

Agenda 2021

Regulation Hearing Committee

Date: Thursday 11 November 2021

Time: 8.30am

Venue: Council Chamber, 200 Tuam Street, Christchurch



Regulation Hearing Committee

Membership

Co-Chairs:

Tumu Taiao Yvette Couch-Lewis
Cr Nicole Marshall

Members:

Cr Grant Edge
Cr Claire McKay
Cr Elizabeth McKenzie
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 30 September 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, 30 September 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 – 26 August 2021
- 6.0 Matters Arising
- 7.0 Item for Discussion
 - 7.1 Revocation of Appointment of Hearing Commissioner
- 8.0 Extraordinary and Urgent Business
- 9.0 Other Business
- 10.0 Next Meeting
- 11.0 Mihi/Karakia Whakamutunga - Closure

PRESENT

Tumu Taiao Yvette Couch-Lewis (Chair), Councillors Claire McKay, Grant Edge, Nicole Marshall, Elizabeth McKenzie, Craig Pauling

IN ATTENDANCE

Catherine Schache (Legal Counsel), Judith Earl-Goulet (General Manager Regulatory Services), Aurora Grant (Consents Manager) and Alison Cooper (Consents Hearings Officer)

1. MIHI/KARAKIA TIMATANGA - OPENING

Cr McKay opened the meeting with a karakia.

2. APOLOGY

Councillor Pham

3. DEPUTATIONS AND PETITIONS

There were no deputations or petitions.

4. CONFLICT OF INTEREST

Councillor Pauling declared a conflict of interest during Item 7.1.

5. MINUTES OF MEETING – 26 AUGUST 2021

Refer pages 6 - 9 of the agenda.

Resolved

The Regulation Hearing Committee confirms the minutes of the meeting held on 26 August 2021 as a true and correct record.

Cr Marshall / Cr McKay
CARRIED

6. MATTERS ARISING

There were no matters arising.

7. ITEMS FOR DISCUSSION

Refer pages 11 -12 of the agenda.

7.1 Revocation of Appointment of Hearing Commissioner

Tumu Taiao Yvette Couch-Lewis introduced the item noting that if the appointment of the hearing commissioner was revoked, the remaining hearing panel members could continue.

It was noted that a three-person panel was expected for this hearing, with one member having environmental science and cultural expertise.

Councillor Pauling declared a conflict of interest and withdrew from discussion.

There was discussion about the availability of other hearing commissioners with the required expertise and what options would be available for the remaining panel members. It was noted that tools are in place for the panel to action if further cultural information was required.

Resolved

That the Regulation Hearing Committee in regard to resource consent application(s) CRC184166, CRC200500, CRC201366, CRC201367, CRC201368 and CRC203016 applied for by Bathurst Coal Limited

- 1. Revokes the appointment of Dr Jane Kitson as a Hearings Commissioner; and member of the Hearing Panel under s34A of the Resource Management Act 1991; and that**
- 2. The Committee is satisfied the two appointed Hearing Commissioners, Sharon McGarry and Graham Taylor continue as the Hearing panel to hear the applications.**

Cr Edge / Cr McKay
CARRIED

8. EXTRAORDINARY AND URGENT BUSINESS

There was no extraordinary and 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 8:52am

CONFIRMED

Date:

Chairperson:

6. Matters Arising

7. Items for discussion

7.1. Appointment of Hearing Commissioner - Orari Coach Station Limited

Regulation Hearing Committee paper

Date of meeting	11 November 2021
Agenda item	7.1
General Manager – Regulatory Services	Judith Earl-Goulet
Author	Alison Cooper - Consents Hearings Officer

Purpose

1. To appoint a Hearing Commissioner to hear and decide resource consent applications CRC210919 and CRC210922 applied for by Orari Coach Station Limited

Recommendations

That the Regulation Hearing Committee in regard to resource consent application(s) CRC210919, CRC210920, CRC210922, CRC210923 and CRC210970 applied for by Orari Coach Station Limited:

1. **Appoints Brent Cowie as a Hearings Commissioner under s34A of the Resource Management Act 1991; and**
2. **Delegates to Brent Cowie 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.**

Background

2. Orari Coach Station Limited applied for consent to discharge contaminants from stormwater, an on-site wastewater system, and solid animal waste and animal effluent and other contaminants from a stock-holding yard; and the use land for stock holding and stock truck tank effluent, as part of a proposal to establish and operate a new rural transport yard at Orari.
3. The applications were limited notified to two parties and both submitted in opposition to the proposal. The submitters concerns are that the activities proposed pose a potential risk to the district council water supply and to public health if the water supply was contaminated.

