back to Council on the review of the delegations to Community Boards, following the Council resolution of 9 June 2011.

**EXECUTIVE SUMMARY**

2. On 9 June 2011, the Council resolved to delegate to Community Boards the majority of 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. Since the June Council meeting, staff have
  - discussed the Community Board delegations with the Community Board Chairs at the Community Board Chair Forum on 22 July 2011:
  - reported to each Community Board on their current delegations and asked each Board whether they would like to see any amendments:
  - participated in the Combined Community Boards Seminar on Delegations and Role (which was held on 1 October 2011).
4. The Boards have identified some issues with their current delegated powers. There is one major issue which relates to the Hagley/Ferrymead Community Board and the prior removal of a number of their delegated powers with respect to the Central City Area. The Boards have also questioned their ability to make submissions on notified resource consent applications as well as be more involved in the liquor licensing process. In addition, some technical changes have been identified that would improve and update the current wording of the delegations. In light of these comments staff have proposed some amendments to the current set of delegations. However, it is recommended that the Council make no changes to the restrictions on the Hagley/Ferrymead Community Board exercising various delegated powers in the Central City Area. The report recommends that once the Central City Plan is finalised, the Council reviews this position.
5. The Boards have also raised some issues about Council processes and their involvement in technical or metropolitan issues. Some suggestions have been made with respect to dealing with these matters. It is considered that a good way of progressing this would be through the Community Board Chairs Forum.
6. Set out in **Attachments D and E** are two revised sets of delegations. Attachment D contains the delegations in the current format with the changes shown. Attachment E contains the delegations to Community Boards in a revised format with the changes shown.

**LEGAL CONSIDERATIONS**

7. 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.
8. Clause 32(6) of Schedule 7 of 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.

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9. 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.*
10. 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.
11. 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?**

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

**CONSULTATION FULFILMENT**

13. 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. Those issues and the staff comments are set out in **Attachment B**, and were contained in the report that went to each Community Board in August – September this year.
14. Details of the consideration of this issue by each Community Board are set out below. Further specific issues that were raised by each Community Board are set out in **Attachment C**. This includes staff comment on those issues.

**Riccarton/ Wigram**

15. The minutes from the meeting dated 30 August 2011 record as follows:

***BOARD CONSIDERATION***

*The Board considered each of the current delegations and discussed suggested amendments to the attending staff. The Board recommend that a Combined Community Board seminar be held.*

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**Hagley / Ferrymead**

16. The minutes from the meeting dated 31 August 2011 record as follows:

**BOARD CONSIDERATION**

*The Board considered the current delegations and made comments and sought clarification on matters, as recorded by attending staff.*

*Points raised included the central city delegations for roads, parks and leases as they relate to the Board. The Board sought further information regarding the rationale for the change to these delegations in 2009 in regard to expedience of decision making, and clarification on the Central City area as it relates to earthquake response matters.*

*Board members commented on Board involvement in consideration and recommendation to the Council on metropolitan issues, and some members raised concern that involvement is not consistent throughout the city. It was also suggested that there is a need for clarification within delegations on public excluded matters.*

*The Board indicated it was supportive of members of all Community Boards having the opportunity to discuss the delegations collectively, or at a combined Community Board Seminar.*

*The Board was advised that the comments from each Community Board will be reported back to the Council, and that it is anticipated before this consideration a workshop will be held.*

**Burwood / Pegasus**

17. The minutes from the meeting dated 12 September 2011 record as follows:

**DELEGATIONS TO COMMUNITY BOARD - REVIEW**

*The Board considered a report seeking feedback on the Council's current delegations to its community boards.*

*After discussion, the Board **decided** to defer the report and to offer feedback on the delegations at a forthcoming Elected Members' Workshop.*

*In the interim, members were encouraged to think about the matter and to pass their thoughts on to staff.*

**Lyttleton / Mt Herbert**

18. The minutes from the meeting dated 13 September 2011 record as follows:

**BOARD CONSIDERATION**

*The Board thanked the Council for being given appropriate time to consider the delegations. The Board considered each of the current delegations and discussed suggested amendments with the attending staff.*

*Board members commented on the following points:*

*Sub-delegation – suggested that the prohibition on sub-delegating some of the delegations relating to reserves, should apply to all Community Boards, not just the two Banks Peninsula Boards.*

*Parks – heading should be "Parks and Reserves".*

*Technical and Metropolitan projects – include wording around consultation being carried out with the relevant Board when these projects involved local communities. This was suggested to encourage staff to consult with the relevant Community Board on these issues.*

