

QLDC Council

19 October 2023

Report for Agenda Item | Rīpoata moto e Rāraki take [2]

Department: Planning & Development

Title | Taitara : Request to update Officer Delegations under the Resource Management Act 1991

Purpose of the Report | Te Take mō te Pūroko

The purpose of this report is to request approval from Council for an update to Council Officer Delegations under the Resource Management Act 1991 (RMA).

Recommendation | Kā Tūtohuka

That the Council:

1. **Note** the contents of this report; and
2. **Approve** the updated Delegations Register [in **Attachment A** to this report], which reflects changes to Council Officer Delegations under the Resource Management Act 1991.

Prepared by:



Name: Fiona Blight
Title: Manager Resource Consents

26 September 2023

Reviewed and Authorised by:



Name: David Wallace
Title: General Manager Planning and
Development

26 September 2023

Context | Horopaki

1. Approval is being sought from Council to amend and update the Council Delegations Register for the Resource Management Act 1991 (RMA or the 'Act') relating to the delegations for the designation provisions. The opportunity is also taken to carry out an administrative update to the delegations to reflect job title changes in the administration team that supports the resource consenting function.
2. The RMA is still in force and remains the primary planning legislation for the District. While the replacement 'Natural and Built Environment Act' passed into law in August 2023, the RMA remains in force until such time as a new Plan for the District is confirmed, which is anticipated to be some years away. As parts of the new legislation come into use, the Council's Delegations Register will be updated. Until that time, delegations under the RMA are still required.
3. The relevant designation provisions and the proposed changes are shown in underline and strike through in Attachment A to this report. The reasons for the changes are provided below.
4. Council has two functions in relation to the designation provisions of the RMA:
 - As a territorial authority it is also a Requiring Authority as set out at section 166 of the RMA. As such, it may use the RMA process for Designations to secure land and develop and manage it for public works.
 - It has territorial authority responsibilities to process applications made by Requiring Authorities under the designation provisions (it's consent authority function).
 - A streamlined process is available to Territorial Authorities that are also Requiring Authorities under section 168A of the Act.
 - Under section 168A of the RMA, a Territorial Authority (in its role as Consent Authority and Requiring Authority) may make recommendations and confirm or modify the Notice of Requirement (to designate land), impose conditions, or withdraw the Notice of Requirement.
5. The designation provisions of the RMA sit separately to the District Plan making and resource consent process. These processes specifically enable public works¹ to be undertaken.
6. Council is just one of a number of Requiring Authorities in New Zealand that each control the public works it is responsible for. The designation provisions essentially enable a "spot zoning" over land required for the public work, providing for the public work to be undertaken and operate without the need to adhere to the underlying District Plan zoning provisions or obtain resource consent².

¹ Public works include (but are not limited to) – water, waste, road, rail and electricity infrastructure and networks, community facilities on community owned reserves/open spaces, airports.

² A designation over land is established (confirmed) either via a publicly notified District Plan review process, or under a similar process to how a resource consent application is processed (including the notification processes). The latter is done via a Notice of Requirement rather than a resource consent application. Once in place ongoing works undertaken by the Requiring Authority on the

7. These designation provisions (and the specific powers they contain) are important because they authorise ongoing critical public works that would otherwise not fit neatly into a typical District Plan zoning, and/or the works span multiple zones in the case of linear infrastructure. They also give additional powers to Council to secure land for public works. Without the designation provisions in the Act public works would be subject to a multitude of resource consent applications from a territorial authority each time work was undertaken. The RMA purposely removes that requirement.
8. The process for decision-making for a Council designation is set out at section 168A of the Act. Where Council is both the Territorial Authority and the Requiring Authority, the RMA leaves it to Council to organise its internal decision-making, but Council's preference is to ensure that there is a clear separation of the decision-making powers, and that these reflect what the Act directs. Generally, a Notice of Requirement ('NoR'/the Application) is lodged by the Council in its Requiring Authority role, and Council in its role as Territorial Authority (consent authority function) under specific delegations will consider the Application and make recommendations. The Council as a Requiring Authority will then make the decision in consideration of those recommendations.
9. In order to ensure a separation of these functions, this Council has traditionally sent applications to an Independent Hearing Commissioner³, who, where Council is both the Territorial Authority and the Requiring Authority, undertakes both functions – recommendatory and decision-maker.
10. While this provides independence from internal officers making decisions, it does not reflect the distinct roles within Council. For example, the Property and Infrastructure and Community Services departments generally act as the Requiring Authority because the works related to designations sit within their work streams and as such, they are best placed to make the decision for the Requiring Authority. This reflects the provisions in the RMA, which gives the power to Requiring Authorities to make the decision on a NoR⁴.
11. Changes to the delegations are sought to reflect the distinct roles of the Territorial (Consent) Authority and the Requiring Authority. As it sits, Council as the Consent Authority is undertaking both roles. The changes to the delegations to place the decision-making with the Requiring Authority in relation to designations are being sought because:
 - Historically, the delegations around decision-making in relation to the designation provisions have sat with the Territorial Consent Authority function of Council. This has resulted in confusion in a number of situations over the last few years, including

designated land may be subject to the Outline Plan provisions, which require information on the works to be provided to the territorial consent authority for review (note not approval).

