

## STAFF REPORT

## LATE AGENDA ITEM

**TO:** Full Council

**FROM:** Phil Doole, Resource Consents Manager

**REFERENCE:** C651

**SUBJECT:** **PROPOSED CHANGES TO RMA DELEGATIONS - REPORT EP09/10/06** – Report prepared for meeting of 1 October

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This item is introduced as a late item because the Resource Management Amendment Act 2009 was assented to on 22 September, and comes into force on 1 October 2009. Therefore immediate action is required to amend Council's Delegation Register to incorporate the new provisions as soon as possible to enable efficient processing of resource consents to continue.

### 1. INTRODUCTION

This report presents proposed changes to the Council's Delegations Register that are required to achieve efficient implementation of the Resource Management Amendment Act 2009.

### 2. SUMMARY OF PROPOSED CHANGES TO RESOURCE MANAGEMENT ACT

The Amendment Act comes into force on 1 October. New provisions that affect staff delegations are:

- New sections 87CA etc enabling applicants for resource consents to request that their applications be referred directly to the Environment Court for determination. Council will have 15 working days to decide on these requests.
- New provisions in Part 6AA for "calling in" applications and other matters of national importance to be determined by a Board of Inquiry or the Environment Court.
- New provisions for notices of requirement (designations) and heritage protection orders removing the presumption that new matters will be publicly notified, and enabling requiring authorities to request that their matters be referred directly to the Environment Court for determination. Council will have 15 working days to decide on these requests.
- Revised provisions for deciding whether applications and requirements should be publicly or limited notified and determining affected persons.

- New provisions allowing applicant's and submitters to request Independent Commissioner decision-makers; and other changes to the processing of resource consent applications including restrictions on extending timeframes and on further information requests.

### **3. PROPOSED CHANGES TO DELEGATIONS**

The proposed changes to staff delegations are set out in Attachment 1 (extracts from Council's Delegations Register).

It is proposed that applicant's requests for direct referrals to the Environment Court be decided by the Manager Environment & Planning or the Resource Consent Manager in consultation with the Chair or Deputy Chair of the Environment & Planning Committee. This level of delegation will assist Council to make the required decisions within 15 working days.

With regard to matter of national importance, it is proposed that the potentially significant actions be delegated to the Manager Environment & Planning to decide in consultation with the Chair or Deputy Chair of the Environment & Planning Committee.

The proposed changes to staff delegations for the notification and affected person decision-making reflect the changes in the Act (new Sections 95A-(5F)). There are no changes proposed to the level of staff delegation, except for the initial check when an application is received to ensure it is adequate (Section 88) which can be delegated to the Resource Consent Coordinators for time-efficiency gains.

A change is also proposed to the delegation to require payment of charges because of the new provisions relating to Commissioners and further information requests (for example) that may require payments to be made additional to deposits before significant processing costs are incurred.

The opportunity is also being taken to propose minor wording changes on several other delegations to achieve consistency.

Applications received prior to 1 October 2009 are to be processed as if the RMA had not been amended, therefore the "old" delegations will still be required until the processing of all of those applications is completed.

### **4. RECOMMENDATIONS**

1. That the changes to the Council's Delegations Register set out in Attachment 1 be approved.
2. That the RMA delegations dated 31 October 2007 remain in effect with regard to applications and other matters received prior to 1 October 2009.

Phil Doole  
**Resource Consents Manager**

## **Section 4**

### **A Delegations to Officers**

The Council and Committees may delegate some of their responsibilities to officers. This is a matter that needs to be discussed and determined by the Council and each Committee and the Chief Executive and the departmental Managers. However the following principles apply.

1. Delegations must be precise and in writing in order to protect both the Council and the officers.
2. Delegations must be subject to regular review.
3. Major decisions made under delegated authority must be reported in writing to the Council/relevant Committee.
4. Officers have certain powers of delegation in their own right. See Clause 32(3), Schedule 7 Local Government Act 2002

#### **General Qualification on all Delegations**

Staff will not exercise delegated authority in cases of uncertainty or where it would be desirable that political direction be given.

For the avoidance of doubt, any delegated power to make a decision on behalf, or in lieu, of the Council or its Standing Committees may be given subject to such conditions as is provided for in the statute under which the decision is made. Any staff delegation shall be exercised so as to ensure compliance with all the statutory duties that Council, as a local authority, has to comply with.

Unless stated to the contrary in any Act or in this instrument of delegation, any delegate may where applicable and with the approval of the Chief Executive or Department Manager, delegate to any other officer of the Council all or any of the powers exercisable by the first-mentioned officer, except this power of delegation.

