

REGULATORY AND PLANNING COMMITTEE AGENDA

TUESDAY 13 MARCH 2012

AT 9.15AM

IN COMMITTEE ROOM 2, CIVIC OFFICES, 53 HEREFORD STREET

Committee: Councillor Sue Wells (Chairperson),
Councillors Helen Broughton, Sally Buck, Tim Carter, Jimmy Chen, Jamie Gough, Yani Johanson,
Glenn Livingstone and Claudia Reid.

Principal Advisers

Mike Theelen
Telephone: 941-8281

Peter Mitchell
Telephone: 941-8462

Committee Adviser

Megan Pearce
Committee Adviser
Telephone: 941-8140

- PART A - MATTERS REQUIRING A COUNCIL DECISION**
- PART B - REPORTS FOR INFORMATION**
- PART C - DELEGATED DECISIONS**

INDEX

PAGE NO

- PART C 1. APOLOGIES**
- PART B 2. DEPUTATIONS BY APPOINTMENT**
- PART A 3. COUNCIL HEARINGS PANEL**
- PART A 4. DIRECT REFERRAL OF APPLICATIONS TO THE ENVIRONMENT COURT**

REGULATORY AND PLANNING COMMITTEE 13. 3. 2012

- 1. APOLOGIES**
- 2. DEPUTATIONS BY APPOINTMENT**

REGULATORY AND PLANNING COMMITTEE 13. 3. 2012

3. COUNCIL HEARINGS PANEL

General Manager responsible:	General Manager Regulation & Democracy Services, DDI 941-8462
Officer responsible:	Resource Consents & Building Policy Manager
Author:	John Gibson, Planning Administration Manager

PURPOSE OF REPORT

1. The purpose of this report is to refresh Councillors about the Council Hearings Panel Workshop on 29 November 2010. The workshop was held as a result of the following 3 June 2010 Regulatory and Planning Committee resolution:

“The Regulatory and Planning Committee requested that a councillor workshop to be held as soon as possible regarding the Council’s Hearings Panel.”

EXECUTIVE SUMMARY

2. At the workshop a PowerPoint presentation by Peter Mitchell covered a range of matters relevant to the resolution. It included the following:

What is the Council Hearings Panel?

The Council Hearings Panel is a committee of the Council and has been appointed after each election for many years. All 54 elected members are appointed members of the Hearings Panel. The delegations register requires that a minimum of three and a maximum of four members are required to be on a Hearings Panel and that two of these may be Community Board members. The general role of the Hearings Panel is to carry out quasi judicial hearings on behalf of the Council.

A typical Resource Management Act (RMA) Panel operates with three elected members or two elected members and a Commissioner. The Resource Management Act requires the majority of panel members to be accredited to consider a notified application, a private plan change, or a notice of requirement and the RMA also provides for an accreditation process. The Act also requires that for a panel, the chair must be accredited. Other than for RMA hearings no formal accreditation is required for other types of hearings.

Typical hearings held by the Panel include:

- Decisions on resource consent hearings.
- Recommendations to Council on plan changes.
- To determine notification issues.
- Fencing of swimming pools.
- Barking dogs and dangerous dogs issues.
- Decisions under the Sale of Liquor Act.

What doe Quasi Judicial Mean?

Quasi judicial decisions are decisions which effect people’s legal rights and there is a legal requirement to hold a hearing when making such decisions. The rules of natural justice apply when making quasi judicial decisions and there may be a right of appeal. An important consideration is that quasi judicial decisions are not political decisions and must be based on the weight of evidence before the panel. Panels making quasi judicial decisions may have powers resembling those of a court. For example, witnesses can be summoned and evidence can be required to be given on oath.

Remuneration

RMA Hearings Panel members have fees payable. The hearing chair gets \$100 per hearing panel hour and Hearings Panel members get \$80 per hearing panel hour. On this matter it is worth noting that the Mayor is not eligible for any fee. It is also worth noting that for all other hearings there are no fees payable.

3 Cont'd

How are Panel Members Appointed?

The Council has resolved that the Planning Administration Manager or Resource Consents Manager appoint members to Hearings Panel considering all RMA matters. The Council's Secretary appoints members to panels considering non-RMA matters. The panel members are appointed based on the following criteria:

- No conflict of interest.
- Avoid hearings in own Ward (except Banks Peninsula).
- Availability.
- Accredited (if required).
- Experience versus in-experience.
- Complexity of the application.
- Swimming pools - must be Councillors

It is important to note that only Councillors can be appointed to Plan Change Hearings.

