

Agenda 2021

Regulation Hearing Committee

Date: Thursday 04 February 2021

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

Tumu Taiao Yvette Couch-Lewis

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 28 January 2021

Refer to attachment on following page.

REGULATION HEARING COMMITTEE

Minutes of the meeting held in the
Council Chambers, 200 Tuam Street, Christchurch on
Thursday, 28 January 2021 at 8.30am

CONTENTS

- 1.0 Mihi/Karakia Timatanga - Opening
- 2.0 Apologies
- 3.0 Deputations and Petitions
- 4.0 Conflict of Interest
- 5.0 Minutes of Meeting – 03 December 2020
- 6.0 Matters Arising
- 7.0 Item for Discussion
 - 7.1 Appointment of Hearing Commissioner – Ashburton Lyndhurst Irrigation & Barrhill Chertsey Irrigation
- 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, Craig Pauling, Lan Pham and Tumu Taiao Yvette Couch-Lewis

IN ATTENDANCE

Councillors Elizabeth McKenzie and Ian Mackenzie;

Catherine Schache (General Counsel), Paul Hulse (Senior Manager Operational Support), Virginia Loughnan (Manager Zone Delivery), Aurora Grant (Consents Manager), and Alison Cooper (Consents Hearings Officer)

1. MIHI/KARAKIA TIMATANGA - OPENING

Cr Pauling opened the meeting with a Karakia.

2. APOLOGY

There were no apologies.

Councillor McKay invited Virginia Loughnan to introduce Aurora Grant, the new Consents Manager, and Paul Hulse as the Senior Manager Operational Support.

3. DEPUTATIONS AND PETITIONS

There were no deputations or petitions.

4. CONFLICT OF INTEREST

There were no conflicts of interest.

5. MINUTES OF MEETING –

5.1 MINUTES OF THE MEETING OF 29 OCTOBER 2020

Councillor McKay noted an error was found in the approved minutes of 29 October 2020. Item 7.2 paragraph heading reads as Appointment of Hearing Commissioner – Fulton Hogan Ltd. It should read as Appointment of Hearing Commissioner – MHV Water Limited.

Resolved

The Regulation Hearing Committee:

- 1. confirms the corrected minutes of the meeting held 29 October 2020.**

Cr L Pham / Cr G Edge
CARRIED

5.2 MINUTES OF THE MEETING OF 3 DECEMBER 2020

Councillor Marshall noted the incorrect spelling of November in Item 5.

Resolved

The Regulation Hearing Committee:

- 1. confirms the corrected minutes of the meeting held on 3 December 2020 as a true and correct record.**

Cr McKay / Cr Pham
CARRIED

6. MATTERS ARISING

There were no matters arising.

7. ITEMS FOR DISCUSSION

7.1 Appointment of Hearing Commissioner – Ashburton Lyndhurst Irrigation & Barrhill Irrigation

Refer pages 10 to 12 of the agenda.

Councillor Pham asked for clarification if the applications were of a single or global nature. Ms Loughan advised the applications were all renewals and the applicant would manage the discharges. It was noted that two consent applications were required by Barrhill Chertsey Irrigation as their scheme areas covered two catchment areas.

Councillor Pauling asked if a mana whenua commissioner should also be appointed to address any cultural concerns.

Tumu Taiao Couch-Lewis expressed assurance that the recommended commissioner was experienced in the catchment issues.

Councillor Edge supported an additional commissioner appointment; and asked about the persons notified. Ms Loughnan explained that the applications cannot be re-notified to others, and that it was considered that rūnanga were the only party affected by the proposals.

Councillor Mackenzie queried that if Ngāi Tahu were an objector, can a mana whenua commissioner be appointed? Councillor Pauling noted that a mana whenua commissioner from outside the region could be appointed.

