

QLDC Council  
30 June 2016

Report for Agenda Item: 16

Department: Planning & Development

**Appointment of Commissioners and amending the Terms of Reference for the Resource Consent Commissioner Appointment Subcommittee**

**Purpose**

The purpose of this report is to add five newly accredited Councillors and independent commissioner Jan Caunter to the list of Commissioners able to be appointed to hearings by the Resource Consent Commissioner Appointment Subcommittee, and to amend the membership of and terms of reference for the Resource Consent Commissioner Appointment Subcommittee.

**Recommendation**

That Council:

1. **Note** the contents of this report;
2. Pursuant to section 34A(1) of the Resource Management Act 1991 (the "Act"), **delegates** to Scott Stevens, Ella Lawton, Calum MacLeod, Simon Stammers-Smith, Mel Gazzard and Jan Caunter (as Hearings Commissioners) all of the functions, powers or duties under the Act except the following:
  - a) The approval of a policy statement or plan;
  - b) This power of delegation.
3. **Approve** the changes to the Resource Consent Commissioner Appointment Subcommittee ("**RCCAC**") Terms of Reference set out in **Attachment A** to:
  - a. remove Councillors Simon Stammers-Smith and Calum MacLeod; and
  - b. appoint Councillors Craig Ferguson and Alexa Forbes; and
  - c. clarify that appointments to consider section 357 objections and Notices of Requirement may also be made by the RCCAC.

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15/06/2016

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15/06/2016

## Background

- 1 At its meeting on 14 November 2013, Council approved the Terms of Reference for the Resource Consent Commissioner Appointment Subcommittee (RCCAC).
- 2 The membership of RCCAC comprises four members, the Mayor, Councillors Aoake, MacLeod and Stammers-Smith. There is a quorum of two. The existing Terms of Reference can be seen in **Attachment A** with proposed changes marked.
- 3 At its meeting on 30 January 2014, Council appointed 32 persons to sit as Commissioners. The existing list of approved Commissioners is appended as **Attachment B**.
- 4 Since the above agenda items were considered, a number of changes have occurred that require the list of Commissioners to be updated, as well as the Terms of Reference.
- 5 The Proposed District Plan hearings have commenced, and many of the Commissioners used to hear resource consents are involved in hearing submissions on the Proposed District Plan. This has made it challenging at times for officers to find Commissioners for recommendation to RCCAC who are not involved in the Proposed District Plan hearings.
- 6 Five Councillors (Scott Stevens, Calum MacLeod, Mel Gazzard, Ella Lawton, and Simon Stammers-Smith) have now completed the 'Making Good Decisions' programme and are now accredited to hear resource consents.
- 7 In addition, an experienced local Barrister and Solicitor (Ms Jan Caunter) with considerable resource management experience has become available to act as a Commissioner.
- 8 Ms Caunter has considerable experience in the resource management field. Ms Caunter is seeking to be appointed as an independent commissioner having recently set up her own legal practice following eight years with Gallaway Cook Allan, based in Wanaka. A copy of her curriculum vitae is appended as **Attachment C**. To preserve her personal privacy, this information is provided in the public excluded part of this agenda.

- 9 It has been noted that the Terms of Reference for the RCCAC do not explicitly list appointment of Commissioners to hear applications for Notices of Requirement (**NOR**) for designations. As these applications are usually publicly notified, the appointment of Commissioners to hear NORs should also be included within the Terms of Reference of the RCCAC.
- 10 Similarly, the appointment of Commissioners to consider section 357 objections is not mentioned in the existing Terms of Reference.

### **Comment**

- 11 The existing list of Commissioners able to be appointed by the RCCAC is extensive, containing 32 persons. However many of the Commissioners who have the most local experience and are frequently appointed by RCCAC, are now regularly involved with the Proposed District Plan hearings.
- 12 It is prudent to appoint the five additional Councillors and one additional independent commissioner to the approved pool of Commissioners so that the RCCAC can quickly appoint a Hearings Commissioner(s) to hear and determine notified resource consents, NORs and section 357 objections.
- 13 Councillors MacLeod and Stammers-Smith are now accredited and able to hear consents, however they are also appointed to RCCAC. To avoid any perceived conflict of interest, it is prudent that two new Councillors be appointed to RCCAC.
- 14 The Terms of Reference for RCCAC have been updated to include delegation for section 357 objections or NORs for designations. The proposed change would clarify that RCCAC can appoint Commissioners to hear and determine these matters. NORs are notified applications similar to a resource consent, and the right of objection under Section 357 applies to a decision made under delegated authority.

### **Options**

- 15 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by Section 77 of the Local Government Act 2002.
- 16 Option 1 Status Quo – Do not update the Commissioner list or RCCAC Terms of Reference.

#### *Advantages:*

- 17 None identified.

#### *Disadvantages:*

- 18 Councillors who have become accredited under the 'Making Good Decisions' programme will not be able to be appointed to hear resource consents, NORs or section 357 objections without a paper to Council.

- 19 Will make it harder to find Commissioners to hear and determine resource consents, NORs or section 357 objections as many of the existing panel are involved in the Proposed District Plan hearings.
- 20 Would continue uncertainty regarding appointment of Commissioners to hear Section 357 objections and NORs.
- 21 Option 2 Update the Commissioner list and RCCAC Terms of Reference.
- Advantages:
- 22 Recognises five Councillors have now gained accreditation through the 'Making Good Decisions' programme.
- 23 Enables selection of a further experienced resource management practitioner as a Hearings Commissioner.
- 24 Increases the number of Commissioners that can be appointed by RCCAC.
- 25 Removes potential for conflicts of interest.
- 26 Clarifies that RCCAC can appoint Commissioners to hear NORs for designations and section 357 objections
- Disadvantages:
- 27 None identified.
- 28 This report recommends Option 2 for addressing the matter because it will enable effective and efficient administration by the RCCAC.