3. The presentation finished by putting forward a number of issues for consideration which had arisen during discussion at the 3 June Regulatory and Planning Committee meeting. These issues included:
 - Consistency of decision-making.
 - Accountability for decision-making.
 - Delegation powers.
 - Membership of Hearings Panels.
 - Availability of elected members to be on Hearings Panels.
 - No governance oversight of panel decisions by the Council.
 - Need for criteria re who attends RMA training.
4. There was discussion about some of the matters dealt with in the presentation particularly around the way hearings panel members are appointed.
5. At its meeting on 16 December 2010 the Council passed the following resolution:

"That the Mayor and Chief Executive appoint any hearings panels required to meet before 28 February 2011 on the following matters:

 - (i) Resource Management Act 1991.
 - (ii) Exemptions under the Fencing of Swimming Pools Act 1987.
 - (iii) Objections under the Dog Control Act 1996.
 - (iv) Sale of Liquor Act 1989"
6. This December 2010 delegation to the Mayor and chief Executive was subsequently extended by the Council and is the process to appoint Hearings Panel members today.

STAFF RECOMMENDATION

For consideration by the Committee.

REGULATORY AND PLANNING COMMITTEE 13. 3. 2012

4. DIRECT REFERRAL OF APPLICATIONS TO THE ENVIRONMENT COURT

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Resource Consents & Building Policy Manager
Author:	John Gibson, Planning Administration Manager and Maurice Dale, Consultant Senior Planner

PURPOSE OF REPORT

1. The purpose of this report is to inform the Council of the process under the Resource Management Act 1991 (as amended by the Resource Management Amendment Act 2009), that provides for certain applications to be directly referred to the Environment Court for a decision. The report also seeks input as to internal communication practices and the criteria that Officer's have developed to assist in determining whether such individual applications should be referred to the Environment Court or should instead be first determined by the Council as per usual practice. The criteria that have been developed are for use by Council Planning Officers in making recommendations to the Council Hearings Panel or alternatively Commissioners who currently have delegated decision making powers to determine whether an application should be referred to the Environment Court. The criteria are also for use by the Panel and Commissioners to assist them making decisions.
2. This is an updated version of the report presented to the Committee at its 6 May 2010 meeting. As a result of questions and directions from the Committee at that meeting, the report was held over to enable Officer's to consider the matters raised and respond to them. The matters that arose and that are addressed in this updated report include:
 - Whether there is any starting presumption when the consent authority is exercising the discretion to refer an application directly to the Environment Court if requested to do so by the applicant; and
 - If the consent authority agrees to refer an application to the Environment Court, whether the Council is able to be a party to the proceeding with a differing view on the merits of the application than that recommended in a consent authority report that is distributed prior to the applicant commencing the Environment Court proceedings.
 - Inclusion of further guidance in the proposed referral criteria in regards to whether a hearing would otherwise be necessary in deciding whether to directly refer an application; and
 - Addition of a recommendation to amend the delegations register such that the reference to a Hearings Panel considering a request for direct referral, instead be to a Sub-Committee made up of those Councillors who are accredited; and
 - Amendment of recommendations so as to direct Officers to implement processes to ensure that relevant Councillors, Community Board Members, Regulatory and Planning Committee, submitters, and potential submitters are advised only of the outcome of requests for direct referral and not when requests are received.
3. The representation of this report to the Committee has been delayed for sometime due to more urgent matters being brought before the Committee following the September 2010 and subsequent earthquakes. The opportunity has been taken since the previous meeting to update the information in this report to recognise more recent knowledge of direct referral matters.

EXECUTIVE SUMMARY

Direct referral process

4. The Resource Management (Simplifying and Streamlining) Amendment Bill 2009 came into effect on the 1 of October 2009. It introduced a number of changes to the Resource Management Act 1991 with the aim of simplifying and streamlining the planning processes under the Act. Part of the streamlining provisions included the ability for applicants for notified resource consent applications, and applications for notices of requirement for designations and heritage orders, to request to have their applications considered by the Environment Court without first having to proceed through the Council hearing process. This ability to refer applications directly to the Environment Court, does however not apply to private plan change requests.

