

Agenda 2023

Regulation Hearing Committee

Date: Wednesday, 23 August 2023
Time: 8.30 PM
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

TERMS OF REFERENCE

Version 2.0 Adopted by Council 29 April 2021

1. MEMBERSHIP

There shall be a maximum of seven Councillors appointed to the Regulation Hearing Committee (RHC).

2. QUORUM

The quorum for the RHC meetings shall be two Councillors.

3. OBJECTIVES

The objectives for the RHC meetings shall be:

- (a) to consider and decide resource consent applications in accordance with delegated powers;
- (b) to appoint Consent Hearing Committees;
- (c) to appoint Hearing Commissioners; and
- (d) to exercise such other powers as delegated by Council.

4. DELEGATED POWERS

The Regulation Hearing Committee shall have those powers that are delegated to it by Council:

- (a) The authority to appoint Consent Hearing Committees from time to time comprising a minimum of three members and a maximum number of four members, one of whom shall be appointed Chairperson by the Regulation Hearings Committee, with the full powers of the Council as a consent authority under the Resource Management Act 1991. A committee so appointed may include any person who is not a member of the Council.
- (b) The authority to appoint hearing commissioners to hear and decide resource consent applications including the determination of any preliminary matter relating to an application, with full powers of the Council as a consent authority under the Resource Management Act 1991.
- (c) The authority to hear and decide resource consent applications for which the Council is obliged to hold a hearing.
- (d) The authority to decide resource consent applications to which submissions were received and where there are no requests to be heard or any requests to be heard have been withdrawn.
- (e) The authority to decide resource consent applications for notified non-complying activities irrespective of whether the Council is obliged to hold a hearing.
- (f) The authority to make decisions on a review of resource consent decisions.
- (g) The authority to decide notified resource consent applications to which no submissions were received and where the applicant has not requested to be heard.

- (h) The authority to authorise or prohibit the use in a clean air zone of any class of fuel.
- (i) The authority to hear appeals to Council's contaminated site registration process under the Council's Contaminated Site Information Strategy.

Document history and version control

Version	Date approved	Approved by	Brief description
1.0	23 August 2018	Council	Increase Committee membership to 6
2.0	29 April 2021	Council	Increase Committee membership to a maximum of 7

Regulation Hearing Committee

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1. Karakia/Mihi Timatanga - Opening

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

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.

Items not on the agenda may be brought before the meeting through a report from either the chief executive or the Chairperson.

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 - 16 August 2023

Regulation Hearing Committee

Date of meeting	Wednesday, 23 August 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 16 August 2023 are to be confirmed.

Recommendations

That the Regulation Hearing Committee:

1. **Confirms the minutes from the Regulation Hearing Committee meeting held on 16 August 2023.**

Attachments

1. 2023-08-16 UNCONFIRMED Minutes Regulation Hearing Committee [6.1.1 - 4 pages]

Minutes of the Regulation Hearing Committee held at Environment Canterbury, Council Chamber, 200 Tuam Street, Christchurch, on Wednesday 16 August 2023 at 8.30am.

Present

Committee Chair Claire McKay, Committee Deputy Chair Craig Pauling*, Councillors Joe Davies, David East, Grant Edge, and Deon Swiggs

In attendance - Councillor Greg Byrnes

*via audio/visual link

1. Karakia/Mihi Timatanga - Opening

Cr McKay opened the meeting with a karakia.

2. Apologies

No apologies were received.

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

6.1. Unconfirmed Minutes - Regulation Hearing Committee - 21 June 2023

Refer pages 9 -13 of the agenda.

Resolved RHC/2023/19

Staff recommendations adopted without change.

That the Regulation Hearing Committee:

1. Confirms the minutes from the Regulation Hearing Committee meeting held on 21 June 2023.

Cr Edge/Cr Davies
CARRIED

7. Report Items

7.1. Regulation Hearing Committee Resolutions Status Report - August 2023

Refer to pages 12 -15 of the agenda.

Staff provided visibility on the status of resolutions made by the Regulation Hearing Committee

Resolved RHC/2023/20

Staff recommendations adopted without change.

That the Regulation Hearing Committee:

1. Notes the status of previous resolutions provided in the status of Regulation Hearing Committee Resolutions report as 16 August 2023.

Cr East/Cr Davies
CARRIED

7.2. Appointment of Prehearing Facilitator

Refer pages 16 -18 of the agenda.

