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**Committee** Policy, Finance and Strategy Committee  
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## **Delegations for hearing resource consents and submissions on regional policy statements and plans**

### **1. Purpose**

- a) To delegate to the Environment Committee and the Rural Services and Wairarapa Committee the powers relating to hearing and deciding on resource consent applications that are notified under section 93(1) or section 94(1) of the Resource Management Act 1991 (RMA) and require a hearing.
- b) To delegate to the Environment Committee the power to hear and make recommendations on submissions made on regional policy statements and regional plans.

### **2. Significance of the Decision**

The matters in this report do not trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

### **3. Background**

#### **3.1 Changes required to existing delegations**

On 15 February 2005 the Council delegated to the Environment Committee and the Rural Services and Wairarapa Committee powers relating to hearing and deciding on resource consent applications and hearing and making recommendations on submissions on regional plans and policy statements (**Attachment 1**).

It has recently come to our attention that these delegations need to be altered. This is because officers' understanding of sections 34 and 34A of the RMA has changed and proposed amendments to the RMA recommend that subsection (3) of 34A be deleted.

### 3.2 Sections 34 and 34A of RMA

The wording of sections 34 and 34A of the RMA has caused much confusion for councils. This has resulted in different interpretations of the process that councils must follow when appointing commissioners or committees/sub-committees to hear, decide and/or make recommendations on resource management issues. (**Attachment 2** contains a copy of sections 34 and 34A.)

Section 34 enables a local authority to delegate to a committee or sub-committee any of its powers, duties and functions under the RMA. Under this section a local authority can, for example, delegate to a sub-committee the power to hear and decide on a resource consent application, or the power to hear and make recommendations on submissions made on regional policy statements and plans.

Section 34A enables a local authority to delegate many of its powers to a commissioner or panel of commissioners. Under this section, a local authority can, for example, delegate to a panel of commissioners the power to hear and decide on resource consent applications. However under subsection (3) of this section any such delegation must also be made through the chief executive. This makes it unclear whether the power to delegate to a commissioner or commissioners rests with the local authority or the chief executive.

The Council's current delegations to committees relating to hearings include the words "direct the chief executive to delegate . . ." (**Attachment 1**). This wording was based on legal advice that officers received prior to 15 February 2005. Since then, officers have received advice from the Ministry for the Environment clarifying the issue under section 34A. The Ministry has said that any appointment of and delegation to a commissioner or commissioners should be made by the Council or Council committee and that the chief executive should simply sign off any such delegation. The Ministry also advised that proposed amendments to the RMA, which are due to be passed before September, suggest that subsection (3) be deleted.

## 4. Comments

Current delegations do not explicitly distinguish between hearing panels and hearing sub-committees, nor do they provide the Environment Committee and the Rural Services and Wairarapa Committee with the explicit power to delegate and appoint commissioners, a hearing panel or a hearing sub-committee. Instead, the committees only have the power to direct the chief executive to do so. It is, therefore, recommended that the Council replaces delegations 1.1.4, 1.1.5 and 1.1.6 to the Environment Committee and 3.2.2 and 3.2.3 to the Rural Services and Wairarapa Committee (**Attachment 1**) with the delegations outlined in the *Recommendations* section of this report.

The proposed delegations better fit with the advice from the Ministry for the Environment relating to section 34A and the upcoming amendments to the RMA. They also make the delegations relating to hearing panels and hearings sub-committees even clearer and more specific. The proposals have been checked by an experienced resource management lawyer.

## 4.1 Key changes to existing delegations

The key changes to the existing delegations include:

- Clearly distinguishing between hearing panels and hearing sub-committees.
- Explicitly giving the Environment Committee the power to hear and decide on resource consent applications and the power to hear and make recommendations on submissions on regional policy statements and plans.
- Explicitly giving the Rural Services and Wairarapa Committee the power to hear and decide on resource consent applications.
- Deleting the words “direct the chief executive to . . .” to enable committees to appoint and delegate to commissioners, hearings panels and hearings sub-committees. The chief executive will still need to sign off any delegation to a commissioner or commissioners until the RMA has been amended.
- Clearly identifying that committees, hearing sub-committees and hearing panels hold those powers relating to hearing and deciding on those resource consent applications that have been notified under 93(1) or 94(1) and a hearing is required. The powers to make decisions on resource consents where no hearing is required have been delegated to officers.

