

5. REVIEW OF DELEGATIONS TO THE DISTRICT PLAN APPEALS SUBCOMMITTEE AND THE RESOURCE MANAGEMENT OFFICER SUBCOMMITTEE

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8549
Officers responsible:	Legal Services Manager and Environmental Policy and Approvals Manager
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PURPOSE OF REPORT

1. This report has been prepared in response to a resolution of Council of 7 November 2007 which stated:

“That the Regulatory and Planning Committee be requested to review at its first meeting the delegations granted to the District Plan Appeals Subcommittee and the Resource Management Officer Subcommittee, particularly the delegation enabling the officers subcommittee to consider and make decisions on any resource consent which is not duly notified as does not require a hearing, under the Resource Management Act 1991. A report initiating this review will be placed before the first meeting of the Regulatory and Planning Committee in 2008.”

2. The purpose of the report is to provide background on the present level of delegation to the Resource Management Officer Subcommittee and the District Plan Appeals Subcommittee.

BACKGROUND

Resource Management Officer Subcommittee

3. When the Resource Management Act became law in 1991 the Council delegated the power to make decisions about notification/non-notification of resource consent applications, and the making of decisions on those applications to the Resource Management Officer Subcommittee (comprising two senior staff), Council Hearings Panels (of elected members) and Commissioners. Since 1991 every notification/non-notification decision in Christchurch City has been made by been one of these three groups.
4. There are a wide range of powers delegated to senior Council staff and the Resource Management Officer Subcommittee under the Resource Management Act. Most of these have been in place since 1991. These delegations are in place partly to ensure that the Council carries out its responsibilities for processing resource consent applications in a timely and efficient manner. This is particularly important because of the large number of resource consent applications that are received by the Council, the tight time-frames imposed for their processing by the Resource Management Act and customer expectations.
5. The current delegations to the Resource Management Officer Subcommittee are set out in Appendix A of this report (attached).

District Plans Appeals Subcommittee

6. In December 2001 the Council delegated to the District Plan Appeals Subcommittee (or the City Plan References Subcommittee as it was formerly known) the power to manage the appeals to the Environment Court arising out of the Council's decisions in 1999-2001 on the City Plan. There was seen to be a need to respond to the very short timeframes set by the Environment Court for the Council to respond to resolution of appeals. Since 2001 the Subcommittee has had four Councillors as members. The delegations were most recently amended by the Council on 23 November 2006, to incorporate the Banks Peninsula District Plan and make other minor amendments. An additional appointment of a Banks Peninsula Community Board member was also made.

7. The report to the Council on 23 November 2006 provided the following reasoning for the proposed delegations at that time:

"...gaining full Council approval for any agreement reached through mediation is different to that provided for the City Plan and has the potential to become cumbersome and unwieldy given mediation has the potential to require several meetings with Councillors. [The proposed option] appears to be the most efficient and effective option because of the ability of the subcommittee to meet as and when required. This option includes adding the ward member for Banks Peninsula for local knowledge. It also renames the subcommittee. Since amalgamation, the Council now has one district plan with two sections, as allowed by the RMA, being the City Plan and the Banks Peninsula District Plan."

8. The current delegations to the District Plan Appeals Subcommittee are set out in Appendix B of this report (attached).

RESOURCE MANAGEMENT ACT

9. The Council has explicit regulatory decision making powers vested in it by virtue of the Resource Management Act 1991 and the delegations discussed in this report are only concerned with Council's powers under that Act.
10. Under the Resource Management Act the Council may legally delegate its resource management powers to a committee, subcommittee, community board (except the power to approve a Plan or to change a Plan), an employee or a commissioner (except with these last two the power to approve a Plan).
11. Whether or not the Council should delegate any decision making power is not solely a legal issue as questions of compliance, administrative and management efficiency arise. The Council has a statutory duty under the RMA to process resource consent applications promptly and within a statutory maximum time period of 20 working days to grant a resource consent. If there is to be a change to the existing processes the Council's ability to handle the volume and comply with the statutory time limits may become an issue. The Council should carefully consider the reason why it wishes to alter a system which has worked well for many years.
12. Determining whether a resource consent application should be processed on a notified or non-notified basis is not a political decision by the Council, committee, community board, officer or commissioner. It is a quasi judicial decision which has to be made in accordance with the clear statutory criteria in Section 93 of the Resource Management Act. Any decision by the Council, whether it is made by the Council, a Council committee, an officer subcommittee, a board, or a Commissioner, may be subject to judicial review by the High Court so the Council has to be very careful about observing the legal principles in any decision making. Notification decisions are the most frequent cause of judicial reviews against councils nationally.
13. Each resource consent application must be assessed on its merits within the planning framework and the Council cannot notify an application simply because it may be controversial. Neither can the Council decide to notify an application because it may be opposed by a large number of people or there may be a clamour for public notification. An application which is not required to be notified because of City Plan rules cannot be notified just because it is unpopular.
14. The Council has only 10 working days from the time it receives a complete application to make the decision about notification/non-notification. This time frame requires that an efficient system is in place to deal with the large number of applications the Council receives. In the 2006/07 year, for example, the Council processed 2612 applications (1,833 land use and 779 subdivision). For all but a handful of these, the decision about notification/non-notification was made by an officer subcommittee.
15. The current delegations, which enable decisions about notification/non-notification to be made by the Resource Management Officer Subcommittee, provide for efficient processing. Changing this delegation may slow processing times and make it more difficult to achieve the statutory timeframes..

