

11.6. Delegation Where ORC is both applicant and regulatory authority

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PURPOSE

- [1] To make minor changes to delegations where the ORC is both the applicant and the regulatory authority for resource consents or approval under Council Bylaws.

EXECUTIVE SUMMARY

- [2] Under current delegations when the ORC applies for a consent under the Resource Management Act 1991 or applies for approval under ORC Bylaws the Council is both the applicant and the decision maker. This situation most often arises in relation to the development, maintenance and operation of flood control schemes. It may also arise under the Navigational Safety bylaw.
- [3] Sound regulatory practice separates the roles of applicant and decision maker. Other Councils do this by ensuring that when they are the applicant for a consent the consent is processed and determined by external and independent decision makers. The use of independent decision makers in these instances avoids any accusation of bias in the way in which the Council is treated as an applicant.
- [4] This paper proposes a change to current Council delegations so that when the Council is an applicant for either a resource consent or a Bylaw approval, the decision making is delegated to an independent Commissioner(s) appointed by the Commissioner Appointment Sub Committee.

RECOMMENDATION

That the Council:

- 1) **Receives** this report.
- 2) **Resolves** to change its delegations so that, in circumstances where the ORC is the applicant, decisions to approve or decline applications under the Otago Regional Council Flood Protection Bylaw or the Navigational Safety Bylaw and decisions under sections 42A(1AA)(b), 42A(5), 88(3), 91, 92, 92(2), 92A(2), 92B(2), 95 to 95F, 99, 101, 104 to 104F, 105, 107, 108, 108A, and 217 of the Resource Management Act 1991 are delegated to an independent decision maker(s) appointed by the Commissioner Appointment Sub Committee.

ISSUE

- [5] All Councils are exposed to accusations of bias and to potentially favourable treatment in the way in which they apply rules under the Resource Management Act 1992 or their own Bylaws to themselves. Historically, there have been instances of Councils providing consents to themselves on more favourable terms than they grant to other applicants, or worse, of Councils undertaking unconsented activities and subsequently taking no steps to address their own non-compliance.
- [6] Sound regulatory practice separates the roles of applicant and decision maker. Other Councils do this by ensuring that when they are the applicant for a consent the consent is processed and determined by external and independent decision makers. The use of independent decision makers in these instances avoids any accusation of bias in the way in which the Council is treated as an applicant.
- [7] Under current delegations when the ORC applies for a consent under the Resource Management Act 1991 or applies for approval under ORC Bylaws the Council is both the applicant and the decision maker. This situation most often arises in relation to the development, maintenance and operation of flood control schemes.
- [8] It is proposed that ORC adopt sound regulatory practice and separate the roles of applicant by decision maker through the use of an independent Commissioner(s) appointed and the Commissioner Appointment Sub Committee when the ORC is applying to itself for consent or approval under an ORC Bylaw.
- [9] In addition to the use of independent decision makers, sound regulatory practice involves the use of independent professionals to process consent applications and provide advice to decision makers when the Council applies to itself for consent or approvals. Staff have now started this practice to ensure to ensure transparency and sound practice.

CONSIDERATIONS

Policy Considerations

- [10] The proposed change aligns ORC with sound regulatory practice and has no broader policy implications.

Financial Considerations

- [11] The financial implications of the proposed change in delegations are minor and will depend entirely on the number of consent or Bylaw approval applications made in any year.

Significance and Engagement

- [12] The proposed change in delegations does not trigger the Council's significance policy and public consultation is not required

Legislative Considerations

- [13] The proposed change to delegations complies with the relevant provisions of the Resource Management Act 1991 and the Local Government Act 2002.

Risk Considerations

- [14] The proposed change to delegations reduces the risk to Council in relation to accusations of bias, inappropriate influence, or preferential treatment in relation to consents or approvals where the ORC is the applicant.

ATTACHMENTS

Nil