Resolved

That the Regulation Hearing Committee in regard to resource consent application:

- (i) CRC185469, applied for by Ashburton Lyndhurst Irrigation Limited; and**
- (ii) CRC184159 and CRC211511, applied for by Barrhill Chertsey Irrigation 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 applications.**

Cr McKay / Cr Pham
CARRIED

8. EXTRAORDINARY AND URGENT BUSINESS

There was no extraordinary or urgent business.

9. GENERAL BUSINESS

There was no general business.

10. NEXT MEETING - Thursday 4 February 2021**11. MIHI/KARAKIA WHAKAMUTUNGA - CLOSURE – The meeting closed at 8.49am****CONFIRMED**

Date:

Chairperson:

6. Matters Arising

7. Items for discussion

7.1. Ashburton Consent Reviews - Panel appointment

Regulation Hearing Committee paper

Date of meeting	4 February 2021
Agenda item	7.1
Operations Senior Manager Support	Paul Hulse
Author	Henry Winchester, Catherine Schache

Purpose

1. 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").
2. This paper:
 - a. seeks the appointment of Sharon McGarry and Hoani Langsbury to hear and decide Consent CRC200269 which was publicly notified and which is one of the Ashburton Consent Reviews; and
 - b. seeks the appointment of Sharon McGarry to hear and decide all other Ashburton Consent Reviews where the consent review has been publicly notified; and
 - c. notes that an additional independent Hearing Commissioner to hear and 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 will be added at a later date, alongside the already appointed Chair Sharon McGarry; and
 - d. notes that an additional independent Hearing Commissioner will be added to hear and decide all other Ashburton Consent Reviews that have been publicly notified at a later date.

Recommendations

That the Regulation Hearing Committee (RHC) in regard to the Ashburton Consent Reviews:

- 1. Notes that the Committee has previously:**

- 1.1. appointed Sharon McGarry to decide whether to notify reviews of consent conditions where Canterbury Regional Council or its staff would have a conflict of interest; and
 - 1.2. where her decision was not to notify those reviews of consent conditions, to appoint Sharon McGarry to make decisions on the reviews of consent conditions; and
 - 1.3. where her decision was to notify those reviews of consent conditions, the Committee resolved that Sharon McGarry would Chair the Hearing Panel to consider and decide that consent review, but that the Committee would appoint a second hearing commissioner (See Attachment 1) at a later date.
2. The Committee now resolves, in relation to consent CRC200269 which is one of the Ashburton Consent Reviews and which has been publicly notified under section 130 of the RMA;
 - 2.1. To appoint Hoani Langsbury as an additional Hearing Commissioner, and member of the Hearing Panel to consider and decide that consent review under section 132 of the RMA alongside already appointed Chair Sharon McGarry; and
 - 2.2. In the case of an equality of votes of the panel, to give to Sharon McGarry a casting vote;
 - 2.3. In addition to the earlier delegation to Sharon McGarry, to delegate to Hoani Langsbury, pursuant to s34A(1) of the RMA, the function, powers and duties required to: deal with any preliminary matters; hear, decide consent CRC200269.
3. For all other publicly notified consents in the Ashburton Consent Reviews, the Committee resolves to:
 - 3.1. Appoint Sharon McGarry as a Hearing Commissioner, and Chair of the Hearing Panel under s34A of the Resource Management Act 1991, and in the case of an equality of votes of the panel, gives Sharon McGarry a casting vote; and
 - 3.2. Note that another Hearing Commissioner will be appointed prior to the next hearing through this process; and
 - 3.3. Delegate to Sharon McGarry pursuant to s34A(1) of the RMA, the function, powers and duties required to: deal with any preliminary matters; hear, decide the resource consent reviews.

Background

3. The Ashburton 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.

Consent Reviews that have a conflict or perceived conflict

6. Currently, independent Hearing Commissioner Sharon McGarry is appointed to hear and decide whether to notify and then to decide the Ashburton Consent Reviews of resource consent applications where Council/Environment Canterbury staff would have or would be perceived to have a conflict of interest in making decisions.
7. The original appointment of Sharon McGarry outlined (Attachment 1) in resolution 2.2 that a Hearing Commissioner would be added at a later date, which remains unfilled.