*Financial – Clause 1 replace the word "criteria" with "resolution".*

*Financial – Clause 4 should be incorporated into Clause 2 and should refer to .... The two "Banks" Peninsula Boards....*

*Roads – Clause 8(d) – include an explanation of what clauses 10 and 15 of the Traffic and Parking Bylaw refer to.*

*Parks – the Board requested clarification of whether regional parks were included under this section, as members expressed a wish to be involved in decisions relating to the regional parks in the Lyttelton/Mt Herbert area.*

*Parks – Clause 7 – the Board sought clarification on the "policy" referred to in this clause.*

*Leases – this section should be located above the Miscellaneous section.*

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*The Board raised a further two issues in relation to the difficulty in maintaining an overview of services provided to the community, and the difficulty preparing an annual submission on expenditure in the community. The Board also noted that for delegations to work, they needed to be supported by sound processes.*

*The Board was advised that the comments from each Community Board will be reported back to the Council and that it is anticipated before this consideration, a Combined Boards' Seminar will be held.*

**Fendalton / Waimari**

19. The minutes from the meeting dated 13 September 2011 record as follows:

**BOARD CONSIDERATION**

*The Board considered the current delegations and suggested the following amendments to the attending staff.*

- *that the abilities of Community Boards to make submissions to 'non-territorial' authorities be made explicit.*
- *the Board would like to formally request a review of the process for decision making in regards to sub-divisions to enable Community Boards to have some input/advocacy for residents before and/or during the hearings for resource consent.*
- *that Community Boards have the ability to participate in the formulation of key strategic policies and plans – including the Annual Plan, during the development phase, rather than as a consultee once any such policy or plan has been drafted.*

**Akaroa / Wairewa**

20. The Board considered each of the current delegations and discussed suggested amendments with the attending staff. Specific mention was made of the following:

- *Roads – the Board sought a delegation for Community Boards to consider classification of roads for special purposes.*
- *Roads – the Board suggested that the two Banks Peninsula Community Boards should have additional delegations in regard to unformed legal roads, because of the large number of such roads on Banks Peninsula.*
- *Marine Structures – the Board sought a delegation for local Community Boards to be involved in decisions relating to harbour/marine structures, because of the consummate local knowledge of Community Board members.*
- *Sub-delegation – suggested that the prohibition on sub-delegating some of the delegations relating to reserves, should apply to all Community Boards, not just the two Banks Peninsula Boards.*
- *Financial – the Board expressed a wish for the Community Boards to be involved in the Annual Plan and Long Term Plan processes at an earlier stage.*

**Shirley / Papanui**

21. The Board Report to Council regarding the meeting of the Board on 14 September 2011 states as follows:

**BOARD RECOMMENDATION**

*The Board considered each of the current delegations and discussed suggested amendments to the attending staff.*

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**Spreydon / Heathcote**

22. The Board considered the matter at its meeting on 30 September 2011 as follows:

**BOARD CONSIDERATION**

*The Board considered the current delegations and suggested the following matters be considered in the final report.*

- *that Community Boards have the ability to participate in the formulation of key strategic policies and plans – including the Annual Plan, during the development phase, rather than as a consultee once any such policy or plan has been drafted.*
- *that the process surrounding the granting of liquor licensing and resource consents be reviewed to include Community Board's input at an earlier stage.*
- *that a review of the plantings/beautification of the city be carried out to allow the Community Boards to have greater input into the beautification of their wards.*

23. A Combined Community Boards Seminar on Delegations and Role was held on 1 October 2011 at the Beckenham Service Centre. It was attended by 15 out of 40 Community Board Members. At the seminar, there were presentations by David Griffith of the Canterbury Temporary Accommodation Service, Carolyn Gallagher, Christchurch City Council Community Support Manager, and Yvonne Palmer, a former member of the LGNZ Community Board Executive and a former chair of the Shirley / Papanui Community Board.

24. In the seminar, the participants broke into 3 groups and discussed issues of increased decision making, the meaning of the community boards advocacy role under section 52 of the Local Government Act 2002, and process issues. It was agreed that issues arising out of the group discussions with implications for Board delegations would be noted in this report. Issues relating to the Boards' advocacy roles, or involvement in Council processes, would be discussed at the next Board Chairs Forum with a view to determining how progress could be made. The issues that related to delegations were as follows:

- Ask the Council to reconsider the restriction on the Hagley/Ferrymead Community Board exercising delegated authority in the Central City Area.
- RMA – The Boards want greater involvement in planning decisions. They would like to be able to make submissions on behalf of the community (not the Council).
- There is a need for greater alignment between delegations and policies (eg tree policy).
- Alcohol/gambling – the Boards need more input
- Delegations need to be adaptable to have specific delegations for Wards, eg harbour / marine structures relevant to Banks Peninsula.

