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Committee Ara Tahī
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Outcomes of the 2005 Consents Review

1. Purpose

To report on the outcomes of the Consents Review and to request that Ara Tahī nominates further representatives to act in the capacity of Iwi Appointee.

2. Background

In February 2004, Council requested a review of some of our consent processing practices and procedures.

The Review was initiated for two key reasons. First, the Council was criticised in an Environment Court decision (the *Barton*¹ decision, December 2003) around our use of an Iwi Commissioner, and the associated cost implications to the applicant, in a case that seemingly had no implications for Maori. Secondly, there was also some political discomfort that resource consents were costing applicants too much, and that some aspects of the process were not as efficient as they might be.

The Review incorporated staff involved in the consent process from both the Wairarapa and Wellington offices, and the Council Secretariat. The outcomes of this Review were to have been finalised some time ago. However, part way through the process, the Government announced a review of the Resource Management Act (RMA), focussing on ways to improve the quality of decisions and processes. It was recognised that the RMA review could result in changes that would impact on the way in which we process consents, and, therefore, also on a substantive part of the Consents Review itself.

The RMA amendment programme has now gone through a public consultation and parliamentary process with the resulting *Resource Management Amendment Act 2005* being passed under urgency by Parliament on 3 August

¹ Barton Wellington Regional Council EC.W81/03

2005. Most of the provisions contained in the amendments came into effect on 10 August 2005.

The completion of the RMA amendment process gave us the certainty to allow the Consent Review to be completed, and for the findings to be reported to Council. This was done at their meeting of 18 October 2005, where Council considered the outcomes and recommendations of the Review. As a result of these deliberations, Council endorsed the recommendations contained in the report.

Further information in relation to the outcomes of the review and associated recommendations are detailed below.

3. Comment

In developing the scope of the consents review, it was recognised that our consent processing and compliance monitoring practices are set down and well established in our operations manuals, namely:

- Consent procedures manual
- Compliance monitoring procedures manual
- Incident response and investigation manual

These manuals rule our everyday life. They are continually updated and refined to ensure that we are consistent with best practice and meet all legislative requirements. It was not the intention of the Review to look at these processes; rather, the Consents Review was focussed on providing a thorough assessment of practices and procedures specifically related to the notified consent process. On this basis, the review team assessed the notified consent process on a step-by-step basis, assessing our legal requirements and our current practices, and recommending changes where required.

3.1 General outcomes of the Consents review

In general, the Consents Review provided useful validation of the majority of management systems and procedures currently already in place with regard to the notified consent process. The review covered issues in relation to:

- Provision of pre-application advice
- Assessment of applications
- Advertising applications
- Making the decision to notify or not
- Consideration of submissions
- Preparation and distribution of the decision

- Processes where negotiated outcomes are reached; and
- Charging and invoicing.

The Review concluded that, apart from some minor changes in relation to publically notifying applications, and charging for a second officer's time at hearings, there was no need to change practices in relation to the processing of notified consents. This decision was made on the basis that these processes continue to provide a high level of customer service, are efficient and statutorily correct, and result in fair and reasonable costs to the applicant.

3.2 Outcomes of specific interest to Ara Tahī

A number of recommendations endorsed by Council have potential implications for some members of Ara Tahī. These relate specifically to the terminology around the use of Iwi 'Commissioners', the use and remuneration of Iwi 'Commissioners' on resource consent hearing panels, and the ongoing use of the Commissioners List.

3.2.1 Iwi 'Commissioners' or 'Iwi Appointees'

Greater Wellington has for some time provided a mechanism for Iwi to be part of the decision making process for notified consents. In March 2002, the Council agreed to an action plan to strengthen its relationship with tangata whenua, with section 3.6 of this plan stating that *"the Council will continue to use Maori commissioners on resource management hearing committees where this is appropriate"*.

However, the Consents Review found that the terminology Iwi Commissioners caused a degree of confusion for applicants in relation to the purpose of the role of an Iwi 'Commissioner', as compared to that of an independent commissioner. For this reason, the review recommended that the terminology Iwi Appointee be used, a recommendation that was approved by Council. It is worth noting that in practice, we have already adopted the terminology Iwi Appointee and Council simply provided formal clarification of this terminology.

3.2.2 Use of Iwi Appointees

Greater Wellington has for some time attempted to include an Iwi Appointee on all hearing panels. However, in practice, this has not always been possible as in some instances we simply have not been able to find an available Iwi Appointee, either through unavailability or conflict of interest. For instance, in Wellington in the last financial year, Iwi appointees sat on 6 of the 11 formal consent hearings held.

While this is not necessarily problematic in terms of meeting the intent of the formal Council resolution of March 2002, it is the Councils desire to have an Iwi Appointee on as many hearings as possible.

The *Barton* decision served to test what was appropriate in terms of the use of Iwi appointees. The Environment Court believed in the *Barton* case that where

there was no particular interest to Maori values through the assessment of the application, there was no need to have an Iwi appointee on the Hearings panel. Since this decision, Greater Wellington staff have used more discretion in including Iwi appointees to hearings. The delegation to appoint persons to a Hearings Committee lies with the Chairs of the Environment and Rural Services and Wairarapa Committees. Those chairs, in consultation with Greater Wellington staff, will continue to adopt an approach where Iwi Appointees will be included in Hearings panels where appropriate, in a manner consistent with the Council resolution of March 2002.

