

Chair and Committee Members
REGULATORY MANAGEMENT COMMITTEE

5 SEPTEMBER 2013

Meeting Status: **Public**

Purpose of Report: For Decision

CONTINUITY OF RESOURCE MANAGEMENT FUNCTIONS THROUGH THE 2013 ELECTION PERIOD

PURPOSE OF REPORT

- 1 The purpose of this report is to outline arrangements so that the Council can maintain its resource management functions during the transition to the new triennium. These functions include hearing and deciding resource consent applications, hearing and deciding objections to resource consent decisions, confirming consent orders for District Plan appeals, and applying for enforcement orders.

SIGNIFICANCE OF DECISION

- 2 The Council's significance policy is not triggered by this report.

BACKGROUND

- 3 Delegation of Council's resource management powers occurs under section 34A of the Resource Management Act 1991 (**RMA**).
- 4 Section 34A(1) of the RMA provides that Council *may delegate to an...hearings commissioner appointed by the local authority (who may or may not be a member of the local authority), any of its functions, powers or duties under this Act, except the following:*
 - a) *the approval of a policy statement or plan;*
 - b) *the power of delegation.*
- 5 Section 34A(2) of the RMA provides that:
 - (2) *A local authority may delegate to any other person any functions, powers, or duties under this Act except the following:*
 - (a) *the powers in subsection (1)(a) and (b);*
 - (b) *the decision on an application for a resource consent;*
 - (c) *the making of a recommendation on a requirement for a designation.*
- 6 The delegated authority of the present Regulatory Management Committee, including the authority of the Chair of that Committee to appoint hearing commissioners, will cease the day after the official results of the 12 October 2013 Local Body Elections are declared, when those elected come into office.
- 7 Following the election, elected Councillors may not act or exercise any power in their capacity as a Councillor until they have made their declaration. The same restriction applies whether Councillors are newly elected or re-elected

Councillors, and despite the committee or other subordinate decision-making body continuing after the election under a resolution made under clause 30(7) of Schedule 7 of the Local Government Act 2002 (**LGA**). Furthermore, it will not be until at least this time that the Committee in whatever form, is established to exercise the functions of Council's existing Regulatory Management Committee.

- 8 In order to ensure that the resource management functions of Council are maintained during the transition period, the Council needs to make appropriate arrangements. This has been done previously at the change of trienniums (see, for example, SP-10-972)

CONSIDERATIONS

Issues

- 9 During the election period and before the Council appoints new committees, several of the Council's resource management functions, powers and duties will need to be exercised.
- 10 Clause 30(7) of Schedule 7 of the LGA provides that

*A committee, subcommittee, or other subordinate decision-making body is, **unless the local authority resolves otherwise**, deemed to be discharged on the coming into office of the members of the local authority elected or appointed at, or following, the triennial general election of members next after the appointment of the committee, subcommittee, or other subordinate decision-making body.* (Emphasis added).
- 11 It is unclear whether this provision applies to hearing commissioners, but for the avoidance of doubt, the Council should resolve the continuity of any decision-making body including commissioners which it intends to continue exercising decision-making functions beyond the election. The Council can resolve the continuity to a specified date, or until the Council resolves to discontinue the decision-making body, or until the next election (whichever is the earlier).
- 12 Council's approach in the past has been, before the election, to resolve to establish a panel of hearings commissioners to exercise those functions for the Council during the transition. This special panel is discharged when the new committee exercising the functions currently exercised by the Regulatory Management Committee comes into being. If such a panel is made up of Councillors in their capacity as elected members, those Councillors (and therefore the panel) could not function between the election and those Councillors making their declaration. The Councillors therefore need to be appointed as independent commissioners and need to have the appropriate accreditation required by the Council's current Governance Structure.
- 13 A minimum of three specifically named commissioners should be appointed to carry out the following functions and responsibilities of the Regulatory Management Committee of Council:
 - Hear and decide all notified and limited notified resource consent applications under the RMA;

- Hear and decide all objections to non-notified resource consent decisions or conditions under the RMA;
 - Liaise with the Sustainable Development Manager to enable staff to confirm to the Environment Court that Consent Orders in relation to appeals on District Plan changes may be issued;
 - Apply for enforcement orders (including interim enforcement orders) under section 316 of the RMA, following receipt of advice from the Resource Consents and Compliance Manager.
- 14 Due to the requirements of the RMA, as well as consistency with the Council's own Governance Structure, it is preferable that the Hearings Commissioners for these matters consist of the current Chairperson of the Regulatory Management Committee and two other named Elected Members who have RMA accreditation, with these members appointed as transitional commissioners rather than in their capacity as elected members. Members with RMA accreditation currently include Councillors Mike Cardiff, K Gurunathan, Tony Lloyd and Hilary Wooding, as well as Waikanae Community Board member Jocelyn Prvanov.
- 15 The Council may reassess the membership of any hearing panels after the election. Clause 31(5) of Schedule 7 of the LGA provides that:

If a local authority resolves that a committee, subcommittee, or other decision-making body is not to be discharged under clause 30(7), the local authority may replace the members of that committee, subcommittee, or other subordinate decision-making body after the next triennial general election of members.

Financial Considerations

- 16 A budget has been allocated in the current financial year for independent commissioners, should they be required.

Legal Considerations

- 17 Legal considerations are outlined above.

Delegation

- 18 The Committee has the delegation under Section B.2 of the Governance Structure to appoint a pool of hearing commissioners consisting of Elected Members with appropriate accreditation and/or qualification as well as accredited independent commissioners. It is not clear, however, that this includes the appointment of transitional commissioners as recommended in this paper. Accordingly, it is suggested that the Committee make recommendations to Council on this matter.

Consultation

- 19 No consultation has been required on this matter.

Policy Implications

- 20 There are no policy considerations as this is a procedural matter relating to governance arrangements.

Tāngata Whenua Considerations

21 There are no tāngata whenua considerations relevant to this matter.

Publicity Considerations

22 No media release is required but there may be a need to be prepared for any media enquiries on this matter.

RECOMMENDATIONS

23 That the Committee recommends that Council, pursuant to section 34A(1) of the Resource Management Act 1991, appoints Diane Ammundsen, _____ and _____ (**Transitional Commissioners**) as commissioners and delegates to them the authority to perform the following functions:

23.1 Hear and decide all notified and limited notified resource consent applications under the Resource Management Act 1991;

23.2 Hear and decide all objections to non-notified resource consent decisions or conditions under the Resource Management Act 1991;

23.3 Liaise with the Sustainable Development Manager to enable staff to confirm to the Environment Court that Consent Orders in relation to appeals on District Plan changes may be issued; and

23.4 Apply for enforcement orders (including interim enforcement orders) under section 316 of the Resource Management Act 1991, following receipt of advice from the Resource Consents and Compliance Manager.

24 That the Committee recommends that Council resolves, for the avoidance of doubt, that:

24.1 The Transitional Commissioners are not discharged on the coming into office of the members of the local authority elected or appointed at, or following, the 2013 triennial general election of members; instead, they will be discharged once the Council resolves to discharge these commissioners of their duties.

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