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Report 97.373

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Report to the Environment Committee
from Jillian Kennemore, Account Manager, Consents Management

Delegation of Resource Management Act 1991 Functions to Hearings Commissioners

1. **Purpose**

To approve the delegation of functions under the Resource Management Act 1991 to a group of Hearings Commissioners.

3. **Background**

The authority to hear and decide all resource consent applications has been delegated by the Wellington Regional Council to the Environment Committee which has in turn delegated these responsibilities to any duly appointed Hearings Committees or Hearings Commissioners.

Currently, the power to appoint Hearings Commissioners is delegated to the Chairperson, Environment Committee, and the Divisional Manager, Environment. We need to use commissioners in relation to approximately 2-5 hearings a year. At least two commissioners per hearing are usually engaged and we aim for a mix of resource management and relevant technical expertise. The choice is made from a group of people who have indicated their interest in acting as Hearings Commissioners.

A recent legal opinion has suggested that this arrangement gives the impression that the Divisional Manager, Environment, is subdelegating functions to Hearings Commissioners. The Resource Management Act 1991 specifically prevents officers from subdelegating decision making powers. It is prudent to amend our arrangements, even though the risk of challenge is not high.

3. 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 or plan.*
 - (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 plan.*
 - (b) *The making of a recommendation on a requirement for a designation or heritage order under Part VIII.*
 - (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.*

4. Options

(1) **Environment Committee Delegates Responsibility to Specific Hearings Commissioners as Required**

This option would require a separate report to the Environment Committee every time we needed commissioners to hear and decide on a resource consent application. An obvious disadvantage is the inflexibility associated with the frequency of Environment Committee meetings and the long lead times required for complying with report deadlines. It would also add to the existing complexity of administrative steps associated with the organisation of resource consent hearings.



(2) **Environment Committee Delegates Responsibility for the Appointment of Hearings Commissioners to a Subcommittee**

The subcommittee could comprise the Chairperson and Deputy Chairperson of the Environment Committee. This is similar to the existing arrangement whereby the Chairperson of the Environment Committee and the Divisional Manager, Environment, appoint Hearings Commissioners. It overcomes the problem of involving an officer in the delegation of responsibilities. However, the availability of both subcommittee members could be a problem.

(3) **The Environment Committee Delegates Responsibility to a List of Persons to Act as Hearings Commissioners**

This option avoids the need for reporting to the Environment Committee each time commissioners are required. It provides a pool of individuals with delegated authority from which to appoint a Hearings Committee. The Chairperson of the Environment Committee and the Divisional Manager, Environment, could continue their involvement in confirming appointments. An additional advantage of this option is that it provides a clear indication, to the Environment Committee and members of the public, of the people who may be appointed as commissioners.

This is the preferred option and a list of recommended Hearings Commissioners is provided below. A brief description of each person's qualifications is also provided. They have been grouped according to their relevant expertise. It is desirable to have delegated commissioners in each of these categories, so that we can cover as many situations as possible. A folder of detailed curriculum vitae is available for inspection in the Councillors' Lounge.

At this stage, we have not suggested people with a special knowledge of Maori issues. Because of the sensitivities associated with selecting appropriate people, it is considered that this should be done on a case by case basis.

From time to time, we may need to add or subtract from the list of delegated commissioners in response to the changing availability of people on it. There may also be occasions when we need to appoint particular people to meet the special circumstances of a resource consent application. In these situations, further reports to this committee would be required.

5. **Wairarapa**

The Rural Services and Wairarapa Committee has its own set of delegations under the Resource Management Act 1991. Accordingly, a similar report will need to go to this Committee in order to establish its own list of Hearings Commissioners.



6. Recommended Commissioners

(1) Resource Management Planners

Alistair Aburn - Alistair is a planning consultant who has had a wide range of experience in the resource management area. Previous positions include five years as City Planner/ General Manager Environment with the Wellington City Council. Before that, he was a principal within a large consulting firm. Alistair is now a director of his own small consultancy. He has an interest in mediation and commissioner roles and recently acted as one of the commissioners on the Tranz Rail application to establish an inter-island ferry terminal at Clifford Bay.

Christine Foster - Christine has wide ranging experience as a planner. She was City Planner with Porirua City Council between 1989 and 1991. This was followed by a time working with the Ministry for the Environment. A recent position with a large consulting firm saw her working on the resource consent requirements for a number of large development proposals. She currently works part-time with a small consultancy.

Ian Stewart - Ian is currently a director of his own policy management consultancy. He has recently acted for the Northland Regional Council and the Minister of Conservation as a Hearings Commissioner. He was employed by the Department of Conservation between 1989 and 1996, including time as Manager of the Coastal Policy Section.

Helen Tobin - Helen has a wide background in planning and environmental work. She had early experience with the Ministry of Works and the Wellington Regional Planning Authority. After time overseas, she became a consultant in 1976 and built up a practice in the Wellington area which merged with the Wellington office of Murray-North Limited in 1987. This office closed in December 1992. Since then she has worked as a consultant on her own account. Helen has broad experience as a Hearings Commissioner with the Wellington Regional and this has confirmed her strong knowledge of the Resource Management Act 1991.