Staff requested that the Committee appoint a Hearing Commissioner to facilitate a pre-hearing meeting for resource consent application CRC210883.

Resolved RHC/2023/21

Staff recommendations adopted without change.

That the Regulation Hearing Committee:

1. In regard to resource consent application CRC210883 applied for by Z Energy Limited (the 'Application')
 - 1.1 appoints Andrew Henderson as a Hearing Commissioner under Section 34A of the Resource Management Act 1991
 - 1.2 delegates to Andrew Henderson pursuant to Section 34A(1) of the Resource Management Act 1991, the function powers and duties required to: deal with any preliminary matters and facilitate a pre-hearing meeting of the Application.

Cr East/Cr Davies
CARRIED

Cr Swiggs requested that his abstention from voting on the resolution be recorded.

7.3. Nomination of An Expert Consenting Panel Member

Refer pages 19 -20 of the agenda.

Staff requested that the Committee nominate an Expert Consenting Panel Member in relation to Holly-Lea Village – Buildings E and E project.

Resolved RHC/2023/22

Staff recommendations adopted without change.

That the Regulation Hearing Committee:

1. Nominates Nathan O'Connell to be a member of the Holly-Lea Village - Buildings D and E project Expert Consenting Panel.

Cr Edge/Cr McKay
CARRIED

Cr East requested that his abstention from voting on the resolution be recorded.

8. Next Meeting

The next meeting will be held on Wednesday 23 August 2023 at 8:30am.

9. Karakia Whakamutunga - Closing

A karakia was provided by Cr McKay.

The meeting concluded at 8:49am.

CONFIRMED: 23 August 2023

Committee Chair Claire McKay
Councillor, Environment Canterbury

7. Report Items

7.1. Regulation Hearing Committee Resolutions Status Report - 23 August 2023

Regulation Hearing Committee report

Date of meeting	Wednesday, 23 August 2023
Author	Alison Cooper, Consents Coordinator
Responsible Director	Judith Earl-Goulet, General Manager – Regulatory Services

Purpose

1. To provide visibility on the status of resolutions made by Regulation Hearing Committee

Recommendations

That the Regulation Hearing Committee:

1. Notes the status of previous resolutions provided in the status of Regulation Hearing Committee Resolutions report as 23 August 2023.

Status Reporting

2. The status of resolutions is reported at each ordinary Committee meeting. The report includes all resolutions from the previous meeting.
3. There are no incomplete actions from prior meetings.

Cost, compliance and communication

Financial implications

4. The report was compiled using existing staff resources, therefore there were no additional financial implications.

Risk assessment and legal compliance

5. This gives visibility to the Committee of matters outstanding to ensure appropriate actions have been taken as resolved.

Engagement, Significance and Māori Participation

6. Not applicable.

Consistency with council policy

7. Under Environment Canterbury Standing Orders 28.3 discussion of minutes is limited to their correctness. This report allows members to be updated on the status of resolutions and to monitor progress.

Climate Change Impacts

8. Not applicable.

Communication

9. Not applicable.

Next steps

10. An updated report will be provided to the next Regulation Hearing Committee meeting.

Attachments

1. RHC Resolutions Status Report 23 August 2023 [7.1.1 - 1 page]

Regulation Hearing Committee Resolutions Status Report – from meetings as at 23 August 2023

Resolution No.	Meeting Date	Report	Resolution	Complete [Yes/No]
RHC/2023/19	16 August 2023	6.1 Unconfirmed Minutes – Regulation Hearing Committee – 21 June 2023	That the Regulation Hearing Committee: 1. Confirms the minutes from the Regulation Hearing Committee meeting held on 21 June 2023.	Yes
RHC/2023/20	16 August 2023	7.1 Regulation Hearing Committee Resolution Status Report – 16 August 2023	That the Regulation Hearing Committee: 1. Notes the status of previous resolutions provided in the Status of Regulation Hearing Committee Resolutions report as at 16 August 2023.	Yes
RHC/2023/21	16 August 2023	7.2 Appointment of Prehearing Facilitator	That the Regulation Hearing Committee: 1. In regard to resource consent application CRC210883 applied for by Z Energy Limited (the 'Application') 1.1 appoints Andrew Henderson as a Hearing Commissioner under Section 34A of the Resource Management Act 1991 1.2 delegates to Andrew Henderson pursuant to Section 34A(1) of the Resource Management Act 1991, the function powers and duties required to: deal with any preliminary matters and facilitate a pre-hearing meeting of the Application.	Yes
RHC/2023/22	16 August 2023	7.3 Nomination of An Expert Consenting Panel Member	That the Regulation Hearing Committee: 1. Nominates Nathan O'Connell to be a member of the Holly-Lea Village - Buildings D and E project Expert Consenting Panel.	Yes