25. The staff comment on these issues is as follows:

**Hagley / Ferrymead delegations**

At present, the position of the "Central City Area" as represented in the current Delegations Register is unclear. This is because of the red zone cordon remaining in place and the fact that the final form of the Central City Plan has not yet been settled. However, once the Central City Plan has been determined it is suggested that the Council reviews the position of the Hagley/Ferrymead Community Board. At this point the Council can determine whether or not the Board may exercise delegated powers in the Central City Area and if so what those powers might look like. Consequently, staff consider that it is appropriate to maintain the status quo until the time that the Central City Plan has been finalised.

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***RMA issues***

Further consideration has been given to whether or not Community Boards should have delegated authority to be able to make submissions on notified resource consent hearings where the Council is the decision-maker on the application. Generally, the Council's position is that the comments of the Council as a whole (and this includes the interests of the Community Board) are provided by way of the officer report on an application. In other words, there is a whole of Council approach to dealing with applications. On this basis, it is not considered desirable for Community Boards, which are part of the Council organisation, to be making separate submissions on notified resource consent hearings where the Council is the decision-making body. However, it is noted that there is a current mechanism by which Community Board members may raise concerns about particular resource management applications with staff.

***Need for greater alignment between delegations and policies***

The introductory words to the delegations to Community Boards currently provide that "*any decision by a Community Board shall be consistent with any policies or standards or resolutions adopted by the Council.*" In addition, some specific delegations also refer to being within the terms of the policy set by Council. Given the general requirement about consistency, it is not considered that additional wording is required in the delegations themselves. However, it is noted that relevant policies need to be clearly detailed in any report to the Community Board where the Community Board is asked to exercise its delegated functions. This is a matter that could be further discussed at the Community Board Chairs Forum.

***Alcohol/Gambling***

The current delegations provide that each Community Board may appoint one or more members of the Board to appear and be heard under s.108(e) of the Sale of Liquor Act 1989, for the purpose of providing community input. Section 108 of the Sale of Liquor Act 1989 states that in any proceedings before the Liquor Licensing Authority or a District Licensing Agency, various persons may appear and be heard. Paragraph (e) includes "*any person authorised in that behalf by any local authority*". On this basis, a Community Board member can make a submission to the Liquor Licensing Authority or the Council (in the Council's capacity as the District Licensing Agency) when the Authority or Agency are hearing a liquor licensing application.

With respect to gambling, the Council is currently embarking on a review of the Gambling Policy. Once the Gambling Policy has been reviewed, it would be appropriate for the Council to consider any delegation issues.

***Delegations need to be adaptable etc***

The comments from the various Community Boards have not suggested that the current set of delegations are inflexible. However, some technical amendments have been suggested to improve the wording of the current provisions. In the past the Council has also adopted the practice of re-resolving the delegations at the start of each triennium. This provides an opportunity to make changes to the current set of delegations if required.

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### STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Receives this report; and
- (b) Determines that once the Central City Plan has been finalised, the Council considers whether or not the Hagley/Ferrymead Community Board may exercise delegated responsibilities, functions and powers in the Central City Area and if so the wording of those delegations; and
- (c) Makes a number of changes to the current set of delegations which changes include –
  - (i) extending the current prohibition on subdelegation of various delegated responsibilities, functions and powers that currently applies to the two Banks Peninsula Community Boards to all Community Boards:
  - (ii) reordering the wording of the financial delegations so the discretionary funding allocation is clear in the way it applies to the two Banks Peninsula Community Boards:
  - (iii) inserting the words "per annum" in the financial delegations:
  - (iv) including the road stopping delegations that were made by the Council to Community Boards on 9 April 2009 in this part of the Delegations Register and deleting the delegation in the current paragraph 4(a) under the heading "Roads" which is no longer relevant:
  - (v) updating the names of the various bodies under the heading "Miscellaneous":
  - (vi) providing that the current paragraph 7 under the heading "Parks" refers to policy set by the Council" as opposed to "policy authorised by the relevant community board"; and
- (d) Therefore, in substitution for the delegations made to the Community Boards on 9 June 2011 and pursuant to clause 32(1) of Schedule 7 of the Local Government Act 2002, delegates to the Community Boards the delegations set out in **Attachment E**.

