

STAFF REPORT

TO: Council Enterprises Subcommittee
FROM: Port Tarakohe Administration Manager
REFERENCE: A303
DATE: 30 July 2006
SUBJECT: Port Tarakohe Report August 2006

FINANCIALS

Details to be provided by David Ward

GOVERNANCE AND MANAGEMENT

The matter of governance was raised by the Port Tarakohe Advisory Committee at the last Council's Enterprises Meeting.

Frankly I am a bit unsure as to when Governance stops and Management begins, that's why I think having some bench marks would be useful.

My perception is that the Council are the 'bosses' having overall responsibility of the organisation but that your role is more related to vision goals, purposes and policies that give effect to that 'big picture'

Management at senior level is about making decisions to give effect to those policies.

Below that we have lower management and coal face workers who implement the upper managerial decisions and achieve the targets set by Council

There are obviously no clear boundaries and each area can overlap either upwards or downwards. In some cases issues at the boundaries can be shared.

Below is a typical example of confusion as to roles and responsibilities that I personally have encountered (as well as other managers).

I do not want or intend to go over the matters relating to the recent request from the Golden Bay Community Board regarding various matters relating to the Ports development and finances, however the exercise has highlighted the need to have clear defined terms of reference for the port's management so that Allan Kilgour and I

can effectively run the port to the best of our ability and without the need to refer every day to day management decision back to a political governance body.

One of the matters raised by the GBCB that concerned them was the discounting of rates at the port. It is however common practice for discounting to be applied to achieve business contracts.

As an example I recently had to make a call to allow a fairly large boat to tie up alongside the old wharf. The posted rate in the bylaws was unacceptable to the company given that the wharf could not be used due to its condition.

In discussion with the Harbour Manager I agreed to a set price which offered a minor discount and also subject to their giving a written waiver for any Council liability for tying up to the old wharf and acknowledging the wharf is non-operational.

In doing this I was able to secure an income of several thousand dollars for the port but feel uncomfortable that the Community Board may be concerned that I did not stick to the full rate. In this case sticking to the rate would have meant we'd have lost the whole income as there was obviously insufficient time to put this matter before this committee for confirmation.

Therefore a clear delegation pathway that precisely spells out the limits of my authority as Harbour Administration Manager and incorporating fully the appropriate governance checks and balances to ensure transparency and confidence in management decisions.

In a succinct conclusion the Council I assume wishes to have Port Tarakohe run effectively and efficiently, returning the best income achievable whilst operating to all lawful requirements and having happy and satisfied port customers and (in the case of Port Tarakohe) maintaining the recreational and amenity values that the residents of Golden Bay value from the Port.

Those values, goals and purposes need to be supported by policies and targets that will achieve the Council's aims.

Recommendation

That the Port Tarakohe Administration Manager provides a detailed report for the next Meeting of this Committee on all matters relating to the future governance and management of Port Tarakohe and such report to include matters of:

- The Governance Role of the Tasman District Council through the Council's Enterprises Committee
- The terms of reference for the management of the port through the Chief Executive Office, through to the Administration Manager and Harbour Manager with recommendations on delegations and limits of responsibilities and liabilities for each management level

- The role of the Port Tarakohe Advisory Committee including its constitution and terms of reference

FEES AND CHARGES

The posting of charges both in the Navigation Safety Bylaw and in the LTCCP for business transactions seems unnecessary.

The proposed changes to fees and charges under the Navigation Safety Bylaw will be at least a couple of months away and without any certainty as to what the outcome will be given the high level of participation in the process. Likewise changes set in the LTCCP can only be easily adjusted at the time of the annual plan process.

In business there is a need to be able to make decisions swiftly to maintain profitability. If a market price is set too low we will lose income and if too high we will lose income (through loss of custom). There is a need in business to 'dance on your feet'. It would be untenable for a business to have to incur months of fiscal drag through bureaucratic processes yet that is the current regime at Port Tarakohe.

For example if we set an unrealistically high price for wharfage custom will drop off or could disappear altogether. Not only would you lose the current income but also customer loyalty and have the risk of embedded customers setting up with an alternate preferred supplier...this creates an on-going loss even after any corrective measures are taken.