7.2. Appointment of Pre-hearing Facilitator

Regulation Hearing Committee report

Date of meeting	Wednesday, 23 August 2023
Author	Alison Cooper, Consents Coordinator
Responsible Director	Judith Earl-Goulet, General Manager – Regulatory Services

Purpose

1. To appoint a hearing commissioner to facilitate a pre-hearing meeting for resource consent application CRC230275 applied for by Talley's Limited.

Recommendations

That the Regulation Hearing Committee:

1. In regard to resource consent application CRC230275 applied for by Talley's Limited (the 'Application')
 - 1.1 appoints Myles McCauley as a Hearing Commissioner under Section 34A of the Resource Management Act 1991; and
 - 1.2 delegates to Myles McCauley pursuant to section 34A(1) of the Resource Management Act 1991, the function, powers and duties required to: deal with any preliminary matters and facilitate a pre-hearing meeting of the Application.

Background

2. Talley's Limited has applied to Environment Canterbury for resource consent to discharge factory processing wastewater, vehicle wash water and stormwater from their processing plant onto land via irrigation at 125 Fairton Road, Fairton.
3. The Applicant also proposes to increase the average weekly volume limit of factory processing wastewater discharge to 48,000 cubic metres per week to meet the processing plant demands.

Notification

4. The s95 notification report provides a full description of the application, consultation undertaken, all legal and planning matters, as well as the recommendation for notification.
5. The notification report outlines the consultation undertaken with potentially affected parties.

6. The application was publicly notified. Two submissions were received opposing the application and wishing to be heard. Submitter concerns are that the application will lead to an increased impact - not improve- groundwater quality; and impact on the school drinking water supply.
7. The applicant has requested a pre-hearing meeting be held.
8. The purpose of a pre-hearing meeting is to clarify a matter or any issue; or facilitate a resolution of a matter or issue.

Proposed Pre-Hearing Facilitator

9. 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 the hearing and decision-making
 - No conflict of interest
 - Ministry for the Environment (MfE) Making Good Decisions accreditation and Chair endorsement for the proposed Chair.
10. For the pre-hearing meeting we are seeking a person who is experienced in facilitating pre-hearing meetings or managing hearings and ensuring all parties to the process are comfortable and heard.
11. A list of potential candidates was prepared and screened against the selection criteria listed above in paragraphs 9 and 10. On this basis the following hearing commissioner is recommended:

Myles McCauley – Mr McCauley is a hearing commissioner with over 25 years' experience as a planner covering roles in local government and private practice. He has a good understanding of regional council activities and frameworks.

Mr McCauley has identified that he has no conflict of interest with parties and is available to facilitate the pre-hearing meeting and provide a report of the outcome of the meeting.

Cost, risk, and compliance

12. Processing of resource consent applications are at cost to the applicant.
13. Section 99 of the Resource Management Act 1991 (RMA) provides council to invite or require applicants and some or all submitters on the application to be invited or required to attend a pre-hearing meeting.
14. Section 34A of the RMA 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 RMA.

Legal review	Robyn Fitchett, General Counsel
Peer reviewers	Aurora Grant

7.3. Appointment of Hearing Commissioner - Z Energy Limited

Regulation Hearing Committee report

Date of meeting	Wednesday, 23 August 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 CRC210883 applied for by Z Energy Limited.

Recommendations

That the Regulation Hearing Committee:

1. In regard to resource consent application CRC210883 applied for by Z Energy Limited (the 'Application')
 - 1.1 appoints Ken Gimblett as a Hearing Commissioner under s34A of the Resource Management Act 1991; and
 - 1.2 delegates to Ken Gimblett 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. Z Energy Limited has applied to Environment Canterbury for resource consent to discharge contaminants to groundwater from a site at 25 Colombo Street, Christchurch.
3. The application is to allow for the on-going passive discharge of hydrocarbon-based contaminants remaining in subsurface soils and groundwater following the removal of hydrocarbon-contaminated soils as part of the re-tanking works in 2016. The re-tanking works also involved the installation of a gypsum trench to help mitigate any residual off-site hydrocarbon discharge.