For the avoidance of doubt, supervisors shall have the same powers of delegation as subordinate staff, unless the exercise of such delegation requires, by law, a particular qualification or registration.

All staff decisions made under delegated authority should clearly contain an appropriate endorsement e.g. 'made under delegated authority'. Where a delegation exists to make a decision on behalf of Council, the delegate has all the necessary powers of Council to effect that decision, including any related transitional powers prescribed by statute.

Staff decisions made under delegated authority on permits and licences shall be reported in summary form on a three monthly basis to the relevant Standing Committee.

The delegations to staff, if required by any enactment, are also made through the Chief Executive Officer by virtue of inclusion in this register.

(Note: The following delegations are additional to any financial and staffing delegations which may from time to time be granted to staff.)

## B Key To Staff Positions

CE	Chief Executive	DL	District Librarian
ComSM	Community Services Manager	EHO	Environmental Health Officer
CSM	Corporate Services Manager	EEO	Environmental Education Officer
EM	Engineering Manager	EIM	Environmental Information Manager
E&PMgr	Environment and Planning Manager	EMO	Environmental Monitoring Officer
AA	Administration Advisor	HMR	Harbourmaster
AM	Accounting Manager	MP	Policy Manager
AO	Administration Officer - Regulatory	PM	Property Manager
BCO	Building Consent Officer	PRCA	Principal Resource Consents Advisor
BI	Building Inspector	PP	Policy Planner
BO	Biosecurity Officer		
CBC	Co-ordinator Building Control	PW	Parking Wardens
CCM	Co-ordinator Compliance Monitoring	RAM	Rivers Asset Manager
CEM	Co-ordinator Environmental Monitoring	RegM	Regulatory Manager
CO	Compliance Officer	RCM	Resource Consents Manager
CP	Consent Planner	RCAO	Resource Consents Administration Officer
C& RA	Community and Recreation Advisor	RM	Reserves Manager
CRC	Co-ordinator Resource Consents (Either Subdivisions, Land Use, or Natural Resources)	RO	Rates Officer
CCM	Customer Services Manager	RS	Resource Scientist
CSO	Customer Services Officer	TAM	Transportation Asset Manager
CR	Co-ordinator Regulatory Services	UAM	Utilities Asset Manager
DE	Development Engineer		

## H Environment and Planning Department

### Council Delegations to Staff

	<b>Resource Management Act</b>	
1	Under Section 34A of the Resource Management Act the following delegations apply:-	
2	Section 10(2)(b) Granting a time extension to existing use.	E&P Mgr, RCM
3	Section 34A(1) Power to appoint and delegate the functions and powers of the Council to an independent Hearing Commissioner or panel of Commissioners to hear and decide on any application for resource consent. This appointment shall be undertaken following consultation with the Chairperson of the Environment & Planning Committee.	E&P Mgr, RCM
4	Section 36 Power to set additional charges, provide estimates, and remit the whole or any part of any charge.	E&P Mgr, RCM
5	Section 36(7) Power to not commence or continue processing resource consent applications if insufficient money has been <b>paid provided as required by Council's schedule of charges as a deposit.</b> <i>Note: When using this provision the application remains effectively "on hold" until the correct <del>deposit</del> payment is provided made by the applicant.</i>	E & P Mgr, RCM, CRC
6	Section 37 Powers to extend or waive time periods.	E&P Mgr, RCM, PRCA, CRC, MP, EIM, CP
7	Section 38 Authorisation of Enforcement Officer.	E&P Mgr
8	Section 41B and 41C Power to issue directions to applicants and/or submitters to provide briefs of evidence before commencement of a hearing, and to direct certain procedural aspects of the hearing before the hearing but excluding the power to strike out a submission under section 41C(5).	E&P Mgr, RCM, MP
9	Section 42 Power to respond to requests to protect sensitive information.	E&P Mgr, RCM
10	Section 42A <del>and 42B</del> Powers in relation to requiring or commissioning a report on any matter described in section 39(1).	E&P Mgr, RCM, MP, <b>PRCA</b>