4. The applicant subsequently responded to a post notification request for further information and amended the application by advising that the discharges to an on-site wastewater system (CRC210920), and of solid animal waste and animal effluent and other contaminant from a stock-holding yard (CRC210970); and use of land for stock holding and stock truck effluent would not be progressed on the site (CRC210923).
5. The discharge of stormwater (CRC210919) and the use of the land for earthworks (CRC210922) applications would be retained but scaled back.
6. No applications have been withdrawn as a result of the amendments.
7. A joint hearing may be required with the Timaru District Council who have received a separate but similar application to use the land.

Proposed Commissioners

8. Council's Hearings Policy outlines the criteria for selection of commissioners:
 - Scale, complexity and nature of the hearing;
 - Suitable Experience,
 - Ability to understand and evaluate the key issues associated with the application;
 - Availability for hearing and decision making;
 - No conflicts of interest;
 - Ministry for the Environment (MfE) Making Good Decisions Accreditation and Chair accreditation for the proposed Chair.
9. It is proposed to appoint a sole hearing commissioner to hear and decide these applications because of the small number of submitters to be heard, and the limited key issues that can be addressed. The hearing should take one day.
10. We sought a hearings commissioner with experience as a sole decision-maker and with the ability to hear and evaluate the key issue of water quality.
11. It is recommended that Dr Brent Cowie be appointed as a sole hearing commissioner. He has extensive experience as a sole commissioner or member of a hearing panel in both regional and district council activities.
12. Dr Cowie has over 35 years' experience in environmental management and consultancy with key areas of focus being planning and science. He has been involved as a hearing commissioner around New Zealand for various activities including water takes; wastewater and stormwater discharges and activities associated with lake openings; as well as in the preparation of resource consent applications and evidence for hearings. He has particular expertise in water resource management, investigation and reporting.
13. He is an accredited under the Making Good Decisions programme and has a chair endorsement.

14. Dr Cowie has satisfied Council staff he has the necessary criteria, including no conflict of interest, technical ability, RMA Accreditation certification, availability and timeframe commitments to carry out the duties required as a sole commissioner.

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.

Peer reviewers	Aurora Grant, Catherine Schache
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7.2. Appointment of Hearing Commissioner - Christchurch City Council

Regulation Hearing Committee paper

Date of meeting	11 November 2021
Agenda item	7.2
General Manager – Regulatory Services	Judith Earl-Goulet – General Manager – Regulatory Services
Author	Alison Cooper – Consents Hearings Officer

Purpose

To appoint Hearing Commissioners to hear and decide resource consent applications CRC204086, CRC204087 and CRC210834 applied for by Christchurch City Council.

Recommendations

That the Regulation Hearing Committee in regard to resource consent application(s) CRC204086, CRC204087 and CRC210834 applied for by Christchurch City Council:

- 1. Appoints Hoani Langsbury as a Hearings Commissioner under s34A of the Resource Management Act 1991; and**
- 2. Delegates to Hoani Langsbury 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.**

Background

- Christchurch City Council has applied for resource consents to continue to discharge treated wastewater from the Akaroa Wastewater Treatment Plant (WWTP) to Whakaroa/Akaroa Harbour, continue to use land to store and treat wastewater at the existing WWTP site, and to continue to discharge odour to air from the operation of the existing WWTP.
- The WWTP is located at 301 Beach Road on the southern end of Takapūneke/Red House Bay south of Akaroa and receives and treats wastewater from the Akaroa urban catchment.
- A duration of 8 years is sought to allow time to build and commission a new plant.
- The applications were limited notified to three parties in February 2021. One combined submission was received from Ngai Tahu parties opposing the application to discharge wastewater to the harbour but sought continued discussions with the applicant around consent conditions. The submitter wished to be heard.
- A hearing is not expected to be held. The submitter and applicant have concluded discussions with an agreed set of conditions for the discharge of wastewater to the

harbour, however the applicant has still to confirm if they wish to be heard in respect to the discharge to air.

