

Agenda 2023

Regulation Hearing Committee

Date: Wednesday, 8 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 David East
- 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 - 1 March 2023

Regulation Hearing Committee

| | |
|------------------------|---|
| Date of meeting | Wednesday, 8 March 2023 |
| Author | Alison Cooper, Consents Coordinator |
| Endorsed by | Judith Earl-Goulet, General Manager – Regulatory Services |

Purpose

1. The circulated minutes from the Regulation Hearing Committee on 1 March 2023 are to be confirmed.

Recommendations

That the Regulation Hearing Committee:

1. Confirms the minutes from the Regulation Hearing Committee meeting held on 1 March 2023.

Attachments

1. RHC Unconfirmed Minutes 2023 03 01 [6.1.1 - 4 pages]

Minutes of the Regulation Hearing Committee held at Environment Canterbury, Council Chamber, 200 Tuam Street, Christchurch on Wednesday, 1 March 2023 at 8:30am.

Present

Chair Cr Claire McKay*; Deputy Chair Cr Craig Pauling, Cr Joe Davies, Cr Grant Edge, and Cr Deon Swiggs.

*via online link

Report writers and other staff were also present.

Deputy Chair Cr Craig Pauling assumed the chair for the meeting.

1. Mihi/Karakia Timatanga - Opening

Cr Craig Pauling opened the meeting with a karakia.

2. Apologies

An apology was received from Cr David East.

It was noted in the published agenda that Cr East's name has been omitted from the membership list of the Regulation Hearing Committee. Cr East is a member of the committee, and the next agenda will have this corrected.

3. Conflicts of Interest

Cr McKay advised of a conflict of interest in Item 7.3.

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

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

Refer pages 6-9 of the agenda.

Resolved RHC/2023/1

Staff recommendations adopted without change.

That the Regulation Hearing Committee:

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

Cr Joe Davies/Cr Grant Edge
CARRIED

7. Report Items

7.1. Nomination of An Expert Consenting Panel Member

Refer pages 10-11 of the agenda.

Staff recommended that the Committee nominate an Expert Consenting Panel Member in relation to Faringdon Oval.

Resolved RHC/2023/2

Staff recommendations adopted without change.

That the Regulation Hearing Committee:

1. Nominates Janette Dovey to be a member to the Faringdon Oval (Fast-track Consenting project FTC000072) Expert Consenting Panel.

Cr Deon Swiggs/Cr Grant Edge
CARRIED

7.2. Appointment of Hearing Commissioner - Lyttelton Port Company

Refer pages 12-14 of the agenda.

Staff requested that the Committee appoint a hearing commissioner to hear and decide resource consent application CRC220756.

Resolved RHC/2023/3

Staff recommendations adopted without change.

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.

Cr Deon Swiggs/Cr Grant Edge
CARRIED

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

Refer pages 15-16 of the agenda.

Cr Claire McKay had declared a conflict of interest in this item and took no part in the discussion and voting.

Staff requested that the Committee appoint a hearing commissioner to hear and decide an objection to a decision to return resource consent application CRC232345.

Resolved RHC/2023/4

Staff recommendations adopted without change.

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.

Cr Grant Edge/Cr Deon Swiggs

CARRIED

8. Next Meeting

The next meeting will be held on 8 March 2023 at 8:30am.

9. Mihi/Karakia Whakamutunga - Closing

A karakia was provided by Cr Craig Pauling.

Meeting concluded at 8: 51am.

CONFIRMED 8 MARCH 2023

Chair, Councillor Claire McKay
Environment Canterbury

7. Report Items

7.1. Appointment of Hearing Commissioner - South Island Resource Recovery Limited

Regulation Hearing Committee report

| | |
|-----------------------------|---|
| Date of meeting | Wednesday, 8 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 applications CRC232714, CRC232715, CRC232716, CRC232717, CRC232718, CRC232719 and CRC232720 applied for by South Island Resource Recovery Limited.

Recommendations

That the Regulation Hearing Committee:

1. In regard to the objection to a decision to return resource consent applications CRC232714, CRC232715, CRC232716, CRC232717, CRC232718, CRC232719 and CRC232720 applied for by South Island Resource Recovery Limited (the “Objection”):
 - 1.1. Appoints Rob Enright as a Hearings Commissioner under s34A of the Resource Management Act 1991, and
 - 1.2. Delegates to Rob Enright 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.

