

**Mayor and Councillors**  
COUNCIL

16 OCTOBER 2014

Meeting Status: **Public**

Purpose of Report: For Decision

## **AMENDMENTS TO THE COUNCIL DELEGATIONS TO CHIEF EXECUTIVE AND STAFF**

### **PURPOSE OF REPORT**

- 1 This report seeks Council's consideration and approval of amendments to the delegations to the Chief Executive and staff.

### **SIGNIFICANCE OF DECISION**

- 2 This report does not trigger the Council's Significance Policy.

### **BACKGROUND**

- 3 The Council has certain statutory powers it can exercise and duties it must fulfil. Various statutes recognise that it is not efficient or practical for Elected Members to have to deal with every aspect of their functions, duties and powers.
- 4 Various Acts of Parliament provide the Council with the legal authority to delegate to officers. In particular, Council has the authority to delegate to officers under clause 32 of Schedule 7 of the Local Government Act 2002. Clause 32 also sets out certain powers that cannot be delegated as follows:

*32. Delegations—(1) Unless expressly provided otherwise in this Act, or in any other Act, for the purposes of efficiency and effectiveness in the conduct of a local authority's business, a local authority may delegate to a committee or other subordinate decision-making body, community board, or member or officer of the local authority any of its responsibilities, duties, or powers except—*

- (a) the power to make a rate; or*
- (b) the power to make a bylaw; or*
- (c) the power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan; or*
- (d) the power to adopt a long-term plan, annual plan, or annual report; or*
- (e) the power to appoint a chief executive; or*
- (f) the power to adopt policies required to be adopted and consulted on under this Act in association with the long-term plan or developed for the purpose of the local governance statement.*
- (h) the power to adopt a remuneration and employment policy.*

- 5 Delegated authority allows for administrative efficiency and ensures timeliness in the conduct of Council's daily business activities.

- 6 The majority of Acts allow the Chief Executive the discretion to sub-delegate to council staff, provided he has the delegated power from the Council to further sub-delegate. However, some Acts prescribe the way delegations must be made. The Resource Management Act 1991 (RMA 1991) does not allow the Chief Executive the power to sub-delegate.

## CONSIDERATIONS

### Issues

- 7 The Council delegations to the Chief Executive and Staff are monitored on a regular basis and reported back to Council for amendment as required in response to changes in staff or the legislation.
- 8 Delegations are also reviewed on request by Council.
- 9 The following amendments to the RMA 1991 delegations are recommended:
  - a) Sections 311, 316, 343B, 343C and 338 of the RMA 1991 need to be provided to all Group Managers as members of the Enforcement Decision Group which has been formed as part of the decision making process set down within the new Enforcement Policy. Each Group Manager's delegations will be updated so that they include the above sections;
  - b) Sections 311, 316, 343B, 343C and 338 of the RMA 1991 also need to be delegated to a new position of 'External Member – Enforcement Decision Group' again for the purpose of carrying out the decision-making process set down within the new Enforcement Policy;
  - c) For consistency, it is also recommended that staff who currently have the delegation of section 338(4) have their delegations updated to the full section 338.
  - d) The RMA 1991 delegations provided to the Group Manager, Community Services require updating following the creation of the new Regulatory Services Group. The delegation changes recommended reflect the work now being undertaken by the restructured Community Services Group;
  - e) The new title of Principal Policy Planner has been added to the positions within the Environmental Planning Team; and
  - f) Council lawyers have suggested that delegations to staff under Schedule 1 Clause 25(1) should be updated to Schedule 1 Clause 25 and enforcement staff should be delegated section 343B.
- 10 For the purpose of implementing the new Enforcement Policy, it is also recommended that the Criminal Procedure Act 2011 and the Summary Proceedings Act 1957 be added to the Council Delegations to the Chief Executive and Staff. It is recommended that these Acts are delegated to the Chief Executive with the power of sub-delegation.

## Financial Considerations

- 11 There are no financial considerations relating to the process of making this amendment.

## Legal Considerations

- 12 This paper sets out the legislative framework for making delegations. This paper has been reviewed by the Council's Senior Legal Counsel. In addition, Simpson Grierson have provided advice regarding some of the recommended amendments.

## Delegation

- 13 The delegations comply with the provisions of the Local Government Act 2002 (clause 32, Schedule 7), which empowers the Council to consider an appropriate governance structure and associated delegations.
- 14 It also meets the requirements of section 10 of the Local Government Act 2002 which prescribes the purpose of local government.
- 15 The delegations will be available to be audited by Council's auditors Ernst and Young during their scheduled audits.

## Consultation

- 16 There are no consultation considerations with what is essentially a procedural process to make appropriate provision for the staff to perform their roles efficiently.

