

Agenda 2022

Regulation Hearing Committee

Date: Thursday, 19 May 2022
Time: 8.30 AM
Venue: Council Chamber
Environment Canterbury
200 Tuam Street, Christchurch



Regulation Hearing Committee

Membership

Co-Chairs:

Tumu Taiao Yvette Couch-Lewis
Councillor Nicole Marshall

Members:

Councillor Grant Edge
Councillor Claire McKay
Councillor Elizabeth McKenzie
Councillor Craig Pauling
Councillor Lan Pham

Regulation Hearing Committee

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1. Mihi / Karakia Timatanga - Opening

The meeting will be opened with a mihi whakatau, followed by a member of the Regulation Hearing Committee with a karakia.

2. Apologies

At the time the agenda closed there were no apologies received.

3. Conflicts of Interest

Members are reminded to be vigilant and to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

4. Public Forum, Deputations, and Petitions

There were no requests for public forum, deputations and petitions at the time the agenda was prepared.

5. Extraordinary and Urgent Business

The Chairperson will give notice of items requiring urgent attention not on the agenda as follows.

Matters Requiring Urgent Attention as Determined by Resolution of the Regulation Hearing Committee:

A meeting may deal with an item of business that is not on the agenda where the meeting resolves to deal with that item and the Chairperson provides the following information during the public part of the meeting:

1. The reason why the item is not on the agenda; and
2. The reason why discussion of the item cannot be delayed until a subsequent meeting. The item may be allowed onto the agenda by resolution of the Regulation Hearing Committee.

Minor Matters relating to the General Business of the Regulation Hearing Committee:

A meeting may discuss an item that is not on the agenda only if it is a minor matter relating to the general business of the meeting and Chairperson explains at the beginning of the public part of the meeting that the item will be discussed. The meeting may not make a resolution, decision or recommendation about the item, except to refer it to a subsequent meeting for further discussion.

6. Minutes

Regulation Hearing Committee

Date of meeting	Thursday, 19 May 2022
Author	Alison Cooper, Consents Coordinator
Endorsed by	Judith Earl-Goulet, General Manager – Regulatory Services

Purpose

1. The previously circulated minutes from the Regulation Hearing Committee on Thursday, 5 May 2022 are to be confirmed.

Recommendations

That the Regulation Hearing Committee:

1. **confirms the minutes from the Regulation Hearing Committee meeting held Thursday, 5 May 2022.**

Attachments

1. RHC 2022-05-05 UNCONFIRMED Minutes [6.1.1 - 2 pages]

Minutes of the Regulation Hearing Committee, held in the Council Chambers, 200 Tuam Street, Christchurch on Thursday, 5 May 2022 at 8.30am.

Present

Co-Chairs Tumu Taiao Yvette Couch-Lewis and Councillors Nicole Marshall, Elizabeth McKenzie, Craig Pauling, and Lan Pham.

1. Mihi / Karakia Timatanga - Opening

Tumu Taiao Yvette Couch-Lewis opened the meeting with a karakia.

2. Apologies

The apologies for absence were received from Cr Grant Edge and Cr Claire McKay.

3. Conflicts of Interest

There were no conflicts of interest reported.

4. Public Forum, Deputations, and Petitions

There were no requests for public forum, deputations and petitions.

5. Extraordinary and Urgent Business

There was no extraordinary or urgent business.

6. Minutes

Resolved RHC/2022/10

Staff recommendations adopted without change.

That the Regulation Hearing Committee:

1. confirms the minutes from the Regulation Hearing Committee meeting held Thursday, 24 March 2022.

Cr Lan Pham/Cr Nicole Marshall
CARRIED

7. Report Items

7.1. Revocation and Appointment of Hearing Commissioners

Resolved RHC/2022/11

Staff recommendations adopted without change.

That the Regulation Hearing Committee:

1. revokes the appointment of Reginald Profitt as a Hearings Commissioner to hear and decide resource consent applications CRC212078, CRC212079 and CRC212384 made by Mr. J S Rutherford.