	<u>Section 87CA</u> In consultation with the Chairperson or deputy chair of the Environment and Planning Committee, power to grant or decline requests for applications to be determined by the Environment Court instead of by the Consent Authority.	<u>E &amp; P Mgr, RCM</u>
	<u>Section 87D</u> Powers in relation to providing a report on applications that are to be determined by the Environment Court.	<u>E&amp;P Mgr, RCM, CRC, PRCA</u>
11	Section 88(3) Power to return <u>an</u> application if an inadequate assessment of environmental effects is submitted with <u>it an application</u> or if the application does not include all the information required to be submitted according to the proposed Tasman Resource Management Plan.	E & P Mgr, RCM, <u>CRC</u>
12	Section 91 <u>Power</u> to determine not to proceed with processing an application pending applications for additional consent(s).	E&P Mgr, RCM, CRC, PRCA, CP
13	Section 92(1) <u>Power to</u> request further information from applicants.	E&P Mgr, RCM, CRC, PRCA , CP
14	Section 92(2) Power to commission report for further information	E&P Mgr, RCM
15	Section 92A Power to set time limit for further information where the applicant agrees to provide it.	E & P Mgr, RCM, CRC, PRCA, CP
16	<del>Section 92A(3) and Section 92B(2)</del> <del>Power to decline an application (including for a controlled activity) on the basis that it is considered that the Council has insufficient information to enable it to make a decision on the application.</del> <i>Note: this power has been shifted to Section 104</i>	<del>E &amp; P Mgr, RCM</del>
17	<del>Section 93(1)(b)</del> <del>To determine whether the adverse effects of an activity on the environment will be minor.</del>	<del>E&amp;P Mgr, RCM</del>
18	<del>Section 94, 94A, 94B, 94C, 94D</del> <del>The power to decide on when an application for resource consent need not be notified and to determine which parties (if any) may be adversely affected by an application and whether their written approval has been obtained and provided that any relevant statutory criteria can be satisfactorily met.</del>	<del>E&amp;P Mgr, RCM</del>

	<u>Sections 95A and 95D</u> Powers to determine whether to publicly notify an application for resource consent, and to decide whether the activity will have, or is likely to have adverse effects on the environment that are more than minor.	E&P Mgr, RCM
	<u>Sections 95B, 95E and 95F</u> Powers to decide if there are any affected persons or affected order holders, to determine whether limited notification is required.	E&P Mgr, RCM
19	Section 99 Power to fix a pre-hearing meeting and attend to all associated matters regarding notification, conduct and reporting excepting the powers of declining to process an application or submission under subsection (5).	E&P Mgr, RCM, CRC, PCRA
20	Section 99A Power to refer matters to mediation prior to a hearing.	E&P Mgr, RCM
21	Section 100 The Power to determine that a formal hearing is or is not needed in accordance with Section 100.	E&P Mgr, RCM
22	Section 102/103 The Power to make a decision to establish a joint/combined hearing.	E&P Mgr, RCM
23	<del>Section 104A</del> <del>The power to grant a resource consent for applications for controlled activities. Note: this is covered in 25 below</del>	<del>E&amp;P Mgr, RCM, CRC, PRCA, CP</del>
24	Section 104 – 104D, 106, and 107 The Powers to grant a resource consent for applications which were processed on either a public or limited notified basis not requiring a hearing (follow a decision made pursuant to Section 100 of the Act) and the power to grant a resource consent on any application processed on a non-notified basis.	E&P Mgr, RCM, PRCA CRC, CP
25	<u>Section 104 – 104D, 106, and 107</u> The Power to decline any resource consent application not requiring a hearing. <u>Power to decline an application (including for a controlled activity) on the basis that it is considered that the Council has insufficient information to enable it to make a decision on the application.</u>	E&P Mgr, RCM
26	Section 108 Power to impose conditions on resource consents.	E&P Mgr, RCM, PRCA, CRC, CP

27	Section 108A and 109 <del>The</del> Powers to make decisions in relation to bonds or covenants.	E&P Mgr, RCM, PRCA ,CRC, CP
28	Section 110 <del>The</del> Power to authorise refund of money paid when activity does not proceed.	E&P Mgr, RCM
29	Section 114(2)(b) <b>Powers</b> to determine what other authorities and persons should be notified of decisions on resource consent applications.	E&P Mgr, RCM, <b>PRCP</b>
30	Section 119A Authority to allow staff to process changes <b>and reviews</b> to restricted coastal activity consents subject to criteria in the Act.	E&P Mgr, RCM
31	Section 124 <del>The</del> Power to permit the exercise of consent while applying for renewal.	E&P Mgr, RCM
32	Section 125 <del>The</del> Power to extend the period in which a resource consent lapses.	E&P Mgr, RCM
33	Section 126 <del>The</del> Power to cancel unexercised consents.	E& P Mgr, RCM, EIM
34	Section 127 <del>The</del> Power to decide who is adversely affected by an application to change or cancellation a consent condition.	E&P Mgr, RCM
35	Section 128-132 <del>The</del> Power to initiate <b>and determine</b> a review of <del>conditions of</del> a resource consent, <b>except if a hearing is required.</b>	E&P Mgr, RCM, EIM
36	Section 133A Power to issue amended consent which corrects minor mistakes or defects in the consent.	E&P Mgr, RCM, PRCA, and where it relates to a decision made by a Hearing Panel, to do so in consultation with the Chair of the Hearings Committee that made the original decision.
37	Section 134(3) <b>Power</b> to receive on behalf of the Council written notice of transfer of whole or part of a land use consent.	E&P Mgr, RCM, CRC, PRCA, CP, RCAO



