Aro Valley Community Council

Constitution Discussion Document – July 2014

*Introduction*

There has been a wide-ranging discussion over the past year regarding the role, relevance and interpretation of the Aro Valley Community Council’s Constitution. These discussions are very timely. The wider principles surrounding the good governance, transparency and accountability of Incorporated Societies are the cornerstones of the Law Commission Report on Incorporated Societies which was released in June 2013.. The report recommends a major overhaul of the Incorporated Societies Act 1908. Key recommendations include clarification of the duties and protections of Officers and Committee members; appointment of a Statutory Officer; mandatory dispute resolution processes for managing misconduct and grievances between members, the Committee and the Society; and defining mandatory rules that must be included in all Constitutions. Accordingly, it is appropriate that the AVCC review its Constitution against the model presented by the Law Commission.

*Background*

The current version of the Constitution was endorsed and registered in 2004. The general consensus of those present at the General Meeting, subsequent discussions and in correspondence is that the Constitution is a good document and most of its provisions are widely accepted and work well. There is some ambiguity in the terminology of selected clauses. There is also a difference of opinion as to how a number of clauses should be interpreted. The purpose of this document is to refine the material to date, and focus on the issues raised and suggest a framework to determine if changes are necessary. If there are to be changes, how should the process be managed?

The issues raised at the General Meeting were listed on the whiteboard. A photo of this whiteboard is attached to this report. For ease of reference the noted points have been included under the appropriate headings.

*Name, Objectives, and Powers and Benefits: Clauses 1-3*

• Why do we have a Constitution?

• Some clarity is required as to who interprets the Constitution.

The Incorporated Societies Act 1908 did not require societies to have constitutions. It did however require societies to have rules including the name of the society and objects of the objects for which it is established; the modes in which people become and cease to be members; the mode in which the rules may be altered, added to or rescinded; the mode of summoning and holding general meetings and of voting; the appointment of officers; the control and use of the common seal; the control and investment of the funds; the powers (if any) of the society to borrow money. The AVCC Constitution complies with the Incorporated Societies Act 1908 and contains clauses which encompass those statutorily required rules.

The main benefit for incorporating a society is to enable the society to act as a separate legal entity. In our context, this means that the AVCC seeks funding, holds bank accounts, can lodge court proceedings, enters transactions etc., as a legal being separate from the members who make up the organisation.

The rules of an incorporated society are set by the membership and usually the members interpret those rules and run the organisation in accordance with them. At the first instance, it is the responsibility of the membership to resolve any dispute regarding the interpretation of the rules. Statutory interpretation, analysis of ordinary usage and context are methods of interpreting an ambiguity. Ultimately, if the membership fails to resolve an issue of interpretation, disputes can be decided in Court. There is a significant cost associated with this action.

*Membership: Clauses 4-5*

• Geographical boundaries.

• Who are our members?

• Membership rights.

One of the unique features of the AVCC Constitution is its mechanism for membership. The combination of defining a geographical area with those that hold an interest by way of residence, ownership and/or employment reflects our sense of community. Aro Valley did not exist as a legally defined suburb until relatively recently and has often been subjected to haphazard and arbitrary zoning rules. Although Aro Valley is now a defined location, parts of the Aro Valley area remain outside those notified boundaries but the residents and property owners consider themselves part of the Aro Valley community.

All those who qualify for full membership of the AVCC belong to the Society as “inactive” members who “activate” their membership by attending an AVCC meeting and declaring their intention in writing.

An example of ambiguity in AVCC’s Constitution is the lack of definition of who constitutes a “worker” in Aro Valley. This is one of the qualification criteria for full membership of the AVCC. The membership of AVCC needs to clarify what constitutes a worker for the purposes of establishing membership. Common sense would suggest that a ”worker” in Aro Valley should have some degree of permanence or continuity in order to qualify. It would make a mockery of the clause to suggest that a tradesperson employed in his/her trade for a day or taxi driver who drove a passenger to an Aro Valley location qualified as a worker under the Constitution.

