

STAFF REPORT

TO: Mayor and Councillors

FROM: Chief Executive

DATE: 26 August 2010

SUBJECT: REVIEW OF CURRENT ARRANGEMENTS FOR COMMUNITY BOARDS, AND COMMUNITY COUNCILS AND ASSOCIATIONS – RCN10-09-03

1. PURPOSE

This report seeks to review current arrangements for Ward Community Boards, and Community Associations and Community Councils, and to consider possible changes to present delegations to Ward Community Boards.

2. BACKGROUND

2.1 When the Tasman District Council was first formed in 1989, the then Local Government Commission decreed that there would be five wards as follows:

- Motueka
- Moutere/Waimea
- Lakes-Murchison
- Golden Bay
- Richmond

2.2 In addition, the Local Government Commission decreed that there would be Community Boards established in the Golden Bay Ward and the Motueka Ward, and that the membership of the Boards would be four elected members plus up to two Council appointed representatives.

2.3 In subsequent years, a number of community organisations have been recognised by the Council as representing local communities in various parts of the Tasman District. Currently there are 11 such voluntary associations or 'councils' as follows:

- Brightwater Community Association (Inc)
- Dovedale Residents Association
- Mapua and Districts Community Association
- Marahau Sandy Bay Ratepayers and Residents Association
- Motueka Valley Association
- Murchison and Districts Community Council
- Richmond Community Forum
- Rotoiti District Community Council
- Tapawera and Districts Community Council

- Tasman Area Community Association
- Wakefield Community Council

It should also be noted that this list is far from exhaustive. Council regularly has dealings with other Associations, each of whom also represents a local community, including:

- Awaroa Residents Association
- Torrent Bay Residents Association
- Paton's Rock Residents and Ratepayers Association
- Split Apple Rock Residents Association

2.4 Historically there has been tension between the full Council and the two Ward Community Boards. Conversely there is little evidence of any ongoing tension between the full Council, and the various Community Associations and Associations.

In 2006 the Full Council recommended that the two Ward Community Boards be disestablished. This recommendation came about as a part of the representation review being undertaken at that time by the Local Government Commission as a pre-requisite to the October 2007 elections.

The recommendation to disestablish the two Community Boards was vigorously opposed by many within the Golden Bay and Motueka Wards.

In the event, the Local Government Commission confirmed the continuation of the two Ward Community Boards.

2.5 In 2007, submissions from the three Wards that did not have Ward Community Boards contained objections to the costs of running the two Ward Community Boards being funded from the general rate applicable to all five Wards. Those submitters argued that, as their three Wards did not want Community Boards, the ratepayers in those three non-Community Board Wards should not be required to fund the costs of a Community Board, given that those costs were unique to those two Community Board Wards. This argument was accepted by the majority of the Council.

2.6 At that time, Council noted that the voluntary Community Associations were able to apply for small annual grants that could be used to assist them with their administration costs. The total amount available to be spread across all Associations was approximately \$20,000.

This practice of providing administration grants to Community Associations has continued with the most recent grants for 2009/2010 being as follows:

Dovedale Residents Association	\$2,200
Rotoiti District Community Council	\$1,800
Tapawera and Districts Community Council	\$3,000
Mapua and Districts Community Association	\$2,500
Wakefield Community Council	\$3,730

Murchison and Districts Community Council	\$2,000
Tasman Area Community Association	\$1,500
Brightwater Community Association	\$2,100
Motueka Valley Association	\$750

- 2.7 In recognition of this practice of providing some financial assistance to the Community Associations, funded from the general rate, the Council agreed to fund the first \$14,560 of each Ward Community Board budget from the general rate, with the balance of the Ward Community Board budget being funded from special targeted rates to each Community Board Ward area.
- 2.8 To facilitate this approach, annual budgets were then established for each Ward Community Board. These budgets were established on the basis of full accrual accounting practices and included all direct and indirect costs. It is important to note that the principles and practices used to establish these budgets were the same as those used to establish any other Council budgets.
- 2.9 There is a cost to operating Ward Community Boards. Community Boards are formal creatures of statute and as such they are required to adhere to all requirements of the Local Government Act 2002, and the Local Government Official Information and Meetings Act. They are not voluntary organisations and therefore the Chairperson and members are remunerated for their services by way of annual salaries. As Ward Community Board members are publicly elected there is also a requirement to fund a share of the triennial election cost. Both Ward Community Boards have chosen to meet monthly and this incurs substantial costs both in terms of the preparation and publication of agendas, and all other meeting arrangements including the assistance and attendance of Tasman District Council staff.

The end result was that the first round of fully costed budgets for each Board totalled in the region of \$90,000 per annum. The inclusion of the share of election costs has been contentious and consideration could be given to excluding this from the targeted rate, or reducing the amount to a marginal cost only.

- 2.10 As previously indicated, Council determined that the “base line” subsidy of \$14,500 would be covered by a general rates. This meant that the remaining portion of the budget (roughly \$75,000) would be covered by a targeted rate applicable to all residents in each Community Board area. The end result was that the costs of Ward Community Boards were effectively funded on a hybrid basis; part general rate and part targeted rate.

The legality of such a targeted rate was vigorously challenged by both Ward Community Boards. However Council received legal advice confirming the legality of the targeted rate. This legality has been further clarified in recent legislative amendments.

- 2.11 Since the introduction of the hybrid rate system in 2007, the same approach has been confirmed by Council in each subsequent year, although the figures have been adjusted each year to allow for inflation and changed expenditure patterns.

