

Report 05.256
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Committee Rural Services and Wairarapa
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Delegations for conducting resource consent hearings

1. Purpose

To sub-delegate to the Chairperson of the Rural Services and Wairarapa Committee certain powers relating to conducting hearings for resource consent applications that are notified under 93(1) or 94(1) of the Resource Management Act 1991 (RMA) and require a hearing.

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

On Tuesday, 17 May 2005, the Council delegated to the Environment and Wairarapa and Rural Services Committees certain powers relating to hearing and deciding on resource consent applications that are notified under section 93(1) or 94(1) of the RMA and require a hearing (**Attachment 1**).

The report containing these delegations (Report 05.214) also stated that officers would recommend to the Environment and Rural Services and Wairarapa Committees that they sub-delegate some of their powers relating to conducting resource consent hearings to their respective Committee Chairperson and the appropriate Divisional Manager jointly. On 26 May 2005, the Environment Committee decided instead to sub-delegate its powers relating to conducting resource consent hearings to the Chairperson of the Environment Committee alone.

4. Comments

4.1 Delegations to committee chairperson

To ensure consistency of approach across the Council, it is recommended that the Rural Services and Wairarapa Committee sub-delegate to the Chairperson

of the Rural Services and Wairarapa Committee the same powers as the Environment Committee sub-delegated to its Chairperson on 26 May 2005:

- 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.
- The power to determine the appropriate commissioner or composition of each hearing panel or hearing sub-committee.
- The power to delegate to a hearing panel or hearing sub-committee the authority to hear and decide on a resource consent application. Where a hearing panel or hearing sub-committee cannot reach a unanimous decision on a resource consent application, the Rural Services and Wairarapa Committee must hear and decide on the resource consent.

It should be noted that subsection (3) of section 34 of the RMA requires delegations to commissioners or hearing panels to be made through the chief executive. The chief executive will therefore need to sign off any delegation to commissioners/hearing panels until such time as this is no longer legislated for. The Ministry for the Environment has proposed that this section be changed as part of the amendment to the RMA, which is due to be passed before September 2005.

4.2 Rules for using a hearing sub-committee or a hearing panel

Consent hearings shall be conducted by either:

- a) a hearing sub-committee that is established under section 34 of the Resource Management Act 1991, or
- b) a single commissioner or hearing panel that is appointed under section 34A of the Resource Management Act 1991.

The rules for when a hearing sub-committee or a hearing panel shall hear and decide on a resource consent application are set out below. It is recommended that the Committee Chairperson makes every effort to adhere to these rules when making decisions on conducting resource consent hearings.

4.2.1 Hearing panels

A hearing panel shall 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 along with commissioners and 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 Resource Management Act 1991, they will be remunerated in line with the rates set by the Remuneration Authority for councillors.

4.2.2 Appointing a pool of commissioners

Both the Environment and Rural Services and Wairarapa Committees have the power to appoint a pool of commissioners from which a single commissioner or hearing panel is selected. We would suggest, however, that the committees ask the Council to appoint the pool of commissioners from which both the Chairperson of the Environment Committee and the Chairperson of the Rural Services and Wairarapa Committee can select commissioners. It would be appropriate to do this once the consent review has been completed. Establishing one big pool of commissioners will increase efficiency and provide more flexibility.

4.2.3 Hearing sub-committees

A sub-committee¹ shall 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.

4.3 Conditions of delegation and sub-delegation

All delegations and sub-delegations are subject to the general conditions provided in **Attachment 2**.

¹ 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.

It is suggested that the Rural Services and Wairarapa Committee limit the ability of the Chairperson of the Rural Services and Wairarapa Committee to sub-delegate his powers relating to conducting hearings for resource consent applications to the Deputy Chairperson of the Rural Services and Wairarapa Committee.

4.4 Rural Services and Wairarapa Committee can only exercise the powers it sub-delegates in certain circumstances

The Rural Services and Wairarapa Committee retains any of the powers it sub-delegates. However, the Committee should only make a decision relating to the powers it sub-delegates when the person or people the powers have been sub-delegated to determine that the decision should be made by the Committee. In this instance, the Committee would be making a decision *in place* of the person/people originally designated to make the decision. The Committee cannot rescind a decision that has already been made.

4.5 Rural Services and Wairarapa Committee to deal with consents for Wairarapa area

While not formally part of the delegation, it is expected that the Rural Services and Wairarapa Committee will deal with consents in the Wairarapa and the Environment Committee will deal with resource consents in the Western part of the region. No formal restriction is proposed so that there is greater flexibility should the need arise.

5. Communication

There is no need to communicate these delegations externally. They will, however, be recorded in Greater Wellington's register of delegations and all the relevant divisions will be notified of any changes.

6. Recommendations

That the Rural Services and Wairarapa Committee:

- (1) **Revokes** the previous delegations it made to the Chairperson of the Rural Services and Wairarapa Committee and the Divisional Manager, Wairarapa in relation to hearing and deciding on resource consent applications.
- (2) **Delegates** to the Chairperson of the Rural Services and Wairarapa Committee, Rick Long, the following powers in relation to conducting hearings for resource consent applications that have been notified under section 93(1) or 94(1) of the Resource Management Act 1991 and require a hearing:
 - (i) The power to establish a hearing panel where required.
 - (ii) The power to establish a hearing sub-committee where required.

- (iii) *The power to choose, on a case-by-case basis, whether to conduct a hearing through a single commissioner, or a hearing panel, or a hearing sub-committee.*
 - (iv) *The power to decide, on a case-by-case basis, the appropriate commissioner or composition of each hearing panel or hearing sub-committee.*
 - (v) *The power to 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 consent applications. Where a hearing panel cannot reach a unanimous decision on a resource consent application, the Rural Services and Wairarapa Committee must hear and decide on the resource consent.*
 - (vi) *The power to 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 consent applications. Where a hearing sub-committee cannot reach a unanimous decision on a resource consent application, the Rural Services and Wairarapa Committee must hear and decide on the resource consent.*
- (3) ***Notes** that the Chairperson of the Rural Services and Wairarapa Committee will exercise the powers in (2) above in consultation with the Divisional Manager, Wairarapa.*
 - (4) ***Notes** that the chief executive will sign off any delegation to a commissioner or commissioners until the RMA is amended.*
 - (5) ***Limits** the ability of the Chairperson of the Rural Services and Wairarapa Committee to sub-delegate his powers relating to conducting hearings for resource consent applications to the Deputy Chairperson of the Rural Services and Wairarapa Committee.*
 - (6) ***Requires** the Chairperson of the Rural Services and Wairarapa Committee to note the rules on when to use a single commissioner, hearing sub-committee or hearing panel as set out in 4.2 of this report when exercising the powers given to him in 2 above.*
 - (7) ***Stipulates** that the delegations set out in Report 05.256 be subject to the general conditions provided in **Attachment 2** to report 05.256.*

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