In terms of membership rights, every incorporated society must make arrangements for maintaining the register of members, enable access to the membership list for members, and make provision for the dissemination of relevant information to the members in a timely and appropriate fashion. Members are also entitled to have the organisation run according to the Constitution and have rights to financial and annual reports from the elected Committee.

*Decision Making: Clause 6*

There has been some discussion regarding consensus as the decision making process of the AVCC and its Committee. The fall back position contained in the Constitution is a decision by way of a vote with a simple majority determining the outcome. Generally, the AVCC strives to make as many decisions as it can by consensus. In recent times, there have been a number of refinements in how consensus has been applied in meetings that have proved successful.

The topic of the most recent AVCC General Meeting was Loomio and whether it may be a useful tool in decision making and building consensus in a geographically based community such as Aro Valley. The Meeting agreed to consider this possibility further and a timetable was set for the next stages of that process.

*Elected positions: Clause 7*

• Chairing of meetings

• Roles  
• Meaning of ‘interests’

The roles of Co-Chair(s), Secretary and Treasurer together with a Committee of up to ten members are elected at the AGM and remain in office until the following AGM. It should be noted that the Law Commission Report strongly supported the involvement of Committees in running societies and set the minimum number of positions on a committee at three.

Generally, it has been the role of one of the Co-Chairs to preside at meetings. However, the AVCC Constitution only specifies what is to occur in the absence of the Co-Chairs. The tradition of the AVCC has been to conduct its meetings in line with the consensus model. To be successful, this model does require confident facilitation. There may be some occasions when it is appropriate to have independent facilitation and a protocol that establishes some guidelines may be helpful.

The AVCC has a policy regarding Conflicts of Interest which explains what they are and how they should be managed. This document applies to those in elected positions, who will be considered officers of a society pursuant to with the Law Commission Report.

*Committee: Clause 8*

• Communication, transparency and reporting

• Recording of decisions

• Seeking opinions

• Roles

• Recording of business

The Incorporated Societies Act 1908 provides that a society’s constitution must prescribe how officers are appointed but contains no provisions dealing with the obligations of officers once appointed.

Between Annual General Meetings, the Committee is the governance body of the AVCC and is empowered to make decisions and run the affairs of the organisation in line with the society’s stated objectives. The Committee’s powers are conferred by the Constitution and are listed in Clause 3.

An effective Committee should adhere to basic accountability rules that protect membership involvement and democratic decision-making. The AVCC Committee does this by meeting regularly and holds a number of public meetings (some of which are General meetings), contributes to the Valley Voice and corresponds with members. Access to Meeting Minutes (once they have been formally approved), policy documents and notices for AVCC members are also available through the AVCC website and in hard copy form.

The Law Commission’s Report makes its strongest recommendations regarding the rights and responsibilities of Committee members. The AVCC Constitution substantially meets the new requirements regarding composition, roles and functions of the AVCC Committee. New compulsory provisions regarding the functions and powers of Committees, how Committee members can be removed from office and the appointment of a Statutory Officer on every Committee are proposed in the Report. In particular, committee members would be required:

1. to act in good faith and in the best interests of the society, and use powers for a proper purpose;
2. to comply with the Incorporated Societies Act and with the society's constitution, except where the constitution contravenes the Act;
3. to exercise the degree of care and diligence that a reasonable person with the same responsibilities within the society would exercise in the circumstances applying at the time;
4. to not allow the activities of the society to be carried on recklessly or in a manner that is likely to create a substantial risk of serious loss to the society’s creditors; and
5. to not allow the society to incur obligations that the officer does not reasonably believe will be fulfilled.

It is noted that the AVCC Constitution does not contain any clause in line with those proposed.

The function of the Statutory Officer will be as an interface between the Registrar of Incorporated Societies and the organisation. That person will ensure that AVCC fulfils its obligations under the new legislation. This provides another level of accountability and oversight of the operation of incorporated societies and their governing bodies.