6. The key issues associated with the applications are the cultural offensiveness of the discharges; continuation of an existing activity and that the applicant is actively working towards alternative options.

Proposed Commissioners

7. It is proposed to have appointed one hearing commissioner to hear and decide these applications as there is one submitter to be heard and the limited number of key issues. Should a hearing be required it is anticipated the hearing would take one day.
8. If no hearing is required, the Hearing Commissioner would consider and decide the applications.
9. The selection of independent hearing commissioners is based on the following criteria:
 - a. Scale, complexity and nature of the hearing
 - b. Suitable Experience
 - c. Ability to understand and evaluate the key issues associated with the application
 - d. Availability for hearing and decision making
 - e. No conflicts of interest
 - f. Ministry for the Environment (MfE) Making Good Decisions Accreditation and Chair accreditation for a proposed Chair.
10. We sought a hearing commissioner who has experience in hearings, mātauranga Maori /tikanga and the ability to hear, evaluate and consider the key issues.
11. It is recommended that Hoani Langsbury be appointed. He is an accredited and experienced hearing commissioner and has sat on several recent regional council hearings for discharges into a coastal environment including the panel for the previous Akaroa wastewater treatment plant applications. He has technical expertise in ecology and mātauranga Maori /tikanga and a background in environmental management.
12. Mr Langsbury has satisfied Council staff he has the necessary criteria, including no conflicts of interest, technical ability, RMA Accreditation certification, availability and timeframe commitments to carry out the duties required.

Legal compliance

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

Peer reviewers	Aurora Grant, Catherine Schache
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7.3. Appointment of Hearing Commissioner - SOL Quarries Limited

Regulation Hearing Committee paper

Date of meeting	11 November 2021
Agenda item	7.3
General Manager – Regulatory Services	Judith Earl-Goulet – General Manager – Regulatory Services
Author	Alison Cooper – Consents Hearings Officer

Purpose

1. To appoint a Hearing Commissioner to hear and decide an objection to costs incurred in the processing of resource consent applications CRC193563, CRC193564 and CRC193773 applied for by SOL Quarries Limited.

Recommendations

That the Regulation Hearing Committee in regard to an objection to costs incurred in the processing of resource consent applications CRC193563, CRC193564 and CRC193773 applied for by SOL Quarries Limited:

1. Appoints Cindy Robinson as a Hearings Commissioner under s34A of the Resource Management Act 1991; and
2. Delegates to Cindy Robinson 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.

Background

2. SOL Quarries Limited has objected to the costs incurred in the processing of their resource consent applications CRC193563, CRC193564 and CRC193773 associated with the establishment, commissioning and operation of an extension to its existing quarry and cleanfill operations at Conservators Road, Yaldhurst.
3. The applications were processed as limited notified applications that were heard before an independent hearing panel. The hearing was jointly held with Christchurch City Council.

Proposed Commissioners

4. It is recommended that Ms Cindy Robinson be appointed to hear the cost objection.

5. Ms Robinson is an experienced, accredited hearings commissioner with a background as a resource management lawyer. She has previously heard regional council objection hearings as well as deciding resource consent applications as a sole commissioner and as chair of hearing panels.
6. Ms Robinson has satisfied Council staff she has the necessary criteria, including no conflicts of interest, technical ability, RMA Accreditation certification, availability and timeframe commitments to carry out the duties required.

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.

Peer reviewers	Aurora Grant, Catherine Schache
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7.4. Appointment of Hearing Commissioner - Rooney Earthmoving Ltd

Regulation Hearing Committee paper

Date of meeting	11 November 2021
Agenda item	7.4
General Manager – Regulatory Services	Judith Earl-Goulet – General Manager – Regulatory Services
Author	Alison Cooper – Consents Hearings Officer

Purpose

1. To appoint Hearing Commissioners to hear and decide an objection to costs for the processing of resource consent application CRC212021 applied for by Rooney Earthmoving Limited.

Recommendations

That the Regulation Hearing Committee in regard to an objection to costs for the processing of resource consent application CRC212021 applied for by Rooney Earthmoving Limited:

1. **Appoints Cindy Robinson as a Hearings Commissioner under s34A of the Resource Management Act 1991; and**
2. **Delegates to Cindy Robinson 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 costs.**

Background

2. Rooney Earthmoving Limited has objected to the costs incurred in the processing of resource consent application CRC212021 for a global air discharge for bulk material processing.
3. The application was processed as a non-notified application.