REGULATORY AND PLANNING COMMITTEE 13. 3. 2012

4 Cont'd

5. The intent of the provisions enabling direct referral of applications is to reduce duplication of process, costs and time delays as a result of applications going through a Council hearing process and then being heard again in the Environment Court. Thus, direct referral of an application enables all interested parties to debate the merits of the application before the Court without the usual time delays and costs associated with first proceeding through a Council hearing process.
6. **Attachment 1** contains a flow diagram of the direct referral process. To initiate direct referral of a notified application, an applicant must first apply in writing to the Council for the application to be referred under section 87D (notified resource consents) or 198B (notices of requirement). The request may be made on the day that the application is lodged up until 5 working days after which submissions on the application have closed. If the Council receives a request before it has determined whether to notify an application, it must defer its decision on whether to directly refer the application until a decision on notification has been made. If the Council determines that the application will not be notified, it must return the request.
7. Under sections 87E(5) or 198C(4) of the Act, if the Council determines to notify the application, it must make a decision as whether to directly refer the application within 15 working days after the date of the decision on notification. The Act specifies that no submitter has a right to be heard by the Council on a request for direct referral.
8. If the Council declines the request for direct referral, it must give the applicant its reasons in writing. The applicant then may object the decision to the Council under section 357/357A of the Act. Under section 358(1), there is no further right of appeal beyond this to the Environment Court for a direct referral request relating to a resource consent application, but there is for a notice of requirement. Appeals to the High Court on points of law are however also possible.
9. Under the Council delegations amended in October 2009, a decision on direct referral sits with either a Hearings Panel or Commissioner. At its 6 May 2010 meeting, the Committee outlined its preference that a Sub-Committee rather than a Hearings Panel make the decision on direct referral. The Committee considered that appointment of a Subcommittee with a smaller number of members compared to the Hearings Panel would promote consistency in Council decision making on direct referral matters. Furthermore, the Committee considered that this Sub-Committee should be made up of those Councillors who are accredited to hear and consider RMA matters. A recommendation amending the delegations accordingly is added to this report.
10. Where the Council agrees to the request, the application is directly referred to the Environment Court who make a decision on the application. Where it does not agree (and any objection is unsuccessful), the application continues to be processed by the Council as per normal processes under the Act.
11. Notices of requirement for designations and heritage orders by Councils (as opposed to by requiring authorities) may also be subject to direct referral to the Environment Court. The process however differs in reflection that there is no request per-se for referral and that the decision on direct referral is therefore essentially an internal one for the Council.

Direct Referrals since the 2009 Amendment Act

12. Since the enactment of the Resource Management Amendment Act 2009, there have been ten applications accepted by Councils for referral to the Environment Court, and only one in Christchurch City. The status of these applications is as follows:
 - 3 completed.
 - 1 decision of Environment Court pending.
 - 1 on hold.
 - 5 filed with the Court but yet to proceed to hearing.
13. Typically the applications to which direct referral requests have been made and accepted have been large scale notified resource consents. They have included a supermarket proposal in Rodney District (now Auckland Council), a sewerage scheme in Hawkes Bay Region, the establishment of a quarry in Selwyn District, and a proposed Meridian wind farm in Hurunui District.

