



FLETCHER VAUTIER MOORE
LAWYERS

Memo

TO: Bob Dickinson, Tasman District Council
FROM: Stuart Ritchie, Fletcher Vautier Moore
DATE: 25 November 2004
RE: **COMMUNITY BOARDS - DELEGATIONS**

1 Purpose

- 1.1 The purpose of this report is to consider the status of Community Boards and the Council's power to delegate to a Community Board.

2 Legal status

- 2.1 The establishment and membership of a Community Board is prescribed by legislation, the relevant statutes being the Local Government Act 2002 and the Local Electoral Act 2001.
- 2.2 Section 51 Local Government Act states that a Community Board is an unincorporated body, is not a local authority and is not a committee of the Council. Generally, unincorporated bodies do not have a legal personality that is distinct and separate from its members. For example, many societies and clubs are unincorporated bodies. On the other hand, a body corporate like the Council is a separate legal person distinct from its members and can sue, and be sued, in the name of the Tasman District Council.
- 2.3 The courts have held that in certain circumstances legal personality can be conferred on an unincorporated association of persons by statute. However, the Local Government Act 2002, unlike the 1974 Act, expressly states that a community board is an unincorporated body. We consider the reason for this is to confirm, for the avoidance of doubt, that although a Community Board is a creature of statute a Community Board is not at law a legal person in its own right, separate and distinct from its members. We therefore consider that Parliament did not intend that Community Boards can sue or be sued in the name of the Community Board.
- 2.4 Even if one argued that the Local Government Act does confer a separate legal personality on Community Boards (which we consider is unlikely to succeed as an argument), there would be nothing to gain from bringing an action against a Community Board, because the Board has no assets. The Act expressly prohibits Community Boards from holding property.

3 Delegation

- 3.1 The role of a Community Board (set out in section 52 of the Act) includes acting as an advocate for the interests of the particular community, to report on matters

referred to the Board by the Council and to communicate with community organisations and special interest groups within the community. Beyond that, the powers of the Board are limited to those that are delegated to the Board by the Council, or prescribed by the Order in Council that constituted the relevant community. The powers of a Community Board prescribed by Order in Council expire six years after the Order comes into force. As the Council's two Community Boards have been in existence for longer than that, the Community Boards must rely on powers delegated to them by the Council.

- 3.2 When considering whether or not to delegate to a Community Board, the Council must check that the delegation is not prohibited by the Local Government Act 2002 or any other Act. Clause 32 Schedule 7 of the Act states that the Council cannot delegate to a Community Board:
- (a) The power to make a rate;
 - (b) The power to make a bylaw;
 - (c) The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long-Term Council Community Plan;
 - (d) The power to adopt a Long-Term Council Community Plan, Annual Plan or Annual Report;
 - (e) The power to appoint a Chief Executive;
 - (f) The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the Long-Term Council Community Plan or developed for the purpose of the Local Governance Statement.
- 3.3 Section 53 of the Act states that a Community Board may not:
- (a) Acquire, hold or dispose of property; or
 - (b) Appoint, suspend, or remove staff.
- 3.4 Always check the Act that confers the relevant power on the Council before deciding whether or not to delegate that power. For example, section 34 of the Resource Management Act prohibits the delegation to a Community Board of the approval of a plan or any change to a plan.
- 3.5 The Council can only delegate to a Community Board 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? Relevant to this issue is the Council's obligation to provide the necessary administrative and other facilities for its Community Boards (clause 38 Schedule 7). Further, the expenses of a Community Board in the performance and exercise of its responsibilities, duties and powers must be paid for by the Council out of the general revenues of the District (clause 39 Schedule 7). Therefore, if the Council wishes to delegate to a Community Board, the Council must be prepared to provide the facilities, and fund the costs incurred by the Community Board in exercising that power.
- 3.6 We mention clause 32 (6) Schedule 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, and can therefore decide not to make the delegation.

- 3.7 The Local Government Act 2002 permits a Community Board to delegate its responsibilities, duties or powers to a subcommittee or person, subject to any conditions, limitations or prohibitions imposed by the Council when it makes the original delegation. If the Council does not want the Community Board to have the power to sub-delegate the responsibility, duty or power to a person then that needs to be expressly stated in the original delegation.
- 3.8 Clause 32(7) Schedule 7 Local Government Act 2002 states "to avoid doubt, no delegation relieves the local authority, member or officer of the liability or legal responsibility to perform or ensure performance of any function or duty". Therefore, even if the Council delegates a responsibility, power or duty to a Community Board, the Council is still liable if the Board does not perform that responsibility, power or duty.
- 4.0 The March 2000 resolutions**
- 4.1 We refer to the Stage I and Stage II delegations set out in the Council's resolution of March 2000. The Stage I delegations are consistent with the role of the Community Board expressed in the Local Government Act. The Stage II delegations are a different matter. The resolution refers to a more formalised partnership in decision making on rating issues. On the face of it, this is a breach of the Act, because the Council cannot delegate its power to make a rate to a Community Board. The rest of the resolution is concerned with decisions on property and planning matters, yet the Council cannot delegate the power to purchase or dispose of assets, other than in accordance with the Long Term Community Plan. We consider that the delegation is not worded precisely enough. It is unclear what is intended by the "more formalised partnership" and what responsibility, power or duty the Council intends to delegate. The wording of the resolution is unsatisfactory, and in our view needs to be reviewed.

