



Education Report: Resource Management: Confirmation of statutory powers under the Act

To:	Hon Chris Hipkins Minister of Education		
Date:	14 July 2022	Priority:	Medium
Security Level:	In Confidence	METIS No:	1291527
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose

This paper seeks your confirmation that the existing delegations under the Resource Management Act 1991 (RMA) can be amended and updated.

Summary

- The Ministry of Education interacts with the Resource Management Act (RMA) 1991 predominantly through the operation, management and expansion of the school property portfolio.
- The previous review and delegation of Ministerial powers under the Resource Management Act (RMA) 1991, occurred in 2014.
- As there is work currently underway to reform the Resource Management system we have taken the opportunity to review and familiarise ourselves with the existing powers and delegations to support our ability to accommodate future shifts.
- We have also identified that in addition to reconfirming the existing delegations, there are 11 opportunities to improve operational efficiencies by approving proposed express delegations.
- This paper provides you with the instrument of delegation to confirm a 2022 update of statutory delegations for the RMA.

Recommended Actions

The Ministry recommends that you:

- a. **note** the the previous review of the Ministerial powers and delegations under the Resource Management Act (RMA) 1991 occurred in 2014;
- b. **note** that we have conducted a review of the existing powers and delegations and identified a further 11 opportunities for express delegations;
- c. **sign** the instrument of delegation attached in Annex 1, and initial each page of the schedule of powers; and

Agree / Disagree

Proactive release

- d. **agree** that once decisions are made, this Education Report can be proactively released.

Agree / Disagree



Scott Evans

Hautū - Hanganga, Matihiko | Deputy Secretary - Infrastructure & Digital

14/07/2022



Hon Chris Hipkins
Minister of Education

20/ 7/ 2022

Background

1. The predominant interaction the Ministry of Education has with the Resource Management Act 1991 (RMA) has been through the school property portfolio. This includes aspect of both operation and maintenance. Since the announcement of the National Education Growth Plan (NEGP) in 2019,¹ we have also had an increased focus on establishing new schools and expanding existing schools in catchments with youth population increases.
2. The previous delegations of your powers under the RMA were made in 2014. While these have worked effectively, the Resource Management system is currently undergoing a comprehensive reform that will seek to replace the current Act. Given the changes since 2014 and the shifts proposed under the reform, it is timely to look at reviewing the existing powers and delegations.

Review of powers and delegations

3. In recognition of the Resource Management Reform, we have undertaken a full review of the Ministerial powers under the current RMA and clarified the corresponding delegations, where applicable. As part of the review, we have also considered whether further ancillary provisions under the RMA would benefit from an express delegation.
4. We have identified that there are 11 opportunities for express delegations that are not explicitly provided for, and if updated, these powers would assist operational efficiency.

Process for updates and changes

5. Under clause 5 of Schedule 6 of the Public Service Act 2020, the appropriate Minister in relation to a department may delegate statutory powers to the chief executive of that department. When Ministers delegate powers to departmental chief executives, they can also approve the sub-delegation to departmental employees under clause 2 of Schedule 6 of the Public Service Act 2020.
6. The delegations schedule in **Annex 1** sets out your statutory powers:
 - column 1, shows the provision of the Resource Management Act 1991 that contains the power;
 - column 2, describes the power;
 - column 3, describes the current delegation; and
 - column 4, specifies the proposed delegation for your approval.
7. The delegation of these powers may be reviewed, revoked or amended by you at any time.
8. We recommend that you consider and confirm the delegation of the statutory powers listed in the schedule in Annex 1 to the Secretary for Education and to other employees of the Ministry as determined by the Secretary. This can be achieved by **signing the instrument of delegation and initialling each page** of the schedule in Annex 1.

¹ <https://www.beehive.govt.nz/release/government-build-new-schools-and-classrooms-100000-students>

Annex 1: Delegations

Instrument of Delegation

Delegation of Minister's powers

Under clause 5 of Schedule 6 of the Public Service Act 2020, I delegate the statutory powers set out in the attached schedule to the Secretary for Education.

Under clause 2 of Schedule 6 of the Public Service Act 2020, I approve the further delegation of powers identified in the attached schedule to employees of the Ministry of Education as determined by the Secretary for Education.



Hon Chris Hipkins

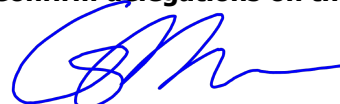
Minister of Education

20 / 07 / 2022

SCHEDULE: RESOURCE MANAGEMENT ACT 1991

SECTION	DESCRIPTION OF POWER OR DUTY	EXISTING DELEGATION	PROPOSED DELEGATION
168(1)	The power to give notice in the prescribed form to a territorial authority with respect to a designation for a public work.	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary
168(4)	The power by notice in writing to withdraw a requirement made under section 168.	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary
169(1)(b)(ii) and 149ZCB(2)(b)	The function of requesting public notification of a requirement under section 168.	<i>Not expressly provided for in existing delegation table. These are essentially a subset of the s168 requirement process so same delegation would apply.</i>	Secretary for Education Any employee of the Ministry as determined by the Secretary
169(1A)(b)(i)((B) and 169(1A)(b)(ii)((B)	The power to refuse to provide requested information or the commissioning of a report relating to a requirement under section 168.	<i>Not expressly provided for in existing delegation table. These are essentially a subset of the s168 requirement process so same delegation would apply.</i>	Secretary for Education Any employee of the Ministry as determined by the Secretary
170(1), 170(2)(b), and 170(8)	The power to consent to a requirement under section 168 being included in a proposed plan.	<i>Not expressly provided for in existing delegation table. These are essentially a subset of the s168 requirement process so same delegation would apply.</i>	Secretary for Education Any employee of the Ministry as determined by the Secretary