Background

2. South Island Resource Recovery Limited has objected to a decision to return applications CRC232714, CRC232715, CRC232716, CRC232717, CRC232718, CRC232719 and CRC232720 as incomplete under s88 of the Resource Management Act 1991 (RMA).
3. The applications are for the ‘Project Kea’ proposed waste to energy plant at Waimate.
4. Waimate District Council received an application for the same proposal which was also returned as incomplete under s88 of the RMA.
5. The applications were returned as an adequate assessment of effects on cultural values had not been provided.

6. It is proposed that an objection hearing will be held jointly with Waimate District Council and before the same hearing commissioner.

Proposed Commissioner

7. Council currently has three hearing commissioners appointed to hear and decide objections however they are not available at this time to hear the Objection. A hearing commissioner is therefore required to be appointed to hear this Objection.
8. Council's Hearing Policy outlines the criteria for the selection of a hearing commissioner:
 - Scale, complexity and nature of the objection
 - Suitable experience
 - Ability to understand and evaluate the key issues
 - Availability for hearing and decision-making
 - No conflict of interest
 - Ministry for the Environment (MfE) Making Good Decisions accreditation.
9. It is proposed to appoint a sole experienced independent hearing commissioner to hear and decide this objection because while the scale, complexity and nature of the applications is large, this objection hearing and decision is based on relatively narrow scope.
10. We sought a hearing commissioner who has the ability to discern and evaluate the key issues, and legal and resource management experience to determine if the Objection should be upheld or dismissed.
11. It is recommended that Rob Enright be appointed. Mr Enright is an experienced hearing commissioner sitting either as a sole commissioner, chair or panel member. He is a barrister with over 25 years specialist experience in RMA, environmental law, and public law. He has extensive experience in drafting decisions and consent decisions and has undertaken commissioner work for regional and district councils over a variety of activities. He has 'Making Good Decisions' accreditation with the Chair endorsement.
12. He has no conflict of interest with parties and is available to hear and decide the Objection.
13. Mr Enright has satisfied Council staff he has the necessary criteria including legal experience, RMA accreditation certification, availability and timeframe commitments to carry out the duties required.

Risk assessment and legal compliance

14. The RMA allows for the right of objection to a consent authority against certain decisions or requirements including an application made under s88 of the RMA. An objection may be considered by a hearing commissioner.
15. S34A of the RMA 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 RMA.

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| Legal review | Robyn Fitchett |
| Peer reviewers | Aurora Grant |

7.2. Appointment of Hearing Commissioner - Christchurch City Council

Regulation Hearing Committee report

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|-----------------------------|---|
| Date of meeting | Wednesday, 8 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 applications CRC230356, CRC230357 and CRC230358 applied for by Christchurch City Council.

Recommendations

That the Regulation Hearing Committee:

1. **In regard to resource consent applications CRC230356, CRC230357 and CRC230358 applied for by Christchurch City Council (the ‘Application’):**
 - 1.1. **appoints Hoani Langsbury as a Hearing Commissioner under s34A of the Resource Management Act 1991;**
 - 1.2. **delegates to Hoani Langsbury 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. Christchurch City Council has applied for resource consents associated with the storage of wastewater – CRC230356; discharge of contaminants (odour) - CRC230357; and the discharge of treated wastewater into the coastal waters of Whakaroa/Akaroa Harbour – CRC230358; from the Duvauchelle Wastewater Treatment Plant.
3. The storage of wastewater and discharge of treated wastewater from the plant are currently authorised under existing consents.
4. A duration of eight years is sought to provide sufficient time for the Christchurch City Council to design, consent, construct and commission a land-based scheme to discharge wastewater from the Duvauchelle Wastewater Treatment Plant to land at the Akaroa Golf Course.

Notification

5. The s95 notification and decision report provides a full description of the application, consultation undertake, all legal and planning matters, and assessments of adverse

effects. The report also provides a recommendation to limit notify the application and identifies the affected parties to be notified. The decision affirms the recommendation to limit notify the applications.

