

8. **DELEGATION TO ENGINEER TO CONTRACT UNDER NZS 3910:2003
CONDITIONS OF CONTRACT FOR BUILDING AND CIVIL ENGINEERING CONSTRUCTION**

General Manager responsible:	General Manager, Capital Programme, DDI 941-8235
Officer responsible:	Legal Services Manager
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PURPOSE OF REPORT

1. To delegate the appointment of “Engineer to Contract” under NZS 3910:2003 - Conditions of Contract for Building and Civil Engineering Construction, to the General Manager Capital Programme.
2. The relevant existing delegations are in Attachment A to this report

EXECUTIVE SUMMARY

2. NZS 3910:2003, Conditions of Contract for Building and Civil Engineering Construction [known as “NZS 3910”], is the standard contract used by the Council, other Councils and similar organisations for the supply of construction work. It is the accepted industry standard and universally accepted. The Council has used the NZS 3910 format, with some local variations, for many years and the capital programme and supply of other Council funded construction work is performed under these terms. The terms have been approved by external legal advisers and our insurers.
3. A feature of NZS 3910 is that the parties appoint an “Engineer to the Contract” to perform various functions in the administration of the contract. These are primarily to act as an expert advisor to the principal - Council - giving directions to the contractor on behalf of Council and issuing payment schedules as per the contract. The Engineer also acts independently of either contracting party to fairly and impartially make various technical assessments and decisions, to value the work and to issue various certificates.
4. All NZS 3910 contracts have a named “Engineer to Contract”. The “Engineer to Contract” in a NZS 3910 contract is identified as a named individual not as a role or position description. For this reason the Council should delegate the power of appointment specifically to a senior manager. Kevin Mara was the Council’s “Engineer to Contract” by a specific delegation from the Council dated 27 September 2001 with the ability to sub-delegate.
5. The delegation to Mr Kevin Mara states *“That if Mr Kevin Mara is unavailable or unable to appoint another officer as the Engineer for a contract the General Manager Strategic Development be authorised to appoint another Council officer in any Council unit as Engineer for that contract”*.
6. With the departure of Mr Kevin Mara it is necessary for the Council to formally appoint a suitable person to appoint the “Engineer to Contract” and it is recommended that Jane Parfitt, Acting General Manager Capital Programme, be delegated to make this appointment where required.
7. To facilitate the administration of the many existing contracts and new ones that will occur in the NZS 3910 format it is recommended that until a General manager capital programme is appointed, Jane Parfitt Acting General Manager Capital Programme is able to appoint either an internal or an external Engineer to the contract as appropriate . The Engineer is required to act impartially within the NZS 3910 terms and by using an external engineer the potential for dispute can be lessened. Where the value or complexity of the work is substantial the role of the engineer can be crucial and it is prudent to have the ability to employ an external engineer for the role. This is also recommended practice where the potential for conflict of interest is high.

FINANCIAL IMPLICATIONS

8. Nil.

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

9. Expenditure approved by the "Engineer to Contract" is approved either as the work programme is part of the capital programme or is otherwise budgeted and approved in specific maintenance and renewal budgets included in the Annual Plan and LTCCP budgets.

LEGAL CONSIDERATIONS

10. The Council must appoint an "Engineer to Contract" to comply with contractual terms under existing and future NZS 3910 contracts. The role of Engineer to Contract should not remain vacant if the Council is to comply with existing commitments under NZS 3910 and future commitments it will enter into for new works.

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

11. Yes as above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

12. N/A.

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

13. Yes.

ALIGNMENT WITH STRATEGIES

14. N/A.

Do the recommendations align with the Council's strategies?

15. N/A.

CONSULTATION FULFILMENT

16. N/A.

STAFF RECOMMENDATION

It is recommended that the Council delegate Council power of appointment in respect of the role of "Engineer to Contract" under NZS 3910:2003, Conditions of Contract for Building and Civil Engineering Construction, to the General Manager Capital Programme in all the Council's existing and future contracts under NZS 3910 and further authorise the appointment of a suitably qualified Council external contractor if necessary to act in the role of "Engineer to Contract" in any of the Council's present and future contracts where the Council is the principal.

BACKGROUND (THE ISSUES)

- 17. The Council must appoint an individual to the “Engineer to Contract” role to replace Mr Kevin Mara .

THE OBJECTIVES

- 18. To fulfil contractual requirements created by NZS 3910.

THE OPTIONS

- 19. Appoint the General Manager, Capital Programme or some other person to the role of Engineer to Contract.

THE PREFERRED OPTION

- 17. Appoint the General Manager, Capital Programme.

ASSESSMENT OF OPTIONS

The Preferred Option

- 18. Appoint the General Manager, Capital Programme.

	Benefits (current and future)	Costs (current and future)
Social	NA	
Cultural	NA	
Environmental	NA	
Economic	NA	
Extent to which community outcomes are achieved: NA		
Impact on the Council’s capacity and responsibilities: NA		
Effects on Maori: NA		
Consistency with existing Council policies: The Council needs to make an appointment to comply with existing and future contractual commitments.		
Views and preferences of persons affected or likely to have an interest: NA		
Other relevant matters: NA		