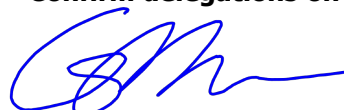
Confirm delegations on this page



Hon Chris Hipkins, Minister of Education

SECTION	DESCRIPTION OF POWER OR DUTY	EXISTING DELEGATION	PROPOSED DELEGATION
172(1)	The power to accept or reject a territorial authority's recommendation under section 171.	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary
172(2)	The power to modify a requirement in accordance with this subsection.	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary
176(1)(b)	The power to give consent to the use of land subject to a designation that would prevent or hinder a public work or project or work to which the designation relates.	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary
176A(1)	The function of submitting, to the territorial authority, an outline plan of the public work, project, or work to be constructed on designated land.	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary
176A(5)	The power to decide not to make changes requested by the territorial authority to an outline plan.	<i>Not expressly provided for in existing delegation table. This follows on from the outline plan application under s176A(1) so same delegation would apply down.</i>	Secretary for Education Any employee of the Ministry as determined by the Secretary
177(2)	The function of providing/withholding written consent to a requiring authority responsible for a later designation or heritage order to do anything that is accordance with that designation over the same land.	<i>Not expressly provided for in existing delegation table. This is a follow-on power from the s168 requirement process so same delegation would apply.</i>	Secretary for Education Any employee of the Ministry as determined by the Secretary

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SECTION	DESCRIPTION OF POWER OR DUTY	EXISTING DELEGATION	PROPOSED DELEGATION
178(2)	The function of providing written consent to a person to do anything that would prevent or hinder the public work, project, or work to which the designation relates.	<i>Not expressly provided for in existing delegation table. This is a follow-on power from the s168 requirement process so same delegation would apply.</i>	Secretary for Education Any employee of the Ministry as determined by the Secretary
180(2)	The function of advising the Minister for the Environment and the relevant territorial authority of a transfer of financial responsibility for a project or work.	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary
181(1)	The power to give notice to the territorial authority of its requirement to alter the designation.	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary
181(3)(c)	The function of agreeing to a minor alteration under s181(3)(a)(i) or (ii).	<i>Not expressly provided for in existing delegation table. This is essentially a subset of the s181(1) requirement process so same delegation would apply.</i>	Secretary for Education Any employee of the Ministry as determined by the Secretary
182(1)	The function of giving notice in the prescribed form to the relevant territorial authority if the designation or part of a designation is no longer wanted.	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary
182(6)	The power to object to any decision to decline removal of part of a designation under section 182(5).	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary

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SECTION	DESCRIPTION OF POWER OR DUTY	EXISTING DELEGATION	PROPOSED DELEGATION
184(1)(b)	The power to apply for a longer period before a designation lapses.	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary
184(3)	The power to object to any decision to decline a longer period before a designation lapses.	<i>Not expressly provided for in existing delegation table. This is essentially a subset of the s184(1)(b) requirement process so same delegation would apply.</i>	Secretary for Education Any employee of the Ministry as determined by the Secretary
Schedule 1, Clause 4(1B)	The power to notify the territorial authority that a requiring authority's prior designation (which has not yet lapsed), be included in a proposed district plan with or without modification.	Secretary for Education Any employee of the Ministry as determined by the Secretary	Secretary for Education Any employee of the Ministry as determined by the Secretary
Schedule 1, Clause 4(9)	The power by notice in writing to withdraw a requirement included in a proposed plan accordance with section 168(4).	<i>Not expressly provided for in existing delegation table – equivalent to the s168(4) process but rolled into a proposed district plan process so same delegation would apply.</i>	Secretary for Education Any employee of the Ministry as determined by the Secretary
Schedule 1, Clause 13(1)	The power to accept or reject a territorial authority's recommendation under Schedule 1, clause 9.	<i>Not expressly provided for in existing delegation table – equivalent to the s172(1) process but rolled into a proposed district plan process so same delegation would apply.</i>	Secretary for Education Any employee of the Ministry as determined by the Secretary

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SECTION	DESCRIPTION OF POWER OR DUTY	EXISTING DELEGATION	PROPOSED DELEGATION
Schedule 1, Clause 13(2)	The power to modify a requirement in accordance with this subclause.	<i>Not expressly provided for in existing delegation table – equivalent to the s172(2) process but rolled into a proposed district plan process so same delegation would apply.</i>	Secretary for Education Any employee of the Ministry as determined by the Secretary

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