- 2.12 Since the passage of the Local Government Act 2002, both Ward Community Boards have campaigned for additional delegated powers. Tasman District Council records confirm periodic discussions and negotiations. The currently elected Tasman District Council met with the current Ward Community Boards in 2008, in an attempt to negotiate some delegations, but little progress was made.
- 2.13 Tension between the two Ward Community Boards and the Council has continued. In an attempt to make progress towards a more constructive and healthy relationship, the Mayor and the Chief Executive undertook to review all matters related to Community Boards and to bring forward their findings to the Council and to the Community Boards. This process has taken far longer than originally expected but these matters are complex and it is apparent that there are no easy answers.
- 2.14 Over the last 12 months, the Chief Executive has visited several Councils and Community Boards. The Mayor also made himself available for a brief tour of the Southland District, which as a Council probably has the largest number of Community Boards in New Zealand. The Southland District Council situation is particularly interesting as their Community Boards have been granted considerable delegated authority by their Council.
- 2.15 The results of these various studies are brought to the attention of the Council and Community Boards in the main body of this report.

3. WHAT IS A COMMUNITY BOARD?

- 3.1 Community Boards derive their existence and role from Sections 49 to 54 of the Local Government Act 2002. A copy of these sections is attached as [Appendix A](#).
- 3.2 It is important to note what a Community Board is not.
- A Community Board is not a local authority
 - A Community Board is not a committee of the relevant local authority
 - Similarly, a Community Board cannot acquire, hold or dispose of property
 - Nor can a Community Board appoint, suspend or remove staff
- 3.3 Instead a Community Board is “*an unincorporated body*”. It has the following statutory roles as set out in Clause 52 of the Local Government Act 2002:

“Role of community boards

*The **role** of a community board is to—*

- (a) represent, and act as an advocate for, the interests of its community;*
- and*
- (b) consider and report on all matters referred to it by the territorial authority, or any matter of interest or concern to the community board; and*
- (c) maintain an overview of services provided by the territorial authority within the community; and*

(d) prepare an annual submission to the territorial authority for expenditure within the community; and
(e) communicate with community organisations and special interest groups within the community; and
(f) undertake any other responsibilities that are delegated to it by the territorial authority.”

- 3.4 The **'powers'** of a Community Board are limited by Clause 53(i)(a) of the Local Government Act 2002 to those powers that are delegated to it by the territorial authority.

In a practical sense, this additional Clause 53 provision overlaps with the 'role' set out in Clause 53(f) of the Local Government Act 2002, which requires the Community Board to undertake any other responsibilities "that are delegated to it by the territorial authority".

- 3.5 Whilst Community Boards are 'not a local authority', the Local Government Act 2002 Clause 54 requires that most of the legislative requirements of Parts (i) and (ii) of Schedule 7 of the Act apply to Community Boards "*as if they were local authorities*".

In practice this provides authority for remuneration for elected Community Board members and imposes significant procedural and overhead requirements and costs. All of which must be funded by the relevant local authority from its "*general revenue*" which includes both general and targeted rates.

- 3.6 Note that nothing in the Local Government Act 2002 confers any decision making powers on to a Community Board.
- 3.7 Clauses 75 to 80 of the Local Government Act 2002 are specifically devoted to decision making. These clauses relate to elected councillors. They do not relate to Community Board members.
- 3.8 The relative roles and powers appear to follow a simple logic;
- Community Board members advise and advocate
 - Elected Councillors then decide

4. WHAT IS A COMMUNITY ASSOCIATION/COMMUNITY COUNCIL?

- 4.1 Community Associations or Community Councils have no statutory authority or role. They are not mentioned in the Local Government Act 2002, or in the Local Government Official Information and Meetings Act. The provisions of those Acts are irrelevant to the operation of Community Associations or Community Councils.

- 4.2 Whereas a Ward Community Board must be formally recognised and funded by a Council as a mandatory requirement, Community Associations and

Community Councils are only recognised and funded at the discretion of the Council.

- 4.3 Whereas Ward Community Board members are elected under the same statutory framework that applies to elected Councillors, the officers of Community Councils or Community Associations are elected or appointed whenever and however that particular Community Council or Community Association decides.
- 4.4 While every resident of a Ward Community Board area has the statutory right to vote for Community Board members, membership and voting rights for Community Associations or Community Councils are entirely discretionary to individuals and may not necessarily even be codified in the form of a constitution.
- 4.5 While every resident in a Ward Community Board area is mandatorily a member of that statutory Ward Community, individual membership of Community Associations or Community Councils is entirely at the discretion of the individual.
- 4.6 The geographical area covered by a Ward Community Board is established by the Local Government Commission which follows a statutory process. Community Boards and Associations establish themselves as and where they decide for themselves. Community Councils and Community Associations can (and do) exist within parts on Ward Community Board areas.
- 4.7 While elected members of Ward Community Boards are paid a salary, the officers of Community Associations and Councils are normally unpaid volunteers. The membership of the Community Councils and Associations tends to comprise like-minded or concerned members of a specific township or small area community. The focus of Community Councils or Community Associations tends to be exclusively on matters directly relating to that township or small community.

This is in direct contrast to the two Tasman District Ward Community Boards which each have responsibility for an entire large Ward.

- 4.8 Community Council or Community Association meetings do not have to conform to the requirements of the Local Government Official Information and Meetings Act, and do not need to be open to the public (although they generally are). In contrast Ward Community Board meetings must be open to the public unless grounds exist to exclude the public under the provision of the Local Government Official Information and Meetings Act. Community Associations and Community Councils tend to only meet periodically or as issues arise in line with their much narrower focus. As previously indicated, the two Ward Community Boards meet regularly each month.
- 4.9 Ward Community Boards have a mandatory right to funding from the Council. Community Associations or Community Councils are required to raise their own funds and they are responsible for their own costs. While the Community

Councils and Community Associations may seek Council funding, the Council has complete liberty to decline any requests.