Notification

4. The s95 notification report provides a full description of the application, consultation undertaken, all legal and planning matters as well as the recommendation for notification. The decision was that the application be limited notified by those affected by the discharge.
5. The application was limited notified to one party who submitted in support and wished to be heard. The submitter's concern was the potential for the hydrocarbon plume to adversely affect nearby Council water supply pipes.
6. A hearing is required to be held as there is a submitter to be heard.

Proposed Hearing Commissioner

7. 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 the hearing and decision-making
 - No conflict of interest
 - Ministry for the Environment (MfE) Making Good Decisions accreditation and Chair endorsement for the proposed Chair.
8. As a hearing is required, a hearing commissioner is needed to hear and decide the application.
9. It is expected this will be a one-day hearing.
10. It is recommended that a sole hearing commissioner be appointed to hear and decide the application. Any hearing commissioner should have experience in running a hearing, and the ability to understand and evaluate the key issues and provide a written decision.
11. A list of potential candidates was prepared, and candidates were screened against the selection criteria listed in paragraphs 7 and 10 and checked with the Ministry for the Environment (MfE) website to confirm 'Making Good Decisions' certification. On this basis the following hearing commissioner is recommended.
12. It is recommended that Ken Gimblett be appointed. He is an accredited and experienced hearing commissioner and has over 30 years' experience in statutory and environmental planning in both regional and district council matters. He is a partner at Boffa Miskell.
13. Mr Gimblett has identified that he has no conflict of interest with parties and is available to hear and decide the application.

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 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.

Legal review	Robyn Fitchett, General Counsel
Peer reviewers	Aurora Grant

7.4. Appointment of Hearing Commissioner - PJ Pollard and Others

Regulation Hearing Committee report

Date of meeting	Wednesday, 23 August 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 CRC040067 applied for by P J Pollard and Others

Recommendations

That the Regulation Hearing Committee:

1. In regard to resource consent application CRC040067 applied for by P J Pollard and Others (the 'Application')
 - 1.1 appoints Bianca Sullivan as a Hearing Commissioner under s34A of the Resource Management Act 1991; and
 - 1.2 delegates to Bianca Sullivan 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. P J Pollard and Others applied to Environment Canterbury for resource consent to take and use groundwater at a maximum volume of 500 cubic metres per day at State Highway 1, Waipara.
3. The application is to allow for the trickle irrigation of 50 hectares of grapes. A consent duration of 35 years is sought.

Notification

4. The application was publicly notified in 2004 along with other applications due to the potential significant cumulative effects on water resources of the Waipara catchment;

and potential significant effects on abstractions on the instream values of the Waipara River and its tributaries.

5. Ten submissions were received in opposition and in support. Six submitters wished to be heard.

Hearing

6. Following the notification, instead of hearing individual applications a water allocation plan process was begun for the Waipara catchment. The Waipara Plan became operative in 2012 and since this time the applicant has been consulting with submitters to withdraw their right to be heard on the submission.
7. There are now no submitters who wish to be heard. No hearing is required as the recommendation of the consent planner is to grant the application.
8. A decision can be made 'on the papers'.

Proposed Hearing Commissioner

9. 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 the hearing and decision-making
 - No conflict of interest
 - Ministry for the Environment (MfE) Making Good Decisions accreditation and Chair endorsement for the proposed Chair.
10. It is recommended that a sole hearing commissioner be appointed to consider and decide the application. Any hearing commissioner should have experience with hearings, and the ability to understand and evaluate the key issues and provide a written decision.
11. A list of potential candidates was prepared, and candidates were screened against the selection criteria listed in paragraphs 7 and 10 and checked with the Ministry for the Environment (MfE) website to confirm 'Making Good Decisions' certification. On this basis the following hearing commissioner is recommended.
12. It is recommended that Bianca Sullivan be appointed. She is an accredited and experienced hearing commissioner, decision-maker and environmental planner. She is conversant in regional council planning matters and has technical ability and understanding of water quality and quantity matters. She is a director of Enviser Ltd.

13. Ms Sullivan has identified that she has no conflict of interest with parties and is available to decide the application.

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 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.

Legal review	Robyn Fitchett, General Counsel
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. Karakia Whakamutunga - Closing

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