



Report 09.599
Date 24 September 2009
File E/01/06/27

Committee Council
Author Francis Ryan, Manager Secretariat

Resource Management (Simplifying & Streamlining) Amendment Act 2009 - proposed delegations

1. Purpose

To propose an approach to delegations under the Resource Management Act 1991 (RMA) in regard to the changes coming into effect on 1 October 2009 under the Resource Management (Simplifying & Streamlining) Amendment Act 2009 (RMAA).

2. Significance of the decision

The matters for decision 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

The RMAA 2009 is the first step in the Government's broader programme of resource management reforms. The focus of the RMAA 2009 is to both simplify and streamline most processes in relation to consent processing, but also in plan development and enforcement areas.

The intent of the RMAA 2009 is to improve processes for both councils and applicants.

The RMAA 2009 comes into force on 1 October 2009.

4. Comment

4.1 Interpretation

The RMAA 2009 is the outcome of a review which was centred around eight major themes:

- Reducing the ability for the RMA to be used for making frivolous, vexatious or anti-competitive objections and appeals

- Reducing the costs and time it takes to make decisions on proposals of national significance
- Establishing an Environmental Protection Agency (EPA) to process applications for proposals of national significance in a timely and efficient manner
- Improving plan development and plan change processes to reduce the time and cost associated with preparing and changing policy statements and plans
- Improving the resource consent process to reduce the cost and time faced by applicants while maintaining an appropriate level of public participation
- Streamlining the preparation, and improving the effectiveness of, national instruments, including national policy statements and national environmental standards
- Improving the effectiveness and deterrent effect of enforcement and compliance mechanisms
- Increasing the efficiency and workability of RMA decision-making processes.

4.2 Current delegations

Under the Council's overall approach to delegations, the Chief Executive has been delegated all of the Council's powers, functions and duties except for those that:

- the Council cannot delegate under statute, and
- the Council has retained the sole right to exercise, or
- the Council has delegated to a committee, subcommittee or to a member or other officer.

Under the current delegations framework for the RMA, the Council has delegated specific powers to:

- the Regulatory Committee relating to resource consent charging, hearing arrangements and decision-making,
- the Chairperson of the Regulatory Committee regarding resource consent hearing arrangements, and
- the Natural Resource Management Plan Development Committee regarding the preparation of proposed plans.

4.3 Proposed delegations

It is proposed that the existing delegations be amended to reflect the changes arising from the RMAA 2009.

4.3.1 Powers retained by Council

There are a number of powers under the RMA that Council has decided to retain (Report 04.701 refers). As a result of the amendments coming into effect on 1 October 2009 the following two powers previously retained by Council have been repealed:

- Section 16(2) - the right of a local authority to prescribe noise emission standards in plans. This section has been replaced by a provision that generally enables the prescription of noise emission standards.
- Section 20(1) - the power to resolve that a rule in a plan does not have effect until the plan becomes operative. This section has been replaced with new provisions that set out when rules come into effect.

From 1 October 2009 the new section 36AA(3) of the RMA will provide Council with the power to adopt a policy to discount administrative charges under certain circumstances. Officers consider it appropriate that that Council retain this power.

Officers also recommend that the Council retain the power under the new section 80 of the RMA to make a decision to prepare, implement and administer combined regional and district documents.

4.3.2 Regulatory Committee

The Regulatory Committee's power under section 117(6)(b) of the RMA to make a recommendation to the Minister of Conservation on an application for a restricted coastal activity has been repealed. In its place, a new section 117(7) requires the consent authority to delegate its functions, duties and powers required to hear and decide an application for a restricted coastal activity, to one or more persons, including one person nominated by the Minister of Conservation.

The Regulatory Committee and the Chairperson of the Regulatory Committee already have the delegated authority to establish panels or appoint single commissioners and to provide each panel or commissioner with the power to hear and decide on resource consent applications. It is proposed that this authority be extended so that the Regulatory Committee and the Chairperson of the Regulatory Committee also have the delegated authority to provide the panel or commissioner with the power to hear and decide on a restricted coastal activity application.

It is also proposed that the Committee be delegated power under section 37(1) to extend a time period or waive compliance with a requirement, and under section 37A(5) to extend a time period so that the extended time period exceeds twice the maximum time period specified in the RMA.

Attachment 1 shows the proposed delegation changes for the Regulatory Committee and Chairperson of the Regulatory Committee.

5. Communication

No further communication is required.

6. Recommendations

That the Council:

1. *Receives the report.*
2. *Notes the content of the report.*
3. *Agrees that the Council should retain the powers under sections 36AA(3) and 80 of the RMA.*
4. *Approves the amended delegations to the Regulatory Committee and Chairperson of the Regulatory Committee, as set out in Attachment 1.*
5. *Agrees that any remaining powers, functions or duties under the RMA not retained by the Council or delegated by the Council to a committee or the Chairperson of the Regulatory Committee should be exercised by the Chief Executive or his delegates.*

Report prepared by

Report approved by

Francis Ryan
Manager, Secretariat

Jane Bradbury
Divisional Manager,
Corporate and Strategy

Attachment 1: Proposed amended terms of reference for Regulatory Committee and delegations to the Chairperson of the Regulatory Committee

Regulatory Committee

Purpose

- A. Promote the sustainable management of the region's natural and physical resources, particularly their use, development and protection, by overseeing the Council's regulatory responsibilities in relation to resource management.
- B. Oversee the regulation of the harbours and coastal waters of the region for navigation and safety purposes.

