

Agenda 2023

Regulation Hearing Committee

Date: Wednesday, 1 March 2023
Time: 8.30 AM
Venue: Council Chamber
Environment Canterbury
200 Tuam Street, Christchurch



Regulation Hearing Committee

Membership

Chair: Councillor Claire McKay

Deputy Chair: Councillor Craig Pauling

Members: Councillor Joe Davies
Councillor Grant Edge
Councillor Deon Swiggs

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

6.1. Unconfirmed Minutes - Regulation Hearing Committee - 24 November 2022

Regulation Hearing Committee

Date of meeting	Wednesday, 1 March 2023
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 24 November 2022 are to be confirmed.

Recommendations

That the Regulation Hearing Committee:

1. **Confirms the minutes from the Regulation Hearing Committee meeting held on 24 November 2022.**

Attachments

1. 2022-11-24 UNCONFIRMED Regulation Hearings Committee 24 November 2022
[6.1.1 - 3 pages]

Minutes of the Regulation Hearing Committee held at Environment Canterbury, Council Chamber, 200 Tuam Street, Christchurch on Thursday, 24 November 2022 at 8.30am.

Present

Chair Cr Claire McKay, Deputy Chair Cr Craig Pauling, Cr Joe Davies, Cr David East, Cr Grant Edge, Cr Deon Swiggs.

Report writers and other staff were also present.

Chair Cr Claire McKay welcomed the new members to this first meeting of the Regulation Hearings Committee meeting for the 2022-25 triennium.

1. Karakia Timatanga - Opening

Cr Joe Davies opened the meeting with a karakia timatanga.

2. Apologies

There were no apologies.

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 at the time the agenda was prepared.

5. Extraordinary and Urgent Business

There was no extraordinary or urgent business.

6. Minutes

6.1 Previous Minutes - Regulation Hearing Committee 8 September 2022

The minutes from the previous meeting held on 8 September 2022 were confirmed at the end of the 2019-22 triennium in accordance with Environment Canterbury Standing Order 28.4.

Resolved RHC/2022/19

Staff recommendations adopted without change.

1. **Notes the confirmed minutes from the Regulation Hearing Committee meeting held on 8 September 2022.**

Deputy Chair Cr Craig Pauling / Cr Grant Edge
CARRIED

7. Report Items

7.1 Appointment of Hearing Commissioners - B L & A M Parkinson Family Trust

Resolved RHC/2022/19

Staff recommendations adopted without change.

That the Regulation Hearing Committee:

1. **In regard to resource consent applications CRC176146, CRC176147 and CRC202022 applied for by B L & A M Parkinson Family Trust (the 'Application'):**
 - 1.1. **appoints John Iseli as a Hearings Commissioner under s34A of the Resource Management Act 1991;**
 - 1.2. **appoints David Mountfort as a Hearings Commissioner under s34A of the Resource Management Act 1991; and**
 - 1.3. **delegates to John Iseli and David Mountfort pursuant to s34A(1) of the Resource Management Act 1991, the function, power and duties required to: deal with any preliminary matters; consider and decide the Application.**

Chair Cr Claire McKay / Cr David East
CARRIED

Deputy Chair Cr Craig Pauling and Cr Deon Swiggs requested that their votes against the motion be recorded.

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 karakia whakamutunga will occur later in the day at the close of other meetings.

Meeting concluded at 8.48am.

CONFIRMED: _____
Chair Cr Claire McKay
Councillor, Environment Canterbury

Date

7. Report Items

7.1. Nomination of An Expert Consenting Panel Member

Regulation Hearing Committee report

Date of meeting	Wednesday, 1 March 2023
Author	Alison Cooper, Consents Coordinator
Responsible Director	Judith Earl-Goulet, General Manager – Regulatory Services

Purpose

1. To nominate an Expert Consenting Panel Member under the COVID-19 Recovery (Fast-track Consenting) Act 2020 in relation to Faringdon Oval (Fast-track Consenting Project FTC00072).

