

Agenda 2020

Regulation Hearing Committee

Date: Thursday 26 November 2020

Time: 8.30am

Venue: Council Chamber, 200 Tuam Street, Christchurch



Regulation Hearing Committee

Membership

Chair

Cr Claire McKay

Members:

Cr Grant Edge

Cr Nicole Marshall

Cr Craig Pauling

Cr Lan Pham

ENVIRONMENT CANTERBURY
REGULATION HEARING COMMITTEE
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- 1. Mihi/Karakia Timatanga - Opening**
- 2. Apologies**
- 3. Conflict of Interest**
- 4. Deputations and Petitions**

5. Minutes

5.1. Minutes from 29 October 2020

Refer to attachment on following page.

REGULATION HEARING COMMITTEE

Minutes of the meeting held in the
Council Chambers, 200 Tuam Street, Christchurch on
Thursday, 29 October 2020 at 8.30am

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- 1.0 Mihi/Karakia Timatanga - Opening
- 2.0 Apologies
- 3.0 Deputations and Petitions
- 4.0 Conflict of Interest
- 5.0 Minutes of Meeting – 29 October 2020
- 6.0 Matters Arising
- 7.0 Item for Discussion
 - 7.1 RH Consideration of resource consent applications
 - 7.2 Appointment of Hearing Commissioner – MHV Water Limited
- 8.0 Extraordinary and Urgent Business
- 9.0 Other Business
- 10.0 Next Meeting
- 11.0 Mihi/Karakia Whakamutunga - Closure

PRESENT

Councillors Claire McKay (Chair), Grant Edge, Nicole Marshall, Lan Pham and Craig Pauling (from 8.36am)

IN ATTENDANCE

Tumu Taiao Yvette Couch-Lewis, Catherine Schache (General Counsel), Tania Harris (Senior Manager Operational Support) and Alison Cooper (Consents Hearings Officer)

1. MIHI/KARAKIA TIMATANGA - OPENING

Cr McKay opening the meeting with a Karakia.

2. APOLOGY

Councillor Pauling (for lateness)

3. DEPUTATIONS AND PETITIONS

There were no deputations or petitions.

4. CONFLICT OF INTEREST

There were no conflicts of interest. Councillor Pauling confirmed he had no conflicts of interest to declare.

5. MINUTES OF MEETING – 22 OCTOBER 2020

Resolved

The Regulation Hearing Committee:

- 1. confirms the minutes of the meeting held on 22 October 2020 as a true and correct record.**

Cr McKay / Cr Pham
CARRIED

Councillor Pauling entered the meeting at 8.36am

6. MATTERS ARISING

Item 7.2 – Tumu Taiao Yvette Couch-Lewis noted that she had air expertise having sat on the Canterbury Air Regional Plan hearing panel.
Councillor Pham asked if there should be discussion about expertise.

7. ITEMS FOR DISCUSSION

7.1 RHC consideration of resource consent applications *Refer pages 11 to 21 of the agenda.*

Councillor McKay invited Catherine Schache to speak to the paper. Ms Schache noted that with the addition of Tumu Taiao Yvette Couch-Lewis, the number of committee members with hearing commissioner certification would increase.

Tumu Taiao Yvette Couch-Lewis asked for clarification of paragraph 5 and if recordings of discussions would be taken. Ms Schache advised that staff would not record the discussions, only the outcomes.

Tumu Taiao Yvette Couch-Lewis said she had 'natural justice' issues if additional expertise was brought in as an independent hearing commissioner. She said that hearing commissioners are decision-makers, and that expertise would be in the process and not technical expertise.

Councillor McKay asked members their preferred option.

Councillor Edge preferred Option B as the reasons offered were good, and an independent chair would be available for writing decisions.

Councillor Marshall noted costs to the applicant need to be considered, and that outcomes for the decision were important. She preferred Options A and G.

Councillor Pauling said Option A was preferred with a need to recognise it does take time to make decisions and that maybe reimbursement be considered for the extra time. He also suggested Option B could be considered at a later time.

Councillor Pham noted her preference for Option A to allow growth of the decision-makers experience. She said that with Option G – you can learn from shadowing an independent

hearing commissioner, but it was not the same as doing. She asked about the numbers of commissioners making the decision.

Ms Schache advised that it would be a committee decision even if one person was delegated the decision writing.

Tumu Taiao Yvette Couch-Lewis stated her preference for Option A and to trust the expertise at the table and said to follow the process from the Good Decisions course to arrive at a decision.

Councillor McKay also noted costs to the applicant and was comfortable with Option A and with the process for non-heard decisions outlined in the report.

Councillor Edge said he was also fine with Option A and asking if due to the complexity of applications could Option F be used. Ms Schache advised that would be dependent on timing.

Resolved

That the Regulation Hearing Committee:

- 1. Receives the report on proposed options to allow it to hear resource consent applications;**
- 2. Decides its preferred option is Option A and will advise Council they will continue exercising existing delegations; and**
- 3. Advises staff its preferred option is Option A and for staff to undertake necessary steps to implement that option.**

7.2 Appointment of Hearing Commissioner – Fulton Hogan Limited

Refer pages 22 to 23 of the agenda

Councillor McKay outlined the basis of the report noting staff involvement with the application.

Resolved

That the Regulation Hearing Committee in regard to resource consent application CRC185857 applied for by MHV Water Limited:

- 1. Appoints Sharon McGarry as a Hearings Commissioner under s34A of the Resource Management Act 1991; and**
- 2. delegates to Sharon McGarry 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.**

Cr Marshall / Cr Edge
CARRIED

8. EXTRAORDINARY AND URGENT BUSINESS

There was no extraordinary or urgent business.

