

12. RESOURCE MANAGEMENT AMENDMENT ACT 2005 – DELEGATION OF POWERS



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

1. The purpose of this report is to set out new powers provided to the Council in the Resource Management Amendment Act 2005 relating to planning administration and to recommend the Hearings Panels, Officer Subcommittees or senior staff position to which they should be delegated. It also makes a recommendation on the delegation of a power provided in the Resource Management Amendment Act 2003 which was omitted in an update to the delegations in 2004.

EXECUTIVE SUMMARY

2. The Resource Management Amendment Act 2005 came into effect in August 2005. It introduced a number of changes to the Resource Management Act focusing on ways to improve the quality of decisions and processes. Many of these changes give councils new powers in relation to processing resource consents.

3. These powers fall into two general categories:

First, there are new powers which relate primarily to resource consent applications requiring a hearing and to hear a wider range of objections made under Section 357 of the Resource Management Act requiring a hearing. These powers involve:

- Requiring or inviting an applicant and submitters to attend pre-hearing meetings and declining to process an application or consider a submission if a person fails to attend (Sections 99 and 998).
- Referring an application to mediation if all the parties agree (Section 99A).
- To delegate the power to mediate an issue or matter arising from a resource consent application (Section 99A(3)).
- To direct an applicant and submitters to provide briefs of evidence before a hearing (Section 41B).
- To direct the order of business of a hearing including the order in which evidence and submissions are presented (Section 41C).
- To direct that all or part of a submission be struck out if it is considered that the submission is frivolous or vexatious (Section 41C).
- To hear a wider range of objections made under Section 357. These objections relate to:
 - striking out submissions under Section 41C(7)
 - existing use certificates
 - requests for further information and for commissioning of reports
 - decisions to decline to process an application or consider a submission.

These processes will be used almost exclusively in relation to applications and objections requiring a hearing. It is therefore appropriate that they be delegated to Council Hearings Panels to administer.

4. Second, there are process related powers which involve decisions which need to be made on a day to day basis. These include matters such as:

- Issuing an existing use certificate (Section 139A).
- Requiring a person to provide any further information needed to determine whether an existing use certificate should be issued (Section 139A(3)).
- Revoking an existing use certificate when it was issued based on inaccurate information (Section 139A(8)).
- Varying or cancelling a condition specified in a consent notice (Section 221(3)).
- Inviting an applicant and submitters to attend pre-hearing meetings (Section 99).
- Issuing an amended resource consent (Section 133A).

5. In most cases decisions on these matters will need to be made frequently and within short statutory timeframes. So that they can be administered quickly it would therefore be appropriate for them to be delegated to the Resource Management Officer Subcommittee and in some cases senior Council staff. On occasions though, decisions on these matters may be contentious and therefore need to be referred to a Hearings Panel. They should therefore also be delegated to Hearings Panels of elected members.
6. Set out in the table below are the new powers together with the group or position to which it is recommended they be delegated.

New Provision	Delegated to
1. To issue an existing use certificate pursuant to Section 139A of the Resource Management Act 1991	Council Hearings Panels; the Resource Management Officer Subcommittee
2. To require pursuant to Section 139(A)(3) of the Resource Management Act 1991 that a person provide further information needed to determine if an existing use certificate must be issued	Council Hearings Panels; the Resource Management Officer Subcommittee
3. To revoke an existing use certificate if it was issued based on inaccurate information pursuant to Section 139A(3) of the Resource Management Act 1991	Council Hearings Panels; the Resource Management Officer Subcommittee
4. To vary or cancel a condition specified in a consent notice pursuant to Section 221(3) of the Resource Management Act 1991	Resource Management Officer Subcommittee
5. To invite an applicant and submitters to attend a pre-hearing meeting pursuant to Section 99 of the Resource Management Act 1991	Civic Planning Team Leader; Planning Administration Manager; Resource Management Manager; Area Development Officers, Team Leader Subdivisions; Environmental Policy and Approvals Manager
6. To issue an amended resource consent pursuant to Section 133A of the Resource Management Act 1991	Council Hearings Panels; Planning Administration Manager; Resource Management Manager; Civic Planning Team Leader; Area Development Officers; Team Leader Subdivisions; Environmental Policy and Approvals Manager
7. To hear and make decisions on any notified application or non-notified application which requires a hearing under the Resource Management Act 1991, including directions pursuant to Section 41B (provision of evidence), Section 41C (order of business and provision of reports and information)	Council Hearings Panels

New Provision	Delegated to
8. To invite or require an applicant and submitters to attend a brief hearing meeting, pursuant to Section 99 of the Resource Management Act 1991 and to decline to process an application or to consider a submission pursuant to Section 99(8) on the grounds that the person required to attend a meeting fails to do so and does not give a reasonable excuse	Council Hearings Panels
9. To refer to mediation a resource consent application and some or all of the persons who have lodged a submission, pursuant to Section 99A of the Resource Management Act 1991	Council Hearings Panels
10. To delegate the power to mediate on an issue or matter arising from a resource consent application, or appoint a mediator pursuant to Section 99A(3) of the Resource Management Act 1991	Council Hearings Panels
11. To hear and make decisions on any objection, made pursuant to Sections 357 and 357A to 357D of the Resource Management Act 1991, to any Council decision	Council Hearings Panels

7. The power which was omitted in the 2004 delegation update stems from a new Section 88 introduced in the Resource Management Amendment Act 2003. This provides for an application to be rejected by the Council if it does not include an adequate assessment of environmental effects or the information required by regulations. The Council has to provide reasons for such a decision and has to make the decision in five working days. As decisions on this matter will need to be made quickly and frequently it is recommended that this be delegated to the Resource Management Officer Subcommittee. In order to deal with potentially contentious or controversial applications it is recommended that it also be delegated to Council Hearings Panels.

FINANCIAL AND LEGAL CONSIDERATIONS

8. Nil

STAFF RECOMMENDATION

It is recommended that the Council approve the delegations set out in the above table and paragraph 7.