Recommendations

That the Regulation Hearing Committee:

1. **nominates Janette Dovey to be a member to the Faringdon Oval (Fast-track Consenting project FTC00072) Expert Consenting Panel**

Background

2. Environment Canterbury has been advised by the Environmental Protection Agency (EPA) of the proposed lodgement of the Faringdon Oval application for fast-track consenting and has asked Council to consider a nomination to the Expert Consenting Panel.
3. Expert Panel members are appointed by a Panel Convenor and must include a person nominated by the relevant local authorities and a person nominated by the relevant iwi authorities.
4. Faringdon Oval is a specific project listed in the COVID-19 Recovery (Fast-track Consenting) Act 2020. The EPA are responsible for receiving the applications and providing advice and secretariat support to the Panel Convenor and Expert Consenting Panel.
5. The scope of the project at Rolleston is to subdivide land and construct approximately 1,044 residential units; construct commercial buildings; develop private open space and public reserves, including restoration of a natural wetland; and construct or install infrastructure, or structures, associated with the subdivision and development.
6. The proposal covers mainly district council matters, with regional council matters relating to stormwater and any wetland restoration.

Nominations

7. The EPA have advised they will formally seek nominations to the Expert Consenting Panel from both Environment Canterbury and Selwyn District Council. However, once the formal letter inviting nominations is received, there is then a limited timeframe within which to provide a nomination.
8. The Panel Convenor chooses one nominee from those nominated by the relevant local authorities. Ideally the local authorities should consult to reach a consensus and nominate the same person. If no nomination is made, the EPA will appoint a person with the appropriate skills and experience to be a member of the panel.
9. Expert Panel members must include a person nominated by the relevant local authorities, and a person nominated by the relevant iwi authorities.
10. Nominees must be accredited under the Ministry for the Environment 'Making Good Decisions' programme.
11. Environment Canterbury has consulted with Selwyn District Council, who agree with the proposed nominee.
12. Janette Dovey has worked as a planner in Christchurch and surrounding areas for over 27 years in local government and the private sector. She has been a director of the consultancy Bellbird Consulting Group Ltd for over 10 years.
13. She has extensive experience in planning and resource management and has worked as a sole hearing commissioner and as a panel member over a wide range of topic areas and legislative frameworks, including the Resource Management Act, Canterbury Earthquake Recovery Act, the Housing Accords and Special Housing Areas Act, as well as the Local Government Act. She has also made a large number of decisions on non-notified applications for local authorities.

Compliance, cost and communication

14. There are no cost, compliance and communication implications as the application is made to the Environmental Protection Agency who process and decide the application. Council is asked for a nomination to an Expert Consenting Panel.

Legal review	Robyn Fitchett
Peer reviewers	Aurora Grant

7.2. Appointment of Hearing Commissioner - Lyttelton Port Company

Regulation Hearing Committee report

Date of meeting	Wednesday, 1 March 2023
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 application CRC220756 applied for by Lyttelton Port Company.

Recommendations

That the Regulation Hearing Committee:

1. In regard to resource consent application CRC220756 applied for by Lyttelton Port Company (the 'Application'):
 - 1.1 appoints John Iseli as a Hearing Commissioner under s34A of the Resource Management Act 1991;
 - 1.2 delegates to John Iseli pursuant to s34A(1) of the Resource Management Act 1991, the function, powers and duties required to: deal with any preliminary matters; and hear and decide the Application.

Background

Application

2. Lyttelton Port Company has applied to Environment Canterbury for a resource consent for the discharge of contaminants to air from coal stockpiles, coal transfer and loading from an area of approximately 23.5 hectares, Te Awaparahi Bay, Lyttelton Harbour.
3. The applicant is proposing to continue to discharge coal dust into air as previously authorised under resource consent CRC940431 – in summary to operate 24 hours each day seven days a week; and to load approximately 35 ships per year at a yard that can hold up to 335,000 tonnes at any one time.
4. A duration of 20 years is sought.

Notification

5. The s95 notification and decision reports provide a full description of the Application, consultation undertaken, all legal and planning matters, as well as the recommendation, and decision for notification. The applicant requested public notification of the Application, therefore it is mandatory the Application be publicly notified.