16. The Council has previously decided that only elected members who been trained under the national "Making Good Decisions" programme can be involved in decision making on the resource consent process. Given the Council has already decided to adopt the national training programme and has paid for the elected members who chose to be trained, it would seem to be inconsistent for the Council to decide that elected members who have not received any training should be involved in making decisions about notification of applications. As at the date of this report there are six Councillors and nine Community Board members who have qualified under the "Making Good Decisions" programme.
17. Because of Councillor and Community Board member workloads and commitments it is currently sometimes difficult to assemble panels of elected members who have undertaken the "Making Good Decisions" training for hearing the relatively low number of applications which have been notified or limited notified. In view of this, it may be unrealistic to expect elected members who have done this course to also be involved in making decisions about notification/non-notification on anything other than a small number of the resource consent applications the Council receives. .
18. While most decisions on notification/non-notification are made by the Officer Subcommittee, in cases where applications are potentially controversial or arouse widespread public interest, the standard practice for many years has been for the Officer Subcommittee to decline to exercise its power and to refer decision making to a Hearings Panel of elected members or a commissioner. In other words elected members or commissioners already make the decisions on controversial applications when it can be anticipated the application may be controversial.
19. The decision to refer an application to a Hearings Panel or Commissioner is based on the judgement of the Resource Management Officer Subcommittee. If elected members are concerned that decisions on some applications made by the Officer Subcommittee ought to have been made by a Hearings Panel or Commissioner a solution may be for a formal direction to be prepared setting out the types of applications that are to be referred to the Hearings Panels and Commissioners.
20. The track record on decisions about notification/non-notification by the Resource Management Officer Subcommittee, Hearings Panels and Commissioners is exceptionally good. Since the Resource Management Act became law there has only been one case of such a decision made by the Christchurch City Council being heard by the High Court as a judicial review. In that case the Court declined to overturn the Council's decision not to notify. Given the controversial nature of some of the applications involved, this indicates the decisions made have been both robust and procedurally sound. We can say this because we are aware that on a number of occasions legal input has been obtained by aggrieved parties as to the likelihood of a successful challenge.
21. Copies of applications and decisions on applications which are potentially controversial are circulated to the elected members in whose ward the application site is located. This is done in accordance with the Planning Administration Team's communication strategy so that elected members are aware of these applications and how they have been processed. Elected members can also look at all applications issued via the elected member Intranet – www.ccc.govt.nz/ElectedMemberIntranet/Resource.asp. This is updated weekly.
22. There are a number of significant benefits which flow from the delegation of decision making about notification/non-notification of resource consent applications to senior staff:
 - It enables the large number of applications received and processed by the Council at four Service Centres to be dealt with in an efficient and timely manner. This in turn enables a high degree of compliance with meeting statutory time-frames (and hence KPI's) and meeting customer expectations.
 - It enables a high degree of quality control. Senior staff are qualified planners and are familiar with the requirements of the Resource Management Act, current case law regarding notification/non-notification issues and with the provisions of the City Plan. In addition, senior staff who make up the Resource Management Officer Subcommittees meet regularly to discuss how various types of applications are being processed in order to ensure consistency.

23. It is the officers view that the current level of delegation to the Resource Management Officer Subcommittee, Hearings Panels and Commissioners to make decisions on notification/non-notification works very well. Most importantly, it enables decisions on the large number of resource consents received to be made speedily, for decisions to be consistent, robust and procedurally sound. Long standing practice means that potentially controversial applications or those which have aroused widespread public interest are made by a Hearings Panel of elected members or by Commissioners who have been trained and accredited.

Have you considered the legal implications of the issue under consideration?

24. Yes, see above.

FINANCIAL IMPLICATIONS

25. The possible extra financial cost of officers servicing the Committee has not been accounted for in the EPA budget.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

26. Not applicable.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

27. Not applicable.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

28. If the status quo is continued then the achievement of Levels of Service and KPI's will be met. There is a risk that these standards may not be able to be achieved without additional resources should the delegation be changed.

ALIGNMENT WITH STRATEGIES

29. Not applicable.

Do the recommendations align with the Council's strategies?

30. Not applicable.

CONSULTATION FULFILMENT

31. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Committee:

- (a) Receive this report.
- (b) If required, request a further officer's report addressing the delegations to the Resource Management Officer Subcommittee and the District Plan Appeals Subcommittee on matters identified by the Committee.