## 4.2 What will this mean in practice?

We suggest that different processes be followed for hearing and deciding on resource consent applications, and hearing and making recommendations on submissions on regional policy statements and regional plans.

### 4.2.1 Hearing and deciding on resource consent applications

We propose that consent hearings be conducted by either

- a) a hearing sub-committee that is established under section 34, or
- b) a single commissioner or hearing panel that is appointed under section 34A.

The rules for when a hearing sub-committee or a hearing panel should hear and decide on resource consent are set out below.

#### **Hearing panels**

A hearing panel should be used where it is considered appropriate for either:

- a) More than one commissioner to hear and decide on a resource consent application i.e. external commissioners, not iwi members nor councillors acting as commissioners, or

- b) a combination of councillors (acting as commissioners) and commissioners to hear and decide on a resource consent application. All councillors will need to be appointed as commissioners in case they are required to be part of a hearings panel, or
- c) an iwi member (acting as a commissioner), along with commissioners or councillors (acting as commissioners), to hear and decide on a resource consent application. Iwi members will need to be appointed as commissioners in case they are required to be part of a hearings panel.

A single commissioner can also be appointed to hear and decide on a resource consent application where it is considered appropriate.

While councillors and iwi members will be appointed as commissioners to meet the requirements of the Act, they will be remunerated in line with the rates set by the Remuneration Authority for councillors. This is common practice for many councils.

### **Hearing sub-committees**

We suggest that a sub-committee<sup>1</sup> be established where it is considered appropriate that:

- a) councillors alone hear and decide on a resource consent applications.
- b) an iwi member hears and decides on a resource consent, along with councillors.

Councillors and iwi members will be remunerated in line with the rates set by the Remuneration Authority.

#### **4.2.2 Hearing and making recommendations on submissions on regional policy statements and regional plans**

It is proposed that a hearing sub-committee be established under section 34 of the RMA each time a hearing is required to make recommendations on submissions on regional policy statements and regional plans. The power to appoint a hearing sub-committee for this purpose should be delegated to the Environment Committee. We suggest that the Committee does not sub-delegate their power to appoint a hearing sub-committee for this purpose, as changes to regional policy statements or plans rarely occur and plans are a core part of the Council's business that should be undertaken at Council/committee level.

A hearing sub-committee established for the purpose of hearing and making recommendations on submissions on regional policy statements and plans can

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<sup>1</sup> The Local Government Act 2002 describes a committee as a committee or a sub-committee and says that a sub-committee must have at least two members. The members of a committee or sub-committee need not be elected members, but a committee must have at least one elected member.

include any combination of councillors and/or external members and must have at least two members. In line with the rates set by the Remuneration Authority, councillors will not be provided with any additional remuneration as a member of a hearing sub-committee.

#### **4.3 Delegations from Environment and Rural Services and Wairarapa Committees to chairperson and divisional manager**

It will be recommended to both the Environment and Rural Services and Wairarapa Committees that they sub-delegate the following powers relating to the hearing and deciding of resource consent applications to their chairperson and the appropriate divisional manager:

- The power to establish hearing sub-committees and hearing panels.
- The power to decide whether to conduct a hearing for a resource consent application through a single commissioner, or a hearing panel, or a hearing sub-committee. In the event that the committee chairperson and the relevant divisional manager cannot agree, the Committee will make this decision.
- The power to determine the appropriate commissioner or composition of each hearing panel or hearing sub-committee. In the event that the committee chairperson and the relevant divisional manager cannot agree, the Committee will make the decision.
- The power to delegate to a hearing panel or hearing sub-committee the authority to hear and decide on a resource consent application.

It will also be recommended that, where a hearing panel or hearing sub-committee cannot reach a unanimous decision on a resource consent application, the relevant Committee must hear and decide on the resource consent.