38	Section 135 <b>Power</b> to receive on behalf of the Council written notice of transfer of whole or part of a coastal permit.	E&P Mgr, RCM, CRC, PRCA, CP, RCAO
39	Section 136(1), (2)(a), and (2)(b)(i) <b>Power</b> to receive on behalf of the Council written notice of transfer of a water permit.	E&P Mgr, RCM, CRC, PRCA, CP, RCAO
40	Section 136 <del>The</del> <b>Power</b> to approve transfer of water permits to another site <b>if the change is not notified, except if a hearing is required.</b>	E&P Mgr, RCM, CRC (Natural Resources), CP
41	Section 137 <b>Power</b> to receive on behalf of the Council written notice of transfer of whole or part of a discharge permit and the power to decide on transfers of discharge permits to other sites, <b>except if a hearing is required.</b>	E&P Mgr, RCM, CRC (Natural Resources), CP
42	Section 138 <b>Power</b> to accept the surrender or part surrender of a resource consent or refuse surrender of part of a resource consent and to accept that a person need not complete any work to give effect to the consent.	E&P Mgr, RCM, EIM
43	Section 138A <del>The</del> Authority for staff to consider special provisions relating to coastal permits for dumping or incineration	E&P Mgr, RCM, CRC (Natural Resources), CP
44	Section 139 Power to issue Certificates of Compliance.	E&P Mgr, RCM, PRCA, CRC, CP
45	Section 139A Power to issue existing use certificates.	E&P Mgr, RCM, PRCA, CRC, CP
	<b>Section 142</b> <b><u>In consultation with the Chairperson or deputy chair of the Environment and Planning Committee, power to request that the Minister make a direction that a matter is or is part of a proposal of national significance.</u></b>	<b>E&amp;P Mgr</b>
	<b>Section 147</b> <b><u>Power to provide views to Minister on a matter of national importance.</u></b>	<b>E&amp;P Mgr</b>
	<b>Section 149E</b> <b><u>Authorisation to make a submission to the EPA on a matter of national importance that has been called in and publicly notified.</u></b>	<b>E&amp;P Mgr</b>
	<b>Section 149G</b> <b><u>Powers in relation to providing a report to the Environmental Protection Agency when commissioned to do so.</u></b>	<b>E&amp;P Mgr, RCM, CRC, PRCA</b>

	<u>Section 149K</u> <u>Authorisation to provide the Minister with suggestions for members of a Board of Inquiry</u>	<u>E&amp;P Mgr</u>
	<u>Section 149Q</u> <u>Authorisation to provide comments to a Board of Inquiry on a draft report.</u>	<u>E&amp;P Mgr</u>
	<u>Section 149V</u> <u>In consultation with the Chairperson or deputy chair of the Environment and Planning Committee, power to appeal to the High Court (on points of law) against a decision of a Board of Inquiry or Environment Court.</u>	<u>E&amp;P Mgr</u>
	<u>Sections 168A and 169</u> <u>Powers to decide whether to notify a notice of requirement for a designation.</u>	<u>E&amp;P Mgr, RCM</u>
46	Section 171 <u>Powers to make recommendations</u> to a requiring authority including reasons for the recommendation, <u>except when a hearing is required.</u>	E&P Mgr, RCM, PRCA, CRC
47	Section 174 <u>Power</u> to appeal to the Environment Court against a decision of a Requiring Authority subject to consultation with Environment & Planning Committee Chairperson and Deputy	E&P Mgr
48	Section 176A <u>The</u> Power to request changes to outline plans	E&P Mgr, RCM, PRCA, CRC, CP
49	Section 181 <u>The</u> Power to alter a designation.	E&P Mgr, RCM, MP, CRC (Land Use Consents)
50	Section 182 Removal of designation	E&P Mgr, MP
51	Section 184 <u>Power to decide on</u> <del>Decision on</del> lapsing of designations.	E&P Mgr, MP, RCM
	<u>Sections 189A and 190</u> <u>Powers to decide whether to notify a notice of requirement for a heritage order.</u>	<u>E&amp;P Mgr, RCM</u>
	<u>Section 191</u> <u>Powers to make recommendations to a heritage protection authority including reasons for the recommendation, except when a hearing is required.</u>	<u>E&amp;P Mgr, RCM, PRCA, CRC</u>
	<u>Section 195A</u> <u>Power to alter a heritage order.</u>	<u>E&amp;P Mgr, RCM, MP</u>