6. The notification report advises that Ōnuku Rūnanga was consulted and a Cultural Advice Report provided that included an assessment of the proposal against the Mahaanui Iwi Management Plan and feedback on the proposal. It was noted that the adverse effects on rūnanga as a result of the continued discharge of wastewater to coastal water will continue to be significant.
7. The applications were limited notified to Ōnuku Rūnanga, Te Rūnanga o Ngāi Tahu and Wairewa Rūnanga.
8. A neutral submission was received from Ōnuku Rūnanga seeking a term of eight years or less and proposing monitoring and notification conditions.
9. A hearing is not expected to be held as there is no submitter to be heard, however the applicant has still to confirm if they wish to be heard.

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 understand and evaluate the key issues associated with the application, has mātauranga Māori tikanga and experience in hearings and writing decisions.
13. It is recommended that Hoani Langsbury be appointed. He is an accredited and experienced hearing commissioner and has sat on several regional council hearings for discharges into the coastal environment including several Akaroa wastewater treatment plant applications. He has technical expertise in ecology and mātauranga Māori tikanga and a background in environmental management.

Cost and Compliance

Financial implications

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

Risk assessment and legal compliance

15. Section 100 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.
16. The RMA provides for financial penalties to apply should the application not be processed within the required timeframe.
17. Section 34A of the RMA allows Council to delegate functions to hearing commissioners appointed by Canterbury Regional Council.
18. The Regulation Hearing Committee appoints hearing commissioners in relation to consent authority matters under the RMA.

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| Legal review | Robyn Fitchett |
| Peer reviewers | Aurora Grant |

7.3. Appointment of Hearing Commissioners - Woodstock Quarries Limited

Regulation Hearing Committee report

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|-----------------------------|---|
| Date of meeting | Wednesday, 8 March 2023 |
| Author | Alison Cooper, Consents Coordinator |
| Responsible Director | Judith Earl-Goulet, General Manager – Regulatory Services |

Purpose

1. To appoint hearing commissioners to hear and decide resource consent applications CRC214073, CRC214074, CRC214075, CRC214076 and CRC214077 applied for by Woodstock Quarries Limited.

Recommendations

That the Regulation Hearing Committee:

1. In regard to resource consent applications CRC214073, CRC214074, CRC214075, CRC214076 and CRC214077 applied for by Woodstock Quarries Limited (the ‘Application’):
 - 1.1. appoints Rob Enright as a Hearing Commissioner, Chairperson and member of the Hearing panel under s34A of the Resource Management Act 1991; and
 - 1.2. appoints Dean Chrystal as a Hearing Commissioner and member of the Hearing panel under s34A of the Resource Management Act 1991; and
 - 1.3. appoints Ngaire Phillips as a Hearing Commissioner and member of the Hearing panel under s34A of the Resource Management Act 1991; and
 - 1.4. delegates to Rob Enright, Dean Chrystal and Ngaire Phillips 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 Application.

Background

Application

2. Woodstock Quarries Ltd has applied to Environment Canterbury and Waimakariri District Council for consent to expand an existing hard rock quarry and to establish and operate new solid waste management and disposal facility for the disposal of construction and demolition waste, contaminated soils and special wastes at 513 Trig Road, View Hill.

3. The proposed quarry extension will involve topsoil stripping and aggregate extraction to below ground level over up to 14 hectares in total. Crushing and stockpiling of extracted rock will occur within the quarry site.
4. The proposed landfill operation is to be located within quarried areas of the site over a footprint of approximately 12.4 hectares with an approximate total volume of 4.1 million cubic metres. This equates to approximately 100,000 cubic metres of landfill material per year, and a maximum of 40 truck movements per day.
5. Resource consents required include land use permits for the excavation and deposit of material; a water permit to take and damming of groundwater and discharge permits to discharge stormwater, waste, and contaminants to air.

