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Committee Environment Committee  
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## Limited Delegation of Enforcement Powers: pilot trial with the Hutt City Council

### 1. Purpose

This report is to inform the Environment Committee of a proposed one year trial delegation of stormwater-related enforcement powers to the Hutt City Council.

### 2. Background

Greater Wellington regulates all discharges into and out of stormwater systems via regional rules in the regional plans. In 2005-2006, Greater Wellington's pollution control team dealt with 519 incidents involving the discharge of contaminants (such as oil, paint, cement, wash water and sediment) into or from stormwater networks, resulting in the issue of two infringement notices and two abatement notices.

Territorial authorities provide and maintain stormwater drainage networks, and are responsible for discharges **from** their networks into receiving waters. However, they have no statutory power to prevent illegal discharges **into** the stormwater network because these are controlled under the Resource Management Act 1991 (RMA).

Many stormwater incidents reported to Greater Wellington are attended by officers from both Greater Wellington and the territorial authority, and often result in Greater Wellington requiring the territorial authority to undertake cleaning or maintenance work. In most cases, this duplication of resources is unnecessary, and can even delay incident resolution in some cases. If territorial authorities were able to take enforcement action for illegal discharges into their stormwater network, they would be better able to protect their infrastructure and reduce the risk of their stormwater discharge being non-compliant. Greater Wellington could also benefit because its officers would not need to attend minor incidents, and could focus their attention on dealing with environmental effects at major incidents.

Greater Wellington staff looked into ten options whereby territorial authorities could control discharges into stormwater networks, and concluded that a delegation of regional council enforcement powers was the most appropriate option. The principal alternative is to set up a joint management agreement for enforcement powers, but this was discounted because of the more extensive statutory process necessary.

Hutt City Council staff have expressed an interest and willingness to take on delegated enforcement powers in their district. In particular, this could help them reduce the level of contaminants in stormwater discharging to the Waiwhetu Stream and other rivers in their district. They have a skilled enforcement team, and an established working relationship with our Pollution Control Team.

It is well worth noting that the proposal contained in this paper is explicitly linked with the development of the Stormwater Action Plan for the Region, and currently forms one of the agreed outcomes in the draft Action Plan.

### **3. Scope of the delegation**

Initial discussions with Hutt City Council staff have progressed well, and both parties are keen to proceed with a trial delegation. The delegation would be limited to investigation and enforcement powers necessary to deal with illegal contaminant discharges into the stormwater network (breaches of Rule 1(a) of the Regional Plan for Discharges to Land).

Delegated enforcement powers would include the ability to issue advisory notices, infringement notices and abatement notices, but the decision to proceed with a prosecution will remain with Greater Wellington.

The delegation will apply throughout the Hutt City district for a period of one year, after which it will be reviewed. RMA delegations can be revoked at any time by notice to the delegates.

### **4. Mechanism of delegation**

Section 34A(2) of the RMA allows a local authority to delegate any of its functions, powers or duties to another person (except for the approval of a policy statement or plan, the decision on a resource consent and the power of delegation).

The proposal is to delegate enforcement powers to the Hutt City Council. The power to delegate enforcement functions to an employee of the Hutt City Council rests with Divisional Manager, Environment Management Division. Hutt City Council officers can then be authorised as enforcement officers either by their council, or by the Divisional Manager, Environment Management Division.

Any enforcement action taken under a delegation is in the name of Greater Wellington. Accordingly, Greater Wellington needs to ensure that the terms of the delegation are clear. These can be set out in a Memorandum of Understanding.

Staff of Greater Wellington and Hutt City Council have agreed that the Memorandum of Understanding between Greater Wellington and Hutt City Council would cover the following matters:

- All investigations and enforcement action would be conducted in accordance with established Greater Wellington protocols.
- Hutt City Council will bear the costs of any investigation and enforcement costs they initiate, and Greater Wellington will remit to them any costs or fines recovered from court action.
- The delegation will not restrict Greater Wellington's existing powers of investigation and enforcement in the Hutt City district.
- Greater Wellington will provide Hutt City Council staff with appropriate training about investigations and protocols for enforcement action.
- Potential conflicts of interest will be identified and addressed as part of the delegation process (e.g. incidents involving contaminant discharges by Hutt City Council or its agents).
- Costs for establishing and administering the delegation would be shared on a 50:50 basis.

If this pilot trial is successful, staff will investigate making similar arrangements with other territorial authorities in the region.

## **5. Communication**

No further public communication is necessary for this report.

## 6. Recommendations

*It is recommended that the Committee:*

1. *Receives the report; and*
2. *Notes the content.*

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