

Agenda 2021

Regulation Hearing Committee

Date: Thursday 02 December 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 11 November 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, 11 November 2021 at 8.30am

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- 7.0 Item for Discussion
 - 7.1 Appointment of Hearing Commissioner - Orari Coach Station Ltd
 - 7.2 Appointment of Hearing Commissioner – Christchurch City Council
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 - 7.4 Appointment of Hearing Commissioner – Rooney Earthmoving Ltd
 - 7.5 Ashburton Consent Review Panel Recommendation
- 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, and Lan Pham

IN ATTENDANCE

Catherine Schache (Legal Counsel), Judith Earl-Goulet (General Manager Regulatory Services), Aurora Grant (Consents Manager), Henry Winchester (Senior Planner), and Alison Cooper (Consents Coordinator)

1. MIHI/KARAKIA TIMATANGA - OPENING

Cr Marshall opened the meeting with a karakia.

2. APOLOGY

There were no apologies.

3. DEPUTATIONS AND PETITIONS

There were no deputations or petitions.

4. CONFLICT OF INTEREST

There were no conflicts of interest.

5. MINUTES OF MEETING – 30 SEPTEMBER 2021

Refer pages 5 - 8 of the agenda.

RESOLVED

The Regulation Hearing Committee confirms the minutes of the meeting held on 30 September 2021 as a true and correct record.

Cr Edge/Cr McKay
CARRIED

6. MATTERS ARISING

There were no matters arising.

7. ITEMS FOR DISCUSSION

7.1 Appointment of Hearing Commissioner – Orari Coach Station Limited

Refer pages 10-12 of the agenda.

Cr McKay asked if discussions with the Timaru District Council had taken place about a joint hearing. It was noted that discussion was still to be heard.

Cr Edge queried the limited notification decision. Ms Schache clarified that the notification decision was made in regard to the Resource Management Act requirements.

RESOLVED

That the Regulation Hearing Committee in regard to resource consent applications CRC210919, CRC210920, 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 that**
- 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.**

Cr Pauling/Cr Pham
CARRIED

7.2 Appointment of Hearing Commissioner – Christchurch City Council

Refer pages 13–14 of the agenda

There was discussion if more than one hearing commissioner should be appointed. It was noted that there was public concern about the activity and that the city council had public meetings about the new facility.

UNCONFIRMED

Cr Marshall noted that there was an expectation the Christchurch City Council will move to build the new plant.

RESOLVED

That the Regulation Hearing Committee in regard to resource consent applications 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 that**
- 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.**

Cr McKay/Cr Marshall
CARRIED

- 7.3 Appointment of Hearing Commissioner – SOL Quarries Limited**
(Refer pages 16-17 of the agenda)

RESOLVED

That the Regulation Hearing Committee in regard to an objection to costs incurred in the processing of resource consent application(s) CRC193563, CRC193564 and CRC`93773 applied for by SOL Quarries Limited

- 1. Appoints Cindy Robinson as a Hearings Commissioner under s34A of the Resource Management Act 1991; and that**
- 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.**

Cr Pham/Cr Edge
CARRIED

- 7.4 Appointment of Hearing Commissioner – Rooney Earthmoving Limited**
(Refer pages 18-19 of the agenda)

RESOLVED

That the Regulation Hearing Committee in regard to an objection to costs incurred in 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 that**
- 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.**

Cr McKay/Cr Marshall
CARRIED

7.5 Ashburton Consent Review Panel Recommendation
(Refer pages 20-31 of the agenda)

Cr Pauling acknowledged staff for getting a second hearing commissioner.

Cr McKay asked what numbers were envisaged to be notified. Mr Winchester said 59 consents had been decided and it will likely that 3 or 4 may propose alternative conditions.

Cr Pham asked if the appointment should be for all notified consents, that is limited and publicly notified consent.

MOTION

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 Resource Management Act 1991 alongside already appointed Chair Sharon McGarry.

An amendment was moved by Cr Pham and seconded by Cr Pauling to add the words 'limited and' before the words 'publicly notified'.

RESOLVED

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

1. **Appoints Hoani Langsbury as an additional Hearing Commissioner for all limited and publicly notified consents in the Ashburton Consent Reviews, to consider and decide that consent review under Section 132 of the Resource Management Act 1991 alongside already appointed Chair Sharon McGarry**

Cr Pham / Cr Pauling

The amendment was CARRIED and became the substantive motion

8. EXTRAORDINARY AND URGENT BUSINESS

There was no extraordinary and urgent business

9. GENERAL BUSINESS

Cr McKenzie asked about notified consents and providing the rationale for notification decisions.