### BACKGROUND (THE ISSUES)

- 26. 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.
- 27. 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.
- 28. 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.
- 29. 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.

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30. Experience has also shown it is not feasible to write delegations which cover every permutation of a subject. The question may arise as to whether a matter falls within a Board's delegated authority.
31. 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. This was provided for in Attachment A.
32. 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.
33. Following the report to Council on 9 June 2011, it came to the attention of staff that there were some further delegations that were made by the Council to Community Boards that were not referred to in the June report. These delegations relate to the Council's Road Stopping Policy and 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.
34. The current set of Community Board delegations were considered by each Community Board and (as noted above), each Community Board made various comments about their powers or had a general discussion about the nature of those powers. Issues were also raised and discussed at the Community Boards Seminar on 1 October 2011.
35. There is one major issue which concerns the inability of the Hagley/Ferrymead Community Board to exercise various delegated powers in the Central City Area. As noted above, staff propose that the Council looks at this issue once the Central City Plan has been finalised.
36. A number of the Boards have also raised the following issues in relation to delegations:
  - The ability of Community Boards to make submissions on notified resource consent applications:
  - The ability to be involved in the liquor licensing process:
  - The prohibition on sub-delegation of certain matters currently only applying to the two Banks Peninsula Community Boards.
37. Staff do not propose that Community Boards be given a wider ability to make submissions on resource consent applications than is currently the case. However, it is noted that there is currently a mechanism in place which will allow Community Board members to provide comments on current resource applications before Council. There is already the ability for Community Boards to be involved in the liquor licensing process by making submissions under section 108(e) of the Sale of Liquor Act 1989. No further delegation is needed in this respect. In relation to extending the prohibition on sub-delegation of certain matters by Community boards, there is no reason why this prohibition should not apply if the other Boards were of a mind to establish reserve committees.
38. A number of technical amendments were raised in relation to the wording of the delegations. These technical amendments include:
  - Tidy up the wording of the financial delegations so that current paragraphs 2 and 4 sit next to each other:
  - Insert some notes in the roading section to explain the meaning of some of the Traffic and Parking Bylaw clauses:
  - Shift the wording of the prohibition on sub-delegation so that it sits next to the delegations to which the prohibition relates.
  - Updating the names of the various committees in the Miscellaneous section.



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39. It is considered that these technical amendments should be addressed as part of the review process.
40. It is acknowledged that the Community Boards expressed a number of concerns about how they exercise their advocacy role as set out in section 52 of the Local Government Act 2002, and their involvement in the Annual Plan / LTP process. In addition they had concerns about public excluded matters when those matters are discussed and voted on at Council meetings having previously been before the Community Board in public excluded, and their involvement in technical or metropolitan issues.
41. With respect to the Annual Plan/LTP issue, it is not yet clear what the final process/documents will be for 2012-2013. However, it is suggested that further consideration could be given to building into the Annual Plan / Long Term Plan process an earlier opportunity (than is currently the case) for Community Board members to be involved in these processes.
42. In terms of the issues relating to public excluded matters, given the current requirements of the Local Government Official Information and Meetings Act 1987, it is not considered that any further action needs to be taken with respect to the attendance of Community Board members during a public excluded part of a Council meeting. It is 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.
43. With respect to the involvement of the Boards in technical or metropolitan issues, it is suggested that a process for dealing with this could be addressed through the Community Board Chairs Forum.

### THE OBJECTIVES

44. The purpose of the review has been 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 desired outcome is a set of robust delegations to Community Boards.

### THE OPTIONS

45. There are three options:

**Option 1** – Do nothing. This would mean that the Council retains the current set of delegations with no amendments.

**Option 2** – Make some changes to the set of delegations but keep the current format (ie Attachment D)

**Option 3** – Make some changes to the set of delegations and adopt a revised format (ie Attachment E).

### THE PREFERRED OPTION

46. The preferred option is option 3 and using Attachment E. Option 3 makes various changes to the current set of delegations but also sets out the delegations in a new format. Each subject area has its own table. The table then describes the responsibility, function or power to be delegated and any other limits on that delegation. This new format is easier to read and will be easier to amend in the future should any changes be required. Where the text has been amended to improve readability or standardised, or a substantive change has been made, the text has been highlighted.

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**THE OTHER OPTIONS**

47. Option 1 retains the status quo and the Council would make no changes to the current set of delegations to Community Boards.
48. Option 2 retains the original format but makes changes to the wording as referred to in this report. The proposed changes are shown as tracked changes for ease of reference.