

CANTERBURY REGIONAL COUNCIL
Kaunihera Taiao ki Waitaha

AGENDA|2018

Regulation Hearing Committee

Thursday, 21 June 2018

.....

Time: 8.30am

Venue: Council Chamber,
200 Tuam Street, Christchurch

Regulation Hearing Committee

Membership

Chair

Peter Skelton

Members:

Councillors Lan Pham, Tom Lambie,
Elizabeth Cunningham

**ENVIRONMENT CANTERBURY
REGULATION HEARING COMMITTEE**

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- 1. Apologies**
- 2. Conflict of Interest**
- 3. Minutes**
 - 3.1. Minutes of Meeting of 7 June 2018**

Refer to attachment on following page.

REGULATION HEARING COMMITTEE

Minutes of the meeting held in the Council Chamber,
200 Tuam Street, Christchurch, on
Thursday, 7 June 2018 at 8.30 am

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- 1.0 APOLOGIES
- 2.0 CONFLICTS OF INTEREST
- 3.0 MINUTES OF PREVIOUS MEETING – 31 May 2018
- 4.0 MATTERS ARISING FROM PREVIOUS MINUTES
- 5.0 DEPUTATIONS AND PETITIONS
- 6.0 DECISION ITEMS
 - 6.1 Appointment of Hearing Commissioners – SOL Quarries Limited**
- 7.0 EXTRA-ORDINARY AND URGENT BUSINESS
- 8.0 NEXT MEETING
- 9.0 CLOSURE

PRESENT

Councillors Peter Skelton (Chairperson), and Tom Lambie and Elizabeth Cunningham

OFFICERS PRESENT

Virginia Loughnan, Consents Manager, Alison Cooper, Consents Hearings Officer

1. APOLOGIES

Councillor Lan Pham

2. CONFLICTS OF INTEREST

No conflicts of interest were declared.

3. MINUTES OF PREVIOUS MEETING – 31 MAY 2018

Resolved:

That the Committee confirms as a true and correct record the minutes of the meeting held on 31 May 2018.

Cr Cunningham / Cr Lambie
CARRIED

4. MATTERS ARISING

There were no matters arising

5. DEPUTATIONS AND PETITIONS

There were no deputations or petitions.

6. DECISION ITEMS

6.1 Appointment of Hearing Commissioners – SOL Quarries Limited

Resolved:

That the Regulation Hearing Committee in regard to applications to CRC184072 and CRC184073 to be held by SOL Quarries Limited :

- 1. Appoints David McMahon as a Hearings Commissioner, and member and Chair of the Hearing Panel under s34A of the Resource Management Act 1991;***
- 2. Appoints Joh Iseli as a Hearings Commissioner, and member of the Hearing Panel under s34A of the Resource Management Act 1991***
- 3. Delegates to David McMahon and John Iseli pursuant to s34A(1) Resource Management Act 1991, the function, powers and duties required to: deal with any preliminary matters; consider; and decide the resource consent applications; and***
- 4. In the event of an inequality of votes provides the Chairman of the Hearing Panel, David McMahon, with a casting vote.***

Cr Cunningham / Cr Lambie
CARRIED

7. EXTRAORDINARY AND URGENT BUSINESS

There was no extraordinary or urgent business.

8. NEXT MEETING

To be confirmed.

9. CLOSURE

Chairperson Skelton declared the meeting closed at 8.34am

CONFIRMED

DATE: _____

CHAIRPERSON: _____

4. Matters Arising

5. Deputations and Petitions

6. Items for discussion

6.1. Appointment of Hearing Commissioner - ERP Group Limited

Regulation Hearing Committee paper

| | |
|-------------------------|-------------------------|
| Date of meeting | Thursday 21st June 2018 |
| Agenda item | 6.1 |
| Consents Manager | Virginia Loughnan |
| Author | Alison Cooper |

Purpose

1. To appoint a Hearing Commissioner to hear and decide resource consent application CRC182795 to be held by ERP Group Limited

Recommendations

That the Regulation Hearing Committee in regard to resource consent application CRC182795 to be held by ERP Group Limited:

1. **Appoints Kenneth Lawn as a Hearings Commissioner, under s34A of the Resource Management Act 1991; and**
2. **Delegates to Kenneth Lawn, pursuant to s34A(1) Resource Management Act 1991, the function, powers and duties required to: deal with any preliminary matters; hear; and decide the resource consent application.**

Background

2. ERP Group Limited has applied to Environment Canterbury for consent to discharge contaminants including dust and odour into air as a result of a waste transfer station at 25 Spencerville Road, Christchurch.
3. The application was limited notified with five submissions being received. Four submissions oppose the application and one is neutral. One submitter wishes to be heard.
4. The application is currently suspended to enable discussion between the applicant and submitter.
5. The hearing is proposed to be heard late July 2018.