3.2.3 Request for further nominations

Given the inability to, at times, find an Iwi Appointee, there is a broader question of whether or not there are currently enough Iwi Appointees available for use on Council hearings. The historical evidence suggests that there are not enough, and for this reason, the Consents Review recommended that Council request Ara Tahi to make further recommendations for Iwi Appointees. Council endorsed this recommendation, and consequently, this report formally asks Ara Tahi to consider whether or not they wish to nominate further individuals to act in the capacity of Iwi Appointee.

It is also worth noting that the expectation of the Council would be that any new Iwi Appointee would be required to obtain formal accreditation as a result of their nomination and acceptance. While recent changes to the RMA require only the Chair and the majority of a Hearing panel to be accredited, Council wants to promote best practice and ensure that we have the highest standards in relation to these panels. As such, the expectation is, wherever possible, all hearing panel members representing Greater Wellington will be accredited.

3.2.4 Remuneration of Iwi Appointees

Given the ongoing commitment to include Iwi Appointees on all hearing panels, where appropriate, the Consents Review also addressed the issue of remuneration for Iwi Appointees. In the past, this is an area where there has been little clarity, with some Iwi Appointees being paid at the same rate as independent commissioners, which is up to \$120.00 per hour and others at lesser rates depending on the circumstances of the hearing or person. Apart from this process not being particularly robust, it also left the Council open to challenge over the costs associated with the use of Iwi Appointees. As noted, this was highlighted by the *Barton* case.

Taking into account this background, the Consent Review recommended that all costs associated with the use of Iwi Appointees be absorbed by the Council. This recommendation was accepted. Council also noted that in practice, we have already tended to cover the cost of Iwi Appointees given the finding of the *Barton* decision which potentially exposed the Council to a high degree of risk if we had continued to pass on these costs to the applicant.

In relation to the actual remuneration of Iwi Appointees themselves, the Consent Review considered this issue in some detail. The continued payment of \$120.00 per hour was considered inconsistent with the Councils policy that

Iwi Appointees be used on every hearing panel, in order to involve local Iwi in the decision making process. While Iwi Appointees clearly bring specific expertise to a hearing panel, the *primary* reason for their appointment is not to provide for particular technical expertise in a specific a field, as is the case when independent commissioners are appointed. For instance, we usually use an independent commissioner when we need some specialist expertise in, for example, the field of groundwater hydrology or freshwater ecosystems. These people are appointed only to those particular hearings where these skills are required, and not on every hearing panel where appropriate, which is the Councils commitment to the use of Iwi Appointees.

Similarities to this approach can be seen in cases where appointed members to the Environment Committee, or Rural Services and Wairarapa Committee, sit on a hearing panel. In these instances, appointed members sit on a hearing panel by being virtue of being appointed to a Council committee, not because of their technical expertise. Appointed members are paid at the same rate as Councillors.

In order to eliminate the current confusion of payment to Iwi Appointees, the Consents Review recommended that the Iwi Appointee be paid at the same rate and on the same terms as Councillors. This decision will ensure a consistency of payment between the Wairarapa and Wellington Offices, consistency of payment with councillors and appointed members, and will better reflect the differences between the use of Iwi Appointees and independent commissioners.

This recommendation was endorsed by Council, with the effect being that all Iwi Appointees, when sitting on resource consent hearing panels, will now be paid at the same hourly rate as councillors and appointed members sitting on resource consent hearing panels. This rate is currently \$60.00 per hour (or part thereof), and reflects the terms of payment for councillors as set out in the Local Government Elected Members Determination (No.3) 2005. This rate obviously reflects a reduction in the rate of payment currently received by some Iwi Appointees. However, it is considered that it more fairly reflects the underlying basis of the Council's desire for Iwi involvement in resource management decision making.

3.2.5 Commissioners List

It was also agreed by Council that the use of the current Commissioners list be discontinued. It was considered that the Commissioners List, which is due for review this year, has in practice been of limited value.

Despite there being about 35 individuals on the Commissioners list, we have tended to use the same people when we need Commissioners. In addition, given the limited number of times we actually need to use Commissioners (only about 10-15% of all notified applications), and the fact we sometimes have to look outside the existing list when we need specific skills, the decision was made to appoint commissions on a case-by-case basis. To facilitate this process, delegations were given to the Chairman of both the Environment Committee and Rural and Services Committee to appoint appropriately

qualified people to act as a commissioner on behalf of the Council, as well as to appoint Commissioners to individual hearing panels.

In practice, the change in the way in which independent commissioners are appointed will have no direct impact on the use or appointment of Iwi Appointees.

4. Communication

No further communication is necessary.

5. Recommendations

That Ara Tahi:

1. **Receive** the report.
2. **Note** the contents; and
3. **Agree** that Ara Tahi bring nominations for additional Iwi Appointees to the next meeting of Ara Tahi, and consider these nominations at that meeting.

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