

11. OFFICER DELEGATIONS

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| General Manager responsible: | General Manager Regulation and Democracy Services, DDI 941-8549 |
| Officer responsible: | Environmental Policy and Approvals Manager |
| Author: | John Gibson |

PURPOSE OF REPORT

1. The purpose of this report is to comment on issues elected members may have about the present level of delegation to Council staff under the Resource Management Act 1991. In particular, they relate to:
 - Concern about Council staff making decisions on the notification/non-notification of resource consent applications.
 - Concern that elected members (Councillors and Community Board members) should be more involved in making decisions on the notification/non-notification of resource consent applications.
2. The proposed updating of the Delegations Register to reflect recent changes to the Resource Management Act makes it timely to consider these issues. At this stage the updating does not propose to change the current delegations to Council staff in relation to the notification/non-notification of resource consent applications.

EXECUTIVE SUMMARY

Background

3. 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. I think it is fair to say that all of these delegations are in place to ensure that the Council carries out its responsibilities for processing resource consent applications in a timely and efficient manner. This is particularly important in view of the large number of resource consent applications which are received by the Council, the tight time-frames imposed for their processing by the Resource Management Act and customer expectations.
4. 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 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.

Considerations

5. Determining whether a resource consent application should be processed on a notified or non-notified basis is not a political decision by the Council. 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 Officer Subcommittee, a Hearings Panel, or 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.
6. 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 unpopular but which slips through a gap/loophole in the City Plan rules cannot be notified for that reason.

7. The Council has only 10 working days from the time it receives a complete application for making 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 2005/06 year, for example, the Council processed 2,520 applications. For all but a handful of these, the decision about notification/non-notification was made by an Officer Subcommittee.
8. The current delegations, which enable decisions about notification/non-notification to be made by the Resource Management Officer Subcommittee, provide efficiency and enable statutory time-frames and KPI's to be met. Reducing this delegation or having elected members make more decisions on notification/non-notification would, in my view, slow processing times and make it more difficult to achieve KPI's. In this regard I note that because of Councillor and Community Board member workloads and commitments it is 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 would in my view 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.
9. Given that 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.
10. 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 is 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 make the decisions on controversial applications. This has been the case for many years.
11. 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 not been a single case of such a decision made by the Christchurch City Council being taken to the High Court for a judicial review. Given the controversial nature of some of the applications involved, this indicates the decisions made have been both robust and procedurally sound. I say this because I am aware that on a number of occasions legal input has been obtained by aggrieved parties as to the likelihood of a successful challenge.
12. 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.
13. 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 familiar with the requirements of the Resource Management Act and current case law regarding notification/non-notification issues. In addition, senior staff who make up the Resource Management Officer Subcommittees meet frequently to discuss how various types of applications are being processed in order to ensure consistency.
 - The Resource Management Officer Subcommittee can meet as and when required. This provides an ability to deal with applications quickly where urgency is required.
 - It encourages a close mentoring relationship between senior staff on the Officer Subcommittee and reporting officers. This results in an upskilling in report writing.

14. It is relevant that the only large local authority which until recently had elected members making most of the decisions about the notification/non-notification of most resource consent applications, North Shore City, is now moving towards delegating those decisions to staff. The main reason for this change is to achieve greater quality control in decision making and more efficient processing time-frames. In 2003/04, only 40% of decisions about notification/non-notification and granting and refusing resource consent applications at North Shore City were made by delegated staff. One of the consequences of that low level of delegation was the low percentage of applications processed within statutory time-frames – 61% for land use consents and 65% for subdivision consents compared with Christchurch City – 91% for land use consents and 76% for subdivision consents.
15. I am aware that some elected members refer to the way applications are dealt with in Southland as a model which could be used in Christchurch. My understanding from talking to senior planning staff in Southland Council is that the decision on notification/non-notification is normally made by a Senior Planner. Potentially controversial applications are referred to a committee of elected members for a decision. Copies of applications which have been notified are circulated to the relevant Community Board for information purposes.

Conclusion

16. In my view, 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.
17. For the reasons set out above, I consider that the present delegations for decisions on notification/non-notification should remain unchanged.

FINANCIAL AND LEGAL CONSIDERATIONS

18. Nil.

STAFF RECOMMENDATIONS

It is recommended that the present delegations for decisions on the notification/non notification of resource consent applications remain unchanged.