5. JUNE 2008 LOCAL GOVERNMENT NEW ZEALAND SURVEY

5.1 In June 2008, Local Government New Zealand received a 69 page report intended to:

- identify the functions carried out by community boards
- describe community board satisfaction with the working relationships between councils and communities boards
- identify if and how the functions of community boards have changed over time (compared with findings of the 1991 and 1995 studies)

5.2 This study spanned two council terms (the end of the 2003-2007 and early 2007 - 2010). This enabled the project to examine if there were any changes in the functions or relationships after the 2007 elections.

5.3 The research included:

- a survey of councils with community boards
- a survey of community boards
- a review of governance statements for 2003-2007 and 2007-2010
- a review of the reports on the 1991 and 1995 studies
- interviews with councillors, community boards members and staff
- discussions with Mike Reid of LGNZ, Yvonne Palmer and Mike Cohen of Community Boards' Executive Committee and participants at the Auckland Region Community Board Workshop (November 2007)

5.4 The survey of councils found that among councils there was a wide variation in the number of decision-making and advisory powers delegated. Taken overall, in 45% of the cases community boards had advisory roles; in 7% of the cases community boards had a decision-making role; in 46% of cases only the council attended to the function.

5.5 Survey and interview responses suggested that advisory roles range from formal advisory roles to adhoc roles. It appears that involvement was often at the discretion of council officers, council committees or council meetings as to whether or not community board advice was sought on a particular matter.

5.6 Some councils also had alternative mechanisms in place seeking community advice, including what the survey described as "advisory and ward committees".

5.7 The survey found that there was a variation in delegation of decision-making and advisory roles across functional areas:

- Community boards most often exercised advisory roles in policy and planning functions. Decision-making roles in planning and policy were rarely delegated to community boards.

- Regulatory functions were the least common category of functions carried out by community boards in either an advisory or decision-making capacity. Regulatory functions were largely performed by councils only. Where roles were delegated to community boards these were largely formal or informal advisory roles
- Resource management functions were largely performed by councils only. Only two councils identified that their community boards had decision-making roles in resource management functions
- Community boards most often exercised advisory roles in service delivery functions. However, this was the area where community boards were more likely to have delegated decision-making, particularly concerning community centres and halls, community grants, sports and recreation activities, and parks, reserves and gardens.

- 5.8 The review of governance statements suggests there were no significant changes in functions carried out by community boards planned for the 2007-2010 triennium.
- 5.9 The Department of Internal Affairs undertook studies of community board functions in 1991 and 1995. Although there were some differences in the three studies some comparisons can be made.
- 5.10 Overall it appears that councils were less likely to delegate decision-making or advisory roles to community boards in 2007 than in 1995. There was a significant reduction in the number of community boards that had a decision-making role from 1995 to 2007. In most functional areas community boards also had fewer advisory roles in 2007 than in 1995.
- 5.11 The 1995 survey found:
- urban community boards tended to have more delegated functions than others had, both in an advisory and a decision-making capacity, although there were some rural exceptions
 - Councils tended to delegate more decision-making functions in places where community boards covered the whole area of the district.
- 5.12 In 2007 the difference between levels of delegation between city and district councils was relatively insignificant.
- 5.13 In 2007 it did not appear that councils delegated more decision-making functions if their community boards covered the whole area of the district.
- 5.14 The study indicated that the majority of respondents (65%) were satisfied with the overall relationship between their board and council.
- 5.15 A sizeable minority of respondents (35%) indicated that they were dissatisfied. Satisfaction with the overall working relationship was not necessarily directly related to the level of delegations the council had made to the board.

- 5.16 In some cases it appears that relationships between councils and community boards were influenced by the attitude and behaviour of council officers. Most respondents were satisfied with the support they received from their dedicated staff and/or secretariat, however, it appears that a number of community boards were dissatisfied with the information they received from other council units.
- 5.17 Remuneration processes appear to have strained relationships between councils and community boards.

6. 'LOCAL BOARDS' (AS PER AUCKLAND SUPER CITY)

- 6.1 The new Auckland Supercity will have a Mayor and 20 Councillors as the prime governance body. Under that main council there will be 21 'Local Boards'. These Local Boards will serve vastly larger communities or populations when compared to the populations served by most existing community boards throughout New Zealand. On average, there will be one elected local board member for each 10,000 people in the greater Auckland area. This is an extraordinarily high representation ratio, and it gives an entirely new meaning to the word 'local' in local government. (Note that the representation ratio for elected members is higher again at roughly 1 councillor to 70,000 residents)
- 6.2 Most of the 21 "Local Boards" will have resident populations well in excess of the population of the average New Zealand city or district council.
- 6.3 Despite the large size of each Local Board, and the imminent launch of the Auckland Supercity on the 1st November 2010, the actual roles and responsibilities of each Local Board have yet to be defined by the Auckland Transition Agency.
- 6.4 The Auckland Transition Agency published a discussion document in May 2010 concerning Local Boards. While there is much comment about input from and consultation with the Boards, the actions listed by the Auckland Transition Agency tend to indicate that the Local Boards will have little real authority or decision making discretion. Since that discussion document was published and reported back, it has been revealed that up to 75 percent of the annual local government expenditure in the larger Supercity area will be placed under the control of a group of Council Controlled Organisations. This action further significantly reduces the potential for delegated authority to be passed down to each Local Board.
- 6.5 In addition, indicative staffing levels to support the operations of each Local Board appear to be miniscule. A total of 75 staff only are to be provided to look after all 21 Boards. In such circumstances it is difficult to see Local Boards being in the position to effectively use any more powers than those currently exercised outside of Auckland by traditional Community Boards.
- 6.6 The new Local Boards will be required to live within budgets set by the governing Supercity Council, and required to request the Supercity Council to

set any targeted rates needed within the Local Board area to fund any additional expenditure requested for that individual area. In this sense, the new Local Boards will act under a funding regime which is similar in principle to that currently applied to the Motueka and Golden Bay Community Boards.

- 6.7 In summary, the event of the Local Boards in the Auckland Supercity scenario is of no practical assistance in resolving issues in the Tasman District. If anything the Auckland scenario suggests a regression of delegated authority with decision-making power being concentrated in the governing Council, its officers and the appointed directors of the Council Controlled Organisations.

7. TASMAN DISTRICT COUNCIL FINDINGS

- 7.1 While considerable effort has been put into researching Ward Community Boards, Community Associations and Community Councils, much of the information gained is anecdotal and contestable. However questionnaires were used to provide some structure and to help identify key success or failure factors.
- 7.2 The 2008 Local Government New Zealand Survey confirmed the anecdotal evidence that the number of Ward Community Boards in New Zealand is steadily shrinking. The same survey also confirmed that rather than Ward Community Boards steadily acquiring more delegations, the reverse is occurring.
- 7.3 While the 2008 Local Government New Zealand Survey sought information from Councils with Ward Community Boards, it did not seem to seek information from those councils who do not have Ward Community Boards.
- 7.4 The 2008 Local Government New Zealand Survey found that 35 percent of Community Boards were dissatisfied with their relationship with their Council. Strangely it does not seem that the Councils were asked how they regarded their relationship with Community Boards.
- 7.5 Some councils championed Community Boards. The strongest support tended to come from large districts such as the Southland District Council. The Southland District Council has 12 formal Community Boards and 16 'Community Development Area Subcommittees'. All 28 of these bodies have significant delegated powers. Each body is focussed on a settlement and enjoys a high level of discretion as to what council work is done or not done within that settlement. The 'catch' is that the funds for that discretionary expenditure have to be raised by the residents of that settlement by way of a targeted rate.
- 7.6 Southland District Council Ward Councillors appear to play varying roles in relation to the Community Boards and Community Development Area Subcommittees that exist within their Ward. The Ward Councillors also tended to have significant 'personal budgets' for those things needed within their Ward but outside of the tightly defined Community Board or Community Development Area settlements. By way of example, the Winton Community Board area is confined to the Winton Township itself. A kilometre or two

outside of Winton, the local Ward Councillor sets the priorities for expenditure in that hinterland, normally working within a budget approved by the Full Council. In practice it seems that the recommendations of the individual Ward Councillor are generally adopted without modification by the Full Council.

- 7.7 The Tasman District Council Mayor and Chief Executive visited both Stewart Island and Winton, meeting with the Community Board members and Ward Councillors and sitting in on their meetings. Without question, both the Council and Community Boards are very happy with the way things work under the Southland setup. There is a healthy and positive mutual respect from one to the other and a fine 'southern spirit'. The two Community Boards clearly focus on their specific jurisdiction and have no trouble accepting the advice and guidance freely offered by Council staff. The Community Boards do not become involved in any wider Council issues or in any other wider political matters that are not directly related to Council expenditure within their own settlement.
- 7.8 While the Southland District Council is justifiably proud of its Community Board and Community Development Area system, there are some downsides. The self-reliance implicit in the self-funding targeted rate approach works well for settlements such as Winton and Stewart Island, both of whom are enjoying good growth on the back of the dairy boom and National Park status tourism. On the other hand, other Southland settlements such as Ohai and Nightcaps are at the other end of the spectrum, with declining populations and community hardship. While only two towns were visited in Southland, a scan of minutes from the various Community Boards and Community Development Area settlements indicates that many of them are severely constrained in what they can actually do. In such circumstances there is a clear risk that the rich will get richer while the poor will get poorer.
- 7.9 Even though more prosperous settlements can face problems when large infrastructure items are needed and the expectation is that they are to be funded by a targeted rate. A scan of minutes and questions put to Community Board members revealed a desire for more district-wide funding and cross-subsidisation to cope with large expenditure items in small populations. Several individuals expressed admiration for the Tasman District Council's 'club' approach.

8. SUCCESS FACTORS VERSUS FAILURE FACTORS

- 8.1 Not all Community Boards are good and not all are bad. The same can be said for Community Associations and Community Councils. Over the last 18 months it has been possible to discern some factors or themes that tend to lead toward success. In a similar fashion, those ingredients that can lead to a failure in Council/Community Board relationships have also tended to emerge.
- 8.2 Community Boards, and Community Associations or Community Councils that focus on, work for, and who are accountable to a single settlement or community are generally found to be successful. Conversely, Community Boards or Community Associations and Community Councils who cover large areas with different population groupings and communities of interest can

easily lose focus and, in particular, find it more difficult to prioritise issues or expenditure.

- 8.3 Community Boards and Community Associations or Community Councils who have to be accountable for 100 percent of their direct and indirect costs as they are incurred and/or created, tend to be more realistic and practical in their approaches to Councils.
- 8.4 Financial accountability is important. The more discretion that any of these bodies can have over their own operating costs budget, the better the accountability. Ward Community Boards, and Community Associations or Community Councils who are responsible for raising the necessary funds for projects or additional services, either by way of a targeted rate (Ward Community Boards) or from their membership or non Council sources (as with Community Associations or Community Councils), and are prepared to prioritise, have more credibility and get on better with their Councils.
- 8.5 Regular liaison between the full Council and the Community Boards and Community Associations or Community Councils definitely pays dividends. It is apparent that where relative boundaries and respective responsibilities are well understood and accepted by both sides, mutual respect and cooperation follows easily.
- 8.6 As indicated in the Local Government New Zealand 2008 report, increased delegations and decision making powers are not necessarily a positive move.

However, where the positive factors such as single settlement focus, community service motivation and full accountability for cost exist, then increased delegations can flourish in a fertile environment, and can be a significant enhancement.

- 8.7 Conversely, Community Boards and Community Associations or Community Councils made up of genuine 'locals' appear to flourish, even in the absence of any delegated authority.

It was noticeable that the less the membership of the Community Board is inclined towards any form of political activism, the more likely that Community Board is to be satisfied with an advocacy/advisory role and a constructive and comfortable relationship with their respective Councils.

- 8.8 Strong Chairs abound within Community Boards and Community Associations or Community Councils. Good community bodies need good leadership and there still seems to be many such people willing to make an extra effort to contribute to their community's wellbeing. Provided this leadership is constructive, inclusive of other's views, and responsive to other members of the Board, then such strong leadership seems to sit comfortably within the local government framework.
- 8.9 Respect for the Local Government Official Information and Meetings Act and the judicious use of Standing Orders also seem to be important factors in successful Boards and healthy relationships with Councils.

While Community Board and Community Association or Community Council meetings are generally run much more informally than Council meetings, maintaining good standards appears to be an important success factor. In particular, care in maintaining good meeting processes and adhering to the published agenda, is clearly positive.

- 8.10 The Community Associations and Community Councils within Tasman are generally all focused on single settlements. They are apolitical local volunteers with strong community motivation, largely self funded and with no guarantees as to their continued existence. They do not rely on Council support and instead are totally dependent on the continued patronage and support of their members, or they will simply fade away. Given their sharp focus, they tend to only meet when there is a genuine reason to meet and they maintain friendly relationships with their Ward Councillors and appropriate Council staff, whose contribution seems to be well valued.

9. DELEGATIONS TO COMMUNITY BOARDS

- 9.1 This question has repeatedly been before the Tasman District Council. The 2008 Local Government New Zealand Survey confirmed that most Councils with Community Boards face the same difficulties. In that survey, only seven percent of the Community Boards actually had full decision making authority.

The fact is that most Boards are restricted to advisory or advocacy roles. In that sense, the Community Boards are simply fulfilling the roles set out in clause 52 of the Local Government Act 2002.

The authority to go beyond that point lies solely in the discretion available to Councils in terms of clause 52(f) of the Local Government Act 2002.

- 9.2 In 2004, the Tasman District Council sought formal legal advice on the use of that clause 52(f) discretion. A copy of the opinion from Fletcher Vautier Moore is attached as **Appendix B**.
- 9.3 The Fletcher Vautier Moore (FVM) opinion draws specific attention to what it terms to be ‘the efficiency and effectiveness test’. Clause 32(1) of Part I of Schedule 7 of the Local Government Act 2002 reads as follows:

Delegations

(1) Unless expressly provided otherwise in this Act, or in any other Act, 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—

- (a) the power to make a rate; or*
- (b) the power to make a bylaw; or*
- (c) the power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term council community plan; or*

- (d) the power to adopt a long-term council community plan, annual plan, or annual report; or*
- (e) the power to appoint a chief executive; or*
- (f) the power to adopt policies required to be adopted and consulted on under this Act in association with the long-term council community plan or developed for the purpose of the local governance statement; or*
- (g) [Repealed]*

9.4 As per paragraph 3.5 of the FVM opinion:

“The Council can only delegate to a Community Boards if it is for the purpose of efficiency and effectiveness in the conduct of the Council’s business. Before making any decision to delegate, always ask the question: Is it effective or efficient in the conduct of the Council’s business for the Council to delegate the responsibility, duty or power to a Community Board?”

9.5 The requirement for a Council to consider delegations to a Community Board (if it has one) is not optional. Clause 32(6) of Part 1 of Schedule 7 of the Local Government Act 2002 reads as follows:

“A territorial authority must consider whether or not to delegate to a community board if the delegation would enable the community board to best achieve its role”

9.6 Note that this imposes a requirement to ‘consider’ only. There is no obligation to delegate, as explained in the FVM opinion at paragraph 3.6.

“We mention clause 32(6) Schedules 7 of the Act. In our view it imposes an obligation on the Council (from time to time during the existence of a Community Board) to consider whether or not to delegate a responsibility, duty or power to a Community Board which would enable the Board to best achieve its role. That consideration by the Council is, however, subject to the efficiency and effectiveness test. What that means is that having identified a power which would enable the Board to best achieve its role, the Council can still decide that it is not efficient or effective in the conduct of the Council’s business for the Board to exercise the power, can therefore decide not to make the delegation.”

9.7 Note in particular the requirement to exercise this consideration ‘subject to the efficiency and effectiveness’ test.

The efficiency and effective test is a high threshold. The reality is that virtually all of the responsibilities that could be delegated to Ward Community Boards are already delegated to Council’s standing committees and to appropriate expert Council staff.

If the responsibilities are instead delegated to Ward Community Boards, there is still a need (and a statutory obligation) for the expert Council staff to offer advice and recommendations to the Community Board.

- 9.8 The end result is that what would have been undertaken efficiently and effectively in one step by a process restricted to professional Council staff, now requires a two step process that in most circumstances adds no further real value.

While delegations may be seen as improving local decision making and democracy, it can be seen that this usually comes at the cost of increased business process, thereby failing the efficiency and effectiveness test.