## Policy Implications

- 17 The proposed delegations support the Council's Governance Structure and Delegations.

## RECOMMENDATIONS

- 18 That the Council adopts the amendments to the Resource Management Act 1991 Delegations, shown in Appendix A of Report SP-14-1330 to include the new delegations to the Group Manager positions as well as the addition of the new positions of External Member – Enforcement Decision Group and Principal Policy Planner. Amendments are also recommended to change existing delegations of section 338(4) to section 338, schedule 1 clause 25(1) to schedule 1 clause 25 and the addition of section 343B to enforcement staff.
- 19 That the Council adopts the amendments to the Council Delegations to the Chief Executive and Staff Delegations, shown in Appendix B of Report SP-14-1330 to include the Criminal Procedure Act 2011 and the Summary Proceedings Act 1957.
- 20 That the Council notes that once approved, these amendments will be included in the existing 24 July 2014 Resource Management Act Delegations and the existing 23 January 2014 Council Delegations to the Chief Executive and Staff.

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**Approved for submission by:**

Stephen McArthur  
**Group Manager, Strategy and Partnerships**

**Approved for submission by:**

Sharon Foss  
**Group Manager, Regulatory Services (Acting)**

**ATTACHMENTS:**

- Appendix A Amendment to be included in the Council RMA 1991 Delegations to Staff
- Appendix C Amendment to be included in the Council to Chief Executive and Staff Delegations
- Appendix B Glossary of RMA Sections Delegated to Staff

## Appendix A – Report SP-14-1330

<b>16 October 2014 Amendments to Council delegations to Staff under the Resource Management Act 1991</b>	
<b>Positions</b>	<b>RMA Sections / Schedules to be added to the delegations to the position (See Appendix B for details of sections)</b>
Principal Policy Planner	<p><u>Sections:</u> 10, 10A, 10B, 22, 32, 36AA(1), 37, 37A, 41B, 42A, 44A, 55, 87E, 87F, 87G, 88, 89A, 91, 92, 92A, 92B, 95A-95F, 98, 99, 99A, 100, 101, 102, 103, 104, 104A, 104B, 104C, 104D, 105, 106, 108, 108A, 109, 110, 113, 114, 125, 126, 127, 128, 129, 132, 133A, 139, 171, 173, 174, 195A, 198A-198M, 220, 243, 314-321, 322-324, 323, 325A, 327, 328, 330, 332, 333, 338, 343B, 343C,</p> <p><u>Schedules:</u> Sch 1 Cl 3, Sch 1 Cl 3A, Sch 1 Cl 3B, Sch 1 CL 4, Sch 1 Cl 6, Sch 1 Cl 7, Sch 1 Cl 8, Sch 1 Cl 8AA, Sch 1 Cl 8B, Sch 1 Cl 8C, Sch 1 Cl 11, Sch 1 Cl 16, Sch 1 Cl 16B, Sch 1 Cl 20, Sch 1 Cl 20A, Sch 1 Cl 23, Sch 1 Cl 24, Sch 1 Cl 25, Sch 1 Cl 29(2), Sch 1 CL 34, Sch 1 Cl 35.</p>
Group Manager Infrastructure Services And Group Manger Corporate Services	<p><u>Sections:</u> 311, 316, 343B, 343C, 338,</p>
Group Manager Regulatory Services	<p><u>Sections:</u> 311, 343B, 338</p>
External Member – Enforcement Decision Group	<p><u>Sections:</u> 311,316, 343B, 343C, 338</p>

<b>16 October 2014 Amendments to Council delegations to Staff under the Resource Management Act 1991</b>	
<b>Position</b>	<b>RMA Sections / Schedules to replace the current delegations to this position (See Appendix B for details of sections)</b>
Group Manager Community Services	<p><u>Sections:</u> 311, 316, 333, 343B, 343C, 338</p> <p><u>Note 2:</u> The power to write off sundry debts under the RMA 1991 to the value of \$1,000.</p>

Appendix B: Extract showing amendments to the Council to Chief Executive and Staff Delegations

<p><b>DELEGATIONS MADE BY COUNCIL TO CHIEF EXECUTIVE AND STAFF – OCTOBER 2014</b></p>
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<b>Legislation and Authority</b>	<b>Powers Delegated</b>
<p><b>Criminal Procedure Act 2011 and any regulations made under that Act</b> To the Chief Executive with power of sub-delegation to officers and the Enforcement Decision Group.</p>	<p>Delegation of authority to exercise and administer all responsibilities, duties and powers of the Council under the Act and any regulations made under the Act.</p>