Consent Reviews that have been notified

8. Council requires independent hearing commissioners to decide all other notified Ashburton Consent Reviews of resource consent applications under Section 132 of the RMA (that is, those where Environment Canterbury does not have a conflict of interest or a perceived conflict of interest).
9. By virtue of their involvement in other Ashburton Consent Reviews, the Panel members will have familiarity with the relevant provisions of the LWRP and RMA, the factual framework and other issues affecting the Ashburton Consent Reviews. Consistency across all decisions relating to the Ashburton Consent Reviews is also vital. For those reasons, staff propose that the same Hearing Panel already established as highlighted above decides all Ashburton Consent Reviews.
10. It is proposed that Sharon McGarry would chair the Hearing Panel and have the casting vote. 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.
11. The other member of the Hearing Panel (as discussed above) is proposed to be a Tangata Whenua representative, based on a recommendation from Te Rūnanga o Ngāi Tahu. As the Hakatere / Ashburton River is located within the rohe of Te Rūnanga o Arowhenua, this representative needs to be external to Arowhenua to avoid perceptions

of conflicts of interest. They must be available for a March hearing for the currently notified Ashburton Consent Review. The representative would also need to ensure there is no conflict with those who have submitted on the notified reviews.

12. Te Rūnanga o Ngāi Tahu recommended Hoani Langsbury to sit as a Hearing Commissioner on the Hearing Panel for consent number CRC200269. Rūnanga o Ngāi Tahu have indicated that they will provide a letter including the reasons for the recommendation which we are yet to receive and will provide as soon as possible. Delegation is only sought for the hearing of this specific consent at this stage.
13. For all other notified consents part of the Ashburton Consent Review, Sharon McGarry will remain the Chair of the Hearing Panel with the casting vote, with a Ngai Tahu representative to be added at a later date.
14. The appointees 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.

Currently notified Ashburton Consent Reviews

15. Currently there is one Ashburton Consent Review which has been publicly notified. The submission period closed on 4 December 2020 and there were 8 submissions lodged when the submission period closed. Six of the submitters opposed and wished to be heard, one submitter supported and wished to be heard and one submitter was neutral and did not request to be heard. A hearing will be scheduled for the middle of March.
16. The notification decision for this notified consent review was made by an internal RMOG panel of a Principal Consent Planner, Principal Planner and the Operations Senior Manager Support. This process is proposed to stay the same for reviewed consents that do not have a conflict or a perceived conflict.
17. In the interests of clarity, we have included at Table 1 below a summary of the relevant decisions and delegations made by the Committee in relation to the Ashburton Consent Reviews (reflecting the proposed decisions being put to the Committee in this paper).

Table 1 Ashburton Consent Reviews decision makers

Type of Ashburton Consent Reviews	Notification Decisions (s130 RMA)	Grant/Decline Decision (s132 RMA)
Consents that staff have a conflict of interest or a perceived conflict of interest	Sharon McGarry	Sharon McGarry and additional commissioner to be added at a later date
For all other publicly notified consents in the Ashburton Consent Reviews	Internal RMOG panel	Sharon McGarry and additional commissioner to be added at a later date
Publicly notified Consent CRC200269	Was made by Internal RMOG panel	Sharon McGarry and Hoani Langsbury

Proposed Commissioners

18. For the reasons set out in the papers recommending their appointments, the Hearings Commissioners identified at resolutions 2 and 3 have satisfied Council staff they have the necessary criteria, including technical ability, RMA Accreditation certification, availability and timeframe commitments to carry out the duties required as Hearing Commissioners.

Legal compliance

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

Attachments

1. Appointment of Hearing Commissioners Environment Canterbury related a [7.1.1 - 3 pages]

Peer reviewers	Catherine Schache, Aurora Grant
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Regulation Hearing Committee paper

Date of meeting	{meeting-date}
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

{attachment-list}

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