

Designation of independent commissioners as duty commissioners to determine resource consent applications – Report under Urgency

File No.:

Confidentiality

Reason:	The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.
Interests:	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person. In particular, the report contains the recommended names of duty commissioners for the coming year and it is necessary to protect the privacy of these individual prior to their appointment.
Grounds:	s48(1)(a) The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.

Purpose

1. To designate a number of independent commissioners as duty commissioners.

Executive summary

2. The current designation of duty commissioners by the Committee expires on 30 June 2018. Duty commissioners are required to continue to determine resource consent applications where staff do not have delegation; where the council or a Council Controlled Organisation (CCO) is the applicant; and to determine notified applications that do not require a hearing. The matter is being considered under urgency as duty commissioners must be designated prior to 1 July 2018 to ensure continuity of service.

Recommendation/s

That the Regulatory Committee:

- a) designate, in accordance with clause 3.3 of the Regulatory Committee Policy, the following independent commissioners to act as duty commissioners for the period from 1 July 2018 until the next full review of the Independent Commissioner pool (in the next electoral term):
 - i) *Lee Beattie*
 - ii) *Richard Blakey*
 - iii) *Justine Bray*
 - iv) *Mark Farnsworth*
 - v) *David Hill*
 - vi) *Greg Hill*
 - vii) *Barry Kaye*
 - viii) *Cherie Lane*
 - ix) *Leigh McGregor*
 - x) *Ian Munro*
 - xi) *Robert Scott*
 - xii) *Dave Serjeant*

- b) delegate, in accordance with clause 3.6 of the Regulatory Committee Policy, to the Principal Specialist Planners – Resource Consents the authority to assign additional or alternate commissioners beyond the “duty” group but from the approved list of independent commissioners, as may be necessary due to unavailability and/or depending on particular skills or knowledge required for a particular resource consent application or section 357 objection determination.
- c) delegate, in accordance with clause 3.3 of the Regulatory Committee Policy, to the Chairperson, Regulatory Committee and the General Manager, Resource Consents the authority to designate replacement duty commissioners, by the selection of alternate professional planner commissioners from the independent commissioner pool.
- d) agree that the report and list of duty commissioners as designated, be re-stated in the open section of the minutes.

<p>Report Recommendations accepted under urgency</p> <p>Date:</p>	 Cr Linda Cooper Chairperson Regulatory Committee  Cr. Bill Cashmore Deputy Chairperson Regulatory Committee  Glenn Wilcox IMSB Member Regulatory Committee
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Comments

Background

3. The Regulatory Committee Policy anticipates the practice of duty commissioners to help ensure the efficient determination of applications within statutory timeframes. The duty commissioners are to be available at short notice to make decisions, where necessary, on resource consent applications not requiring a hearing.
4. At its meeting on 16 June 2017, the Regulatory Committee designated 12 independent commissioners to be duty commissioners and their designation ran from 1 July 2017 to 30 June 2018. A new assignment of 12 duty commissioners is therefore now required for the year starting 1 July 2018. It is recommended that the current commissioners that are undertaking this role are rolled over for the coming year however a delegation be provided to allow one or more of these commissioners to be swapped out for other planner commissioners from the wider independent commissioner pool.
5. Duty commissioners are rostered on call, one week per month, in separate pools covering the region. The commissioners consider approximately 600 primarily non-notified applications per year, (around 4% of all resource consents) typically within 24 hours of receipt.

Basis for designating duty commissioners

6. At its meeting on 12 April 2017, the Regulatory Committee approved a new Regulatory Committee Policy.
7. Paragraph 3.3 of the Regulatory Committee Policy provides for duty commissioners and describes their role:

3.3 *Following consultation with the independent commissioners concerned, the Regulatory Committee will designate a number of independent commissioners appointed to carry out RMA functions to be duty commissioners who must be available on short notice to make decisions.*

8. The Regulatory Committee Policy delegates further to staff the authority to assign duty commissioners:

3.5 *In most cases, council staff will be responsible for the appointment of decision makers for matters which require a decision under the Resource Management Act.....*

9. The benefit of designated duty commissioners is to allow staff to roster these commissioners to be able to consider applications on an 'on-call' basis. It avoids council staff needing to consider the factors under 3.7 of the policy for the appointment of commissioners on an application by application basis, as they will do when selecting a hearing panel for a notified application. The commissioners sit alone when making decisions, so need to have a wide range of knowledge and expertise. The factors under section 3.7 of the policy have been considered here in providing the recommended duty commissioner list.

New designation of duty commissioners

10. The Regulatory Committee (formerly the Hearings Committee) has mid-yearly since 2012, designated groups of independent commissioners to be duty commissioners for the coming year. With the current designation due to expire, it is necessary to re-designate duty commissioners for a further period to ensure continuity of service and determine resource consent applications in a timely manner.
11. A group of 12 duty commissioners has provided sufficient cover for the region over the past recent years and it is recommended to stay with this number.
12. It is recommended to stay with the current 2017- 2018 duty commissioners. The Auckland Unitary Plan is still in its infancy since becoming operative in part and there is merit in having stability with the current group of commissioners. This helps provide consistency in decision-making with the more complex applications being processed. The recommendation however provides the opportunity for other planners of the wider independent commissioner pool to become duty commissioners if replacements are required.
13. There can also be instances where additional detailed knowledge or expertise is required, such as a technical legal matter, built heritage, previous consenting knowledge of an area or kaupapa Maori or Treaty of Waitangi issues. In such instances it may be appropriate for a duty commissioner to be assisted by an additional independent commissioner from the council's approved list with the relevant expertise, or that commissioner stands in as the decision-maker. The recommendation further seeks a delegation to assign an additional or alternate commissioner in such circumstances.
14. Duty commissioners have also been used as a consistent pool of hearings commissioners for considering section 357 objections where these cannot be resolved through negotiation with staff under delegated authority. Section 357 objections often revolve around very narrow but detailed matters and hearings for these objections are usually best handled by one or two commissioners. The use of duty commissioners for this purpose enables hearings to be arranged speedily to the benefit of the customer, and helps to grow a pool of specialist knowledge on these matters.
15. There are also instances where notified applications do not require a hearing and the decision, under the staff delegation manual, is to be made by an independent commissioner. These include applications where neither the applicant nor submitters wish to be heard. In such instances, the statutory timeframe for a decision is reduced, because there is no need to arrange and hold a hearing. Delegating decision-making authority to duty commissioners to consider such applications will ensure the council is able to meet strict statutory timeframes.

Consideration

Local board views and implications

16. The re-designation of duty commissioners is not a matter within the remit of local boards.

Māori impact statement

17. Commissioner Mark Farnsworth was appointed to the list of independent commissioners due to his expertise on kaupapa Maori and Treaty of Waitangi issues. His designation is recommended to ensure such issues can be given the appropriate consideration as and when required. The duty commissioner list also includes a number of highly experienced commissioners with sound knowledge in these areas. Additionally, where a detailed knowledge or expertise of kaupapa Maori or Treaty of Waitangi issues is relevant, one of the iwi specialist commissioners can be assigned to assist a duty commissioner.

Implementation

18. The 'on call' duty commissioner processes seek to ensure that strict statutory timeframes are met. The cost of commissioners considering resource consent applications is recovered from applicants.

Attachments

There are no attachments for this report.

Signatories

Authors	Robert Andrews – Principal Specialist Planner
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