REGULATORY AND PLANNING COMMITTEE 13. 3. 2012

4 Cont'd

14. In Christchurch City, a single direct referral request has been received relating to the proposed expansion of the Lyttelton Port Company coal yard by way of reclamation. The Lyttelton Port Company (LPC) proposal was subject to applications made jointly to both the Christchurch City Council and Environment Canterbury in 2009. Following the close of public submissions on those applications, LPC applied to both Councils seeking that the applications be referred to the Environment Court for a decision thereby bypassing the Council hearing stage of the process. The reasons stipulated for LPC requesting direct referral included in summary:
 - The port's strategic infrastructural and economic importance;
 - Need for process certainty for project planning purposes;
 - Likelihood of appeal to the Environment Court;
 - Many of the issues raised in submissions related to global environment issues which were unlikely to be resolved through mediation;
 - The technical nature of the evidence would be best determined by the Court from the outset;
 - The Court process would assist in focussing the cases of submitters and encourage the pooling of submitter resources;
 - Direct referral would be a more efficient decision making process overall.
15. Direct referral of the LPC applications was accepted by both Christchurch City and Environment Canterbury under their respective delegations. The Christchurch City Council decision was made by a Commissioner due to the Council's partial ownership of the port company. A decision was required to be made in advance of the criteria and process recommended in this report being developed and reported through the Committee.
16. Arrangements for hearing of the LPC applications were being made by the Environment Court at the time of the 4 September 2010 earthquake. Following the earthquake, LPC sought and obtained an adjournment of proceedings. The applications have remained on hold since this time.
17. The subsequent 22 February 2011 earthquake had a severe impact on port facilities, affecting port operations. In order to provide additional space for port operations while existing facilities are repaired, LPC sought an Order in Council through the Canterbury Earthquake Recovery Authority (CERA) to enable the reclamation covered by its applications for the coal yard expansion to proceed. That Order in Council was subsequently gazetted and came into effect on the 27 May 2011. Reclamation utilising demolition rubble has commenced.
18. The Order in Council however specifically does not provide for the use of the reclaimed land for the handling or storage of coal. Accordingly LPC's resource consent applications remain current insofar that they continue to seek that the reclaimed land be used for coal handling and storage. The applications currently remain on hold before the Court. A pre-hearing conference is set for the 4 April at which time LPC must inform the Court whether it wishes to continue with the applications.

Criteria for considering a direct referral request

19. There is currently a lack of guidance for Councils as to what basis they should make a decision on the request for direct referral. Neither the Act nor the Ministry for the Environment presently provide guidance as to how Councils should exercise their decision making power. Indeed the Ministry has advised that they do not intend to produce any such guidance or criteria for making direct referral decisions therefore leaving it up to individual Councils to set their own. The absence of such criteria makes it difficult for Councils to determine what are appropriate grounds to accept or reject a direct referral request and ensure that individual decisions on direct referral are made on a consistent basis.
20. To date Environment Canterbury is the only Council in the country known to have produced any internal guidance to assist in exercising its discretion on direct referral requests. The ECAN criteria have also been used by Selwyn District Council and Hawkes Bay Regional Council in determining direct referral requests. The ECAN criteria were also looked at by Christchurch City Council Officers in reviewing the LPC direct referral request and making a recommendation to the Commissioner for direct referral of the LPC proposal to the Environment Court.

REGULATORY AND PLANNING COMMITTEE 13. 3. 2012

4 Cont'd

21. While there is no statutory requirement to establish criteria, it is considered desirable that criteria are adopted for considering any future requests for direct referral of an application by Council Officers, and the making of decisions by the Hearings Panel and Commissioners. Adopting such criteria will provide consistency in decision making and ensure that decisions to refer or not refer are based on sound reasoning. This is important so that any decision that is challenged is defensible. Accordingly not adopting criteria is not considered to be an appropriate response to enable proper consideration of direct referral requests.
22. At its 6 May 2010 meeting, the Committee sought advice from Officers as to whether there is any starting presumption when the Council is exercising the discretion to refer an application directly to the Environment Court if requested to do so by the applicant. In other words does the streamlining intent of the amended Act mean that there is a presumption for the Council to agree to a direct referral request? Advice obtained from the Council Legal Services Unit attached as **Attachment 2** concludes that the identification of appropriate matters to take into account and weighting of those matters when the Council makes its decision whether to directly refer, is to be ascertained in light of the purpose of simplifying and streamlining the process by excluding the first instance consent authority hearing from that process.
23. As a result, the advice considers that whilst there is no starting presumption to the Council's exercise of discretion, the objective of simplifying and streamlining the consent process must be given particular weight in the consideration of whether to agree to direct referral. That weight has been incorporated in the proposed referral criteria attached to this report and many of the suggested matters for consideration are about whether the process will be simplified and streamlined by the direct referral.
24. Accordingly, when the Council exercises the discretion on whether to agree to the request for direct referral, there is no starting presumption; however,
 - (a) The decision must be focussed on factors that arise from the intent and purpose of the discretion, being to enable the resource consent process to be simplified and streamlined; and
 - (b) The decision must further the purpose of the Act.
25. The advice from the Legal Services Unit has been peer reviewed by Simpson Grierson and they agree that there is no presumption that the Council agree to direct referral. The advice of both the Legal Services Unit and Simpson Grierson remains current as of March 2012.
26. The criteria that are recommended to be adopted for considering direct referral requests to Christchurch City Council are attached as **Attachment 3**. The criteria largely mirror those devised by Environment Canterbury but have been adapted for Christchurch City Council purposes.
27. The criteria are self explanatory and separated into four sections. The first section addresses whether referral of an application is necessary. The second section addresses whether referral will support the enabling intent of the Act. The third section addresses the cost and timeliness of the process. Finally the fourth section addresses technical assessment of applications. It is not intended that the criteria be binding on the reporting officer or decision makers but are merely to assist them in making recommendations and decisions. The criteria are framed in such a way so as to not unduly constrain decision makers and maintain sufficient discretion to determine whether to directly refer an application based on the individual circumstances of the application being considered. There may also be other unique factors that individual applications present and the criteria need to be flexible so as to enable such unique factors to be taken into account.
28. The first criteria under "Necessity for Referral" has been updated following the Committee's 6 May 2010 meeting to provide more explanation around the circumstances as to whether a hearing would otherwise be necessary.

