
Northland Regional Council

Supplementary Item

Regional Transport Committee

**Wednesday, 7 October 2015
at 10.00am**

ISSUE: Supplementary Item for Regional Transport Committee – 7 October 2015**ID:** A786862**To:** Regional Transport Committee Meeting, 7 October 2015**From:** Chris Taylor, Governance Support Manager**Date:** 7 October 2015

Report Type:	<input type="checkbox"/> Normal operations	<input type="checkbox"/> Information	<input checked="" type="checkbox"/> Decision
Purpose:	<input type="checkbox"/> Infrastructure	<input type="checkbox"/> Public service	<input type="checkbox"/> Regulatory function
	<input checked="" type="checkbox"/> Legislative function	<input type="checkbox"/> Annual\Long Term Plan	<input type="checkbox"/> Other
Significance:	<input type="checkbox"/> Triggered	<input checked="" type="checkbox"/> Not Triggered	

Executive Summary:

Following the collation of the committee agenda, a legal opinion was received regarding the appointment of standing alternates to the Regional Transport Committee. This information compliments Item 5.4 on the published agenda and based on the advice, an amended suite of recommendations have been provided.

Hence it is recommended that the supplementary information and amended recommendations be received.

Recommendations:

That as permitted under section 46A(7) of the Local Government Official Information and Meetings Act 1987 the supplementary information and amended recommendations pertaining to Item 5.4 be received.

**ISSUE: Regional Transport Committee Membership –
Amendment to Terms of Reference**

ID: A786872

To: Regional Transport Committee, 7 October 2015

From: Chris Taylor, Governance Support Manager

Date: 7 October 2015

Report Type:	<input type="checkbox"/> Normal operations	<input type="checkbox"/> Information	<input checked="" type="checkbox"/> Decision
Purpose:	<input type="checkbox"/> Infrastructure	<input type="checkbox"/> Public service	<input type="checkbox"/> Regulatory function
	<input checked="" type="checkbox"/> Legislative function	<input type="checkbox"/> Annual\Long Term Plan	<input type="checkbox"/> Other
Significance:	<input type="checkbox"/> Triggered	<input checked="" type="checkbox"/> Not Triggered	

Executive Summary:

This purpose of this report is to present a legal opinion received regarding the appointment of standing alternates to the Regional Transport Committee and an amended suite of recommendation (to replace those in the published agenda) based on this advice. The amended recommendations reflect the need for agencies to formally nominate a standing alternate and for the regional council to ratify the nominations

Legal compliance and significance assessment:

As detailed in Item 5.4 of the published agenda.

Recommendations:

1. That the report, 'Regional Transport Committee Membership – Amendment to Terms of Reference' by Chris Powell, Transport Manager, dated 10 September 2015, be received.
 2. That the Regional Transport Committee note the additional advice regarding appointing Alternate Members to the Regional Transport Committee.
 3. That Far North District Council, Whangarei District Council, Kaipara District Council, Northland Regional Council, and the New Zealand Transport Agency each be requested to nominate Alternate Members to represent their organisation in the event that their principal representative is unavailable.
 4. That the Northland Regional Council be requested to appoint these nominees as Alternate Members to the Regional Transport Committee.
 5. That the Northland Regional Council be requested to make the necessary amendments to the Terms of Reference for the Regional Transport Committee to give effect to these appointments.
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To Chris Taylor / Graham Nielsen, Northland Regional Council

5 October 2015

From David Cochrane, Simpson Grierson

Subject Appointing Alternates to Regional Transport Committees

1. You have an issue with loss of quorum and, of course, potentially inadequate representation of local authorities or NZTA, where an RTC member is absent from a meeting.
2. It would be convenient to have an alternate for each member; either a standing alternate or an alternate appointed for a particular meeting.
3. There is a view, reasonably held, that creatures of statute such as local authorities and NZTA require specific statutory authority for everything they do, and in the absence of authority they cannot do it.

Specific Event Alternates

4. The 7th Schedule to the LGA 2002 (clauses 30, 30A and 31 are relevant) contain no provision for appointing alternates. Section 107 LTMA applies the LGA 2002 to meeting procedures of RTCs.
5. However, the LGA 2002 is not the end of the story.
6. The Interpretation Act 1999 contains section 12 (**attached**) which says the power to appoint a person includes *"the power to... appoint another person in place of a person who.... is absent"*.
7. The Interpretation Act applies to all enactments, including the LGA 2002.
8. Two of the grounds for appointing another person to act are if the original appointee has vacated office or died. Both, obviously, permanent events such that the second appointee fully replaces the first.
9. However, the other two grounds are absence, and incapacity that affects the performance of a duty. Both those are of a temporary nature.
10. In my view, there is no doubt that if an RTC member says in June "I'll be overseas all of November" or "I'm going to hospital to have a knee replacement in December" then a section 12 situation arises.
11. The appointment process in section 105 LTMA should apply so that the local authorities and NZTA have representation on the RTC.
12. Thus, in the examples above, the relevant entity nominates a person who is the only person the regional council can appoint to act during the absence of the committee member.
13. That is what should occur when advance notice has been given of an absence.
14. I acknowledge that even with reasonable notice the process may be difficult to apply.

15. The time needed for say a territorial authority formally to nominate, and the regional council formally to appoint the substitute could be significant.
16. Neither the LTMA nor the LGA 2002 says that appointments have to be made by full meeting of councils, but I expect that is how the process usually works, and there might be reluctance to delegate the appointment power to a committee, or an elected or employed individual.

Standing Alternates

17. I believe a reasonable case can be made for the appointment of standing alternates in the same way as members of RTC's are appointed.
18. Section 12 of the Interpretation Act makes it clear that the power to appoint includes the power to appoint a substitute to cover an absence.
19. So, the only remaining question is "How?".
20. In your recent example, a member was absent, obviously at short notice, while attending a funeral.
21. The Interpretation Act requires all enactments, including itself, to have its meaning ascertained from its text and in light of its purpose.
22. The purposes of section 105 LTMA is very clearly to ensure all relevant local authorities, and NZTA, are represented on the RTC. Representation is the key feature of section 105.
23. The functions of the RTC (section 106 LTMA) are to prepare and lodge a regional land transport plan (and variations) and assist regional councils. A policy must be adopted to determine "significance".
24. All those functions require input from the regional council, all territorial authorities and NZTA. Absences or other vacancies, for whatever reason, will tend to thwart the purposes of the RTC.
25. Section 105 is rather time consuming, especially for appointment of territorial authority representatives (and to a lesser extent, the NZTA representative) because of the need for separate steps of nomination and appointment.
26. If the only practical way a local authority or NZTA can be represented on an RTC when its appointee is absent or incapacitated is to have a substitute already nominated and appointed and "waiting on the wings" then I cannot see what mischief is caused, nor, more importantly, what law would prevent that.
27. The contrary view, that nominations and appointment can only occur once a particular absence or incapacity has been confirmed, seems to me to defeat, rather than promote, the purpose of having appropriate representation on the RTC, and render section 12 of the Interpretation Act ineffectual.
28. You could indeed, as you note, attempt to promote an amendment to the LTMA. That would give certainty to the situation. It may take a long time to achieve, because it is

likely that any clarification would have to extend to Schedule 7 of the LGA 2002 as well for committees and joint committees appointed under that Act.

Yours faithfully
SIMPSON GRIERSON



David Cochrane
Special Counsel