Notification

6. The s95 notification and decision report provide a full description of the application, consultation undertaken, all legal and planning matters, as well as the notification recommendation; and decision for notification. The decision was that the application be publicly notified as the potential effects on the environment were more than minor under s95D of the RMA.
7. The notification report notes that Ngāi Tūāhuriri Rūnanga were consulted, and advised they were opposed to the application in its current form and wished to be notified as an affected party.
8. Ngāi Tūāhuriri Rūnanga and Te Rūnanga o Ngāi Tahu were notified of the application. Ngāi Tūāhuriri Rūnanga lodged a submission stating the applications failed to address the fundamental concept of Te Mana o te Wai; the concept of ki uta ki tai as expressed in the Mahaanui Iwi Management Plan and full policy context requiring the elimination of industrial waste discharges into the Waimakariri River and tributaries; and that the proposal does not consider the cultural landscape.
9. The application was publicly notified with Waimakariri District Council in November 2022. 402 submissions were received with 81 submitters wishing to be heard. Two parties were neutral with the remainder in opposition to the proposal.
10. Common concerns raised include traffic, noise, no need for a landfill site, loss of amenity recreational, water quality and cultural values; and ecological impact.
11. A hearing is required as there are submitters to be heard. Some submitters have also requested under s100A of the Resource Management Act, that the Councils' delegate its functions, powers and duties required to hear and decide the applications to one or more hearings commissioners who are not members of the local authority.
12. A hearing will be held jointly with Waimakariri District Council as the applications are for the same proposal. A hearing is expected to be held in May 2023.

Proposed Hearing Panel

13. Independent hearing commissioners are required to hear and decide the applications.

14. 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 applications;
 - Availability for hearing and decision making;
 - No conflict of interest;
 - Ministry for the Environment (MfE) Making Good Decisions Accreditation and Chair endorsement for the proposed Chair.
15. The hearing will take at least six days with 81 submitters to be heard and significant evidence to be considered.
16. It is recommended that a panel of three hearing commissioners is required. This will allow coverage of the issues and the ability to share the workload over the course of the hearing, while avoiding any split decisions that could eventuate with a 4-person panel. Panel members should also have experience in hearings and technical ability in either planning, legal, landfill operations or groundwater quality.
17. For the hearing, we are seeking a Chairperson who is experienced in managing large hearings, chairing a robust and transparent hearing process and ensuring that all parties to the process, including a large number of lay submitters, feel comfortable when making their submission to the hearing panel.
18. A list of potential candidates was prepared, and candidates were screened against the selection criteria listed above in paragraph 14 and checked with the Ministry for the Environment (MfE) website to confirm "Making Good Decisions" certification and where appropriate Chair endorsement. On this basis, the following panel is recommended. The recommended panel will also be appointed by the Waimakariri District Council.
19. Chairperson and Panel Member

Rob Enright is an experienced hearings commissioner with the Chair endorsement and sitting as either a sole commissioner, chair or panel member. He is a barrister with over 25 years specialist experience in RMA and environmental and public law. He has extensive experience in drafting consent decisions and has undertaken the hearing of both district and regional consent applications over a variety of activities.

Panel Member

Dean Chrystal is an experienced hearings commissioner with the Chair endorsement and sitting as either a sole commissioner, chair, or panel member. He has expertise in planning and resource management including district and regional plan reviews, plan changes, resource consents, including major infrastructure, discharges, and urban and rural development. He is a partner of Planz Consultants Limited.

Ngaire Phillips is also an experienced hearing commissioner. She is an experienced environmental scientist with a specialist expertise in aquatic science including water quality and ecology in rivers, and environmental toxicology. She has sat on panels for throughout the country including a water conservation tribunal. She is also an appointed member of the Hazardous Substances and New Organisms (HSNO) Committee, and a Freshwater Commissioner for the Ministry for the Environment. She has insight into Mātauranga Māori.

20. All have identified they have no conflict with parties and are available to hear and decide the Application.
21. Rob Enright, Dean Chrystal and Ngaire Phillips have satisfied staff they have the necessary criteria including hearing experience and technical ability, RMA accreditation certification, availability, no conflicts of interest, and timeframe commitments to carry out the duties required.

Cost and Compliance

Financial Implications

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

Risk assessment and legal compliance

23. Section 100 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.
24. The RMA provides for financial penalties to apply should the application not be processed within the required timeframe.
25. S34A of the RMA allows Council to delegate functions to hearing commissioners appointed by the Canterbury Regional Council.
26. The Regulation Hearing Committee appoints hearing commissioners in relation to consent authority matters under the RMA.

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| Legal review | Roby 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.