

STAFF REPORT

TO: Mayor and Councillors
FROM: Chief Executive
DATE: 19 October 2010
REFERENCE: C780
SUBJECT: Delegation Register - RCN10-10-07

1. PURPOSE OF THIS REPORT

This report provides the opportunity for the Council to discuss delegations and seeks approval of the Delegations Register.

2. INTRODUCTION

The various statutes under which Council operates provide for delegation of powers and functions to committees, councillors, and staff. Such delegations are recorded in the Delegations Register.

The Local Government Act 2002 provides the powers for delegation subject to specific provisions in the various statutes which govern Council's business. (refer Appendix 1).

3. PRINCIPLES

Good management and effective administrative practice has it that decisions should be made at the lowest competent level. This provides for more expeditious administration and reflects the reality that many decisions required in local government cannot realistically be made, in a collective sense, by all councillors serving on the local authority.

Delegation involves the appointment of a person or group of people to make a decision on behalf of, and instead of, the person or body responsible for the delegation. The delegator can limit the exercise of any delegation within defined parameters.

The delegate must exercise any delegation responsibly in the knowledge he/she/they will be held accountable within the terms of the delegation. Delegates should be aware of the authority and responsibility they have. They should also have the confidence that their decisions, if made within the terms of the delegation, will not provoke a review of the delegation.

The effect of any delegation does not affect the ability of the delegator to exercise the same powers and functions concurrently. However, it would not be expected that the delegator and delegate would deal with the same matter, unless the delegation only extended to making recommendations.

An important consequence of delegation, particularly in relation to delegations to staff, is that appropriate reporting mechanisms should be in place for monitoring purposes. It is implicit that any delegation may be revoked at any time by the delegator.

The act of delegating involves mutual trust in fellow elected representatives and in staff. The maturity of an organisation and the trust which exists will be reflected in the delegation system which is in place. Traditionally Tasman District Council has had a high level of delegation relative to other authorities but it has worked, assisted by the presence of all Councillors on all Committees.

4. WHAT CAN BE DELEGATED?

The powers and functions capable of delegation are essentially of two kinds:

- a) Administration Powers - these include such matters as decisions on whom to serve notices, sign documents, powers to fix meetings, release decisions.
- b) Policy Responsibilities - this includes the development of policy and its implementation and review. In some cases it involves releasing discussion documents, hearing and deciding on submissions, allocating monies, and making submissions on behalf of Council.

Different statutes themselves place limitations on what can be delegated and to whom. It has been the TDC practice in those cases where Council is not able to subdelegate a power of decision, to delegate a power of recommendation to Committees. These qualifications are contained in the Delegations Register.

Committees have the power to delegate in specific instances to subcommittees, members, or staff and in the case of resource consent applications, to independent Commissioners. In such cases delegations must be precise and in writing in order to protect both the Council and the delegate. The Delegations Register serves to encode all the Council delegations.

5. STRUCTURE OF DELEGATIONS REGISTER

The attached Delegations Register has been restructured to include more explicitly, and in one place all existing delegations including administrative, financial and statutory delegations.

The Delegations Register is structured in four parts.

Part A of the Delegations Register presents introductory and background information for the Delegations Register.

Part B of the Delegations Register contains general administrative delegations relating to employment matters, the use of the Common Seal, the making of submissions on behalf of council, and the release of information.

Part C of the Delegations Register contains legal and financial delegations.

Part D of the Delegations Register contains delegations (not already addressed) relating to the Council's statutory functions, duties and powers under various statutes. The first section identifies delegations to Standing Committees and Subcommittees and is based on the previous Committee structure which worked well. The second section identifies some specific delegations to Standing Committees, subcommittees which have an on-going function have also been identified. Future amendments can be made as and when

Council or Standing Committees determine there is a need for change. In relation to Community Boards there is an intention to review the scope of delegations and a separate report will be brought back to Council.

The third section of Part D covers delegations to elected members and the final section is delegations to staff under the various statutes administered by Council. Councillors can contact Departmental Managers if an explanation of the particular provisions is required. Apart from updated position titles and some minor updates, the powers delegated to staff are the same as in the existing Register. The one new delegation to staff is the power to grant exemptions from the Camping Ground Regulations and the Food Hygiene Regulations to the Environment & Planning Manager. It is considered reasonable and appropriate that these powers be granted as a staff delegation as it avoids having to wait for the matter to be determined at a Committee meeting and the practice is that staff would only grant the exemptions in appropriate cases.

6. RECOMMENDATION

THAT the Tasman District Council approves the Delegations Register as attached to report RCN10-10-07

Paul Wylie
Chief Executive

Extract from Local Government Act 2002, Schedule 7, Part 1, Clause 32

32 Delegations

(1) Unless expressly provided otherwise in this Act, or in any other Act, for the purposes of efficiency and effectiveness in the conduct of a local authority's business, a local authority may delegate to a committee or other subordinate decision-making body, community board, or member or officer of the local authority any of its responsibilities, duties, or powers except—

(a) the power to make a rate; or

(b) the power to make a bylaw; or

(c) the power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term council community plan; or

(d) the power to adopt a long-term council community plan, annual plan, or annual report; or

(e) the power to appoint a chief executive; or

(f) the power to adopt policies required to be adopted and consulted on under this Act in association with the long-term council community plan or developed for the purpose of the local governance statement; or

(g) Repealed.

(2) Nothing in this clause restricts the power of a local authority to delegate to a committee or other subordinate decision-making body, community board, or member or officer of the local authority the power to do anything precedent to the exercise by the local authority (after consultation with the committee or body or person) of any power or duty specified in subclause (1).

(3) A committee or other subordinate decision-making body, community board, or member or officer of the local authority may delegate any of its responsibilities, duties, or powers to a subcommittee or person, subject to any conditions, limitations, or prohibitions imposed by the local authority or by the committee or body or person that makes the [original] delegation.

(4) A committee, subcommittee, other subordinate decision-making body, community board, or member or officer of the local authority to which or to whom any responsibilities, powers, or duties are delegated may, without confirmation by the local authority or committee or body or person that made the delegation, exercise or perform them in the like manner and with the same effect as the local authority could itself have exercised or performed them.

(5) A local authority may delegate to any other local authority, organisation, or person the enforcement, inspection, licensing, and administration related to bylaws and other regulatory matters.

(6) A territorial authority must consider whether or not to delegate to a community board if the delegation would enable the community board to best achieve its role.

(7) To avoid doubt, no delegation relieves the local authority, member, or officer of the liability or legal responsibility to perform or ensure performance of any function or duty.

(8) The delegation powers in this clause are in addition to any power of delegation a local authority has under any other enactment.