

Mayor and Councillors
COUNCIL

29 SEPTEMBER 2016

Meeting Status: **Public**

Purpose of Report: For Decision

REGULATORY ARRANGEMENTS DURING THE TRANSITION TO THE 2016-2019 TRIENNIUM

PURPOSE OF REPORT

- 1 This report proposes arrangements enabling the Council to continue a number of regulatory functions during the transition to the new triennium.

DELEGATION

- 2 Only Council has the authority to consider this matter.

BACKGROUND

- 3 Voting in the local body elections closes on Saturday 8 October and final results are expected to appear in the Dominion Post on Friday 14 October. Section 115 of the Local Electoral Act 2001 says "*Candidates at a triennial general election who are declared to be elected come into office on the day after the day on which the official result of the election is declared by public notice under section 86.*"
- 4 This means that current Elected Members will go out of office on 14 October and newly-Elected Members will come into office on Saturday 15 October 2016. However they cannot act as Elected Members until they have made and signed a declaration at a public meeting, which is scheduled for Tuesday 25 October. Decisions on the new governance structure, including appointments to key roles (chairs of committees etc) are expected to occur on Thursday 27 October.
- 5 Although the period where there are in effect no decision-makers is short (two weeks but possibly longer), it would be prudent to allow for the continuation of Council business by making arrangements now, for the areas of:
 - Alcohol licensing
 - Resource consent hearings and associated matters
 - Continuation of the Proposed District Plan (PDP) hearings
 - Continuation of Joint Committees
- 6 It is not unusual for councils to put in place such arrangements for the period between election results being announced and the first public meeting of elected members.

ISSUES AND OPTIONS

Issues

Alcohol licensing matters

- 7 Under Section 186 of the Sale and Supply of Alcohol Act 2012 the Council must appoint a District Licensing Committee (DLC).
- 8 Section 189 of the Act stipulates that the DLC must consist of a chairperson and two members drawn from a list. The chairperson must be either an elected member or a commissioner appointed to the DLC.
- 9 The current Chair, Cr Diane Ammundsen, being an Elected Member, will cease to be Chair once she leaves office on 15 October 2016. The implication is that alcohol licences could not be granted during the hiatus period. Therefore it is proposed that the Council appoint an independent commissioner for this period. Cr Ammundsen is not seeking re-election but has indicated she is willing to be considered by Council as a commissioner for the interim period.
- 10 The current five list members of the DLC were appointed for a term of five years (up to November 2018); therefore they will remain in power during this period.
- 11 Section 193 (2) of the Act requires that a person being considered for appointment as a commissioner must be of good standing in the community and have the necessary knowledge, skill, and experience relating to DLC matters.

Resource Consent hearings and Proposed District Plan (PDP) hearings

- 12 The delegations for Council's resource management powers are under section 34A of the Resource Management Act 1991. Section 34A(1) of the RMA provides that Council *may delegate to a ... 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*
- 13 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*
- 14 The delegated authority of the present Regulatory Management Committee, including the authority of the Chair of that Committee to appoint hearing commissioners, will cease on 14 October 2016.
- 15 In order to ensure that the resource management functions of Council are maintained during the transition period following the election, the Council needs to make appropriate arrangements, including the appointment of hearing commissioners for any resource consent hearings.

- 16 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
- 17 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 independent commissioners rather than in their capacity as elected members. Members with RMA accreditation currently include Diane Ammundsen, Murray Bell, Mike Cardiff, Jackie Elliott, K. (Guru) Gurunathan, Janet Holborow, as well as Community Board members Jocelyn Prvanov and Fiona Vining. Diane Ammundsen, Murray Bell and Janet Holborow have Chairing endorsement.
- 18 The Council may reassess the membership of any hearing panels after the first meeting of the new triennium.
- 19 In December 2015 the Elected Member hearing commissioners Cr Diane Ammundsen and Cr Mike Cardiff had their term as hearing commissioners extended past the end of the current triennium until 23 December 2016, to provide contingency should PDP hearings and recommendations have to be considered post-election. This period will have to be extended again, to 30 April 2017, for Diane Ammundsen and Mike Cardiff (as independent hearing commissioners). The appointments of the independent Commissioners Alistair Aburn, David McMahon and Miria Pomare did not have an end date specified at their appointment.