	<u>Section 198BA</u> In consultation with the Chairperson or deputy chair of the Environment and Planning Committee, power to grant or decline requests for requirements to be determined by the Environment Court instead of by the Consent Authority	<u>E&amp;P Mgr, RCM</u>
	<u>Section 198C</u> Powers in relation to providing a report on requirements that are to be determined by the Environment Court	<u>E&amp;P Mgr, RCM, CRC, PRCA</u>
52	Section 221 <u>Authorisation Power</u> to issue a consent notice.	E&P Mgr, RCM, PRCA, CRC, CP
	<u>Section 221</u> Powers to review and vary or cancel a condition in a consent notice.	<u>E&amp;P Mgr, RCM, CRC (Subdivision Consents)</u>
53	Section 222 Power to issue a completion certificate.	E&P Mgr, RCM, CRC, CP, CCM, CO
54	Section 223 Power to approve any survey plan.	E&P Mgr, RCM, , CRC, CP
55	Section 224(c) Power to certify compliance as an “authorised officer” with specified conditions prior to deposit of survey plan.	E&P Mgr, RCM, CRC (Subdivision Consents), CP
56	Section 224(f) Power to certify compliance under Section 116A of the Building Act.	E& P Mgr, RCM, CRC, CP, CR, BCO, BI
57	Section 226 Power to certify any survey plan or copy thereof to the effect that the subject land has not been subject to a previous statutory approval.	E&P Mgr, RCM, CRC, CP
58	Sections 240, 241 and 243 <u>Power to cancel</u> <del>cancellation of</del> covenants and conditions.	E&P Mgr, RCM, CRC, CP
59	Section 245 <u>Power to</u> approve survey plans for reclamation	E&P Mgr, RCM, CRC, CP
60	Section 281 Power to agree to waiver of notice	E&P Mgr, RCM, MP, EIM
61	Section 311 and 316 In consultation with the Chairperson or deputy chair of the Environment and Planning Committee, the power to apply for a declaration under Section 311 or an enforcement order (including an interim enforcement order) under Section 316 of the Resource Management Act.	E&PMgr

62	Section 329 Issue of water shortage direction.	E&P Mgr
63	Section 330 Power to invoke emergency work provisions.	E&P Mgr
64	Section 357D Power to uphold objections to conditions of consent where there is a favourable staff recommendation.	E&P Mgr, RCM
	<b>RMA First Schedule</b>	
65	Clause 5 Power to fix notification date, and decide on whom public notices shall be sent in relation to a policy statement or plan or a change or variation thereto.	E&P Mgr, MP, PP
66	Clause 7 Power to summarise for and on behalf of the Local Authority submissions made in respect of a policy statement or plan or a change or variation thereto.	E&P Mgr, MP, PP
67	Clause 8AA Power to fix a pre-hearing meeting and attend to all associated matters regarding notification, conduct and reporting, excepting the powers of declining a request for a prehearing meeting.	E&P Mgr, MP
	<b>Clause 11</b> <b>Power to decide which landowners or occupiers are directly affected by the Council's decisions under Clause 9(2).</b>	<b>E&amp;P Mgr, MP</b>
68	Clause 16 Power to alter information and correct minor errors, or to give effect to a direction under s 55 on a national policy statement.	E&P Mgr, MP
69	Clause 20A Power to correct minor errors in an operative statement or plan.	E&P Mgr, MP
70	Clause 23 Power to request further information or commission a report prior to modification or consideration of the plan change request.	E&P Mgr, MP
71	Clause 24 Power to modify a plan change request by agreement with requester, prior to its consideration by Council.	E& P Mgr, MP
72	Clause 25 The power to accept, reject or deal with a request to prepare or change a plan as a resource consent application, provided that any rejection or dealing with as an application for resource consent, may be subject to review by the Environment & Planning Committee.	E&P Mgr, MP

73	Clause 26 Power to complete preparation of plan change request accepted under cl 25, and notify request.	E&P Mgr, MP
74	Clause 28 Power to send a notice to any requester not likely to continue with request.	E&P Mgr, MP
75	Clause 32 Power to certify as correct material incorporated by reference into plan following decision by Environment and Planning Committee.	E&P Mgr, MP

**Note: the above items of Delegation are to be renumbered as required.**