

14 March, 2017

Far North District Council
Attention: Mr Robert Manuel
By email: robert.manuel@fndc.govt.nz

Dear Robert

RE: **COMMUNITY BOARD COMMITTEES**

Background and Summary of Advice

We refer to your email of 7 March 2017. You have asked us whether it is competent for a community board committee established under the Local Government Act 2002 ("LGA") to seek to acquire a different legal identity – by becoming an incorporated society under the Incorporated Societies Act 1908 ("ISA").

The question arises due to a policy paper prepared by a former Council employee in 2013 about "reserve management committees". The report writer suggested that these Council committees should be "encouraged" to become incorporated societies.

We note our preliminary view in our email of 13 March 2017, which briefly set out why we believe council committees cannot be incorporated societies. This letter expands on that earlier advice.

Advice

A local authority is a body corporate with perpetual succession (s12 LGA). Accordingly a Council may carry on or undertake any activity or business, do any act, or enter into any transaction, and has full rights, powers, and privileges. This power of general competence enables a Council to undertake its day to day functions, but also establishes a system of accountability.

While the LGA does provide for other entities, for example community boards, local boards, and committees, these entities all fall under the umbrella of the local authority itself. The LGA is clear that these entities only have specific powers delegated to them by the local authority. They are unable to exist on their own or enter into their own legal relationships.

Under schedule 7 of the LGA the Council may appoint committees and any other subordinate decision-making bodies that it considers appropriate. The definition of committee in section 5 of

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the LGA is a committee comprising all the members of the local authority, and a standing committee or special committee appointed by the local authority. Clause 30(3) of Schedule 7 confirms that a committee is subject *"in all things to the control of the local authority and must carry out all general and special directions of the local authority given in relation to the committee."* Under clause 30(5) the Council may discharge or reconstitute a committee at its will. And as you have noted, a committee is deemed to be discharged following triennial elections (unless the local authority resolves otherwise).

Turning to the ISA, upon registration as an incorporated society a society becomes a body corporate, with the power to exercise all the functions of a body corporate and with the ability to hold land. So the society will from that time be able to employ staff and enter into contracts. A society may be wound up if the members vote to do so. This type of body corporate structure is completely at odds with the committee structure under the LGA, which is controlled at all times by the Council.

In our opinion, following incorporation a committee would cease to be a committee under the LGA. It would lose all powers, rights and protections under the LGA and become controlled only by the restraints under the ISA and by its rules and constitution.

There are a number of examples which show how the two entities cannot co-exist, for example:

- a) Section 43 of the LGA provides an indemnity for all persons undertaking Council work. Committee members are indemnified. This is possible because the committee is at all times under the control of the Council.
 - If the committee were incorporated it would be free to make its own contracts, hire its own staff, purchase land, etc. It would be impossible for there to be an indemnity because the Council would have lost control.
- b) Schedule 7 clause 30 (as above), confirms the committee may be discharged at any time by the Council.
 - An incorporated society could not be discharged by the Council.
- c) Schedule 7 clause 30 (as above), confirms the Council has complete control over the committee.
 - An incorporated society is governed by its members, pursuant to its rules and the ISA.
- d) Section 41A(5) of the LGA confirms that the Mayor is a member of each committee.

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- But in order to be a member of an incorporated society, members have to adhere to the rules of the society and join the society. There is no automatic right to join.

In the event that a Council were to try to incorporate a committee into a society, then (in the event that registration was accepted), the committee would cease to be a committee under the LGA and would be a complete different entity, unable to be controlled by the Council. Council is strongly recommended to not seek to incorporate any committees. In our opinion, that would be *ultra vires*. Council should most certainly not encourage its committees to change their legal status.

We trust this answers your question in relation to this issue, but if you require further clarification please do not hesitate to contact the writer.

Yours faithfully

LAW NORTH LIMITED



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DIRECTOR/SOLICITOR

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