Proposed Commissioners

4. It is recommended that Ms Cindy Robinson be appointed to hear this objection to costs.
5. Ms Robinson is an experienced, accredited hearings commissioner with a background as a resource management lawyer. She has previously heard regional council objection

hearings as well as deciding resource consent applications as a sole commissioner and as chair of hearing panels.

6. Ms Robinson has satisfied Council staff she has the necessary criteria, including no conflicts of interest, technical ability, RMA Accreditation certification, availability and timeframe commitments to carry out the duties required.

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.

Peer reviewers	Aurora Grant, Catherine Schache
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7.5. Ashburton Consent Review Panel Recommendation

Regulation Hearing Committee paper

Date of meeting	11 November 2021
Agenda item	7.5
General Manager – Regulatory Services	Judith Earl-Goulet
Authors	Henry Winchester and 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 Hearing Commissioner Hoani Langsbury as a second commissioner to hear and decide all Ashburton Consent Reviews where the consent review has been notified; and
 - b. Notes that independent Hearing Commissioner Sharon McGarry has already been appointed to chair and 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; and
 - c. Notes that independent Hearing Commissioner Sharon McGarry has also already been appointed to chair to hear and decide the Ashburton Consent Reviews that are publicly notified.

Recommendations

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

- 1 Appoints Hoani Langsbury as an additional Hearing Commissioner for all publicly notified consents in the Ashburton Consent Reviews, to consider and decide that consent review under section 132 of the RMA alongside already appointed Chair Sharon McGarry.**

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.
6. The committee has previously made a series of appointments related to the Ashburton Consent Review, these are as follows:
 - Sharon McGarry was appointed to decide whether to notify reviews of consent conditions where Canterbury Regional Council would have or would be perceived to have a conflict of interest in making decisions.
 - If a decision was made not to notify these reviewed consents Sharon McGarry was appointed to make decisions on the reviews of consent conditions. However, if Sharon McGarry decides 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.
 - Sharon McGarry has been appointed for all other publicly notified consents in the Ashburton Consent Reviews as 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, was given the casting vote (See Attachment 2).
 - The Committee also appointed Hoani Langsbury as an additional Hearing Commissioner, and member of the Hearing Panel to consider and decide one of the Ashburton Consent Reviews, being the consent review of CRC200269 under section 132 of the RMA alongside Chair Sharon McGarry (See Attachment 2).

Hearing Commissioner appointment for Ashburton Consent Reviews

7. 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.