Joint Committees

- 20 The Council is a member of a number of Joint Committees:
- (a) The Wellington Regional Amenities Fund
 - (b) The Wellington Region Waste Management and Minimisation Plan
 - (c) The Wellington Regional Strategy
 - (d) The Wellington Regional Transport Committee
- 21 Legislative provisions establish that any joint committee is deemed to be a committee of each member local authority, and that unless resolved to the contrary by the member authorities, any joint committee is deemed discharged at the end of the triennium (see Appendix 1 for relevant legislative extract). The recommendations at the end of this report propose that three joint committees (as well as the District Licensing Committee (DLC)) be deemed to be not discharged at the end of the Triennium. The Regional Transport Committee is convened under a different piece of legislation (the Land Transport Management Act 2003) which requires each regional council to convene a joint transport committee anew at the beginning of each Triennium.

- 22 Council will be asked to appoint representatives to the Joint Committees and all other decision-making bodies at the beginning of the new Triennium. Membership of Joint Committees will be part of the Governance Structure and Delegations report going to Council in late October.
- 23 With regard to the Wellington Regional Amenities Fund (WRAF), Council consulted on the proposal to continue funding contributions to the Fund as part of the 2016/17 Annual Plan consultation process. After taking into account submissions, the Council resolved to continue with funding, contingent on the results of research commissioned by the Joint Committee into the effectiveness of the Fund in reaching its objectives across the region. The comprehensive results of that research is expected to be reported to a future Council meeting.

CONSIDERATIONS

Policy considerations

- 24 There are no policy considerations as this is a procedural matter.

Legal considerations

- 25 Legal considerations have been discussed for each issue, and legislative extracts can be found at Appendix 1.

Financial considerations

- 26 The Chair of the DLC position is remunerated, as are the PDP Hearing Commissioners. There is sufficient budget to meet these costs. Costs of resource consent hearings are recovered from the applicant.

Tāngata whenua considerations

- 27 There are no tāngata whenua considerations.

SIGNIFICANCE AND ENGAGEMENT

Degree of significance

- 28 As this is a procedural matter to ensure continuance of governance during the transition between triennia it has a low level of significance under Council policy.

Engagement planning

- 29 An engagement plan is not needed to implement this decision.

Publicity

- 30 The decisions will be posted to the Council website.

RECOMMENDATIONS

That Council:

- (a) Pursuant to section 193 of the Sale and Supply of Alcohol Act 2012, authorises the Chief Executive to appoint Diane Ammundsen as an independent Commissioner to the role of Chair of the District Licensing Committee, from 15 October 2016 until such time as a new Chair is appointed by the newly-elected Council;
- (b) Resolves that the District Licensing Committee is deemed not to be discharged at the end of the 2013-2016 Triennium, pursuant to Schedule 7, clause 30(7) of the Local Government Act 2002;
- (c) Extends the appointments of:
 - (i) Diane Ammundsen and
 - (ii) Mike Cardiffas Independent Hearing Commissioners for the Proposed District Plan (PDP) hearings until 30 April 2017;
- (d) Confirms for the avoidance of doubt, the hearings panel for the PDP as a whole is to continue for the purpose of deliberation and making its recommendations on the PDP and submissions notwithstanding the coming into office of the members of the Kapiti Coast District Council elected or appointed at, or following, the triennial general election of members.
- (f) Appoints, as independent hearing commissioners for resource consent applications as per the relevant provisions of the Resource Management Act 1991 until the Council resolves to discharge them of their duties:
 - i. Diane Ammundsen
 - ii. Murray Bell
 - iii. Janet Holborow
- (g) Authorises the Group Manager Regulatory Services (or in his absence the Chief Executive) the ability to appoint independent commissioners where this is specifically sought under section 100A of the Resource Management Act 1991, until such time as the function is formally delegated by the newly-elected Council;
- (h) Resolves that the following Joint Committees be deemed not to be discharged at the end of the 2013-2016 Triennium pursuant to Schedule 7, clause 30(7) of the Local Government Act 2002:
 - (i) The Wellington Regional Amenities Fund
 - (ii) The Wellington Region Waste Management and Minimisation Plan
 - (iii) The Wellington Regional Strategy