<b>Legislation and Authority</b>	<b>Powers Delegated</b>
<p><b>Summary Proceedings Act 1957 and any regulations made under that Act</b> To the Chief Executive with power of sub-delegation to officers and the Enforcement Decision Group.</p>	<p>Delegation of authority to exercise and administer all responsibilities, duties and powers of the Council under the Act and any regulations made under the Act.</p>

## Appendix C: Glossary of RMA Sections Delegated to Staff

### Resource Management Act 1991

#### Section

10	Certain existing uses in relation to land protected
10A	Certain existing activities allowed
10B	Certain existing building works allowed
22	Duty to give certain information
32	Consideration of alternatives, benefits, and costs
36(3)	Administrative charges - Where a charge fixed in accordance with subsection (1) is, in any particular case, inadequate to enable a local authority to recover its actual and reasonable costs in respect of the matter concerned, the local authority may require the person who is liable to pay the charge, to also pay an additional charge to the local authority.
36(3A)	Administrative charges - A local authority must, upon request by any person liable to pay a charge under this section, provide an estimate of any additional charge likely to be imposed under subsection (3).
36(5)	Administrative charges - A local authority may, in any particular case and in its absolute discretion, remit the whole or any part of any charge of a kind referred to in this section which would otherwise be payable.
36AA(1)	Local authority policy on discounting administrative charges
37	Power of waiver and extension of time limits
37A	Requirements for waivers and extensions
38(5)	Authorisation and responsibilities of enforcement officers - The local authority or Minister shall supply every enforcement officer with a warrant, and that warrant shall clearly state the functions and powers that the person concerned has been authorised to exercise and carry out under this Act.
41B	Directions to provide evidence within time limits
42	Protection of sensitive information
42A	Reports to local authority
44A	Local authority recognition of national environmental standards
55	Local authority recognition of national policy statements
86D	Environment Court may order rule to have legal effect from date other than standard date
87E	Consent authority's decision on request
87F	Consent authority's subsequent processing

87G	Environment Court determines application
<b><u>Section</u></b>	
88	Making an application
89A	Applications affecting navigation to be referred to Maritime New Zealand
91	Deferral pending application for additional consents
92	Further information, or agreement, may be requested
92A	Responses to request
92B	Responses to notification
93	When public notification of consent applications is required
94	When public notification of consent applications is not required
94A	Forming opinion as to whether adverse effects are minor or more than minor
94B	Forming opinion as to who may be adversely affected
94C	Public notification if applicant requests or if special circumstances exist
94D	When public notification and service requirements may be varied
95A	Public notification of consent application at consent authority's discretion
95B	Limited notification of consent application
95C	Public notification of consent application after request for further information or report
95D	Consent authority decides if adverse effects likely to be more than minor
95E	Consent authority decides if person is affected person
95F	Consent authority decides if person is affected order holder
98	Advice of submissions to applicant
99	Pre-hearing meetings
99A	Mediation
100	Obligation to hold a hearing
101	Hearing date and notice
102	Joint hearings by 2 or more consent authorities
103	Combined hearings in respect of 2 or more applications
104	Consideration of applications
104A	Determination of applications for controlled activities
104B	Determination of applications for discretionary or non-complying activities
104C	Determination of applications for restricted discretionary activities



104D	Particular restrictions for non-complying activities
<b><u>Section</u></b>	
104F	Implementation of [national environmental standards]
105	Matters relevant to certain applications
106	Consent authority may refuse subdivision consent in certain circumstances
108	Conditions of resource consents
108A	Bonds
109	Special provisions in respect of bonds or covenants
110	Refund of money and return of land where activity does not proceed
113	Decisions on applications to be in writing, etc
114	Notification
124	Exercise of resource consent while applying for new consent
124A	When sections 124B and 124C apply and when they do not apply
124B	Applications by existing holders of resource consents
124C	Applications by persons who are not existing holders of resource consents
125	Lapsing of consent
126	Cancellation of consent
127	Change or cancellation of consent condition on application by consent holder
128	Circumstances when consent conditions can be reviewed
129	Notice of review
132	Decisions on review of consent conditions
133A	Minor corrections of resource consents
134	Land use and subdivision consents attach to land
138	Surrender of consent
138A	Special provisions relating to coastal permits for dumping and incineration
139	Consent authorities and Environmental Protection Authority to issue certificates of compliance
139A	Consent authorities to issue existing use certificates
149B	Local authority's obligations if matter called in
149G	EPA must provide board or Court with necessary information
149Q	Board to produce draft report