³ One of the members of the Council appointed Hearing Commissioner Panel.

⁴ Note, that similar to resource consents the processes around designations, including decisions, have appeal rights to the Environment Court (and higher Courts) who then would become the decision-maker.

recommendations made by the Consent Authority, but no decision being made, and adherence to timeframes becoming problematic because of the confusion.

- Section 168A is designed to streamline process, however the decision-making role does not currently lie with the Requiring Authority, or the appropriate Council workstream.
- The delegations should align to the roles and powers set out under the RMA for each of Councils functions.
- This will enable that the delegations are clear, transparent, and easily understood (because they will be better able to be read in conjunction with the RMA sections to which they relate).

Analysis and Advice | Tatāritaka me kā Tohutohu

12. The proposed changes have been made in collaboration with the Property and Infrastructure and Community Services General Managers and have been reviewed by Councils In-house Legal Team.
13. The current delegations are set out at pages 46-50 of the Register of Delegations (and in **Attachment A** to this report). These set out the delegations for decision-making for each provision under the RMA for the Designations process. The Power to make a decision on a Designation under section 168A, where the Requiring Authority is also the Council currently sits with the following officers:
- Principal Planner Resource Consents;
 - Resource Consents Manager;
 - Planning Policy Manager;
 - Team Leader - Resource Consents; and
 - Hearings Commissioner(s)
14. The proposed new delegations are summarised below:
- Decision to Lodge a NoR in the Role of Requiring Authority:
 - a. The Programme Director, Infrastructure Operations Manager, and Parks Manager. This reflects the work streams for which the NoR is required.
 - b. The delegations to receive a NoR have been retained unchanged as these appropriately sit with the Territorial Consent Authority function whose role it is to process the NoR.
 - The power to determine whether a Council NoR should be notified (either under s171 where other agencies are the Requiring Authority, or under section 168A where Council is the Requiring Authority) has been updated to reflect that the Act now provides for NoR to be processed non-notified, limited notified or publicly notified. The current delegation only refers to public notification. The delegations for this section are not proposed to be changed as these appropriately sit with the Territorial Consent Authority function.
 - A new delegation for the territorial consent authority function, including for its Hearing Commissioners, that reflects that this function should only be considering and making a recommendation back to the Requiring Authority, not making the decision itself⁵. Although section 168A enables the functions to be streamlined, thus recommendations

⁵ Note this is the same process that the Territorial Consent Authority has to follow (under section 171 of the Act) for NoR that it is processing from other Requiring Authorities (such as Waka Kotahi, Transpower, Ministry of Education etc).

and decisions may be made by the Territorial Authority (in its roles as both Consent Authority and Requiring Authority), the current delegations do not distinguish between the two roles – and it sits uncomfortably with the Territorial Authority’s desire for transparency.

- The Chief Executive Officer, the General Manager Property and Infrastructure, and General Manager Community Services to make the decision on NoR for designations – these are new delegations for the reasons set out above. These delegations sit comfortably with the work streams for which the Designation is sought.
- A new delegation for the General Manager Community Services in relation to providing written consent for other parties to undertake an activity within a Council designation – this delegation should have been in place already as the department that manages Councils parks, reserves and open space, and again, the delegation sits comfortably with the functions of Council’s Parks and Reserves.
- The delegations to the Outline Plan provisions under section 176A, and the alteration of a designation under section 181 RMA have been updated to correctly reflect roles and responsibilities of the Council as Requiring Authority or Consent Authority. These provisions apply to all Requiring Authorities, not just Council as a Requiring Authority and that has been reflected in terms of the delegations that the Territorial Consent Authority needs to retain.
- Minor changes to the delegations for the remainder of the designation provisions, which are more ancillary to the key provisions discussed above, to align and reflect the roles and responsibilities of the Council as Requiring Authority or Consent Authority.