#### **4.4 Further changes to delegations may be required in future**

Although we have tried to word the proposed delegations in such a way that they will take account of the proposed RMA amendments, it is possible that further changes will need to be made to the delegations once the amendments have been passed.

### **5. Communication**

There is no need to communicate any changes to the delegations externally. However, once the Council has made the new delegations, they will be added to Greater Wellington's register of delegations and all the relevant divisions will be notified of the changes. A report will also be submitted to the both the Environment Committee and the Rural Services and Wairarapa Committee to make the recommendations discussed in 4.3 above.

## 6. Recommendations

*That the Policy, Finance and Strategy Committee recommends that the Council:*

- (1) Revokes delegations 1.1.4, 1.1.5 and 1.1.6 that it made to the Environment Committee on 15 February 2005.*
- (2) Revokes delegations 3.2.2 and 3.2.3 that it made to the Rural Services and Wairarapa Committee on 15 February 2005.*
- (3) Delegates to the Environment Committee the following powers in relation to hearing and deciding on resource consent applications:*
  - (i) hear and decide on resource consent applications. This includes the powers set out in **Attachment 3**.*
  - (ii) appoint a commissioner or commissioners and delegate to them the power to hear and decide on resource consent applications, including the specific powers set out in **Attachment 3**. A commissioner must not exercise these powers until such time as they are appointed to a hearing panel or as a hearing commissioner to hear a particular resource consent application.*
  - (iii) establish a hearing panel where required.*
  - (iv) establish a hearing sub-committee where required.*
  - (v) choose on a case-by-case basis whether to conduct a hearing through a single commissioner, hearing panel, or a hearing sub-committee.*
  - (vi) decide on a case-by-case basis the composition of a hearing panel or hearing sub-committee or appropriate commissioner.*
  - (vii) delegate to hearing panels (the composition of which is to be determined on a case-by-case basis) the power to hear and decide on resource consents, including the specific powers set out in **Attachment 3**.*
  - (viii) delegate to hearing sub-committee (the composition of which is to be determined on a case-by-case basis) the power to hear and decide on resource consents, including the specific powers set out in **Attachment 3**.*
- (4) Delegates to the Environment Committee the following powers in relation to hearing and making recommendations on submissions on regional policy statements and regional plans:*
  - i) hear and make recommendations on submissions on regional policy statements and regional plans.*

- (ii) establish on a case-by-case basis a hearing sub-committee.*
  - (iii) decide on a case-by-case basis the appropriate composition of a hearing sub-committee.*
- (5) Delegates to the Rural Service and Wairarapa Committee the following powers in relation to hearing and deciding on resource consent applications:*
- (i) hear and decide on resource consent applications. This includes the powers set out in **Attachment 3**.*
  - (ii) appoint a commissioner or commissioners and delegate to them the power to hear and decide on resource consents, including the specific powers set out in **Attachment 3**. A commissioner must not exercise these powers until such time as they are appointed to a panel or as a hearing commissioner to hear a particular resource consent application.*
  - (iii) establish a hearing panel where required.*
  - (iv) establish a hearing sub-committee where required.*
  - (v) choose on a case-by-case basis whether to conduct a hearing for a resource consent through a single commissioner, hearing panel, or a hearing sub-committee.*
  - (vi) decide on a case-by-case basis the composition of hearing panel or hearing sub-committee or appropriate commissioner, which is decided on a case-by-case basis.*
  - (vii) delegate to hearing panels (the composition of which is to be determined on a case-by-case basis) the power to hear and decide on resource consents, including the specific powers set out in **Attachment 3**.*
  - (viii) delegate to hearing sub-committees (the composition of which is to be determined on a case-by-case basis) the power to hear and decide on resource consents, including the specific powers set out in **Attachment 3**.*
- (5) Notes that the chief executive will sign off any delegation to a commissioner or commissioners until the RMA is amended.*

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**Attachment 1** – Current delegations from the Council to the Environment and Rural Services and Wairarapa Committees

**Attachment 2** – Resource Management Act 1991 – Sections 34 and 34A

**Attachment 3** – Specific Resource Management Act 1991 delegations to the Environment and Rural Services and Wairarapa Committees