Ms Grant advised that hearing commissioners make the substantive decision on notified applications and should not be granting a consent if the application should have been notified and it was not. It was noted that future agenda items would include information on notification decisions.

UNCONFIRMED

Ms Grant advised a paper on notification of resource consent applications will be circulated to a full Council briefing meeting.

It was also noted that information on consent applications and notification reports can be accessed through the Consent Search feature of the website for consents.

10. NEXT MEETING - To be confirmed.

11. MIHI/KARAKIA WHAKAMUTUNGA - CLOSURE – The meeting closed at 9:05am

CONFIRMED:

Committee Chair Yvette Couch-Lewis
Tumu Taiao, Environment Canterbury

6. Matters Arising

7. Items for discussion

7.1. Appointment of Hearing Commissioner - Objections to Decision

Regulation Hearing Committee paper

| | |
|--|--------------------|
| Date of meeting | 2 December 2021 |
| Agenda item | 7.1 |
| General Manager – Regulatory Services | Judith Earl-Goulet |
| Author | Alison Cooper |

Purpose

1. To appoint a Hearing Commissioner to hear and decide objections to decision in regard resource consent applications.

Recommendations

That the Regulation Hearing Committee in regard to an objection to a decision on resource consent application(s):

- a. CRC221776 and CRC221777 applied for by Team Blueberry Limited and T J Bunting; and
- b. CRC221841 applied for by R Mao & X Mao
 1. Appoints Bianca Sullivan as a Hearings Commissioner under s34A of the Resource Management Act 1991; and
 2. Delegates to Bianca Sullivan pursuant to s34A(1) Resource Management Act 1991, the function, powers and duties required to: deal with any preliminary matters; hear; and decide the objections to decision.

Background

2. Team Blueberry Limited and T J Bunting have objected to the decision to return the resource consent applications as incomplete under s88 of the Resource Management Act 1991. The application is to partially transfer the take and use of groundwater at Waipara.
3. R Moa and X Mao have also objected to the decision to return the resource consent application as incomplete under s88 of the RMA. The application is for a full transfer site to site of groundwater at Prebbleton.

4. S88 of the RMA allows an application to be returned as incomplete by council within 10 working days of the application being lodged if it does not include the information relating to the activity and its effects on the environment required by Schedule 4 of the RMA.
5. Each applicant was provided with the specific information required to complete the application.
6. The objectors have requested that the objection be heard by an independent hearing commissioner. S357AB of the RMA allows an applicant for a resource consent application to make this request.

Proposed Commissioner

7. The Hearings Policy outlines the criteria for the selection of hearing commissioners:
 - Ability to understand and evaluate the key issues associated with the application
 - Suitable experience
 - Scale, complexity and nature of the application
 - Availability for hearing and decision-making
 - Conflicts of interest
 - Ministry for the Environment (MfE) Making Good Decisions Accreditation
8. These objections require an experienced independent hearing commissioner with expertise in processing of resource consent applications and a full understand of the Land and Water Plan for applications to take and use water and transfer of the same.
9. It is recommended that Ms Bianca Sullivan be appointed. She is an experienced hearing commissioner and has considerable relevant experience in the processing and deciding of groundwater applications.
10. Ms Sullivan has satisfied Council staff she has the necessary criteria, including technical ability, no conflict of interest, RMA Accreditation certification, availability and timeframe commitments to carry out the duties required.

Legal compliance

11. S34A of the Resource Management Act 1991 allows Council to delegate functions to Hearing Commissioners appointed by the Canterbury Regional Council.
12. 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 | Aurora Grant, Catherine Schache |
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7.2. Appointment of Hearing Commissioner - Canterbury Regional Council

Regulation Hearing Committee paper

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| Date of meeting | 2 December 2021 |
| Agenda item | 7.2 |
| General Manager – Regulatory Services | Judith Earl-Goulet |
| Author | Alison Cooper, Consents Coordinator |

Purpose

1. To appoint a Hearing Commissioner to consider, and decide the notification of resource consents CRC222040, CRC222041 and CRC222043 applied for by Canterbury Regional Council; and
2. For that hearing commissioner to be the chair and member of a hearing panel to hear and decide the notified consent applications.