Tony Town - Tony had a long planning career with central government. He retired as Assistant Commissioner (Planning Development) with the Ministry of Works and Development in 1988. Since then he has worked as a part-time Tenancy Adjudicator and occasional Hearings Commissioner. He has acted as a Hearings Commissioner for the Wellington Regional Council on a number of occasions and has a good understanding of resource management considerations.

(2) Former Councillors

Sue Driver - Sue is currently a self-employed consultant who has recently worked on a number of projects requiring skilled facilitation. She also works as a Hearings Commissioner from time to time, drawing on her experience gained as a Wellington City Councillor between 1986 and 1992 and a Wellington Regional Councillor between 1992 and 1995.



Alison Lawson - Alison was a member of the Wellington Regional Council between 1989 and 1995. During this time, she was Chairperson of the Environment Committee between 1989 and 1992 and Deputy Chairperson of the Wellington Regional Council between 1993 and 1995. She also served on a number of Hearings Committees during this time.

David Watt - David has had considerable experience on resource consent hearings through his role on the Tawa Borough and Wellington City Councils between 1983 and 1995. Since then, he has acted as a Hearings Commissioner on a number of occasions. The projects have included Lambton Harbour developments, the Stadium, the Biosolids Project and the Wellington City District Plan.

(3) **Engineers**

Ross Howard - Ross is a retired engineer who has acted as a Hearings Commissioner on a number of occasions. His career was largely based in the Ministry of Works and Development, focusing on water and soil issues.

Russell Howie - Russell currently holds the position of Environmental Manager at ECNZ. He is responsible for all of that organisation's environmental issues including policy development, planning advice and supporting the securing of access to water and other natural resources. Prior to joining ECNZ, Russell was the Deputy Director of Water and Soil Conservation in the Ministry of Works and Development. As an engineer, Russell has also worked on hydro-development schemes, motorway design and construction, and other civil works. Russell has experience as a Hearings Commissioner and makes a valuable contribution to applications involving civil engineering issues. He was on the hearings committee for the Wellington City motorway proposal.

Graeme Shadwell - Graeme has considerable experience as a civil engineer and has worked on a number of road and pipeline projects. He was Commissioner of Works from 1985-88 and, since then, has worked as a Project Director with the Museum of New Zealand on the Te Papa Tongarewa Project. Graeme has acted as a Hearings Commissioner in relation to a number of resource consent applications. He has made a particularly useful contribution to decision making when engineering issues have been raised.

(4) **Landscape Architect**

Frank Boffa - Frank is a founding principal of the company, Boffa Miskell. Frank has practised as a landscape architect for over 25 years. As a landscape planner, his work involves the assessment of environmental impacts, advising on the development of large scale projects, and formulating land use and resource management policies. Frank would make a useful contribution to resource consent hearings where landscape effects have been raised.

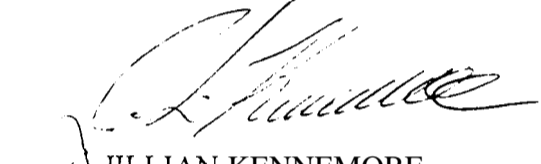


7. Recommendation

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 following Commissioners to hear and consider resource consent applications received by the Wellington Regional Council and the submissions on those applications, and make a decision on the resource consent application under sections 104 and 10.5 of that Act and, when necessary, jointly hear, consider, determine and recommend under section 102 of the Act any applications to any other council when these applications are being dealt with together..

*Alistair Aburn
Frank Boffa
Sue Driver
Ross Howard
Russell Howie
Christine Foster
Alison Lawson
Graeme Shadwell
Ian Stewart
Helen Tobin
Tony Town
David Watt.*

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Councillor Shields questioned whether the Council should have advertised for interested parties in order to include them as potential Hearings Commissioners, Councillor Buchanan noted that the individuals listed were those the Council had historically called upon, and that since there were very few consents in each year requiring the appointment of outside Hearings Commissioners, an expanded list of potential Commissioners was not required.

The Committee requested that officers monitor the use of outside Hearings Commissioners and report back to the Environment Committee in 12 months time.

Resolved

(Cr McDavitt/Cr Yardley)

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 following Commissioners to hear and consider resource consent applications received by the Wellington Regional Council and the submissions on those applications, and make a decision on the resource consent application under sections 104 and 105 of that Act and, when necessary, jointly hear, consider, determine and recommend under section 102 of the Act any applications to any other Council when these applications are being dealt with together..

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Frank Boffa

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Graeme Shadwell

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Resolved to Recommend

(Councillor McDavitt/Councillor Yardley)

That the appropriate amendments be made to the delegations to the Divisional Manager, Environment and the Chairman of the Environment committee to select approved Hearings Commissioner(s) to hear and determine resource consent applications when required.

