

2. DELEGATIONS

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The purpose of this report is to recommend that the Council delegate certain powers and amend existing delegations.

DELEGATION TO ALLOW OFFICERS TO MEDIATE ENVIRONMENT COURT PROCEEDINGS

For some time now there has been a move in the Environment Court to encourage parties to settle appeals and references through the mediation process. This move is likely to continue following the appointment of Judge Joan Allin as the new principal Environment Court Judge. Judge Allin is a strong proponent of mediation as a dispute resolution process.

At a recent pre-hearing conference of a reference (appeal) on the proposed plan, Judge Smith (from the Christchurch division of the Court) expressed his preference that where an appeal or reference is to be mediated, those participating in the process should have full power to settle.

Currently the authority to settle proceedings before the Environment Court lies with:

1. A subcommittee of the Resource Management Committee for matters relating to the proposed plan.
2. The Council Hearings Panel for all other proceedings before the Environment Court.

Apart from a court hearing, the three main forms of dispute resolution are negotiation, mediation and arbitration. Negotiation is the process whereby parties try to resolve the dispute through direct discussions. Mediation is a more formal process where a qualified mediator acts as a facilitator to try to resolve the dispute. This process is a structured one in which the parties participate in joint and individual sessions with the mediator to identify issues, common ground, possible solutions and so on. If the parties reach agreement, this is recorded in a written agreement, which is binding on the parties. If the matter is not settled, it is set down for hearing. All matters raised during the mediation remain confidential and cannot be used in a subsequent hearing. Arbitration is the process under which the parties to the dispute engage a third person to hear and determine the dispute. Effectively the arbitrator, who need not be legally trained, acts as a "private judge".

Of these alternative dispute resolution processes, the Council most commonly uses negotiation to settle proceedings before the Environment Court. However, mediation has proven to be an effective method of resolving complex or protracted disputes. The main obstacle to the Council participating in the mediation process has been the requirement either to send along an officer with no power to settle, or to participate with a subcommittee of Councillors. Both these options are cumbersome.

In terms of time and efficiency, there is merit in the Council authorising officers to enter mediation with full power to settle. This power, however, should be qualified and exercised with care. The relevant committee or subcommittee of the Council should have the ability to decide which cases it wishes to have mediated by officers and the ability to establish a bottom line position for officers to take into mediation. The Council should also give consideration to whether any delegated authority to officers should include, restrict or exclude the power to commit the Council to any expenditure.

This report seeks amendments to the delegations to the Resource Management Committee and the Council Hearings Panel to enable these committees to authorise officers to mediate and settle Environment Court proceedings. Two options are put forward for each delegation. The first suggests a narrower delegation expressly prohibiting settlements requiring Council expenditure. The second suggests an open delegation to be made on such terms as the committees consider appropriate.

DELEGATION TO SUBCOMMITTEE OF THE RESOURCE MANAGEMENT COMMITTEE

Option One

A subcommittee of no fewer than three members of the Resource Management Committee may authorise any one or more officers holding the positions listed below to participate in a mediation of any proceeding before the Environment Court arising out of the First Schedule to the Resource Management Act 1991. This authority shall include the power to commit the Council to a binding agreement to resolve the proceeding.

Any authority given under this delegation shall be on such terms and conditions as the subcommittee considers appropriate, provided it does not require Council expenditure.

Authorised Positions:

- Environmental Services Manager
- Team Leader, City Plan
- Team Leader, Planning Policy
- Senior Planner
- Solicitor, Legal Services Unit

Option Two

A subcommittee of no fewer than three members of the Resource Management Committee may authorise any one or more officers holding the positions listed below to participate in a mediation of any proceeding before the Environment Court arising out of the First Schedule to the Resource Management Act 1991. This authority shall include the power to commit the Council to a binding agreement to resolve the proceeding.

Any authority given under this delegation shall be on such terms and conditions as the subcommittee considers appropriate.

Authorised Positions:

- Environmental Services Manager
- Team Leader, City Plan
- Team Leader, Planning Policy
- Senior Planner
- Solicitor, Legal Services Unit

DELEGATION TO COUNCIL HEARINGS PANEL

Option One

A Council Hearings Panel may authorise any one or more officers holding the positions listed below to participate in a mediation of any proceeding before the Environment Court that does not arise out of the First Schedule to the Resource Management Act 1991. This authority shall include the power to commit the Council to a binding agreement to resolve the proceeding.

Any authority given under this delegation shall be on such terms and conditions as the Panel considers appropriate, provided it does not require any Council expenditure.