Recommendation

That the Regulation Hearing Committee in regard to resource consent applications CRC222040, CRC222041, CRC222043 applied for by Canterbury Regional Council:

1. **Appoints Robert Lieffering as a Hearings Commissioner under s34A of the Resource Management Act 1991 to consider and decide the non-notification or notification of the consent applications.**
2. **Following the decision made in the paragraph above, if that decision is:**
 - 2.1 **not to notify the applications under s95 of the Resource Management Act 1991, to consider and decide the applications;**
 - 2.2 **is to notify the applications under s95 of the Resource Management Act 1991, to be the Chair of a hearing panel to consider, hear and decide the consent applications, in conjunction with other Hearing Commissioners, to be appointed at a later date.**
3. **Delegates to Robert Lieffering pursuant to s34A(1) Resource Management Act 1991, the function, powers and duties required to: deal with any preliminary matters; consider, and, subject to the appointment of additional Hearing Commissioners provided at resolution set out in 2.2 above, hear; and decide the application.**

Background

1. Canterbury Regional Council has applied for resource consent applications to discharge agrichemicals over waterways, into air and the coastal marine area throughout Canterbury to provide for weed clearance within rivers, artificial watercourses and their connected environments.
2. Public notification of the proposal has been requested under s95(3)(a) of the Resource Management Act 1991 because of the scale of the application and potential effects.
3. S95 of the RMA outlines the steps that council must follow to determine whether to publicly notify an application. Step 1: mandatory public notification in certain circumstances is to determine if the application meets any of the criteria being:
 - (a) the applicant requested public notification;
 - (b) public notification is required under section 95C;
 - (c) the application is made jointly with an application to exchange recreation reserve land.
4. As Canterbury Regional Council is the applicant, the appointment of an independent hearing commissioner to determine the notification decision is appropriate because Council is the applicant and there may be a perceived conflict of interest with staff acting under delegation.
5. It would then be appropriate for that independent hearing commissioner to proceed to make the substantive decision; and if a hearing is required, to hear and decide the applications with other independent hearing panel members.

Proposed Commissioners

5. The Hearings Policy outlines the criteria for the selection of a hearing commissioner:
 - Ability to understand and evaluate the key issues associated with the application
 - Suitable experience
 - Scale, complexity and nature of the application
 - Availability for hearing and decision-making
 - Conflicts of interest
 - Ministry for the Environment (MfE) Making Good Decisions Accreditation
6. These applications will require an experienced independent hearing commissioner able to determine if the applications should be notified; and at a hearing be able to evaluate the key issues arising from the discharge of agrichemicals into air and water as well as the relevant planning provisions and if any, national environmental standards.
7. It is recommended that Robert Lieffering be appointed to make the notification decision; and if notification is required and submitters are to be heard, be the chair and

member of a hearing panel at a hearing. Appointing the same person will give continuity as they will be familiar with the application and will be able to deal with any preliminary matters that may arise.

8. Rob Lieffering has over 30 years technical expertise in resource management across the RMA disciplines of land use, water, discharge, coastal and subdivision. He has local government experience in both district and regional consenting, and as a consultant.
9. He is also a very experienced hearing commissioner with considerable decision maker experience both as an Independent Hearing Chair and as a member of a hearing panel. He has heard a variety of types of resource consent applications around New Zealand. He is accredited under the Making Good decisions programme and has the Chair endorsement
10. Rob Lieffering has satisfied Council staff he has the necessary criteria, including technical ability, no conflict of interest, RMA Accreditation certification, availability and timeframe commitments to carry out the duties required.

Legal compliance

11. S34A of the Resource Management Act 1991 allows Council to delegate functions to Hearing Commissioners appointed by the Canterbury Regional Council.
12. 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 | Aurora Grant, Catherine Schache |
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7.3. Appointment of Hearing Commissioner - Amuri Irrigation Company Ltd

Regulation Hearing Committee paper

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| Date of meeting | 2 December 2021 |
| Agenda item | 7.3 |
| General Manager – Regulatory Services | Judith Earl-Goulet |
| Author | Alison Cooper, Consents Coordinator |

Purpose

1. To appoint a Hearing Commissioner to hear and decide resource consent applications CRC210312, CRC210313, CRC210314, CRC210315, CRC210316, CRC210317, CRC210318, CRC210319 and CRC211142 applied for by Amuri Irrigation Company Limited.