REGULATORY AND PLANNING COMMITTEE 13. 3. 2012

4 Cont'd

29. It is expected that over time that the criteria will further evolve as more direct referral requests are considered nationwide. It is also expected that in time a body of case law will develop on direct referral matters which may assist in refining the appropriate matters that Council should consider in determining direct referral requests.

Communication of direct referral requests

30. Aside from the recommended criteria for making direct referral decisions, it is apparent that internal processes are required in order to ensure appropriate communication of requests for direct referral to Councillors, Community Boards, as well as potential submitters on a resource consent or notice of requirement. The Act contains no requirement or guidance for such lines of communication. It is however considered desirable that elected members for the ward, the relevant community board, and submitters or potential submitters are advised when a request for direct referral has been granted. Such communication is considered important so that they are fully informed of the implications of a direct referral decision for their involvement in the consent process.
31. As per the Committee's directions at its 6 May 2010 meeting, any requirement to advise Councillors, Community Boards, submitters, and potential submitters that a direct referral request has been received has been removed. This was in reflection that communicating receipt of a direct referral request may give submitters the false expectation of a right to be heard on a direct referral decision. In this respect, the Act specifies that submitters have no rights to be heard by the Council in considering a direct referral request.
32. It is therefore recommended that the relevant Councillors, Community Board Members, and submitters and potential submitters be advised only of the outcome of that request. It is also recommended that the outcome of requests be reported through the Regulatory and Planning Committee as part of the Planning Administration Managers monthly report.

The Council role at the Environment Court

33. Finally, at its 6 May 2010 meeting, the Committee sought advice from Officers as to the Council's role once a direct referral request has been granted. Specifically the Committee sought advice that if the Council agrees to refer an application to the Environment Court, whether another part of the Council is able to be a party to the proceeding with a differing view on the merits of the application than that recommended in a consent authority report that is distributed prior to the applicant commencing Environment Court proceedings.
34. Under the Act, once the Council has agreed to direct referral, the "consent authority" must provide a report on the application. This report is distributed to the applicant and any submitter prior to any Environment Court proceedings commencing and covers the matters contained in section 87F(4) of the Act. The purpose of the report is to ensure that the Court is given the context of the application in terms of the relevant planning instruments and local environmental issues by the Council, which is best placed to provide a comprehensive 'birds eye view' of those matters. Furthermore since the Council will potentially enforce any conditions of consent, it's important that the Council has a say in how they are drafted. Essentially the report would take a similar form to a section 42A report prepared for a Council hearing.
35. The reporting Council Officer would also be required to appear in Court to give expert evidence which may be subject to cross examination from other parties and questioning from the Court as per normal Environment Court hearing process. Caselaw has established that the council is a party to the proceedings and must be represented at the hearing (*Progressive Enterprises Ltd v Rodney DC* [2010] NZEnvC 221).
36. Given that responsibility for the report in respect of an application that has been directly referred rests with the "consent authority", it would be expected to contain the position of the entire Council as the consent authority including any differing positions as to the merits of the application within the Council. Given the provision in the Act that the report is one of the "consent authority", the advice from the Legal Services Unit is that the Council cannot therefore take a dual role in the Environment Court where for example a Council unit with a different position makes a submission and appear to present their position in Court. Any differing views within the Council may only be captured in the report.