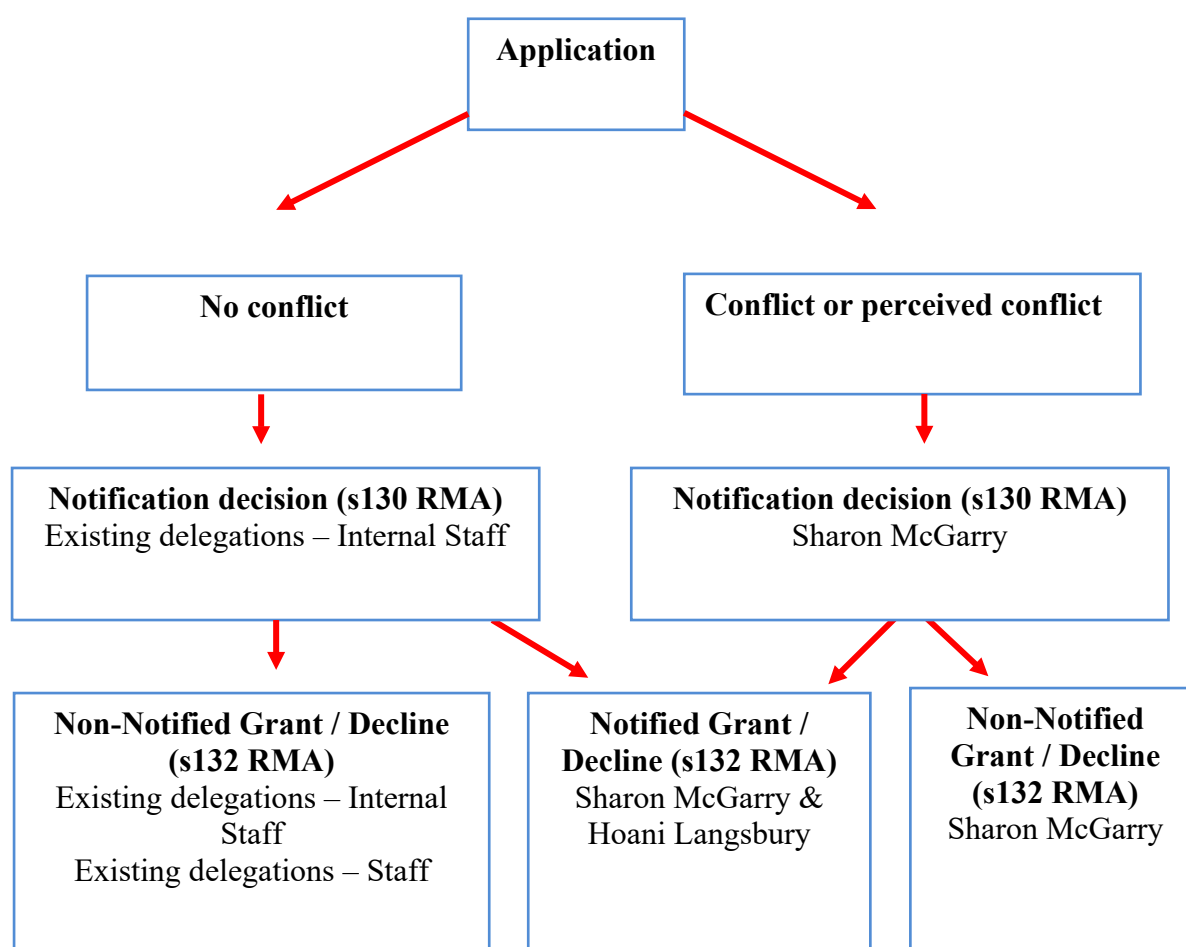
8. The original appointment of Sharon McGarry (Attachment 1) outlined that a Hearing Commissioner would be added at a later date, we now proposed that Hoani Langsbury be added if Sharon McGarry decides to publicly notify a consent part of the Ashburton Consent Review that has a conflict or perceived conflict as per resolution 1.1 in this paper.
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. Sharon McGarry has already been appointed to 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 Ashburton River / Hakatere 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. 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 previously recommended Hoani Langsbury to sit as a Hearing Commissioner on the Hearing Panel for consent number CRC200269 and have also now recommended him to sit on any other notified Ashburton Consent Reviews. Te Rūnanga o Ngāi Tahu have provided an email outlining the reasons for the recommendation. Hoani Langsbury is a knowledgeable hearing commissioner and holds the appropriate Good Decisions accreditation.
13. It is proposed that Hoani Langsbury is appointed as a Hearing Commissioner to sit alongside the chair Sharon McGarry for all notified reviewed consents. Hoani Langsbury has appropriate experience in deciding a range of planning matters, is available and has provided decisions in a timely manner.

Currently notified Ashburton Consent Reviews

14. The notification decision for Ashburton Consent Reviews that do not have a conflict or perceived conflict will remain with an internal RMOG panel or a Principal Consent Planner, Principal Planner and the Operations Senior Manager Support.
15. In the interests of clarity, we have included a flow chart (Figure 1) below, which summarises 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).

Figure 1: Ashburton Consent Reviews decision makers



Proposed Commissioners

16. For the reasons set out in the paper, Hearing Commissioner Hoani Langsbury 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

17. S34A of the Resource Management Act 1991 allows Council to delegate functions to Hearing Commissioners appointed by the Canterbury Regional Council.
18. 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 [7.5.1 - 3 pages]
2. Ashburton Conse [W 6 W 6] [7.5.2 - 5 pages]

Peer reviewers	Catherine Schache
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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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Regulation Hearing Committee paper

Date of meeting	{meeting-date}
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

{attachment-list}

Peer reviewers	Catherine Schache, Aurora Grant
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8. Extraordinary and Urgent Business

9. Next Meeting - to be confirmed

10. Mihi/Karakia Whakamutunga – Closing