### ***Significance and Engagement***

- 29 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because appointing Commissioners and the terms of reference of the RCCAC are routine matters under the Resource Management Act.

### ***Risk***

- 30 This matter relates to the strategic risk SR1 'Current and future development needs of the community (including environmental protection)', as documented in the Council's risk register. The recommended option considered above mitigates the risk by appointing accredited Commissioners to make decisions that affect the 'Current and future development needs of the community (including environmental protection)'.

### **Financial Implications**

- 31 There is no budget or cost implications resulting from the decision.

## **Council Policies, Strategies and Bylaws**

32 No Council policies, strategies and bylaws were considered as there are no known policies, strategies or bylaws relating to appointing Commissioners. Reference has been made to the existing RCCAC Terms of Reference.

33 This matter is not included in the 10-Year Plan/Annual Plan

## **Local Government Act 2002 Purpose Provisions**

34 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by appointing additional accredited Commissioners to the list for appointment by RCCAC.
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly 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.

## **Consultation: Community Views and Preferences**

35 No consultation has been undertaken.

## **Attachments**

- A Proposed changes to the Terms of Reference – Resource Consent Commissioners Appointment Subcommittee Terms of Reference – June 2016
- B List of approved Commissioners – January 2014
- C Curriculum vitae – Ms Jan Caunter (Public Excluded)

~~14 November 2013~~ 30 June 2016

## Resource Consent Commissioner Appointment Subcommittee Terms of Reference

### Membership

The Resource Consent Commissioner Appointment Subcommittee will have four members [the Mayor and Councillors Aoake, ~~MacLeod-Ferguson~~ and ~~Stammers-Smith~~ Forbes].

### Quorum

The quorum for every meeting shall be two.

### Chair

The Mayor will be the Chair.

### Frequency of Meetings

The Resource Consent Commissioner Appointment Subcommittee will meet on the second and fourth Thursdays of the month (approximately every two weeks) or more frequently if required to meet the requirements of the Resource Management Act 1991.

### Parent Body

The Resource Consent Commissioner Appointment Subcommittee is a subcommittee of the Queenstown Lakes District Council and has delegated authority to act within its terms of reference.

### Objectives of the Subcommittee

To appoint commissioners to hear and decide resource consent applications, notices of requirement for designations, section 357 objections ~~and~~ to make notification determinations.

### Terms of Reference

- 1 Determining which commissioners will be appointed to decide particular resource consent applications, notices of requirement for designations, section 357 objections and ~~or~~ notification determinations.
- 2 Delegating authority to those commissioners to hear and decide the resource consent application, notice of requirement, s.357 objection or make the notification determination.
- 3 Reviewing recommendations on appointments from staff.

- 4 Commissioners must be appointed from the pool of potential commissioners appointed by Council.

### **Delegated Authority**

The Resource Consent Commissioner Appointment Subcommittee will have delegated authority to carry out activities within its terms of reference.

### **Delegation Limitations**

The Resource Consent Commissioner Appointment Subcommittee may not delegate any of its responsibilities, duties or powers and its powers ~~exclude-excluding~~ powers that cannot be delegated to committees under the Local Government Act 2002.

Other than as specifically authorised in these terms of reference, the Resource Consent Commissioner Appointment Subcommittee also may not (i) Authorise or commit the Council to any expenditure, (ii) commit the Council to any binding decisions, (iii) appoint any working parties, and/or (iv) make appointments to any other bodies.

The Resource Consent Commissioner Appointment Subcommittee may only appoint commissioners from the pool of potential commissioners appointed by Council.

Attachment B: List of approved Commissioners – January 2014

***Existing Commissioners appointed by Full Council 30 January 214***

<i>Paul Rodgers</i>	<i>Gillian Macleod</i>	<i>Denis Nugent</i>
<i>Andrew Henderson</i>	<i>David Mead</i>	<i>Bob Nixon</i>
<i>Bryce Julyan</i>	<i>Mark St Clair</i>	<i>Dean Chrystal</i>
<i>Ken Gimblett</i>	<i>John Lumsden</i>	<i>Darryl Millar</i>
<i>Sarah Dawson</i>	<i>Jane Sinclair</i>	<i>Graham Taylor</i>
<i>David Clarke</i>	<i>Jane Taylor</i>	<i>David McMahon</i>
<i>David Collins</i>	<i>John Milligan</i>	<i>Trevor Shiels</i>
<i>David Wren</i>	<i>David Whitney</i>	<i>Ian Munroe</i>
<i>Christine Kelly</i>	<i>Cath Gilmour</i>	<i>Colin Weatherall</i>
<i>Lyal Cocks</i>	<i>Leigh Overton</i>	<i>Alan Withy</i>
<i>Phil Mitchell</i>	<i>Louise Taylor</i>	

***Proposed Commissioners for appointment 30 June 2016***

<i>Scott Stevens</i>	<i>Ella Lawton</i>	<i>Calum McLeod</i>
<i>Simon Stammers-Smith</i>	<i>Jan Caunter</i>	<i>Mel Gazzard</i>