Report prepared by

Approved for submission

Approved for submission

Vyvien Starbuck-Maffey

Kevin Currie

Wayne Maxwell

**Democracy Services
Manager**

**Group Manager
Regulatory Services**

**Group Manager
Corporate Services**

ATTACHMENT

Appendix 1 Extracts from relevant legislation

APPENDIX 1

Legislative extracts Sale and Supply of Alcohol Act 2012

189 Composition of licensing committees

- (1) Each licensing committee consists of 3 members appointed by the territorial authority for that territorial authority's district.
- (2) a territorial authority must appoint 1 member as the chairperson and that person must be a member of that territorial authority or a commissioner appointed to the licensing committee.

[...]

- (6) The other 2 members of each licensing committee must be appointed from the territorial authority's list maintained under section 192.

193 Appointment of commissioners

- (1) The chief executive of a territorial authority may, on the recommendation of the territorial authority, appoint a commissioner or commissioners to any of the territorial authority's licensing committees and any person so appointed has all the functions, powers, and duties of the chairperson of the licensing committee.
- (2) The chief executive may only appoint a person as a commissioner if that person is of good standing in the community and has the necessary knowledge, skill, and experience relating to matters that are likely to come before the committee.
- (3) A person must not be appointed as a commissioner if-
 - (a) the territorial authority believes that person has, directly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias or the appearance of bias; or
 - (b) the person is a constable, a Medical Officer of health, an inspector, or an employee of the territorial authority.
- (4) A commissioner appointed under this section holds office for a term, stated when the commissioner is appointed, of up to 5 years and may be reappointed for 1 or more further periods of up to 5 years.

194 Resignation or removal

[...]

- (2) A chairperson of a licensing committee ceases to be a chairperson if he or she ceases to be a member of the licensing committee's territorial authority.

Local Government Act 2002

Schedule 7, Clause 30 Power to appoint committees, subcommittees, other subordinate decision-making bodies, and joint committees

(1) A local authority may appoint-

(a) the committees, subcommittees, and other subordinate decision-making bodies that it considers appropriate; and

(b) a joint committee with another local authority or other public body in accordance with clause 30A.

[...]

(5) Unless expressly provided otherwise in an Act-

(a) a local authority may discharge or reconstitute a committee or subcommittee or other subordinate decision-making body; and

(b) a committee may discharge or reconstitute a subcommittee.

[...]

(7) 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.

Schedule 7, Clause 30A Joint committees

(1) A local authority may not appoint a joint committee under clause 30(1)(b) unless it has first reached agreement with every other local authority or public body that is to appoint members of the committee.

(2) An agreement under subclause (1) must specify—

(a) the number of members each local authority or public body may appoint to the committee; and

(b) how the chairperson and deputy chairperson of the committee are to be appointed; and

(c) the terms of reference of the committee; and

(d) what responsibilities (if any) are to be delegated to the committee by each local authority or public body; and

(e) how the agreement may be varied.

(3) An agreement under subclause (1) may also specify any other matter relating to the appointment, operation, or responsibilities of the committee that the parties agree.

(4) A local authority or public body must not enter into an agreement under subclause (1) that is inconsistent with any enactment applying to that local authority or public body, or its members.

(5) A joint committee appointed under clause 30(1)(b) is deemed to be both a committee of the appointing local authority and a committee of each other local authority or public body that has appointed members to the committee.

(6) This Part applies to a joint committee except that—

(a) the powers to discharge any individual member and appoint another in his or her stead must be exercised by the local authority or public body that made the appointment; and

(b) the quorum at a meeting of the committee consists of—

(i) half of the members if the number of members (including vacancies) is an even number; or

(ii) a majority of members if the number of members (including vacancies) is an odd number; and

(c) the following matters may be varied by an agreement under subclause (1):

(i) the procedure by which the chairperson and deputy chairperson are to be appointed:

(ii) the procedure by which the chairperson or deputy chairperson may be removed from that office:

(iii) whether a quorum must include 1 or more members appointed by each party, or any party:

(iv) the extent to which the standing orders of any local authority or public body apply to meetings of the joint committee.

