

Full Council

19 September 2024

Report for Agenda Item | Rīpoata moto e Rāraki take [4]

Department: Assurance, Finance & Risk

Title | Taitara: Local Government (Rating) Act 2002 Delegations

Purpose of the Report | Te Take mō te Pūroko

The purpose of this report is to seek Council delegation of duties, responsibilities and powers under the Local Government (Rating) Act 2002 to specified officer roles.

Recommendation | Kā Tūtohuka

That the Council:

1. **Note** the contents of this report;
2. **Note** the existing delegation of all responsibilities, duties and powers under the Local Government (Rating) Act 2002 to the Chief Executive confirmed by Council resolution in April 2014; and
3. **Delegate** the responsibilities, duties and powers under the Local Government (Rating) Act 2002 as detailed in Attachment A to the Council officers specified in that document.

Prepared by:



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2 September 2024

Reviewed and Authorised by:



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4 September 2024

Context | Horopaki

1. The Local Government (Rating) Act 2002 (the Act) provides local authorities with the powers to set, assess, and collect rates to fund local government activities and facilitates the administration of rates.
2. Under section 132(2)(b) of the Act, a local authority must not delegate any function, power, or duty conferred by subpart 2 of Part 1 or subpart 1 of Part 5. These include (but is not limited to) the setting of general or targeted rates, or the resetting of rates, which require a Council resolution.
3. Under section 132(1) of the Act, a local authority may delegate the exercise of functions, powers, or duties conferred by the Act to its Chief Executive or any other specified officer of the local authority. However, under section 132(2)(a) it must not delegate the power to delegate (that is, to sub-delegate) which means any delegation to officers must be made by direct resolution of Council. The exception is the power of the Chief Executive to delegate the power to write off rates which is specifically enabled under section 90C of the Act.
4. In April 2014, as part of a comprehensive review of delegations, Council adopted new delegations to the Chief Executive which conferred “any and all of its responsibilities, duties and powers to act on any matter... excluding those matters in respect of which delegation is prohibited by any Act or Regulation”.
5. External legal advice at that time directed officers to prepare delegations to specified roles for the Act and for the Resource Management Act 1991 (RMA) which has a similar restriction on sub-delegation. Whilst the delegations under the RMA were confirmed by Council resolution in August 2014, a resolution for the Local Government (Rating) Act 2002 cannot be evidenced in official minutes and records. It is therefore necessary to ensure these delegations are conferred by Council resolution to ensure functions, powers and duties under the Act can be undertaken efficiently by officers at the appropriate level.
6. The setting of rates has at all times been reserved to and made by Council. There is no suggestion that the rates have not been properly set; nor that there is any doubt that unpaid rates are debts due and payable to Council. Other actions undertaken under the Act during this period from April 2014 to now have been completed by officers employed by the Chief Executive and acting under the direction and control of the Chief Executive. The Chief Executive was generally aware that officers were carrying out these actions to implement the administration of Council rates, these being the activities the Chief Executive has employed officers in the Finance team to do. However, the officers were acting under the incorrect assumption that their roles carried the authority to execute the tasks without a specific authorisation from the Chief Executive for each action.
7. An assessment of activities undertaken by officers during that time has identified certain activities that involved the exercise of discretion and/or evaluative judgment, which had been delegated to the Chief Executive but not to the officers employed by the Chief Executive. This means that the Chief Executive may need to ratify and confirm such activities as the exercise of the Chief

Executive's functions, powers or duties, particularly where there might be a challenge to the activities. This ratification is a legally viable and robust course of action by which the activities are approved by a lawful delegate, namely the Chief Executive. The Chief Executive has already ratified a number of past activities, and will consider further ratification of other activities if and when they are identified as requiring attention.

Analysis and Advice | Tatāritaka me kā Tohutohu

8. 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.
9. Option 1 Approve the delegation under the Local Government (Rating) Act 2002 as outlined in Attachment A

Advantages:

- Applies appropriate delegations to support efficient operations relating to rates.
- Adopts recommendations of officers who have considered appropriate delegations.
- Removes need for Chief Executive to approve or retrospectively ratify any actions going forward.

Disadvantages:

- None identified.

10. Option 2 Do not approve the delegation under the Local Government (Rating) Act 2002 and seek further changes to the recommended delegations

Advantages:

- Enables further consideration of appropriate delegations.

Disadvantages:

- Delays implementing appropriate delegations that would support an efficient operating model.
- Doesn't accept recommendations of officers who have considered appropriate delegations for efficient operating.

11. Option 3 Do not approve the delegation under the Local Government (Rating) Act 2002 (status quo)

Advantages:

- None identified.

Disadvantages:

- Creates an inefficient and unsustainable operating model which relies on the Chief Executive confirming decisions under the Act which would be better delegated to relevant officers in the Finance team.
- Does not accept recommendations of officer who have considered appropriate delegations for efficient operating.

12. This report recommends **Option 1** for addressing the matter because it resolves an historic anomaly and sets appropriate delegations to efficiently manage all rates-related activities.

Consultation Process | Hātepe Matapaki

Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

13. This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy 2021 because it relates to operational matters and ensuring they are efficient and effective.

14. The persons who are affected by or interested in this matter are Council officers and elected members.

15. The Council will not consult on this matter as it is operational in nature.

Māori Consultation | Iwi Rūnaka

16. The Council will not consult Iwi Māori on this matter.

Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

17. This matter relates to the Regulatory/Legal/Compliance risk category. It is associated with RISK10029 Ineffective compliance management practices within the QLDC Risk Register. This risk has been assessed as having a high residual risk rating.

18. The approval of the recommended option will allow Council to avoid the risk. This will be achieved by complying fully with the Local Government (Rating) Act 2002 and conferring appropriate delegations.

Financial Implications | Kā Riteka ā-Pūtea

19. None

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

20. The following Council policies, strategies and bylaws were considered:

- Significance and Engagement Policy 2021
- Queenstown Lakes District Council Register of Delegations

21. The recommended option is consistent with the principles set out in the named documents.

22. This matter is not included in the Long Term Plan/Annual Plan

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

23. The recommended option is consistent with the requirements of the Local Government (Rating) Act 2002, and delegations of this nature are consistent with the approach taken by most if not all other local authorities in New Zealand.

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

24. 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. As such, the recommendation in this report is appropriate and within the ambit of Section 10 of the Act.

25. The recommended option:

- Can be implemented through current funding under the Long Term 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	Proposed Local Government (Rating) Act 2002 delegations to officers
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