Proposed Commissioners

6. Kenneth Lawn has satisfied Council staff he has the necessary criteria, including technical ability, RMA Accreditation certification, availability and timeframe commitments to carry out the duties required as a Hearing Commissioner.

Legal compliance

7. S34A of the Resource Management Act 1991 allows Council to delegate functions to Hearing Commissioners appointed by the Canterbury Regional Council.
8. The Regulation Hearing Committee appoints Hearing Commissioners in relation to consent authority matters under the Resource Management Act 1991.

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| Peer reviewers | Virginia Loughnan |
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6.2. Consent decisions via RHC

Regulation Hearing Committee paper

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| Date of meeting | Thursday 21st June 2018 |
| Agenda item | |
| Consents Manager | |
| Author | Catherine Schache |

Purpose

1. To provide the Committee with information on a proposed change to Council's practice, so that Committee members (rather than independent hearing commissioners) would make decisions for notified consent applications where no submissions have been received.

Recommendations

That the Regulation Hearing Committee:

1. **Notes that Council has previously delegated to the Committee the authority (amongst other things) to consider and decide resource consent applications under the Resource Management Act (RMA) that have been publicly notified but where there are no parties (submitters or applicant) to be heard; and**
2. **Resolves that, with immediate effect, it intends to consider and decide such resource consent applications itself, rather than appointing an independent hearing commissioner to make all such decisions;**
3. **Instructs staff to consider and to report back to the Committee on the steps necessary to implement this change.**

Background

1. Council has previously delegated to the Committee the authority (amongst other things) to consider and decide resource consent applications under the Resource Management Act (RMA) that have been publicly notified but where there are no parties (submitters or applicant) to be heard. The Committee also has the power to appoint hearing commissioners to hear and decide resource consent applications.

Prior to the change of governance from Councillors to Commissioners in 2010, any publicly notified applications where no parties were to be heard, were decided by the Councillors comprising the Committee. There was no additional cost to the applicant to have applications decided in this manner.

The Council's process at that time for the Committee to consider and make the decision was for the officer's s42A report to be included on the agenda. The officer would attend the meeting to answer any questions, and the decision whether to grant or decline as per the RMA would be made and minuted as part of the Committee meeting, with reasons, and conditions. The conditions would be either as proposed in the s42A report in its entirety, or as proposed subject to any amendments or additions made by the Committee.

After the appointment of Commissioners, the power to decide notified applications without parties to be heard was delegated to a hearing commissioner and it has been Council's practice since then for a hearing commissioner to make all such decisions.

1. Since March 2014, Mr Alec Neill, an accredited Environment (MfE) 'Making Good Decisions' hearings commissioner, has been appointed to this role on a yearly basis. His current appointment expired on 20 May 2018. Prior to that he was appointed as required.

Advantages and disadvantages of Commissioners

2. The advantages of using Councillors for these decisions are as follows:
 - Costs of an independent hearing commissioner are avoided; see section on financial implications.
 - Deciding publicly notified applications where no parties were to be heard provides an opportunity for Councillors to participate in the resource management decision-making environment.
 - It provides Councillors an opportunity to practise their decision-making skills on matters that are not complicated by the additional procedural requirements occasioned by hearings. These are skills that few of the Councillors currently hold and introducing this process now allows them to use and learn from the expertise of Councillor Skelton, a former Environment Court Judge.
 - It is consistent with common practice in other local authorities where elected members hear and decide such applications.
1. There are also disadvantages to using Councillors, as follows:
 - A quorum of RHC (that is, at least two members) is needed at each meeting.
 - All RHC Councillors would also need to be MfE certified decision makers, as required by the Hearings policy:
 - All RHC committee members would require certification under the MfE 'Making Good Decision' programme. The foundation course is two-days on-site training, plus additional assignment time (cost \$2,053.04 + GST per person certified).
 - Ideally, at least two members on RHC should also have the Chair Endorsement (to ensure a member with Chair Endorsement is available). This is an additional cost.
 - Any perceived or actual conflict of interest, or perceptions of bias, needs to be disclosed and addressed (typically by standing down from the decision-making process).

