
REPORT 2
(1215/12/IM)

THE ROLE OF THE TAWA COMMUNITY BOARD IN RESOURCE CONSENT PROCESSING AND HEARINGS

1. Purpose of Report

To explain the Board's current Terms of Reference (TOR), previous involvement of the Board in Resource Management Act (RMA) matters, and to provide a framework for the Board to confirm their role in resource consent processing and RMA hearings over this triennium.

2. Executive Summary

The Board's TOR outline the role of the Board in resource consent processing. The current TOR include specific roles in decisions related to resource consent processing. The Board also has the ability to lodge submissions on resource consent applications.

The Board has a role in the resource consent process and the local knowledge and experience is a valuable contribution to decisions made on resource consents. The Board needs to consider and decide in which way it prefers to be involved in the resource consent process. The TOR will then need to be amended to clarify the role of the Board.

3. Recommendations

It is recommended that the Tawa Community Board:

1. *Receive the information;*
2. *Note the delegations the Board currently has in respect of resource consent applications as set out in Appendix 1 to this report.*
3. **Either:**
 - (a) *Agree to fulfil an advice role as part of the resource consent process (advice to Urban Strategy Officers assessing applications);*

Or

 - (b) *Agree to be involved in a decision role as part of resource consent hearing panels hearing and deciding notified applications in the Tawa Community Board area.*
4. *Note that the Terms of Reference/Delegations of Community Boards will be reviewed in 2005 as resolved by the Democracy Subcommittee in April 2004.*

4. Background

Community Board members have previously sat as part of resource consent hearing panels for notified applications in the Tawa Community Board area.

On 13 December 2004, the Regulatory Processes Committee considered a report on the appointment of hearing commissioners. The Committee noted that the current list of hearing commissioners includes all community board members. The Committee resolved that:

“all Councillors and Community Board members available as hearing commissioners achieve certification through the Ministry for the Environment/ Local Government NZ “RMA: Making Good Decisions” Programme by June 2005.”

The Committee also sought confirmation of the Tawa Community Board’s views about their role on resource consent hearing panels. This will form part of the Committee’s consideration of the list of Hearing Commissioners which will occur at the next Regulatory Processes Committee meeting at the end of February.

5. Discussion

5.1 Current Terms of Reference

The Board’s role in resource consent processing includes a number of aspects as set out in TOR attached in Appendix 1.

The TOR include authority to determine resource consent applications, other RMA applications and administrative matters such as time limits and charging additional fees. The processing and determination of resource consent applications is largely delegated to officers of the Urban Strategy Group. As the matters listed in the TOR are carried out by Urban Strategy officers, there is no need for community board members to carry out the tasks.

The TOR provide for the Board to do a number of things in relation to resource consent hearings if the Board is asked to take part in a hearing matter, but it does not have an automatic right to take part in such hearings. As such, there is no presumption that the Board must be included in resource consent hearings in the Tawa Community area.

Practice has developed where the only formal role for the Board in resource consent processing is for the Board Chair to be involved as part of a hearing panel on notified applications. It is noted that a role in hearings is not explicitly listed in the TOR, but is provided for in general terms.

In September 1997, officers prepared a report for the then Communication and Consultation Committee proposing, among other things, different delegations for the Board to explicitly state the role in relation to resource consent hearings. At its meeting in February 1998, the Tawa Community Board resolved to request the Committee to not consider the report. The Committee subsequently resolved to let that report lie on the table. No further action has been taken. The amended delegation as proposed at that time was as follows:

“Resource consent applications in the Tawa Community Board area:

Role:

Tawa Community Board members will utilise their local knowledge to provide input into the hearings process.

Procedure:

(a) The Tawa Community Board will nominate two members (and one back-up member if one of the two is not available) who will be included on the hearings committee which considers notified resource consent applications in the Tawa Community Board area.

(b) The Community Board will receive a monthly list of all non-notified resource consent applications that have been approved for the Tawa Community Board area.

Delegations:

Tawa Community Board members nominated to be on the hearings committee have the delegated authority necessary to consider the application and, in conjunction with the other members of the hearings committee, come to a decision.”

5.2 Numbers of applications in the Tawa Community Board area

From November 2003 to November 2004, 44 resource consents were issued for the Board’s area. Of those, one was publicly notified (83 Woodburn Drive). The hearing panel that considered and decided the notified application included the Chair of the Community Board.

The 83 Woodburn Drive case was the only notified hearing in the last triennium.

The Tawa Community Board receives a report at each meeting listing of the resource consents issued for the previous month, if any.

5.3 Criteria for involvement in the process

For the Board to participate in the resource consent process it must retain integrity of the process. The following must be considered:

- (a) The Board cannot be represented at “all levels” of the process. The Board’s involvement must be discrete and confined to certain parts of the process to avoid any conflict of interest or procedural faults. This is discussed further below.
- (b) Any participation by the Board needs to be within the timeframes set by the Resource Management Act for resource consent processing.
- (c) It is in the Council’s interest to make use of the local knowledge and experience of the Board members in assessing effects as part of the resource consent process.
- (d) In any individual case, independent hearing commissioners may be appointed rather than an elected member hearing panel.