6. The notification report advises that Te Hapū o Ngāti Wheke were consulted, who advised they had been involved with the applicant at the pre-lodgement stage, which resulted in their concerns being accounted for. With the agreement, it was noted that Te Hapū o Ngāti Wheke saw no reason to submit on the Application.
7. Te Rūnanga o Ngāi Tahu and Te Hapū o Ngāti Wheke were notified of the Application. No submission was received.
8. Ten submissions were received, and five submitters wish to be heard. Common concerns raised include impacts on air quality, public health, global warming and proposed duration.
9. A hearing is required as there are submitters to be heard. A hearing is expected to be held late May/June 2023.

Proposed Hearing Commissioner

10. It is proposed to appoint a sole experienced independent hearing commissioner to hear and decide the Application.
11. Council's Hearing 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 conflict of interest;
 - Ministry for the Environment (MfE) Making Good Decisions Accreditation.
12. We sought a hearing commissioner who has the ability to consider and evaluate the key issues of any discharge on air quality and public health arising from the stockpiling and movement of coal, as well as run a hearing that enables all parties to participate.
13. It is recommended that John Iseli be appointed. He is an accredited hearing commissioner, with chair endorsement, and he is experienced in hearing similar applications, either as Chairman or panel member, around the country. He has a good understanding of various discharges to air and their impacts. He is also fully conversant with the relevant planning frameworks.
14. He has no conflict with parties and is available to hear the Application.

Cost, and Compliance

Financial implications

15. Processing of resource consent applications are at cost to the applicant.

Risk assessment and legal compliance

16. The s100 of the Resource Management Act 1991 (RMA) provides an obligation to hold a hearing when a person who has made a submission in relation to an application or the applicant has requested to be heard. The RMA provides for financial penalties to apply should the application not be processed within the required timeframe.
17. S34A of the RMA 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 RMA.

Legal review	Robyn Fitchett
Peer reviewers	Aurora Grant

7.3. Appointment of Hearing Commissioner- Kaikoura Business Park (2021) Ltd

Regulation Hearing Committee report

Date of meeting	Wednesday, 1 March 2023
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 an objection to a decision to return resource consent application CRC232345 applied for by Kaikoura Business Park 2021 Limited.

Recommendations

That the Regulation Hearing Committee:

1. **In regard to the objection to a decision to return resource consent application CRC232345 applied for by Kaikoura Business Park 2021 Limited (the ‘Objection’):**
 - 1.1. **appoints Myles McCauley as a Hearings Commissioner under s34A of the Resource Management Act 1991; and**
 - 1.2. **delegates to Myles McCauley pursuant to s34A(1) of the Resource Management Act 1991, the function, powers and duties required to: deal with any preliminary matters; hear and decide the Objection to decision.**

Background

Objection

2. Kaikoura Business Park 2021 Limited has objected to a decision to return application CRC232345 as incomplete under s88 of the Resource Management Act 1991. The application was to take and use groundwater.

Proposed Commissioner

3. Council currently has three hearing commissioners appointed to hear and decide objections however they are not available at this time to hear the objection.
4. Hearing Commissioner appointees should have:
 - Scale, complexity and nature of the objection
 - Suitable experience in consent processing
 - Ability to discern and evaluate the key issues

- Availability for hearing and to undertake decision-making
 - No conflict of interest
 - Ministry for the Environment (MfE) Making Good Decisions accreditation.
5. It is recommended that Myles McCauley be appointed to hear and decide this objection to a decision.
 6. Mr McCauley is an accredited Hearings Commissioner and is an Environmental Consultant for Enviser Limited. He has extensive experience in the preparation and auditing of resource consent applications for regional councils and has a good understanding of the relevant plans and planning framework. He is experienced in making decisions under delegated authority.
 7. Mr McCauley 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.

Risk assessment and legal compliance

8. The Resource Management Act allows for the right of objection to a consent authority against certain decisions or requirements including an application made under s88 of the Resource Management Act 1991. An objection may be considered by a hearing commissioner.
9. S34A of the Resource Management Act 1991 allows Council to delegate functions to Hearing Commissioners appointed by the Canterbury Regional Council.
10. The Regulation Hearing Committee appoints Hearing Commissioners in relation to consent authority matters under the Resource Management Act 1991.

Legal review	Robyn Fitchett
Peer reviewers	Aurora Grant

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.