- The independent commissioner has travelled to Timaru to make decisions, where officers have been based in Timaru and where applicants have wished to observe the process. The RHC meeting is currently scheduled for 8:30am on Thursdays in Christchurch. Any change would require specific advertising due to Local Government Official Information and Meetings Act requirements.
- Matters may be outside the technical knowledge or experience of committee members. This can be avoided through appointment of independent Commissioners to hear specific resource consent applications, who can be selected for particular skill sets or experience;
- Adds to Councillor workload and may conflict with timing of other council meetings. Additional time would need to be factored in to the current meeting schedule to give due diligence to the application. This may impact on an already busy agenda.

Financial implications

2. Over the past three years 10 applications have been decided by the appointed independent hearing commissioner; or an average of 3 per year.
3. The average time involved in making a decision by the independent hearing commissioner which included reading, questions of the Reporting Officer and drafting of a written decision, is 7.5 hours.
4. Costs per decision using an independent Commissioner averaged \$1,500.00 (noting that these costs have not been increased in the last four years). The Council partially recovers this cost via standard charges imposed via consent processing, however we currently do not fully recover these costs which exceed standard decision- making time.
5. In the past, RHC decisions were typically recorded as part of the RHC minutes, and therefore a separate written decision was not required. This may result in a time saving for these applications, with better ability to fully recover costs of making the decision.

Conclusion and process for moving forward

6. Staff consider that the advantages of moving to Committee members making these decisions outweigh the disadvantages. There are certain steps that would be needed to implement it.
7. The Canterbury Regional Council Hearings Policy - December 2014, acknowledges that decision-makers must hold a current certificate under the Making Good Decisions programme, with the Chair to hold the Chair endorsement.
8. Within the Regulation Hearing Committee, Councillors P Skelton, E Cunningham and L Pham are accredited. Councillor T Lambie does not hold certification. Currently, only Councillor Skelton holds the necessary accreditation to chair the Committee.
9. Training in the foundation course would be required by Cr. Lambie; and for the Chair endorsement by one or two other members. Staff will enquire about the next available courses.
10. The process for recording any decision made by the Committee would be:

- An application requiring decision will be placed on the Committee agenda for consideration and decision by the Committee without formal hearing. The officer's s42A report will be included in the agenda.
- The officer would attend the meeting to answer any questions.
- The discussion, and decision would be made at the Committee meeting to grant or decline as per the RMA, with conditions as per the s42A report and subject to any amendments or additions; and recorded as part of the minutes of the meeting.

Legal compliance

1. The proposal is consistent with delegations previously made to the Committee by the full Council as permitted by section 34 of the Resource Management Act 1991.

Attachments

Nil

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| Peer reviewers | Virginia Loughnan |
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6.3. Appointment of Hearing Commissioner - J A Parfitt

Regulation Hearing Committee paper

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| Date of meeting | Thursday 21st June 2018 |
| Agenda item | 6.3 |
| Consents Manager | Virginia Loughnan |
| Author | Alison Cooper |

Purpose

1. To appoint a Hearing Commissioner to hear and decide an objection to decision on resource consent CRC169979 held by Jennifer A Parfitt

Recommendations

That the Regulation Hearing Committee in regard to an objection to decision of resource consent CRC169979 held by Jennifer A Parfitt:

1. **Appoints Kenneth Lawn as a Hearings Commissioner under s34A of the Resource Management Act 1991; and**
2. **Delegates to Kenneth Lawn pursuant to s34A(1) Resource Management Act 1991, the function, powers and duties required to: deal with any preliminary matters; hear; and decide the objection to decision.**

Background

2. Ms J A Parfitt has objected to a condition of resource consent CRC169979.
3. The consent authorises the take and use of groundwater at Woodfields Road, Swannanoa. The objection is to the imposition of a minimum flow condition.

Proposed Commissioners

4. Kenneth Lawn has satisfied Council staff he has the necessary criteria, including technical ability, RMA Accreditation certification, availability and timeframe commitments to carry out the duties required as a Hearing Commissioner.

Legal compliance

5. S34A of the Resource Management Act 1991 allows Council to delegate functions to Hearing Commissioners appointed by the Canterbury Regional Council.

6. The Regulation Hearing Committee appoints Hearing Commissioners in relation to consent authority matters under the Resource Management Act 1991.

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| Peer reviewers | Virginia Loughnan |
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- 7. Extraordinary and Urgent Business**
- 8. Next Meeting - to be confirmed**
- 9. Closure**