Specific responsibilities

- 1. Consider and determine applications for resource consents in the region.
- 2. Appoint hearing panels, subcommittees and commissioners to hear and determine notified resource consents that require a hearing.
- 3. Ensure the Council adheres to national policy statement, environmental standards and other regulatory requirements.
- 4. Monitor the state of the environment in the region.
- 5. Monitor the implementation of regional plans, compliance with the Resource Management Act 1991 and the Council's programme of oversight of resource consents, taking enforcement action when required.
- 6. Monitor Council delivery of:
 - a. the provision and maintenance of navigational aids;
 - b. a maritime communication service; and
 - c. the enforcement of maritime safety regulations in the region's harbours and coastal waters.
- 7. Monitor the provision of an effective pollution/incident response service for land, freshwater, air, harbours and coastal waters.
- 8. Ensure that Council carries out its responsibilities under the Building Act 2004.

Membership

- 1. Up to eight councillors, including the Council chairperson *ex officio*.

2. An appointed member nominated by Ara Tahi to represent the interests of the Iwi of the region.
1. Such other members appointed by Council, when the committee considers that it could function more effectively by having such appointed members.

Quorum

Four councillors.

Delegated Powers

Council delegates the following statutory powers to the Regulatory Committee:

Resource Management Act 1991	
The power to decide on charges for resource consents as outlined below.	
Section of Act	Power, Function, Duty
36(3)	Require the person who is liable to pay the charge fixed in accordance with s36(1) to also pay an additional charge to the Council where that charge is above the amount council staff can charge in Council's charging policy. Additional payment can only be required where the initial charge is inadequate to enable a local authority to recover its actual and reasonable costs in respect of the matter concerned
36(5)	Remit the whole or any part of any charge of a kind referred to in this section which would otherwise be payable where the charge is above the amount council staff can remit in Council's charging policy.
37(1)	Extend a time period specified in the Act or in regulations; and waive compliance of time or requirement to provide information, or method of service of documents
37A(5)	Extend a time period so that the extended time period exceeds twice the maximum time period specified in the Act.
The power to decide whether or not to include consequential alterations arising out of submissions as outlined below.	
Section of Act	Power, Function, Duty
Schedule 1, cl 10(2)	When making a decision for the purposes of Schedule 1, decide whether or not to include any consequential alterations arising out of submissions and any other relevant matters considered relating to matters raised in submissions
The power to hear and decide on resource consents. This includes the specific powers set out below.	
Section of Act	Power, Function, Duty
40(3)	Elect to proceed with a hearing in the absence of an applicant or submitter, if it is fair and reasonable to do so

41(4)	Request and receive, from any person who makes a report under s42A of the Act, or who is heard by the authority or who is represented at the hearing, any information or advice that is relevant and reasonably necessary to determine the application
42(1), 42(2)	By a motion made by the Committee or on the application of any party to any proceedings, make an order that the whole or part of any hearing shall be conducted with the public excluded, in certain circumstances (detailed in provision)
42A(2)	Consider any report of the type referred to in s42A(1) at a hearing
102(3)	Jointly or separately decide applications where those applications are heard jointly
104, 104A, 104B, 104C, 104D	Grant or refuse (except in the case of applications for controlled activities) resource consent applications where the application is notified or notice is served
104F	Where an application is notified or notice is served, grant the application with or without conditions, or decline it, as necessary to implement any regulations made in accordance with s43 of the Act in relation to climate change
107(2), 107(3)	Where an application is notified or notice is served, grant a consent to a discharge that would otherwise contravene s15 of the Act in certain circumstances (listed in provision). Any such consent may be subject to certain conditions requiring the applicant to undertake work in stages throughout the term of the permit
108, 108A	Where an application is notified or notice is served, impose any condition considered reasonable upon a resource consent, including the provision of a bond or financial contribution
131(2)	As the result of a review of consent conditions, include a condition requiring the holder of a discharge consent or coastal permit to adopt the best practicable option to remove or reduce any adverse effect on the environment. This only applies to applications that are notified or require notice to be served
138A(1)	At any reasonable time before the hearing (or, if there is no hearing, the determination) of an application for discharge that would otherwise contravene s15A(1), by written notice to the applicant, require the applicant to provide, by way of further information, an explanation of those matters. This only applies to applications that are notified or require notice to be served
357D	Uphold or reject an objection in respect of a relevant decision under section 357
369(4)	Grant a discharge permit, or a coastal permit to do something that would otherwise contravene s15, that does not meet the minimum standards of water quality as required by a regional rule, in certain circumstances (listed in the provision)
The power to appoint a commissioner or commissioners.	

The power to establish a hearing panel where required.
The power to establish a hearing subcommittee where required.
The power to choose on a case by case basis whether to conduct a hearing through a single commissioner, hearing panel, or a hearing subcommittee.

The power to decide on a case by case basis the composition of a hearing panel or hearing subcommittee or appropriate commissioner.
The power to delegate to hearing subcommittees or hearing panels (the composition of which is to be determined on a case by case basis) or commissioners the power to hear and decide on resource consent and restricted coastal activity applications.

Delegation to Chairperson (Report 08.262):

The Council delegates to the Chairperson of the Regulatory Committee, Cr Sally Baber, the following powers, which are to be exercised in consultation with the Divisional Manager, Environment Management:

- The authority to appoint appropriately qualified people to act as commissioners on behalf of the Council.
- The power to establish a hearing panel.
- The power to choose, on a case-by-case basis, whether to conduct a hearing through a single commissioner, or a hearing panel.
- The power to decide, on a case-by-case basis, the appropriate commissioner or composition of each hearing panel.

Delegation to a commissioner or panel of commissioners appointed by the Regulatory Committee or its chairperson (Report 08.262 and Report 09.599):

Where a commissioner or panel of commissioners is appointed by the Regulatory Committee or its chairperson to determine a particular matter, the Council delegates to that commissioner or panel of commissioners all those functions and powers that are provided to the Regulatory Committee under its Terms of Reference necessary to hear and decide on resource consent and restricted coastal activity applications.