15. Neither the RMA nor the Local Government Act (LGA) contains any specific provisions about how the Council should structure its internal arrangements to both apply for or process a NoR to designate land for public works in its district. However, Council under the RMA does have a responsibility to prepare and maintain a District Plan and to be a Consent Authority processing a number of varying types of applications made to it under the RMA, including designations from non-Council Requiring Authorities. It also has responsibilities under the LGA around the provision of community services (i.e. infrastructure and community facilities/parks/open space). Accordingly, QLDC has an operational structure that reflects these functions. As stated above, the recommended changes to these delegations are to better reflect and align them to the correct functional arm of Council.

16. Option 1 – Do not approve the proposed changes to the RMA delegations register

Advantages:

- Given that the current delegations are not fit for purpose, there is no advantage in retaining these.
- There are no administrative advantages to retaining current delegations.

Disadvantages:

- The delegations for the designation provisions of the RMA will remain out of alignment with the roles and responsibilities prescribed in the legislation.
- This will continue to result in there being continued confusion around who should do what because the delegations are not consistent with the process the Act prescribes.
- The alignment of the delegations to enable the territorial consent authority to treat all Requiring Authorities the same in terms of process will be lost in terms of efficiencies.

17. Option 2 – Approve the proposed changes to the RMA delegations register set out in Attachment A to this report.

Advantages:

- The Delegations Register will properly reflect the decision-making role of Council as both a Requiring Authority and a Consent Authority and will delegate officers appropriately to make decisions within their work stream and expertise.
- The changes will improve efficiency within Council and provide more certainty for decision-makers themselves.
- The changes will prevent confusion, and ensure timeframes are adhered to.

Disadvantages:

- There is little disadvantage in updating the RMA Delegations Register except that the status quo would no longer exist.

18. This report recommends **Option 2** because it aligns Councils delegations with legislative process, provides greater clarity on roles and responsibilities which will result in more efficient and effective practices around an application and the processing of it.

Consultation Process | Hātepe Matapaki

Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

19. This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because delegations for decision-making under the RMA pertain to the Council and Council Officers it has delegated functions to.

Māori Consultation | Iwi Rūnaka

20. The Council has not undertaken any consultation with iwi. The matter of delegating RMA functions from the Council to Council Officers is not a matter that requires any consultation with iwi. None of the delegations or the changes sought to these pertain to consultation and engagement with iwi, nor changes to current practices and requirements for consultation.

Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

21. This matter relates to the Strategic/Political/Reputation risk category. It is associated with RISK10034 Inadequate resource management or building consent systems, processes and/or people capability results in poor development outcomes and liability within the QLDC Risk Register. This risk has been assessed as having a low residual risk rating.
22. The approval of the recommended option will support the Council by allowing us to retain the risk at its current level. This shall be achieved because the recommended option will provide clarity on the roles and responsibilities of those exercising these delegations. This in itself will reduce and assist to manage any risk to administering the designation processes.

Financial Implications | Kā Riteka ā-Pūtea

23. There are no operational or capital expenditure requirements additional to existing approved budgets or the Annual/Ten Year Plan.

Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera

24. This report is requesting approval be given by Council to changes proposed to the Delegations Register for the RMA. As such no Council policies, strategies or bylaws have been considered.
25. This matter is not included in the Ten Year Plan/Annual Plan.

Legal Considerations and Statutory Responsibilities | Ka Ture Whaiwhakaaro me kā Takohaka Waeture

26. Council has a duty under the RMA to both secure and process NoR for designations to legislative requirements and timeframes. Delegation of decision-making to appropriate Council Officers provides a mechanism for this to be achieved in an efficient and effective manner as part of day-to-day work tasks.
27. The RMA provides that only full Council can delegate functions administered under it to Council officers. These delegations cannot be further sub-delegated as set out in section 34A of the RMA, which states that the power to delegate RMA functions cannot be delegated to Council Officers.

Local Government Act 2002 Purpose Provisions | Te Whakatureture 2002 o te Kāwanataka ā-Kiaka

28. Section 10 of the Local Government Act 2002 states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. The proposed changes to delegations will enable the appropriate workstreams of Council to use the powers given under the RMA to secure designations for critical public works for the community, along with ensuring that Council fulfils the need for good quality and transparent decision-making and the performance of its regulatory functions. As such, the recommendation in this report is appropriate and within the ambit of Section 10 of the Act.

29. The recommended option:

- Can be implemented through current funding under the Ten Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not significantly alter the intended level of service provision for any significant activity undertaken by or on behalf of the Council or transfer the ownership or control of a strategic asset to or from the Council.

Attachments | Kā Tāpirihaka

A	RMA Delegations Register – Delegations from Council to Officers under the Resource Management Act 1991
---	--