REGULATORY AND PLANNING COMMITTEE 13. 3. 2012

4 Cont'd

37. The review of the Council legal advice by Simpson Grierson agrees that it would be inappropriate for the Council having a dual role at any hearing, although they consider there would be no legal barrier to this – i.e. another part of the Council is legally able to make a submission and appear to present their position in Court. Simpson Grierson advise that the Courts have reinforced that the Council is a single entity and there is the potential for criticism of the Council due to it taking an inconsistent or even contradictory position in relation to a proposal.
38. Accordingly it is generally considered that any differing views as to the merits of an application are more properly addressed in the consent authority report as opposed to different parts of the Council making submissions and becoming parties to the proceedings. Indeed this is currently the approach taken with typical resource consents processed within the Council which are not subject to direct referral. In those cases, where another unit of the Council adopts a different position and raises them with the reporting Officer, that position is considered and addressed in the report in making a recommendation to the Hearings Panel or Resource Management Officer Sub-Committee making the decision. As such the only difference with an application that had been directly referred is that the Environment Court would be the decision maker.
39. As with typical resource consent reports, it would also need to be made clear in the report for an application that has been directly referred where differing views are being presented and whom within Council has raised them. This enables the Court to determine what weight should be placed on the views presented and avoids any sense that the Council is not being entirely transparent, or is leveraging off its position as consent authority to pursue another non-objective agenda (e.g. as a trade competitor). Ultimately it would be up to the Court as the decision making body to make a decision on all the merits of the differing positions reported and presented.
40. In practice the responsibility for preparing the report would appropriately rest with Officers who have the appropriate expertise and experience to address the matters required to be covered in the report. Ultimately it is up to each Council to decide at what level the content of the report should be approved. However it is also considered appropriate that the report be approved at an Officer level, as is currently the case with section 42A reports for Council hearings. In this regard it is noted that it is referred to in the Act as a “report” (not a “submission”) which connotes a professional/dispassionate statutory assessment of the application. Officers with the relevant expertise and experience are generally best placed to conduct such a statutory assessment.
41. It is not considered appropriate for the approval of the report content to sit with elected members as part of a Hearings Panel or Sub-Committee. If for example finalising the content of the report were to sit with a Hearings Panel or Subcommittee, there would be a need for that panel to essentially hold a hearing to debate the merits of the application to reach a decision as to the final content of the report. There is a clear intention in the Act, that the streamlining provisions of the Act exist to reduce duplication of process, costs and time delays as a result of applications going through a Council hearing process and then being heard again in the Environment Court. Accordingly it is considered that having the delegation rest with a Hearings Panel or Subcommittee would also run contrary to the streamlining intent of the direct referral process.
42. Reports on applications that have been directly referred are also required to meet statutory timeframes for their preparation and it would be highly unlikely if not impossible for a report to be able to be drafted, considered, and approved within the 20 working day timeframe following the close of submissions on an application (noting that any Panel or Subcommittee decision would also need to be reported through Council).