Recommendations

That the Regulation Hearing Committee in regard to resource consent applications **CRC210312, CRC210313, CRC210314, CRC210315, CRC210316, CRC210317, CRC210318, CRC210319 and CRC211142 applied for by Amuri Irrigation Company Limited:**

1. **Appoints Reginald Proffit as a Hearings Commissioner under s34A of the Resource Management Act 1991; and**
2. **Delegates to Reginald Proffit 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. Amuri Irrigation Company Limited applied for various resource consents to construct, operate and maintain an intake and piped irrigation scheme on the southern bank (true right) of the Hurunui River. The applicant has also applied for a condition variation of a current consent to take surface water to amend the location of a take point in the Hurunui River.
3. The location of the proposed activities are within the Hawarden, Masons Flat and Waikari areas. The north eastern boundary of the project is bounded by the Hurunui River downstream of the Mandamus River confluence, the eastern boundary follows State Highway 7, until it reaches the Waikari River through to the start of the Scargill Valley. The southern boundary follows the Waikari River valley up to Pyramid Valley, the western boundary follows the foothills of the Southern Alps.

4. Key aspects of the proposal include:
 - (a) Construction of a managed river channel to divert flow from the Hurunui River to the proposed scheme and convey water to the diversion canal.
 - (b) A water level control structure downstream of the diversion canal to control water depth and release excess water back to the Hurunui River.
 - (c) Within the diversion canal, a control intake gate structure to control the take of water.
 - (d) A fish screen within the diversion canal which includes a fish bypass canal back to the Hurunui River.
 - (e) A sediment canal to convey water from the diversion canal to the sediment pond.
 - (f) The construction of an HDPE lined sediment pond with embankments constructed of site-sourced aggregate;
 - (g) A pump station above the pipe intake to boost water to a buffer pond on the terrace above the Hurunui River and a number of additional pump stations to provide adequate network pressure;
 - (h) Construction of underground pipelines (with associated air, drain and isolation valves) in a 'spider-web type fashion' from the pipe intake to deliver water to around 35 farm off-takes;
 - (i) Maintenance activities, if required, within the bed of the Hurunui River associated with 'training' the river flow toward the intake canal; and
 - (j) Periodic removal of sediment extracted from the sediment canal and pond and deposition of this material into the Hurunui River (outside of the wetted bed).
5. The application was limited notified to four parties.
6. In determining notification, it was concluded that in following the steps in s95A of the Resource Management Act, public notification was not required under Step 1 or precluded by Step 2. It was noted that the activity was not required to be notified due to rule in a plan or a National Environmental Standard. Consideration was then given to whether the adverse effects of the activity on the environment were more than minor. It was then concluded that the application did not meet the requirements for public notification as the environmental effects of the activities would be no more than minor.
7. The steps in S95B of the RMA were then followed to determine if limited notification was required. It was decided that because there are affected persons that meet the criteria set in Section 95E of the RMA, the application be limited notified to the identified affected parties.

8. One submission in opposition was received from Te Rūnanga o Kaikōura. They wish to be heard. The submitter concerns are partnership rights and responsibilities, cultural, social and environmental values.
9. A hearing is required to be completed in February 2022.

Proposed Commissioner

10. It is proposed to appoint one hearing commissioner to hear and decide these applications as there is one submitter to be heard on specific key issues. Should a hearing be required it should take one day.
11. 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 if required
12. We sought a hearing commissioner who is an experienced hearings commissioner with the ability to hear, evaluate and consider the key issues. They should also have expertise understanding the planning framework; land use activities, water quality and mātauranga Maori /tikanga.
13. It is recommended that Reginald Proffit be appointed. He is an accredited hearing commissioner with a chair endorsement and has hearings experience as a sole commissioner and in hearing panels for regional and district council consent applications. He has a good understanding of water quality issues and has cultural and tikanga knowledge and experience. He has heard several applications for regional councils around New Zealand including a water take and discharge applications for a meat processing plant; and restoration of a lakebed. He has provided technical advice for the Making Good Decisions Programme.
14. Reginald Proffit has satisfied Council staff he has the necessary criteria, including technical ability, no conflict of interest, RMA Accreditation certification, availability and timeframe commitments to carry out the duties required.

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.

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

9. Next Meeting - to be confirmed

10. Mihi/Karakia Whakamutunga – Closing