If we have a regime that permits quick decisions on pricing then whether the price is too low or too high adjustments to maximise profits can be made swiftly and on a continuing basis to keep us alive and viable in the competitive market place.

The legal situation that currently is in place is as follows:

Section 150 of the Local Government Act 2002 provides that fees may be prescribed by bylaw. Such fees are for certificates, authority, approval, permits, consents and inspections.

In addition subsection 4 states that "the fees prescribed must not provide for the local authority to recover more than reasonable costs incurred for the matter for what the fee is charges".

This clearly provides only for actual and reasonable expenses rather than a business rate which includes a profit margin.

This is interesting considering the recent issue regarding wet fish charges for Port Tarakohe not having applied the bylaw posted rate of \$9.75 from as early as 1994.

Had such a rate been charged then I believe that Council would have been in breach of this provision, particularly given that the rate was very much higher than comparable rates for other ports at the time and that their rates were assumingly a business rate rather than a prescribed fee under a bylaw.

In addition subsection 6 states that the provisions do not apply to charges for goods and services or amenities provided by the local authority in reliance on the general powers under section 12.

Section 12 provides inter alia that “for the purposes of performing its role, a local authority has full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction”

In reviewing the charges under the LTCCP I note that most relate to consent fees and administrative charges. I cannot find any provisions that require business type charges to be prescribed. Such things as the cost for a swim at the Aquatic Centre are not listed and interestingly whilst wharf charges are prescribed there are no berthage or marina occupation charges are prescribed in the LTCCP..

The need to prescribe wharfage charges under the LTCCP (as well as a bylaw) seem superfluous and inhibit price modifications to suit best business practices to maximise profitability.

The same argument also applies to the prescribed fees for the Motueka Aerodrome in the LTCCP. Noticeably Puramahoi aerodrome does not have its charges listed.

My opinion is that business type charges are inappropriate to be included in any schedule of prescribed fees either under a bylaw or the LTCCP.

Whist I cannot find any legal requirements to support prescribing business charges I would defer to advice of my peers and possibly seek legal opinion.

My observations are that prescribed fees appear to apply to services that one has very limited discretion over paying (eg consent and permit fees, rubbish fees etc) whereas business charges are within the market place and there is considerable discretion by the customer whether or not they wish to do business with the TDC.

If indeed the prescribing of business charges are superfluous and could compromise sensible trading business activities then they should be removed both from any bylaw and the LTCCP.

Setting of business rates can come through this Committee with provision for changes to be implemented could be done ‘at the drop of a hat’. Such charges should also provide for reasonable flexibility to adjust charges to ensure the best business opportunities are achieved.

Recommendation

That the Port Tarakohe Administration Manager obtains further advice on the matters of prescribing charges both under bylaw and the LTCCP processes and advise this Committee at its next meeting the legal requirements of removing business related charges from the lists of prescribed fees and replacing such prescribed lists with a system for regular review of business charges by this Committee with appropriate delegated functions through the CEO to Port Management Staff.

MEETING WITH MARINE FARMERS ASSOCIATION REPRESENTATIVES RECOMMENDATION

On Wednesday the 26th July David Ward, myself and Allan Kilgour met with representatives of the NZ Marine Farming Association.

Main item on the agenda included the Memorandum of Understanding and in particular payment of line charges in lieu of wharfage and also the contribution from the 'Ring Road' consortium

We also discussed matters relating to the future needs of the industry at Port Tarakohe and matters in relation to the old wooden wharf.

There also was an opportunity to discuss progress on the eradication/monitoring of the unwanted bio-organisms principally some species of sea squirt.

The meeting went very well with full and frank discussions on the above matters.

Achievements were draft agreements on future payment of backbone line levies, simplification of measuring lines for the purposes of the levy payment and for the Port to work with the industry to look at options for future capital development needed to meet the wharfage needs of the industry both in terms of volumes and operational imperatives (particularly MAF hygiene requirements).

RECOMMENDATION

That the Port Administration Manager's report be received.

B Askew
Port Tarakohe Administration Manager