- 9.9 This simple reality probably explains why such a small percentage of Community Boards throughout New Zealand have any meaningful decision making power, as evidenced by the 2008 Local Government New Zealand survey.

10 CURRENT DELEGATIONS TO TASMAN DISTRICT COUNCIL WARD COMMUNITY BOARDS

- 10.1 Since the passing of the Local Government Act 2002 various attempts have been made to resolve delegation issues between Ward Community Boards and the Council.

Prior to 2007, the Council even had a special Community Board Delegations Subcommittee which attempted to expand delegations in a two stage process. This two stage process was actually written into the delegation register in February 2007, a copy of that form of delegation is attached as **Appendix C**.

- 10.2 It should be noted that this two-stage delegation did not actually include any decision making powers. In simple terms, stage one required the Community Board to commit itself to prioritising projects and expenditure. Stage two sought 'a more formal consultation partnership between Council and Community Board' on a range of matters.

- 10.3 In the event, this two-stage process appears to have suited neither Council or Ward Community Boards. During the same period of time, the Local Government Commission rejected the Tasman District Council's submission that the two Ward Community Boards should be disestablished, effective from the 2007 election.

- 10.4 Subsequently on the 31 October 2007, the newly-elected Tasman District Council resolved to drop the two-stage delegation to Ward Community Boards and instead approved the following delegation:

"To recommend and report on prioritising activities in conjunction with budget and departmental managers relating to DILs expenditure, footpaths and roading projects, rivercare groups, property sales and purchases; council cottages and to act as an advisory body for one-off projects within the Ward."

This form of delegation does not involve any specific decision-making authority.

- 10.5 In addition, both Ward Community Boards were given small “Discretionary Funds”. The Boards were allowed specific authority and discretion to apply those discretionary funds to community projects, Community Board activities, or youth related activities. (A sample of the explanatory information provided by the Motueka Community Board to promote the use of this fund is attached as **Appendix D.**)

This Discretionary Fund area is one area where the Ward Community Board does have full discretion and decision making powers, and it appears to be working satisfactorily.

11. POSSIBLE FUTURE DELEGATIONS

- 11.1 The Tasman District Council is a large land mass with 17 different settlements or communities of interest within a large rural area. Yet it only has about 48,000 permanent residents who elect a Mayor and 13 Councillors to make decisions on behalf of the district wide communities. On average, the representation ratio across the District is very acceptable at one elected representative to each 3,428 residents.

The reality is that the Tasman council is not short of elected councillors to fulfil the decision making requirements of clauses 76 to 80 of the Local government Act 2002.

While there may be a desire by some for Ward Community Boards to have more decision making powers, there is no need.

- 11.2 The Local Government Act 2002 and the Tasman District Council’s own governance arrangements sensibly delegate most day to day and ongoing decision making needs to expert Council staff. Only the ‘big’ policy issues, planning decisions, capital and operating items are retained exclusively for decision making by the elected representatives. With 14 representatives elected to make those big decisions on behalf of a relatively small resident population, the reality is that there are very few possible decision making roles left over or available for the eight second tier elected officials from the Ward Community Boards established in two of the Council’s five Wards.
- 11.3 The high threshold set by the efficiency and effectiveness test, rules out artificially creating additional decision making steps in those two Community Board Wards.

Council also needs to remember that those additional decision making processes are neither wanted nor needed in the other three non Community Board Wards.

- 11.4 Senior staff have been asked to canvass all areas of the Council’s operations with a view to finding some discrete activities that could be ring fenced and delegated to Ward Community Boards. With the best will in the world, it has not been possible to identify anything meaningful that does not then fail the efficiency and effectiveness test, and/or create unmanageable distortions

within the Council's core district wide approach to priority setting and shared funding.

There was one small but often difficult area identified where local input could be very effective and efficient. This is in the area of naming streets. This can be time consuming and contentious but local input is vital. Ward Community Boards could fill such a role.

- 11.5 Notwithstanding the difficulties around decision making roles, there is a universal acceptance of the need for efficient and effective advocacy and advisory roles. This is particularly important when the Council is seeking to set local priorities when the community demands for services exceed the ratepayer supplied funding.

There is a strong feeling that, properly focussed and structured, Ward Community boards, and Community Councils and Associations, could play an enlarged and important role in recommending localised priorities.

12. A WAY FORWARD

- 12.1 The advocacy and advisory roles for Ward Community Boards as set out in clause 52 of the Local Government Act 2002 could go hand in hand with the allocation of **general rates funded or district wide funded** expenditure.

Inevitably this expenditure allocation process involves prioritising competing demands. The advocacy and advisory role of the second tier of elected Ward Community Board representatives is well positioned to assist the first tier decision making process, if the Community Boards could accept more responsibility by providing local advice as to the appropriate local priorities.

In those circumstances, the 14 elected Councillors make the final decisions and set the appropriate general or district wide rates, after receiving the benefit of Ward Community Boards' advice as to the appropriate local priorities.

- 12.2 In principle, there is no reason why the same advocacy/ advisory role/priority setting role could not be made available to Community Associations or Community Councils.
- 12.3 **Targeted rates** provide a different opportunity. By definition, targeted rates focused on a discrete activity to be enjoyed by a distinct community. In an environment where the full Council sets a district wide annual plan in place there is an opening for distinct local communities to decide on a new or additional service or activity or project, and to accept responsibility for funding those by way of a targeted rate.
- 12.4 The proposals so far outlined for the Auckland Super City's 'Local Boards' follow just such a process. These Local Boards will advocate their needs and offer their advice to the first tier Super City Councillors who will then make the decisions to establish the overall long term plan for the whole Super City. In

doing so, the first tier Super City Councillors will establish a base level of services and the degree of costs to be recovered by way of district wide rates. However, before the plans are finalised, an opportunity is placed in front of the second tier Local Boards whereby they can recommend additional services, projects or activities that are exclusive to their own local board area. This opportunity comes with a caveat that anything additional will be funded exclusively by the residents of the area that benefits. In this manner, the Local Board will then be held accountable to its own residents who will have to pay a transparent and discrete targeted rate, and who can voice their approval or disapproval by holding the local board Councillors accountable each three years.

