

Report 17.77
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Committee Council
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Authority to appoint hearings commissioners for certain matters and delegations given to those appointees

1. Purpose

In the event that the Council amends the functions of Te Upoko Taiao – Natural Resource Management Committee (the Committee), to propose a new framework for appointing hearings commissioners to conduct hearings on certain matters, and to delegate powers and functions to hearings commissioners.

2. Background

The Resource Management Act 1991 (the Act) provides the Council with the authority to appoint hearings commissioners. These hearings commissioners may be delegated any functions, powers, or duties under the Act (except the approval of a proposed policy statement or plan, or the power of delegation).

In order to comply with the Act, the Council has delegated its powers, functions and duties directly to those hearings commissioners who have been appointed by an appointments group or by the Committee.

Currently, there is a resource consent hearing appointments group (the Group), which is made up of the two co-Chairs of the Committee and the Chair of the Environment Committee. In consultation with the General Manager, Environment Management, the Group has the following powers in relation to resource consent applications:

- 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.

The Council currently delegates to those hearings commissioners, or panel of hearings commissioners, appointed by the Group or Committee:

- all those functions and powers that are provided to the Committee, under its terms of reference, necessary to hear and decide on resource consent and restricted coastal activity applications.

3. Comment

With the proposed amendments to the functions of Committee (Report 17.157 refers), officers have reviewed the current framework and are proposing the following modifications:

3.1 Appointment of hearings commissioners

Officers propose that the Group's delegated authority be replaced with a delegation to each of the Chief Executive and General Manager, Environment Management (acting severally). This proposed approach aligns with the process at most regional councils around the country.

Advice from the Office of the Auditor-General sets out the need to ensure an appropriate separation of delegated authority between governance and management when making decisions on issues such as consenting, compliance and enforcement. Recent work from the Environmental Defence Society around compliance and enforcement decision-making across councils has reinforced this. The proposed move would bring GWRC into line with other councils and ensure that we are following best practice with regard to appointments of hearings commissioners.

3.2 Delegation to a hearings commissioner appointed by either the Chief Executive or the General Manager, Environment Management

Officers propose that the Council amend the current delegation to reflect the amendment to the appointments process set out above. Officers recommend that some additional powers are specified for hearings commissioners (and panels).

The proposed additional powers reflect the requirement in the Act that certain powers may only be delegated to accredited persons (in most circumstances). Powers which are proposed to be retained by the Committee, i.e. those relating to regional plans, have not been included.

The proposed delegations are set out below:

All of the powers, functions and duties of the Council under the Act to:

- Hear, consider and make decisions on any application for a resource consent under the Act, including the determination of any preliminary matters and matters necessary for the conduct of the hearing.

- Hear and determine a review of a resource consent.
- Hear and determine an application to change or cancel conditions of a resource consent.
- Hear and determine an objection made under the Act.
- Hear and determine coastal activity applications.

4. Communication

No communication is necessary as a result of this report. Officers will update the delegations register to reflect the Council's decisions.

5. Consideration of climate change

The matters addressed in this report are of a procedural nature, and there is no need to conduct a climate change assessment.

6. The decision-making process and significance

The matters requiring decision in this report have been considered by officers against the requirements of Part 6 of the Local Government Act 2002.

6.1 Significance of the decision

Officers have considered the significance of the matter, taking into account the Council's significance and engagement policy and decision-making guidelines. Due to the procedural nature of this decision officers recommend that the matter be considered to have low significance.

Officers do not consider that a formal record outlining consideration of the decision-making process is required in this instance.

6.2 Engagement

Due to its procedural nature and low significance, no engagement on this matter has been undertaken.

7. Recommendations

That the Council:

1. *Receives the report.*
2. *Notes the content of the report.*
3. *Disestablishes the resource consent hearing appointments group.*
4. *Delegates to Chief Executive and the General Manager, Environment Management (acting severally) the following powers with regard to resource consent applications:*
 - *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.*
5. ***Delegates*** to a commissioner or panel of commissioners appointed by either the Chief Executive or the General Manager, Environment Management to determine a particular matter, all of the powers, functions and duties of the Council under the Act to:
- *Hear, consider and make decisions on any application for a resource consent under the Act, including the determination of any preliminary matters and matters necessary for the conduct of the hearing.*
 - *Hear and determine a review of a resource consent.*
 - *Hear and determine an application to change or cancel conditions of a consent.*
 - *Hear and determine an objection made under the Act.*
 - *Hear and determine coastal activity applications.*

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