5.4 Potential Alternatives

The current terms of reference are general and do not clearly specify the Board's role in the application process nor hearings. There are three alternatives for involvement in the resource consent process:

1. Provide input into the officer decisions on an application
2. Make a submission on an application (where notified)
3. Be appointed as hearing commissioners and involved in the hearing panel deciding an application (where there is a hearing).

Further detail is provided on each alternative below.

If the Board provides input to the officers as part of the decision making process (1 above), then it must not be involved in the hearing panel (3 above). If the Board makes a submission (2 above), then it must not be involved in making the decision (3 above).

Legal advice has clarified that involvement in steps 1 and 3 raise questions of conflict of interest and potential procedural faults. If the Board is involved in the hearings panel, then it cannot lodge a submission.

1. Input into the officer's report and decision

Currently, the Tawa Community Board does not provide input into officer decisions on non-notified resource consents. The Makara-Ohariu Community Board has input to the resource consent process for non-complying activities, by specific item in their TOR. The officer assessing a non-complying application in the Makara Ohariu Community Board area contacts the Chair of the Board by phone to receive comments on any relevant matters. The number of non-complying activities in the Makara-Ohariu Board area is relatively low. If the Tawa Community Board resolved to be involved in the resource consent process in this way (through review of the TOR), then the Board would need to consider the types of activities it is interested in, and the process for input. Any comments need to be made within timeframes that ensure that the Council meets the statutory timeframe obligations under the RMA.

2. The Board as a Submitter

The Board's interests may best be achieved by making a submission on a notified application. Being a submitter on an application will give the Board individual rights including speaking at the hearing and appeal (if the Board are not satisfied with a decision of a Hearing Panel). The Board cannot be both a submitter and form part of the Hearings Panel deciding the application.

3. Representation on the Hearings Panel

This option is the same as the current practice to include a Board member on the hearings panel. The Board member(s) form part of a panel. The other members are generally elected councillors. All members of the panel act as commissioners of the Council to make a decision under the Resource Management Act 1991. This is not a political decision, rather, the panel must consider relevant information, submissions, and reports presented to them and make a decision based on the relevant provisions of the RMA. The Board members cannot introduce their own information in this role, nor

can the Board take further action if they are not supportive of, for example, a majority decision of the Panel.

The Regulatory Processes Committee resolved in December 2004 that all Councillors and Community Board members who are available for resource consent hearing panels must achieve certification through the Ministry for the Environment/ Local Government NZ "RMA: Making Good Decisions" Programme.

5.5 General Amendments to the Terms of Reference

As part of its consideration of the Local Government Commission's decision on the Council's Representation Review, the Democracy Subcommittee requested at its meeting in April 2004, that the delegations to Community Boards be reviewed in 2005. The issues relating to resource consent delegations will need to be part of that review to ensure conflicts of interest are avoided and that correct procedure is followed.

6. Conclusion

The Board can have a role in the resource consent process. The process and role for participation is not clearly set out in the current TOR.

Council officers are satisfied that the current approach to implementing the TOR by Board member involvement in a hearing panel is working to achieve appropriate participation. In all cases, we are mindful that the integrity of the process must be retained.

The TOR need to be amended to clarify the role of the Board. This could either reflect the current practice (involvement on hearing panels), or an altered role considering the possible alternatives set out in 5.4 above. Any changes will need to be undertaken after considering the criteria, options and implications discussed in this report.

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Supporting Information

1) Fit with Strategic Objectives/Strategic Outcomes

The determination of resource management matters is a key part of achieving the Council's Built and Natural Environment Key Achievement Area. The Council is required to hear and decide matters as part of its statutory functions under the RMA

2) LTCCP/Annual Plan reference and long term financial impact

The function is contained in the Council Plan project # C479. There will be no changes to long term financial impact.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi considerations.

4) Decision-Making

This is not a significant decision. The report sets out a number of alternatives on a matter of process.

5) Consultation

a) General Consultation

Consultation has been undertaken with Democratic Services to establish the scope of the current Terms of Reference and process for change to those Terms of Reference.

b) Consultation with Maori

Not required.

6) Legal Implications

The legal framework for decision making under the current Terms of Reference and possible changes was discussed with Phillips Fox. The legal view was that the decision making process is at risk of being compromised if the Board participates at all levels of the decision making process.

The Resource Management Act 1991 provides for the Council to delegate certain powers and functions to community boards and hearings commissioners who may or may not be a member of the local authority.

7) Consistency with existing policy

This report recommends an approach which is consistent with existing WCC practice for involvement of the Board in resource consent processing.

Terms of Reference (Excerpt)

6. Resource Consent Applications

- (a) Authority to determine any notified or non-notified application for resource consent (i.e. non-complying, controlled or discretionary activities), including the imposition of conditions.
- (b) Authority to determine any application for consent in respect of Sections 10 (existing uses), 125 (lapsing of consents), 126 (cancellation of consent condition), 127 (change or cancellation of consent condition), 128-133 (review of consent conditions) of the Resource Management Act.
- (c) Authority to make recommendations on a requirement for a designation or a heritage order.
- (d) Authority to waive or extend time limits, etc.
- (e) Authority to order the protection of sensitive information.
- (f) Authority to determine any objections to certain decisions and requirements.
- (g) Authority to make requests for changes to outline plans submitted pursuant to S125 of the Town & Country Planning Act 1977.
- (h) Authority to require the payment of additional charges or to remit the whole or any part of any charge.
- (i) Authority to determine that any application must be notified.