- 12.5 Such a targeted rate regime already exists within Tasman. Good examples are the targeted rates levied on themselves by the CBD businesses in both Richmond and Motueka. In those examples, the two business groups have the same constitutional characteristics as the Community Associations and Community Councils.
- 12.6 There does not appear to be any valid reason why Ward Community Boards, and Community Councils or Community Associations should not be explicitly offered the same opportunities to recommend additional services, projects or activities, ring fenced within their own individual local groupings and funded by a targeted rate on those local groupings.
- 12.7 The statutes do not allow such targeted rates to be formally set by the community bodies. Rates can only be formally set by the full Council. However, subject to some minimum conditions the Tasman District Council could virtually rubber stamp the community bodies' recommendations. This would create a process which would provide a surrogate for delegated decision making.

13. SUMMARY

- 13.1 Increased delegations to Ward Community Boards are not going to solve the long standing difficult relationship between the two Ward Community Boards and the Council.
- 13.2 The relative success of the Community Associations and Community Councils should be noted. It should be further noted that the Tasman District Long Term Plan is based on recognition of 17 separate communities, yet only 11 of those communities currently have their own 'locally grown' advocacy and advisory community body formally recognised by the full Council.
- 13.3 Perhaps one part of the answer lies in the establishment of more, rather than less community bodies. As a minimum it would seem appropriate that Council take steps that will ensure full representation of all 17 communities in the wider community of the Tasman District Council. In addition there seems to be room for representation from other discrete areas such as Split Apple Rock, Awaroa, Torrent Bay, Kaiteriteri, and Pattons Rock etc.

- 13.4 Everybody calls for more meaningful consultation. Community bodies, especially the Ward Community Boards, feel that they are not consulted soon enough, or that they are effectively listened to.

For its part, the Council feels that it is endlessly advertising, explaining, and seeking submissions only to face disinterest and empty halls, or to be criticised unfairly by self interested busy bodies. Many would argue that the silent majority appear to just want the Council to get on with the job and keep rates down.

More meaningful consultation does not mean more consultation. More targeted consultation and better timed consultation could however make some improvement to the consultation paradox.

A prima facie case would seem to exist for better use of the various community bodies as conduits for such targeted consultation.

Note that this approach is also consistent with the consultation undertaken with distinct special interest groups such as the Lee Valley Dam stakeholders group.

- 13.5 Even if consultation can be improved there is still a real need for all community bodies to make themselves more accountable to both the Council and to their communities. This accountability could happen if the community bodies would accept greater responsibility for more meaningful prioritisation of expenditure. Community bodies would need to learn to say "No".

- 13.6 As previously noted, this appears to be a much more easy task where it is a tightly focused Community Council or Community Association.

District wide Ward Community Boards have historically struggled to place the request of one of their many community or interest groups ahead of other similar groups making requests within the large ward area. However, the need to 'grasp the nettle' and set real priorities is inescapable.

The potential contribution that could be made by a locally accountable community body is enormous.

14 WHERE TO FROM HERE?

- 14.1 This report raises many issues. The report's various conclusions in respect of those issues are not likely to find universal acceptance.

- 14.2 In many respects the report is simply the beginning of a conversation that needs to include many parties. While the report started with the Ward Community Boards and their relationship with the full Council, it is apparent that there is a wider opportunity available. That wider opportunity could include the full range of non statutory community bodies based on small communities, settlements, or localities.

- 14.3 The full range of community bodies should be accorded the opportunity and time to absorb and consider the contents of this report. All current and potential stakeholders need to be involved.
- 14.4 The triennial local government elections will take place over the next few weeks. These elections will cover both the full Council and the Ward Community Boards. Some new faces may emerge.
- 14.5 With these events in mind, the present full Council could receive and note a range of possible recommendations.

Those possible recommendations could “lie on the table” in the interim while the report and the possible recommendations are referred to the incoming Ward Community Boards, and to the full range of other community bodies.

The Ward Community Boards and the full range of community bodies could be invited to individually consider the report and the possible recommendations, with a view to joining the newly elected full Council in a workshop that would be convened early in the terms of the newly elected full Council and Ward Community Boards.

That workshop would be used to establish a consensus around recommendations that would;

- enhance targeted consultation,
- promote advocacy and advice that would assist the prioritising of Council expenditure,
- offer the opportunity for locally supported targeted rates for additional and special expenditure specific to individual communities.
- establish a constructive spirit of mutual trust and respect between all parties.

15. POSSIBLE RECOMMENDATIONS

- 15.1 That the present 31 October 2007 delegations be reviewed by the incoming full Council with a view to more clearly identifying the Ward Community Board roles in providing responsible advocacy and advice in a manner that assists the Council to establish the priorities for expenditure funded by general rates or district wide rates.
- 15.2 That the present 31 October 2007 Ward Community Board delegations be further reviewed to explicitly provide the opportunity for Ward Community Boards to recommend the establishment of targeted rates by the Council to fund the provision of additional services, activities or projects that would be available to distinct communities, where those services would not be funded from general rates.
- 15.3 That Ward Community Board representatives be offered the opportunity to be more involved in the early stages of developing the 2012/2022 Long Term Plan, especially as it relates to plans for their ward.