Authorised Positions:

- Environmental Services Manager
- Planning Administration Manager
- Team Leader, Civic Planning Team
- Team Leader, Subdivisions
- Senior Planner
- Subdivisions Officer
- Solicitor, Legal Services Unit

Option Two

A Council Hearings Panel may authorise any one or more officers holding the positions listed below to participate in a mediation of any proceeding before the Environment Court that does not arise out of the First Schedule to the Resource Management Act 1991. This authority shall include the power to commit the Council to a binding agreement to resolve the proceeding.

Any authority given under this delegation shall be on such terms and conditions as the Panel considers appropriate.

Authorised positions:

- Environmental Services Manager
- Planning Administration Manager
- Team Leader, Civic Planning Team
- Team Leader, Subdivisions
- Senior Planner
- Subdivisions Officer
- Solicitor, Legal Services Unit

The only difference between option 1 and option 2 in each delegation is the prohibition against authority to require Council expenditure in option 1. The reason for this suggestion is to ensure that Council expenditure remains closely controlled. Under option 1, any mediation that led to a proposed settlement involving Council expenditure would have to be referred back to the committee by the officer involved. In contrast, option 2 provides the flexibility whereby the committee could impose financial limits on any potential settlement to reflect the circumstances. This could include a condition of the delegation that the officer involved has no power to commit the Council to any expenditure.

It is considered that of the two options put forward, option 2 should be preferred. This is because it still allows committees to prohibit the commitment of any Council expenditure, but retains the flexibility to allow expenditure if the circumstances of the particular case make this appropriate.

- Recommendation:**
1. That the Council delegate to a subcommittee of the Resource Management Committee the power to authorise any one or more officers holding the positions listed below to participate in a mediation of any proceeding before the Environment Court arising out of the First Schedule to the Resource Management Act 1991. This authority shall include the power to commit the Council to a binding agreement to resolve the proceeding, provided it does not require any Council expenditure not authorised by the Council delegation.

Any authority given under this delegation shall be on such terms and conditions as the subcommittee considers appropriate.

Authorised Positions:

- Environmental Services Manager
- Team Leader, City Plan
- Team Leader, Planning Policy
- Senior Planner
- Solicitor, Legal Services Unit

2. That the Council delegate to the Council Hearings Panel the power to authorise any one or more officers holding the positions listed below to participate in a mediation of any proceeding before the Environment Court that does not arise out of the First Schedule to the Resource Management Act 1991. This authority shall include the power to commit the Council to a binding agreement to resolve the proceeding, provided it does not require any Council expenditure not authorised by the Council delegation.

Any authority given under this delegation shall be on such terms and conditions as the Panel considers appropriate.

Authorised positions:

- Environmental Services Manager
- Planning Administration Manager
- Team Leader, Civic Planning Team
- Team Leader, Subdivisions
- Senior Planner
- Subdivisions Officer
- Solicitor, Legal Services Unit

DELEGATION TO ENVIRONMENTAL SERVICES MANAGER AND TEAM LEADER CITY PLAN

These officers have delegated authority to determine which persons and bodies shall be served with a copy of any proposed District Plan or Change to a District Plan. There is currently no delegation to any officer or Committee to determine which persons and bodies should be served with a copy of a requirement for a designation or with a copy of a Variation to a Proposed District Plan. It is recommended that the existing delegation to these officers be amended to include the power to determine who should be served with these documents.

Recommendation: 3. That delegation 1 to the Environmental Services Manager and Team Leader City Plan be amended to read:

“To determine which persons and bodies shall be served with a copy of any proposed District Plan, or Change to a District Plan, or Variation to a Proposed District Plan, or Requirement for a designation.”

POWER TO SETTLE REFERENCES DURING THE INTERREGNUM

Interregnum is the interval when the normal power of Council is suspended between successive regimes following an election. The term of this Council ends on 20 October 2001. The next Council comes into power following the formal appointment of councillors at the inaugural meeting some time in November this year. The powers delegated to Council committees cannot be exercised by Council until the committee structure of the new Council is in place.

This means that there may be a period of several weeks during which the powers of the Resource Management Committee will not be able to be exercised. This includes the power of the Committee to settle references in the Environment Court under delegation 2, which provides:

“The power to consider and resolve any consent orders requested in respect of any proceedings before the Environment Court arising out of the Council’s decisions on City Plan”.

As the Council’s delegations currently stand, there is a risk that the Council’s ability to settle references and proceedings in the Environment Court will be frustrated during the interregnum.

This report seeks a delegation to authorise the Team Leader City Plan to appoint elected councillors as commissioners during the interregnum.

Recommendation: 4. That the Council delegate to the Team Leader City Plan the power to appoint, during the interregnum, any two or more persons declared elected as councillors on Saturday 20 October 2001 as commissioners to consider and resolve any consent orders requested in respect of any proceedings before the Environment Court arising out of the Council’s decision on City Plan.