Cr Elizabeth McKenzie/Cr Lan Pham
CARRIED

2. in regard to resource consent applications CRC212078, CRC212079 and CRC212384 made by Mr. J S Rutherford appoints Sharon McGarry as a Hearings Commissioner under s34A of the Resource Management Act 1991; and

3. 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 Lan Pham/Cr Elizabeth McKenzie
CARRIED

8. Next Meeting

The next meeting of the Regulation Hearing Committee will be advised.

9. Mihi / Karakia Whakamutunga - Closing

Meeting concluded at 8.41am.

CONFIRMED:

Chair Yvette Couch-Lewis
Tumu Taiao, Environment Canterbury

Date

7. Report Items

7.1. Appointment of Hearing Commissioner - Kingan Property Investments Ltd

Regulation Hearing Committee report

Date of meeting	Thursday, 19 May 2022
Author	Alison Cooper, Consents Coordinator
Responsible Director	Judith Earl-Goulet, General Manager – Regulatory Services

Purpose

1. To appoint a Hearing Commissioner to decide resource consent application CRC220011 made by Kingan Property Investments Limited.

Recommendations

That the Regulation Hearing Committee:

1. in regard to resource consent application CRC220011 made by Kingan Property Investments Limited (the 'Application')
 - 1.1. appoints Bianca Sullivan as a Hearings Commissioner under s34A of the Resource Management Act 1991; and
 - 1.2. delegates to Bianca Sullivan pursuant to s34A(1) Resource Management Act 1991, the function, powers and duties required to: deal with any preliminary matters; consider and decide the application.

Background

2. Kingan Property Investments Limited has applied to Council for resource consent to discharge on-site wastewater to land from a four-lot subdivision at 48 Murdochs Road, Ashburton.
3. The proposal is to allow each 4000m² lot to discharge of up to 2000 litres per day from an up to 6-bedroom dwelling, to an aerated secondary treatment system to driplines or a sand trench land application system.
4. The proposed consent duration is 15 years.
5. The application was publicly notified. Six submissions were received with no requests to be heard. Three submitters were opposed to the application and three in support.
6. Submitters in opposition concerns are increased nitrate levels in drinking water supply wells.

7. A hearing would not be required because there is no submitter to be heard. A decision therefore needs to be made within 20 working days from the close of submissions or by 24 May 2022.

Proposed Commissioner

8. As the application was publicly notified and no submitters to be heard, it can be determined by the Regulation Hearing Committee. It is proposed at this time to appoint an experienced, independent hearing commissioner to consider and decide the application because the reporting officer is recommending the application be declined and the applicant is considering an option to be heard.
9. Council's Hearings Policy outlines the criteria for selection of hearing 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 of the Environment (MfE) Making Good Decision Accreditation and Chair accreditation if required.
10. We sought a hearing commissioner who has the ability to consider and evaluate the key impact of water quality degradation from the cumulative effects of on-site wastewater treatment systems from a subdivision and has a good knowledge of groundwater quality and wastewater discharges.
11. It is recommended that Bianca Sullivan be appointed. She is an experienced, accredited hearing commissioner and decision-maker; with a good understanding of water quality issues resulting from discharges, and the relevant planning frameworks.
12. Bianca 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 consider and decide the application.