(7) Nothing in this clause applies to a joint committee constituted or continued by, or required to be constituted or continued by, an enactment other than this Act.

Land Transport Management Act 2003

Section 105 Regional transport committees

(1) As soon as practicable after each triennial election, every regional council must establish a regional transport committee under this section for its region.

(2) Each regional council must appoint to its regional transport committee—

(a) 2 persons to represent the regional council; and

(b) 1 person from each territorial authority in the region to represent that territorial authority; and

(c) 1 person to represent the Agency; and

(d) [Repealed]

(e) [Repealed]

(f) [Repealed]

(g) [Repealed]

(h) [Repealed]

(i) [Repealed]

(3) Each regional council that is a unitary authority, or a combination of unitary authorities (as the case may be), must appoint to its regional transport committee—

(a) 4 persons to represent the unitary authority; and

(b) 1 person to represent the Agency; and

(c) [Repealed]

(d) [Repealed]

(e) [Repealed]

(f) [Repealed]

(g) [Repealed]

(h) [Repealed]

(4) A person specified in subsection (2)(a) to (c) and (3)(a) and (b) may only be appointed on the nomination of the relevant entity.

(5) [Repealed]

(6) Each regional council must appoint from its representatives the chair and deputy chair of the committee.

(7) At any meeting of a regional transport committee, the chair, or any other person presiding at the meeting,—

(a) has a deliberative vote; and

(b) in the case of an equality of votes, does not have a casting vote (and therefore the act or question is defeated and the status quo is preserved).

(8) [Repealed]

(9) Despite subsections (1) to (3), 2 or more adjoining regional councils or Auckland Transport and 1 or more adjoining regional councils may agree in writing to establish a joint regional transport committee and prepare a regional land transport plan, in which case subsections (4), (6), and (7) apply with all necessary modifications.

(9A) Despite subsections (1) to (3), the parties to a joint regional transport committee established under subsection (9) must appoint to the committee—

(a) 2 persons to represent each regional council that is a party to the agreement:

(b) 1 person to represent each territorial authority in the region of each regional council that is a party to the agreement:

(c) 1 person to represent the Agency:

(d) 2 persons to represent Auckland Transport if Auckland Transport is a party to the agreement.

(9B) The agreement to establish a joint regional transport committee must specify the procedure for appointing the chair and deputy chair of the committee.

(9C) The chair and deputy chair of a joint regional transport committee established under subsection (9) must,—

(a) in the case of a joint regional transport committee made up of adjoining regional councils, both be persons who represent a regional council:

(b) in the case of a joint regional transport committee made up of Auckland Transport and adjoining regional councils, both be persons who represent Auckland Transport or a regional council.

(10) If a regional transport committee is established under subsection (9), any reference in Part 2 to a regional council is to be read as a reference to each of the regional councils that have established the committee.

(10A) If Auckland Transport establishes a joint regional transport committee with 1 or more adjoining regional councils under subsection (9), any reference to a regional council in Part 2 must be treated as a reference to Auckland Transport and each of those adjoining regional councils.

(10B) If a joint regional transport committee is established under subsection (9), references to a region in Part 2 must be treated as references to each of the regions that are represented on the joint regional transport committee.

(11) If the area of a territorial authority falls into the regions of more than 1 regional council, the territorial authority must decide (after consulting the relevant regional councils) which regional transport committee to join.

(12) If subsection (11) applies, and a territorial authority fails to decide to join a regional transport committee, the Minister must direct the territorial authority to be represented by a particular regional transport committee.

(13) [Repealed]

(14) For the purposes of subsection (11), **region** has the same meaning as in section 5(1) of the Local Government Act 2002.

(15) Nothing in this section applies to the Auckland Council or Auckland.