**Section**

149W	Local authority to implement decision of board or Court about proposed regional plan or change or variation
149ZD	Costs of processes under this Part recoverable from applicant
168	Notice of requirement to territorial authority
168A	Notice of requirement by territorial authority
169	Further information, notification, submissions, and hearing for notice of requirement to territorial authority
171	Recommendation by territorial authority
173	Notification of decision on designation
174	Appeals
175	Designation to be provided for in district plan
176	Effect of designation
176A	Outline plan
178	Interim effect of requirements for designations
181(3)	Alteration of designation - Circumstances where a territorial authority may alter a designation in its district plan.
184	Lapsing of designations which have not been given effect to
189A	Notice of requirement for heritage order by territorial authority
190	Further information, notification, submissions, and hearing for notice of requirement to territorial authority
193	Effect of heritage order
194	Interim effect of requirement
195A	Alteration of heritage order
198A	Sections 198B to 198G apply to requirements under section 168 or 189
198B	Requiring authority or heritage protection authority's request
198C	Territorial authority's decision on request
198D	Territorial authority's subsequent processing
198E	Environment Court decides
198F	Residual powers of territorial authority
198G	When territorial authority must deal with requirement
198H	Sections 198I to 198M apply to requirements under section 168A or 189A
198I	Territorial authority's decision

198J	Territorial authority's subsequent processing
<b><u>Section</u></b>	
198K	Environment Court decides
198L	Residual powers of territorial authority
198M	When territorial authority must deal with requirement
220	Condition of subdivision consents
221	Territorial authority to issue a consent notice
222	Completion certificates
223	Approval of survey plan by territorial authority
224	Restrictions upon deposit of survey plan
226(1)(e)	Restriction upon issue of certificates of title for subdivision - [The Registrar-General of Land] shall not issue a certificate of title for any land that is shown as a separate allotment on a survey plan (being a certificate issued to give effect to the subdivision shown on that survey plan), unless he or she is satisfied, after due inquiry, that— The territorial authority has [given a certificate signed by the principal administrative officer or other authorised officer to the effect]— (i) That there is no district plan for the area to which the survey plan relates, and that the allotment is in accordance with the requirements and provisions of the proposed district plan; or ii) That the allotment is in accordance with the requirements and provisions of the district plan and the proposed district plan (if any) for the area to which the survey plan relates; or (iii) That the allotment is in accordance with a permission or permissions granted under Part 2 or Part 4 of the Town and Country Planning Act 1977.
227	Cancellation of prior approvals
234	Variation or cancellation of esplanade strips
235	Creation of esplanade strips by agreement
237	Approval of survey plans where esplanade reserve or esplanade strips required
237B	Access strips
237C	Closure of strips to public
237D	Transfers to the Crown or regional council
237E	Compensation for taking of esplanade reserves or strips on allotments of less than 4 hectares
237F	Compensation for taking of esplanade reserves or strips on allotments of 4 hectares or more
237G	Compensation for taking of land below mean high water springs or of bed of lake or river
237H	Valuation

240	Covenant against transfer of allotments
<b><u>Section</u></b>	
241	Amalgamation of allotments
243	Survey plan approved subject to grant or reservation of easements
311	Application for declaration
314	Scope of enforcement order
315	Compliance with enforcement order
316	Application for enforcement order
317	Notification of application
318	Right to be heard
319	Decision on application
320	Interim enforcement order
321	Change or cancellation of enforcement order
322	Scope of abatement notice
323	Compliance with abatement notice
324	Form and content of abatement notice
325A	Cancellation of abatement notice
327	Issue and effect of excessive noise direction
328	Compliance with an excessive noise direction
330	Emergency works and power to take preventive or remedial action
332	Power of entry for inspection
333	Power of entry for survey
336	Return of property seized under sections 323 and 328
338	Offences against this Act
343B	Commission of infringement offence
343C	Infringement notices

## Schedule 1 Preparation, change, and review of policy statements and plans

### Clause

- 3 Consultation
- 3A Consultation in relation to policy statements
- 3B Consultation with iwi authorities

### Clause

- 4 Requirements to be inserted prior to notification of proposed district plans
- 6 Making of submissions
- 7 Public notice of submissions
- 8 Certain persons may make further submissions
- 8AA Resolution of disputes
- 8B Hearing by local authority
- 8C Hearing not needed
- 11 Notification of decision
- 15 Hearing by the [Environment Court]
- 16 Amendment of proposed policy statement or plan
- 16B Merger with proposed policy statement or plan
- 20 Operative date
- 20A Correction of operative policy statement or plan
- 23 Further information may be required
- 24 Modification of request
- 25 Local authority to consider request
- 29(2) Procedure under this Part
- 34 Consultation on proposal to incorporate material by reference
- 35 Access to material incorporated by reference