Legal compliance

13. S34A of the Resource Management Act 1991 allows Council to delegate functions to Hearing Commissioners appointed by 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 and Catherine Schache
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7.2. Appointment of Hearing Commissioners

Regulation Hearing Committee report

Date of meeting	Thursday, 19 May 2022
Author	Alison Cooper, Consents Coordinator
Responsible Director	Judith Earl-Goulet, General Manager – Regulatory Services

Purpose

1. To appoint Hearing Commissioners to consider and decide certain resource consent applications or resource consents 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:

1. **Acting under Section 34A of the Resource Management Act 1991 and for a period of time to expire on 23 May 2023:**

- 1.1. appoints Sharon McGarry as a Hearings Commissioner;
- 1.2. appoints Hoani Langsbury as a Hearings Commissioner;
- 1.3. appoints Bianca Sullivan as a Hearings Commissioner;
- 1.4. appoints Michael Freeman as a Hearings Commissioner; and
- 1.5. appoints Michael Durand as a Hearings Commissioner

each of them acting severally, to consider and decide the non-notification, limited notification or public notification of resource consent applications, or to consider and decide applications to extend a lapse period received from:

- a) sections within Environment Canterbury;
- b) Environment Canterbury staff members, Environment Canterbury Councillors and Tumu Taiao, and family members of those people;
- c) occupiers of Environment Canterbury owned land; and
- d) applicants where Environment Canterbury or its staff would have a conflict of interest or perceived conflict of interest; and

2. following any notification decision made under paragraph (1):
 - 2.1 if that decision is not to notify the consent application, to consider and decide that consent application; and
 - 2.2 if that decision is to limited notify or to publicly notify that consent application, to sit as sole commissioner; or as Chair or member of a hearing panel in conjunction with other Hearing Commissioners to be appointed at a later date; to consider and decide that consent application; and

3. **Delegates to each of the people named in paragraphs 1.1 to 1.5, the function, powers and duties required to: deal with any preliminary matters; consider and, subject to the appointment of additional Hearing Commissioners set out in paragraph 2.2, to decide any such applications.**

Background

2. At its meeting of 13 May 2021, the Committee appointed four independent Hearing Commissioners to make decisions on applications received by, from and to Environment Canterbury where there were possible conflicts of interest; and also decide whether such applications should be non-notified, limited or publicly notified.
3. The appointments to make these decisions expires on 22 May 2022.
4. Such conflicts may arise where Environment Canterbury receives resource consent applications where Environment Canterbury is the applicant, from Environment Canterbury staff members, Environment Canterbury councillors or Tumu Taiao, or family members of either, or from occupiers of Environment Canterbury owned land.
5. Environment Canterbury may also receive applications where internal decision-makers may have concerns because of a perception of conflict or bias, and an independent hearing commissioner should therefore make decisions in relation to the application.
6. Under the Resource Management Act 1991, there is a twenty working day timeframe to notify, and if not to notify, to decide an application.
7. Council may also receive applications to extend a lapse period and such conflicts described in paragraphs 3 and 5 may arise.
8. The number of applications requiring an external decision-maker is approximately 15 per year.
9. Applications are considered 'on the papers' – that is the application and associated documents. The decision-maker can request clarification from the Consents Planner or report writer.
10. It is considered that any one of five is enough to ensure availability, experience in the wide variety of applications, mātauranga Maori/tikanga experience; and to avoid any conflict of interest in regard to the applicant.
11. Appointees should have
 - Availability to undertake decision-making at short notice
 - Suitable experience in making notification and/or substantive decisions on differing activity applications
 - The ability to understand and evaluate the key issues associated with an application; and
 - Hold the Ministry for the Environment (MfE) Making Good Decisions accreditation.

Proposed Commissioners

12. Using the criteria above it is proposed that Sharon McGarry, Bianca Sullivan, Hoani Langsbury, Michael Freeman and Michael Durand be appointed. All are experienced decision-makers in making decisions over a range of application activities. All hold Ministry for the Environment (MfE) accreditation, with Ms McGarry, Ms Sullivan, Mr Freeman and Mr Durand having chair endorsement.

Sharon McGarry – is an experienced independent hearing commissioner and decision-maker. She has heard and made decisions on many regional and district council consent applications throughout New Zealand. She has a good understanding of all regional council consent activities and the relevant planning frameworks.

Bianca Sullivan – is an experienced hearing commissioner and decision-maker with a good understanding of all regional council consent activities and the relevant planning frameworks.