*Meetings: Clauses 9-10*

• Process for reporting agenda items, motions and constitution (sic)

• Seeking opinions

• Notification of meetings

• Urgent general meetings

The purposes of the various meeting types held by the AVCC are not clearly described in the current Constitution. The AVCC Annual General Meeting has a specific timeframe, agenda and notice period defined in the Constitution. The format and purpose of this meeting is structured to fulfil statutory requirements. Outside of these legal obligations, only notified business and urgent general business can be discussed at the AGM.

The same provision applies in relation to AVCC General Meetings. These meetings are usually called to discuss a specific topic or seek the community’s view on a particular issue. The Constitution itself was the subject of a General Meeting in November 2013.

The clause regarding Special General Meetings “SGM” has been the subject of discussion. The threshold number of members for calling an SGM is fifty which is in marked contrast to the quorum of 15 members for Annual General and General Meetings.

Many members of the AVCC have suggested that the format of the Annual General Meeting and General meetings do not provide an adequate opportunity for the membership to discuss governance issues, policy and matters arising. At its Planning Session this year, the current AVCC Committee discussed the possibility of holding participatory forums to provide opportunities for community feedback on governance and as a way for members to raise new ideas and issues without the formality of the notice period.

This year the Committee has formalised a policy entitled *AVCC Code of Conduct: Meeting Attendance and Conduct* which outlines rules regarding attendance and participation at Committee meetings, the process for tabling issues for Committee meeting agendas and a code of conduct for behaviour at all AVCC meetings and Committee meetings.

*Concepts not currently in the AVCC Constitution*

*Dispute Resolution*

The AVCC Constitution is silent on dispute resolution. The introduction of the Code of Conduct goes some way to addressing conflict at meetings. However, the Law Commission report extensively addresses dispute resolution. Once legislation is passed in line with the Commission’s recommendations, it will be mandatory for dispute resolution clauses to be included in every Constitution. The AVCC will need to amend its Constitution to include the appropriate provisions.

*Bi-cultural focus*

Currently the AVCC Constitution is silent as to the culture or philosophy of our community. In its report the Law Commission suggests that an incorporated society is able to describe its tikanga or culture however it wishes. Ways of doing this might include a rule to describe the relevant principles and state that the constitution must be interpreted in light of those principles and to make copies of the Constitution available in te reo Māori.

*Donation and funding ethics*

The Constitution is currently silent on this. One other possibility of addressing this issue would be the development of a policy in relation to funding. While this would not be part of the Constitution itself, it would have the same effect a bylaw with the flexibility to be altered as new situations arose.

*Summary*

The AVCC Constitution complies (and in many instances goes further than) the requirements of the Incorporated Societies Act 1908. However a number of issues and ideas have been raised regarding the Constitution. Some of these are clearly for the AVCC membership to determine. But some of the matters raised reflect the wider considerations of the Law Commission, particularly those regarding the membership and functions of committees, governance and dispute resolution processes.

The Law Commission Report recommends extensive changes that will provide for the inclusion of mandatory clauses in all Constitutions. The AVCC will be required to amend its current Constitution to include those mandatory clauses and comply with new legislation. The obvious issue is whether the AVCC should embark on resolving a number of questions on the interpretation and clarification of existing clauses in light of the foreshadowed law change. One option is to wait and assess the proposed model constitution that will be included in the new Act. However, should the AVCC wish to act before that new legislation is enacted, a process for selecting and addressing those issues should be established to avoid any duplication of effort.

Source material considered in this paper includes: AVCC’s Constitution; Martin Wilson’s draft alterations to the Constitution; Meeting notes from the 2013 Annual General meeting (“AGM”) and the General Meeting held on 27 November; *A New Act for Incorporated Societies, Law Commission, June 2013, Report 129*; and AVCC Committee discussions and meeting Minutes.

*Appendix 1*

Whiteboard from the General meeting on the constitution.