9. GENERAL BUSINESS

There was no general business.

10. NEXT MEETING - to be confirmed

11. MIHI/KARAKIA WHAKAMUTUNGA - CLOSURE – The meeting closed at 9.02am

CONFIRMED

Date:

Chairperson:

6. Matters Arising

7. Items for discussion

7.1. Appointment of Hearing Commissioners - Environment Canterbury related applications for the Ashburton Consent Reviews

Regulation Hearing Committee paper

Date of meeting	26 November 2020
Agenda item	7.1
Operations Senior Manager Support	Tania Harris
Author	Henry Winchester

Purpose

1. To appoint an independent Hearing Commissioner to hear and decide whether to notify and then to decide the Ashburton consent reviews where Council/Environment Canterbury staff would have or would be perceived to have a conflict of interest in making decisions.

Recommendations

That the Regulation Hearing Committee in regard to the Ashburton Consent Reviews (as described below) and for a period of time to expire on 22 May 2021:

1. **Appoints Sharon McGarry as a Hearings Commissioner under s34A of the Resource Management Act 1991 (RMA) to consider and decide the non-notification or public notification of reviews of consent conditions where Environment Canterbury or its staff would have a conflict of interest or a perceived conflict of interest of the type described in this paper; and**
2. **Following any decision made under the above paragraph, if that decision is:**
 - 2.1. **not to notify a consent review under Section 130 of the RMA, to consider and decide the consent review under Section 132 of the RMA; and**
 - 2.2. **if that decision is to publicly notify that consent review under section 130 of the RMA, to be the Chair of a hearing panel to consider and decide that consent review under section 132 of the RMA, in conjunction with other Hearing Commissioner(s), to be appointed at a later date.**
3. **Delegates to Sharon McGarry, pursuant to s34A(1) of the RMA, the function, powers and duties required to: deal with any preliminary matters; decide whether to notify; hear; and subject to the appointment of additional Hearing Commissioners provided at resolution set out 2.2 above, decide the resource consent reviews.**

Background

2. Following input from the Ashburton Zone Committee and a decision of Council, in July 2019 Environment Canterbury initiated a review of 88 water permits to take water from the Ashburton / Hakatere River. This includes 38 direct surface water takes and 50 hydraulically connected groundwater takes (“Ashburton Consent Reviews”)
3. The consent reviews are to apply the Land and Water Regional Plan (LWRP) minimum flow limits for the Ashburton River / Hakatere mainstem and tributaries, which take effect from 1 July 2023, along with updated water metering and telemetry conditions. The LWRP minimum flows will have a range of benefits for the river, along with providing reliability equity to water abstractors.
4. The LWRP minimum flows will adversely affect water availability across the catchment and the significance of these effects on consent holders will vary with location and land use type. The impact of the review for some consent holders will be severe.
5. This is the most complex consent review process in terms of implementing a new plan that Environment Canterbury has undertaken to date, and we are not aware that any other regional councils have undertaken a review of this size and scope. The review process under the Resource Management Act (RMA) is complex and there is no directly relevant case law to guide the process. We have sought legal advice, where necessary, throughout the process and are confident that we are undertaking the reviews in a manner that is legally robust yet compassionate to the impacts on consent holders.
6. Some consents under review relate to land that is owned by Environment Canterbury and is leased to the consent holders. This may result in a conflict of interest or a perceived conflict of interest.
7. Conflicts may also arise where the consents being reviewed are held by Environment Canterbury staff members, Environment Canterbury Councillors, or family members of either.
8. Environment Canterbury may also receive applications from applicants where internal decision-makers may have concerns because of a perception of conflict or bias, and an independent hearing commissioner (or commissioners) should therefore make decisions in relation to the consent review (akin to the process already established for standard resource consent applications, by resolution of this Committee on 2 July 2020).
9. As a result, an independent hearing commissioner is required to make the notification decision and the grant/decline decisions under Section 130 and Section 132 of the RMA.
10. Currently, there are no appointments of independent hearing commissioners to hear and decide whether to notify and then to decide the Ashburton consent reviews of resource consent applications.
11. The appointee should have:

- availability to undertake decision-making at short notice;
- suitable experience in making decisions on differing applications;
- the ability to understand and evaluate any key issues associated with an
- application; and
- Hold Ministry for the Environment (MfE) Making Good Decisions Accreditation.

Proposed Commissioners

12. Using the above criteria it is proposed that Sharon McGarry be appointed. Sharon McGarry has appropriate experience in deciding a range of planning matters, is available and has provided decisions in a timely manner. Sharon McGarry is a knowledgeable hearing commissioner and holds the appropriate Good Decisions accreditation.
13. Sharon McGarry has satisfied Council staff they have the necessary criteria, including technical ability, RMA Accreditation certification, availability and timeframe commitments to carry out the duties required to decide any non-notified application.
14. Sharon McGarry is also a member of the panel of independent hearing commissioners previously appointed by this Committee to hear standard resource consent applications where similar conflicts of interest for Environment Canterbury might arise.

Legal compliance

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

Attachments

Nil

Peer reviewers	Tania Harris, Catherine Schache
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8. Extraordinary and Urgent Business

9. General Business

10. Next Meeting - to be confirmed

11. Mihi/Karakia Whakamutunga – Closing