Hoani Langsbury – is an experienced hearing commissioner with mātauranga Maori /tikanga knowledge and technical expertise in environmental management and marine ecology.

Michael Freeman – is an experienced hearing commissioner and resource management practitioner planner with substantive decision-making experience and technical abilities in discharge, water and land use consents. He has a good understanding of regional council activities.

Michael Durand - He is an accredited hearing commissioner; and is a resource management practitioner with experience in substantive decision-making of resource consents. He has a good understanding and expertise in the technical areas of air, water takes and discharges, land use effects and mitigation.

13. Being able to choose a decision-maker from the group would ensure that one would be available with no conflict of interest and technical ability, when and as required.
14. All have satisfied Council staff they have the necessary criteria including technical ability, RMA accreditation, 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.

Peer reviewers	Aurora Grant, Catherine Schache
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7.3. Appointment of Hearing Commissioner - Waimakariri District Council

Regulation Hearing Committee report

Date of meeting	Thursday, 19 May 2022
Author	Alison Cooper, Consents Coordinator
Responsible Director	Judith Earl-Goulet, General Manager – Regulatory Services

Purpose

1. To appoint a Hearing Commissioner to hear and decide resource consent applications CRC221240, CRC221241, CRC221242, CRC221243, and CRC221244 made by Waimakariri District Council.

Recommendations

That the Regulation Hearing Committee:

1. **In regard to resource consent applications CRC221240, CRC221241, CRC221242, CRC221243, and CRC221244 made by Waimakariri District Council (the ‘Applications’)**
 - 1.1. **appoints Michael Freeman as a Hearings Commissioner under s34A of the Resource Management Act 1991; and**
 - 1.2. **delegates to Michael Freeman 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. Waimakariri District Council applied to Council for a suite of consents to construct a stormwater management area (SMA) to service subdivisions being constructed on adjacent sites. The activities include the take of groundwater, discharge of construction and operational stormwater and earthworks and the installation of structures at 368 Mill Road, Ohoka.
3. The applications were publicly notified with no submissions received.
4. A hearing is not required as no submissions were received, and the applicant does not wish to be heard. A decision is required within twenty working days or 1 June 2022.

Proposed Hearing Commissioner

5. As the application was publicly notified with no submissions received, it can be determined by the Regulation Hearing Committee. It is proposed at this time to appoint

an experienced, independent hearing commissioner to consider and decide the application because the applicant is a territorial authority.

6. Council's Hearings Policy outlines the criteria for selection of hearing 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 of the Environment (MfE) Making Good Decision Accreditation and Chair accreditation if required.
7. We sought a hearing commissioner who has an understanding of stormwater discharges, and groundwater quality; be able to evaluate and consider the key issues relating to the application, have no conflict of interest and be available to make the decision.
8. On that basis the following hearing commissioner is recommended.
9. Michael Freeman is an experienced resource management practitioner, and accredited hearings commissioner with expertise and interest in effluent discharge permits, water permits, and land use consents. He has a good understanding of regional council consenting activities and plans.
10. Michael Freeman has satisfied Council staff he has the necessary criteria, including technical ability, no conflict of interest, RMA accreditation certification, availability and timeframe commitments to consider and decide the application.

Legal compliance

11. S34A of the Resource Management Act 1991 allows Council to delegate functions to Hearing Commissioners appointed by Canterbury Regional Council.
12. 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 Commissioners - Objections

Regulation Hearing Committee report

Date of meeting	Thursday, 19 May 2022
Author	Alison Cooper, Consents Coordinator
Responsible Director	Judith Earl-Goulet, General Manager – Regulatory Services

Purpose

1. To appoint Hearing Commissioners to consider, hear and decide; objections to costs incurred in processing of resource consent applications; and objections to decision in regard to resource consent applications, 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:

1. **Acting under Section 34A of the Resource Management Act 1991 and for a period of time to expire on 23 May 2022:**
 - 1.1. **Appoints Sharon McGarry as a Hearings Commissioner;**
 - 1.2. **Appoints Bianca Sullivan as a Hearings Commissioner;**
 - 1.3. **Appoints Graham Taylor as a Hearings Commissioner,****each of them severally, to consider, and hear and decide an objection to costs; and an objection to a decision to a resource consent application received from:**
 - (a) **sections within Environment Canterbury**
 - (b) **Environment Canterbury staff members, Environment Canterbury Councillors and Tumu Taiao, and family members of those people;**
 - (c) **Occupiers of Environment Canterbury owned land; and**
 - (d) **Objectors where Environment Canterbury or its staff would have a conflict of interest or perceived conflict of interest; and**
 - (e) **Objectors to a decision who request an independent hearing commissioner**
2. **Delegates to each of the people named in paragraphs 1.1 to 1.3, the function, powers and duties required to: deal with any preliminary matters; consider, and decide any such objections.**

Background

2. Appointments of hearing commissioners have previously been made on a year term to make decisions on applications received by, from and to Environment Canterbury where there may be possible conflict of interest.

3. Council also receives under s357 of the Resource Management Act 1991 (RMA), objections to costs, and objections to a decision, and where it would be appropriate to have an external decision-maker consider and decide that objection.
4. It would be appropriate to use an independent hearing commissioner where there may be a conflict when an objection to a decision or cost may arise from Environment Canterbury staff members who have personally applied for a consent, Environment Canterbury councillors or Tumu Taiao, or family members of either; or from occupiers of Environment Canterbury owned land.
5. Environment Canterbury may also receive an objection to a decision or costs and internal decision-makers may have concerns because of a perception of conflict or bias, therefore an independent hearing commissioner should make a decision in relation to the objection.
6. Section 357B of the RMA also allows an objector to request an independent hearing commissioner to consider and decide an objection to a decision.
7. It is proposed that three hearing commissioners be appointed to consider and hear any objections to costs and a decision to remove the risk of conflict; and therefore enable a faster response organising a hearing and final outcome for an objector and council.
8. The number of objections to costs and decisions that require a hearing is approximately 15 per year.

Proposed Commissioners

9. Appointees should have:
 - Availability to undertake decision-making
 - Suitable experience in consent processing
 - Experience as a hearings commissioner
 - Ability to discern and evaluate the key issues
 - Hold Ministry for the Environment (MfE) Making Good Decisions accreditation.
10. It is recommended that any one of three recommended hearing commissioners is enough to ensure availability, suitable experience in consent processing and running a hearing, and to avoid any conflict of interest in regard to the objector.
11. Hearing Commissioners recommended are:

Sharon McGarry – an experienced hearing commissioner with extensive experience in consent processing and hearing of regional council applications. She has a good understanding of all types of regional council activities and tikanga knowledge.

Bianca Sullivan - an experienced hearing commissioner and planner with extensive experience in consent planning processing of regional activities. She has a good knowledge of all types of consent activities.

Graham Taylor – an experienced hearing commissioner and planner with consent planning and processing experience in resource consent applications, infrastructure, land use and related fields.

All are accredited hearing commissioners.

12. Using the criteria in paragraph 9, it is proposed that Sharon McGarry, Bianca Sullivan and Graham Taylor be appointed to hear and make decisions on objections to costs and decision. All are experienced in deciding a range of activities and are knowledgeable hearing commissioners.
13. Sharon McGarry, Bianca Sullivan, and Graham Taylor 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.

Legal compliance

14. S34A of the Resource Management Act 1991 allows Council to delegate functions to Hearing Commissioners appointed by the Canterbury Regional Council.
15. 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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8. Next Meeting

The next meeting of the Regulation Hearing Committee will be advised. Any changes will be publicly advertised and updated on the Environment Canterbury website.

9. Mihi / Karakia Whakamutunga - Closing

The meeting will conclude with a karakia by a member of the Regulation Hearing Committee.