- 15.4 That a similar opportunity to be involved in the development of the Long Term Plan be offered to each recognised Community Council or Community Association, especially as it relates to their individual settlement or community.
- 15.5 That the Council actively works to establish Community Councils or Community Associations in all 17 settlements identified in the Long Term Plan, and that the Council also recognises such other Community Councils . Associations, Forums, or Ratepayers or Residents Associations, or such like bodies where these can be seen to represent discrete local communities.
- 15.6 That the Council reviews the general rated funded 'baseline' funding provided annually to voluntary Community Councils and Community Associations or such like bodies with a view to maintaining their viability.
- 15.7 That the Council review and refine fully costed budgets for each Ward Community Board and that the Council job costing be extended to ensure that the Council costs in association with each and all Community Councils or Community Boards or such like bodies are carefully monitored and controlled.
- 15.8 That training be provided to the Chair and members of the newly elected post October 2010 Ward Community Boards, especially as it relates to the roles and responsibilities of Chairs and members, delegations, preparation of agendas, efficient and effective meeting procedures, and general adherence to the relevant statutory requirements.
- 15.9 That a facilitated seminar for all Community Council and Community Association Chairs and such like bodies and their members, be arranged to assist both the Tasman District Council and those bodies to understand each others roles and structures, and to identify appropriate opportunities for constructive action that is efficient and effective.
- 15.10 That the present schedule of meetings between the Chairs of the Community Boards and the Chairs of the Community Councils and Community Associations and the Tasman District Council Mayor and Chief Executive be continued and that invitations to participate be extended to such other similar bodies that the Council identifies and recognises.
- 15.11 That the incoming Council re-examine the role of elected Councillors in relation to attendance at, and participation in Ward Community Board meetings.
- 15.12 That the incoming Council consider the role of elected Councillors in relation to attendance at and participation in the meetings of Community Council and Community Board and such like bodies.
- 15.13 That the Tasman District Council Chief Executive re-examine the attendance at, and participation in, the meetings of Ward Community Board meetings and Community Council or Community Association or such like bodies, by Council staff.

- 15.14 That the incoming Council consider increasing the size of the annual 'Discretionary Fund' for the two Ward Community Boards, and that a similar opportunity be created for discretionary grants in the three non-Community Board Wards.
- 15.15 That the incoming Council consider how Ward Community Board, and Community Council or Community Association advice on relevant local issues can be constructively linked into Council decision making processes.
- 15.16 That the two Ward Community Boards be offered the role of street naming in their Wards.

16 POSSIBLE COUNCIL RESOLUTIONS

- 16.1 THAT the Council receive this report RCN10-09-03 and note a range of possible recommendations.**
- 16.2 THAT those possible recommendations 'lie on the table' in the interim while the report and the possible recommendations are referred to the incoming Ward Community Boards, and the full range of other community bodies.**
- 16.3 THAT the Ward Community Boards and the full range of community Councils and Community Associations be invited to individually consider the report and the possible recommendations, with a view to joining the newly elected full Council in a workshop that will be convened early in the terms of the newly elected full Council and Ward Community Boards.**
- 16.4 THAT the workshop be used to establish a consensus around recommendations to Council that would;**
- enhance targeted consultation,**
 - promote advocacy and advice that would assist the prioritising of Council expenditure,**
 - offer the opportunity for locally supported targeted rates for additional and special expenditure specific to individual communities.**
 - establish a constructive spirit of mutual trust and respect between all parties.**

Paul Wylie
Chief Executive

SECTIONS 49-54 OF THE Local Government Act 2002
Subpart 2—Community boards

49 Establishment of community boards

- (1) A community board must be established for each community constituted, in accordance with Schedule 6, by—
- (a) an Order in Council giving effect to a reorganisation scheme; or
 - (b) a resolution made by the territorial authority within whose district the community will be situated as a result of a proposal by electors to establish a community; or
 - (c) a resolution made by the territorial authority within whose district the community will be situated as a result of the territorial authority's review of representation arrangements.
- (2) The community board must be described as the “[*name of community*] Community Board”.

50 Membership of community boards

- The membership of a community board consists of—
- (a) members elected under the Local Electoral Act 2001; and
 - (b) members (if any) of, and appointed in accordance with the Local Electoral Act 2001 by, the territorial authority in whose district the relevant community is situated.

51 Status of community boards

- A community board—
- (a) is an unincorporated body; and
 - (b) is not a local authority; and
 - (c) is not a committee of the relevant territorial authority.

52 Role of community boards

- The role of a community board is to—
- (a) represent, and act as an advocate for, the interests of its community; and
 - (b) consider and report on all matters referred to it by the territorial authority, or any matter of interest or concern to the community board; and
 - (c) maintain an overview of services provided by the territorial authority within the community; and
 - (d) prepare an annual submission to the territorial authority for expenditure within the community; and
 - (e) communicate with community organisations and special interest groups within the community; and
 - (f) undertake any other responsibilities that are delegated to it by the territorial authority.

53 Powers of community boards

- (1) A community board has the powers that are—
- (a) delegated to it by the relevant territorial authority in accordance with clause 32 of Schedule 7; or
 - (b) prescribed by the Order in Council constituting its community.

- (2) The powers of a community board prescribed by Order in Council expire at the close of 6 years after the order comes into force.
- (3) Despite subsection (1), a community board may not—
 - (a) acquire, hold, or dispose of property; or
 - (b) appoint, suspend, or remove staff.

54 Application of other provisions to community boards

- (1) Part 2 of Schedule 7 applies to community boards.
- (2) Part 1 of Schedule 7 (excluding clauses 15 and 33 to 36) applies to community boards, with all necessary modifications, as if they were local authorities.