



## CANTERBURY REGIONAL COUNCIL HEARINGS POLICY – DECEMBER 2014

### **POLICY STATEMENT**

Section 34A of the Resource Management Act 1991 allows Council to delegate functions to Hearing Commissioners appointed by the Canterbury Regional Council.

The Canterbury Regional Council (Council) appoints Hearing Commissioners to make recommendations on regional plans and plan changes. The Regulation Hearing Committee (RHC) appoints Hearing Commissioners in relation to consent authority matters under the Resource Management Act 1991.

The decision making for which Hearing Commissioners are responsible includes both decisions made in a formal hearing process and those made without a hearing". It includes, but is not limited to, decisions in relation to resource consents, plan changes, and objections and appeals on Council decisions.

### **PRINCIPLES**

Independent Hearings Commissioners undertake a quasi-judicial decision making function on behalf of Canterbury Regional Council in relation to consents or make recommendations to the Council in relation to regional plans.

Hearings involving Independent Hearings Commissioners comply with the principles of fairness and natural justice.

Decision makers must hold a current certification under the Making Good Decisions programme with the Chair of any Hearing panel to hold the Chair endorsement.

Decisions must be undertaken in a timely manner.

## **POLICY**

### **Timeliness**

Hearing Commissioners recognise the need to respond to matters in a timely fashion, in particular, to avoid the application of the Resource Management (Discount on Administrative Charges) Regulations 2010.

### **Appointment of independent hearing commissioners**

The Council will decide the most appropriate Hearing Commissioner to make recommendations on regional plans and plan changes. RHC will decide the most appropriate decision maker for a particular Consent matter. At the RHC's discretion this may be a Hearing Commissioner(s) or staff member.

In deciding who is the most appropriate Hearing Commissioner the Council or RHC as appropriate will take into account the following matters:

- a) The nature, scale and technical complexity of the issues on which a decision will be made; and
- b) Any other relevant matters, including recommendations from staff.

For administrative efficiency a particular type of decision making:

- May be undertaken by staff with appropriate delegations and without further reference; or
- Through an express delegation to a Hearings Commissioner to achieve this.

A Hearings Commissioner may also be used when the Council has a material conflict of interest as applicant, submitter, or land owner, or circumstances may create a perception of bias (e.g. involving a claim, or legal action)

### **Where independent hearing commissioners are used the Council or RHC will take into account:**

- a) Any statutory requirements to make decisions within particular timeframes.
- b) The likely time commitment for the entire hearing
- c) Their relevant knowledge and experience in the following:
  - A good knowledge of the Resource Management Act 1991, decision making and hearings processes; and
  - Knowledge of the consent authority's function under the Resource Management Act 1991.
- d) Their accreditation under the Resource Management Act 1991;
- e) Their relevant skills, experience and technical expertise in one or more of the following areas:
  - Planning, resource management, and heritage protection
  - Law, local government and community affairs
  - Matters relating to the Treaty of Waitangi and kaupapa Maori
  - Environmental science, including the physical and social sciences
- f) Their experience in determining the particular type and size of matter or familiarity with a particular project.
- g) Whether or not the commissioner is likely to have a conflict of interest.

More than one person may be appointed as a panel to consider a matter when matters are sufficiently complex. When a panel is appointed, the Council or RHC as appropriate, will decide the Chairperson.

### **Conduct of hearings**

RHC is responsible for ensuring that issues of conflicts of interest relating to the Hearing Commissioners are appropriately dealt with once the appointment has been made either by the Council or by RHC.

RHC will be guided by the attached principles when considering issues of conflicts of interests.

Prior to the hearing:

All Hearings Commissioners will complete and return a Disclosure of Interests form prior to the hearing of any matter. If any conflicts are noted, the following process will be followed:

- a) RHC will in its discretion in any particular case determine how it will dispose of the issue. This may include calling for written submissions from parties. It may include immediate revocation of the appointment if it is sufficiently plain that a fair-minded observer would reasonably apprehend bias on the part of the Hearing Commissioner.

During the course of the hearing:

- a) The Chairperson of the hearing panel (or the Hearing Commissioner if sitting alone) must promptly refer the issue via the Hearings Officer to RHC. All material relevant to the issue will be provided for RHC's consideration.
- b) RHC will in its discretion in any particular case determine how it will dispose of the issue. This may include calling for written submissions from parties.
- c) If it is not practicable to convene a meeting of RHC without causing undue delay to the process, the Chairperson of RHC has delegated authority to determine the matter.

For the avoidance of doubt, RHC will not need to determine the matter if the Hearing Commissioner concerned disqualifies him or herself from hearing the matter.

Hearings will generally be conducted following the guidelines as outlined in the Council's Hearings Procedure sheet and based on the Making Good Decisions Programme run by the Ministry for the Environment.

## **Attachment: Conflicts of Interests**

Hearing Commissioners should disqualify themselves in circumstances where a fair-minded, properly informed lay observer would have a reasonable apprehension that the Hearing Commissioner might not bring an impartial mind to the resolution of the question. In making the assessment the fair minded lay observer is presumed to be intelligent and to view matters objectively. He or she is neither unduly sensitive nor suspicious, or complacent about what might influence a decision. While taken to be a non-lawyer, the fair minded lay observer is regarded as someone reasonably informed about the RMA process, the nature of the issues in a particular case and the facts pertaining to the situation which is said to give rise to an appearance or apprehension of bias.

The standard is one of real and not remote possibility, rather than probability. Hearing Commissioners are not disqualified from sitting merely because the issues involved in a case are in some indirect way related to the Hearing Commissioner's personal experience.

Conflict of interest arises in a number of different situations. A Hearing Commissioner should be alert to any appearance of bias arising out of connections with parties, witnesses or their legal advisors. The fact that a particular relationship falls outside these guidelines may not necessarily dispel the possibility that there is nevertheless a reasonable apprehension of bias in the particular circumstances.

The question of disqualification is at first instance, for the Hearing Commissioner. The consent of the parties to a Hearing Commissioner sitting is not determinative, as the subjective perceptions of the parties are not relevant to whether there is a reasonable apprehension of bias.