

Report to the Environment Committee
from Paula Bullock, Account Manager, Consents Management

ProMall Ltd: Possible Delegation of Powers to Upper Hutt City Council

1. Purpose

To allow the Committee to consider the appointment of Upper Hutt City Councillors as Wellington Regional Council (WRC) hearings commissioners to hear and decide on a resource consent application by ProMall Ltd.

2. Background

ProMall Ltd has made applications to the WRC and Upper Hutt City Council (UHCC) for the resource consents required to build a *Mega Mall* at Silverstream. The UHCC consents deal with the land use and district planning matters, and the WRC consents deal with some works in the floodway of the Hutt River, the removal and rebuilding of bridges, and other river works.

In accordance with our normal procedure, the applications will be dealt with jointly. We have also agreed that, because the major issues arising from this application relate to land use, UHCC will be the lead agency administering the applications. This means that all the correspondence, administration and decision drafting will be done by UHCC. We will simply assess the applications, provide an officer's report and attend the hearing.

The remaining outstanding matter to be resolved is the composition of any hearings committee. This application is of major significance to Upper Hutt and we understand, that most (if not all) of the Upper Hutt City Councillors intend to sit on the hearings committee.

The issue for you to decide here is whether you are prepared to appoint the UHCC Hearings Committee as commissioners to hear and decide those applications that have been made to the WRC.

3. **Why Can't Wellington Regional Councillors Sit on the Hearings Committee?**

Provided the WRC does not make any submission on the application, there is no reason why a Regional Councillor (or Councillors) cannot sit on the Hearings Committee. However, it is very likely that the WRC will make a submission, as this application is likely to raise significant transport issues and possibly flood mitigation issues.

As a submitter, the WRC will have taken a position on the application. In taking a position on the application, there would be a perceived conflict of interest for WRC Councillors should they then sit on the Hearings Committee that decides whether or not to grant the consents.

4. **Relevant Statutory Provisions**

Section 34 of the Resource Management Act 1991 provides for the delegation of functions, powers or duties by local authorities. The relevant extracts are:

- (1) *A local authority may delegate to any committee of the local authority established in accordance with the Local Government Act 1974 any of its functions, powers, or duties under this Act...*
- (3) *A local authority may delegate to any hearings commissioner or commissioners appointed by the local authority for this purpose, who may or may not be a member of the local authority, any of its functions, powers, or duties under this Act, other than -*
 - (a) *The approval of a policy statement or plan or any change to a policy statement:*
 - (b) *This power of delegation.*
- (4) *A local authority may delegate to any of its officers any of its functions, powers, or duties under this Act, other than -*
 - (a) *the approval of a policy statement or plan or any change to a policy statement or a plan:*
 - (b) *the making of a recommendation on a requirement for a designation or heritage order under Part VII:*
 - (c) *the granting of a resource consent for a non-complying activity in respect of any application which is notified in accordance with section 93:*
 - (d) *this power of delegation.*

5. Alternatives

There are essentially two alternatives for you to consider.

You may either:

- decide to appoint a commissioner from our approved list to hear and decide those applications that are made to the WRC; or
- decide to appoint one or more Upper Hutt City Councillors as commissioners to hear and decide those applications that are made to the WRC.

A commissioner from our approved list may be able to provide some additional technical expertise in the area of flood protection and/or a region wide perspective. However, it is unlikely that the application will raise many significant technical flood protection issues.

The advantages of appointing Upper Hutt City Councillors are that they represent the primary community of interest relating to the ProMall proposal and they will be less expensive for the applicant than a *professional* commissioner.

Given that the WRC will have significant input to the decision through the submission process, and the Council's position that the best decisions are those that are made by elected councillors serving their community of interest, I have recommended the second option.

If you approve the recommendation you will be allowing the appointment of one or more Upper Hutt City Councillors to act as Hearings Commissioners for the Wellington Regional Council.

In accordance with Delegation 3.1.6 the Committee Chairperson and the Divisional Manager, Environment, will select the particular Upper Hutt City Councillor(s) or other commissioner(s) to be used. This ensures that we do not run into any logistical problems such as the selected Commissioners being unavailable for the hearing due to other commitments or illness.

6. Recommendation

That, pursuant to section 34(3) of the Resource Management Act 1991, the Environment Committee, acting under authority delegated by the Wellington Regional Council under section 34(1) of that Act, appoint the Councillors of the Upper Hutt City Council to jointly hear and consider resource consent applications WGN 990148 received by the Wellington Regional Council from ProMall Limited, the submissions on those applications, and make a decision on those resource consent applications under section 102, 104, and 105 of that Act.

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