REGULATORY AND PLANNING COMMITTEE 13. 3. 2012

4 Cont'd

43. Practical and jurisdictional difficulties in the context of a Court hearing could also eventuate where a Panel or Sub-Committee had finalised the content of the report. It is important to note that the Officer appearing in Court must be able to present their professional opinion and may be examined on that opinion. Accordingly it is important that the report ultimately reflects their professional opinion and not anyone else's. For example, during the course of a Court hearing it is common for the presiding Judge and Commissioners to seek the expert opinion of Officers in respect of resolving a relevant issue. The Court may also direct experts from the parties present to confer to discuss an issue with a view to narrowing or reaching agreement. Also depending on the nature of the evidence presented by other parties, the Officer needs to be open to considering that evidence and if necessary amend the position adopted in their report.
44. Where for example the report has been finalised by a Panel or Sub-Committee, Officers could therefore be constrained in responding, reaching agreement, or amending their position by the scope of the position adopted and approved by the Panel or Sub-Committee, frustrating the Court decision making process. Officers appearing as expert witnesses before the Court also have a duty to impartially assist the Court under the Environment Court Expert Witness Code of Conduct. Accordingly Officers appearing as experts before the Court who did not have full authority to respond, reach agreement, and be open to amending their position on issues could be in breach of this Code. This would also undermine the experts (and Council) credibility before the Court, as well as attracting criticism.
45. Given all of the above, it is recommended that the final content of the report should be delegated down to senior Officer level rather than rest with a Hearings Panel or Subcommittee. Having elected members involved in any aspect of the reports confirmation would not be appropriate process. As discussed above, delegating down to Officer level does not mean that the Council cannot take differing views on the merits of an application. As is currently the case with Officer reports to a Council hearing, the report to the Environment Court may address differing views within the Council. It is the role of the Court (as it is for the Hearings Panel with applications that have not been referred) to then consider those alternative views and reach a decision.
46. It is considered that the delegation as to the final content of the consent authority report rest with the Resource Management Manager and Planning Administration Manager. These roles provide the necessary oversight to ensure that the final content of the report considers all relevant issues including any differing points expressed by other Council units. As outlined in the advice from the Legal Services Unit, the delegation should however be made on the proviso that any report prepared states that it is report of the views of the Officers or consultants as individuals, and is not an expression of the views of a hearing panel or Council – i.e. similar to the preamble of Officer reports prepared under section 42A of the RMA.
47. As noted in the legal advice, the Ministry for the Environment is considering further changes to the direct referral provisions clarifying their intent. This work is likely to further resolve how the overall process will work. This may have the effect of requiring future changes to the Council's processes in considering applications for direct referral.

FINANCIAL IMPLICATIONS

48. There are no direct financial considerations.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

49. There are no LTCCP budgetary implications.

LEGAL CONSIDERATIONS

50. The adoption of the recommended criteria and process for finalising the consent authority report does not conflict with the statutory requirements of the Resource Management Act 1991 as amended by the Resource Management (Simplifying and Streamlining) Amendment Bill 2009.

REGULATORY AND PLANNING COMMITTEE 13. 3. 2012

4 Cont'd

51. Environment Court and High Court case law may develop over time in respect to the direct referral provisions. The Council's internal process and direct referral criteria may therefore occasionally need to be revised and updated to reflect that guidance and case law.

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

52. Yes. The recommended criteria will support decision making related to the powers of direct referral in the Resource Management Act.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

53. Page 156 of the 2009-2019 LTCCP – Level of Service under Democracy and Governance.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

54. Yes. Supports the level of service that Council and Community Board decisions comply with statutory requirements.

ALIGNMENT WITH STRATEGIES

55. Not applicable.

Do the recommendations align with the Council's strategies?

56. Not applicable.

CONSULTATION FULFILMENT

57. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee recommend to the Council that it:

- (a) Adopt the criteria in Attachment 3 for use by Officers, the Hearings Panel, and Commissioners in respect to making decisions on requests for applications to be directly referred to the Environment Court.
- (b) Direct Officers to implement processes to ensure that relevant Councillors, Community Board Members, and the Regulatory and Planning Committee are advised of the outcome of requests for direct referral.
- (c) Direct Officers to implement processes to ensure that submitters or potential submitters are advised of the outcome of requests for direct referral, and the implications for their involvement in the process.
- (d) Amend the delegations register by deleting delegations (yn), (yp), and (ys) relating to the Hearings Panel's powers relating to direct referral of applications to the Environment Court and instead create a new Subcommittee to be known as the "Direct Referral Subcommittee" made up those Councillors who are accredited to hear and consider Resource Management Act 1991 matters. The specific delegation to be included is as follows:

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Direct Referral Subcommittee

Terms of Reference/Quorum

1. To consider and make decisions on requests for resource management applications to be directly referred to the Environment Court.
2. The quorum of the Subcommittee shall be three and shall comprise those elected members that are accredited to hear and decide on Resource Management Act 1991 matters.

Delegations

- (i) To determine whether a notified resource consent application or an application to change or cancel a condition of a resource consent that has been notified, should be directly referred to the Environment Court at the request of an applicant, under section 87E of the Resource Management Act 1991.
 - (ii) To decide whether a notice of requirement for a heritage order should be directly referred to the Environment Court at the request of a requiring authority or a heritage protection authority under sections 198C of the Resource Management Act 1991.
- (e) Amend the delegations register by adding the following delegation under Resource Management Manager and Planning Administration Manager:
- (i) To approve the content of a consent authority report on an application that has been directly referred to the Environment Court under sections 87F and 198D of the Resource Management Act 1991.