Fletcher Vautier Moore

SECTION 3

COMMUNITY BOARD DELEGATIONS – as per CN06/04/08

Stage 1

Reporting on and prioritising activities in conjunction with budget and departmental managers, e.g. DIL's, footpaths and roading, river care groups, property sales and purchases; council cottages; to act as an advisory body for one off projects in the Ward.

Stage 2

Stage 1 plus a more formal consultation partnership (between Council and the Community Board). Council will ask the Community Board to consider and report on the proposed policy for Council cottages, reserves and halls, planning policy matters in their community or ward, ward rating proposals including the possibility of special ward rates and other matters as agreed from time to time.

Discretionary Fund Guidelines

- There is a \$500 maximum for applications for non Motueka Community Board initiated projects.
- Funds to be allocated through quarterly funding rounds.
- Applications should be made two weeks before Motueka Community Board considers quarterly funding allocations.
- Applicants may be given less than they apply for.
- Projects must be completed within nine months of receiving funding.
- Successful applicants report back to Motueka Community Board on the project and how the funding was used, within nine months of receiving funding. Community Board support staff to follow this up.
- Exceptional and unique circumstances will be considered.

Applications are to be handed in to Motueka Office, 7 Hickmott Place, Motueka or emailed to MCB@tasman.govt.nz

Applicants will be expected to speak to their application at Community Board meeting.

The Motueka Community Board will make allocations from its fund to support projects relevant to the following 3 categories:

Category A: Projects

A pool of **\$4,654 pa** will be available for community projects. These projects should as a rule benefit the Motueka community as a whole rather than individuals.

Category B: Board Activities

A pool of **\$1,000 pa** will be available for Board related activities, which may include such items as attendance at conferences or training workshops, advertising and communication, undertaking community surveys/questionnaires, and hosting functions

Category C: Youth Development Fund

A pool of **\$1,000 pa** will be available for youth-related activities. This may include events organised by youth, for youth, or on behalf of youth.

If funds earmarked for Categories **B** and **C** are unused at the time of the final funding round of the financial year, these funds shall be released into the general fund, and may be offered to previous unsuccessful, but worthy applications, and/or utilised in Board initiated projects.

Application forms are available from Motueka Office, online, tdc.govt.nz/index.php?MotuekaCommunityBoard and at the Motueka library.

Existing Discretionary Fund Guidelines

- Applications should be made before an event
- Applicants may be given less than they apply for
- Report back to community board on how project went.
- Exceptional and unique circumstances will be considered

Applications should be made at the beginning of each calendar month, to be addressed at that month's meeting. A decision is to be made within six weeks. Applications are to be handed in to Motueka Service Centre. Community Board meetings are the second Tuesday of each month at 4.30 pm. Applicants will be expected to speak to their application at Community Board meeting. Application forms are able to be picked up from Motueka Service Centre, as well as available on the internet, and at the library.

The Motueka Community Board will make allocations from its fund in accordance with the following criteria.

Category A: Projects

A pool of **\$4,654 pa** will be available for community projects. These projects should as a rule benefit the Motueka community as a whole rather than individuals. Requests for funding should be in writing and presented to the board at an open meeting.

Category B: Board Activities

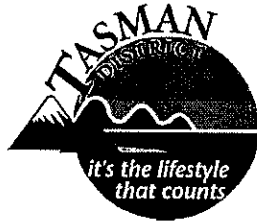
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Motueka Community Board

C/- Tasman District Council
 Motueka Service Centre
 7 Hickmott Place
 P.O. Box 123
 Motueka 7161
 Phone 03 528 2022



Discretionary Fund Application Form

Name of Applicant:	
Address of Applicant:	
Telephone Number:	
History of community group or individual represented:	
Amount applied for: (under \$500)	
Details of project:	
Who/What will benefit in Motueka community from the project:	
Description of voluntary time and money contributions/donations:	
Outline other attempts to raise funding:	
Intended use of funds: (Quotes to be provided)	

Signed:
 (Criteria over page)

Date: