



## Meeting of the Hawke's Bay Regional Council Hearings Committee

**Date:** Tuesday 6 June 2017

**Time:** 2.00pm

**Venue:** Mohaka Room  
Hawke's Bay Regional Council  
159 Dalton Street  
NAPIER

### Agenda

ITEM	SUBJECT	PAGE
1.	Welcome/Notices/Apologies	
2.	Conflict of Interest Declarations	
<b>Decision Items</b>		
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<b>Information or Performance Monitoring</b>		
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# HAWKE'S BAY REGIONAL COUNCIL

## HEARINGS COMMITTEE

Tuesday 06 June 2017

Item 3

### Subject: HEARINGS COMMITTEE TERMS OF REFERENCE

#### Reason for Report

1. This report seeks the Committee's confirmation of the Terms of Reference, including any agreed amendments and initiates discussion about the appointment of tangata whenua representatives to the Committee.

#### Changes proposed

2. The Terms of Reference attached have been updated to add some of the proposed changes.
3. The first change is to 1.4, and arose from recent discussions around water bottling consenting issues, and Council's resolution on 31 May, that Council "Provides clarification of the Council policy position on the taking of water for water bottling to staff by:
  - 3.1. Amending the Hearings Committee Terms of Reference to include the delegations to hear and decide applications for lapse date extensions for water bottling resource consents.
4. This change provides for the Hearings Committee to hear applications for the extension of lapse dates for consents activities such as water bottling.
5. These applications arise when a consent has not been given effect to within the time allowed. If an application is not made to extend the lapse date within which the activity must commence, the consent will lapse and the activity will not be able to proceed. The Council has the ability to allow an extension of lapse date after consideration of an application to do so. Council Officers are currently delegated to decide on lapse date extension applications, except when the application is for water permits in catchments where water has been fully allocated.
6. The second change is to add clause 3 to make provision to hear submissions and make decisions and recommendations on LGA Special Consultative Procedures. This change arose as while the current process for the Gravel Strategy has been delegated to the Hearings Committee Chair and the CE there was consideration that the Hearings Committee could carry out this function if included in their Terms of Reference.
7. What is proposed is that the Hearings Committee can hear or appoint others to hear submissions made through the LGA Special Consultative Procedures, and to make the required decisions and/or recommendations for decisions.
8. The third matter is the appointment of tangata whenua members to the Committee. There is an intention that *Making Good Decisions* accredited Tangata Whenua members of the Maori and Regional Planning committees be appointed to the Hearings Committee and nominations for those appointments will be sought from both groups at upcoming meetings in June to enable Council to confirm the appointments along with the amended Terms of Reference on 28 June.

#### Decision Making Process

9. Council is required to make every decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements in relation to this item and have concluded:
  - 9.1. The decision does not significantly alter the service provision or affect a strategic asset.
  - 9.2. The use of the special consultative procedure is not prescribed by legislation.

- 9.3. The decision does not fall within the definition of Council's policy on significance.
- 9.4. The decision is not inconsistent with an existing policy or plan.
- 9.5. Given the nature and significance of the issue to be considered and decided, and also the persons likely to be affected by, or have an interest in the decisions made, Council can exercise its discretion and make a decision without consulting directly with the community or others having an interest in the decision.

### **Recommendations**

- 1. That the Hearings Committee receives and notes the "Hearings Committee Terms of Reference" staff report.
- 2. The Hearings Committee recommends that Council:
  - 2.1. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted Significance and Engagement Policy, and that Council can exercise its discretion and make decisions on this issue without conferring directly with the community and persons likely to be affected by or to have an interest in the decision.
  - 2.2. Confirms the Terms of Reference for the Hearings Committee, including agreed amendments.

### **Authored by:**

**Malcolm Miller**  
**MANAGER CONSENTS**

### **Approved by:**

**Liz Lambert**  
**GROUP MANAGER**  
**EXTERNAL RELATIONS**

### **Attachment/s**

- [!\[\]\(e6ddc77b791299d975007937cebef274\_img.jpg\) 1](#) Amended Hearings Committee Terms of Reference

## Hearings Committee Terms of Reference

(adopted 9 November 2016)

1. Pursuant to Section 34(1) of the Resource Management Act (RMA) the Hawke's Bay Regional Council delegates the following functions, powers and/or duties under the RMA<sup>1</sup>:
  - 1.1. To hear and make decisions on applications arising out of the Council's regulatory responsibilities on:
    - 1.1.1. notified applications where submissions have been made and submitters wish to be heard;
    - 1.1.2. reviews of conditions (s.128) where consent holder and/or submitters wish to be heard;
    - 1.1.3. notified applications where submissions have been made and where the Committee considers it necessary to hold a hearing;
    - 1.1.4. objections to decisions made under delegated authority by staff, where they wish to be heard (s.357);
    - 1.1.5. where the staff recommendation is to decline any application for reasons other than inadequate information;
  - 1.2. To determine other related discretionary process matters that may be associated with a hearing such as waivers of time, as appropriate under the Resource Management Act 1991.
  - 1.3. To hear and make decisions on objections against costs under Section 36(6) of the Act and objections to the levying of Financial Contributions under Section 108 of the Act.
  - 1.4. To hear and make decisions on lapsing of consents under Section 125 of the Act where Council Policy directs, or staff elect not to make a decision under delegated authority, or where a decision of an officer acting under delegated authority is subject to an objection.
  - 1.5. The appointment of Hearings Committee members or independent commissioners to a Hearing Panel to undertake the functions set out above in 1.1 to 1.4 pursuant to s 34A RMA and the appointment of the Chairperson of the Hearing Panel.
2. Pursuant to section 82 of the Biosecurity Act (BA) the Hawke's Bay Regional Council delegates the following functions, powers and/or duties under the BA:
  - 2.1. To hear and make decisions on submissions received on any statutory documents prepared by Council which have been subject to a formal submission process under the Biosecurity Act.
  - 2.2. To authorise the resolution and settlement of appeals and references through formal hearings or mediation before the Environment Court or any other judicial body which relate to the preparation of any statutory documents prepared under the Biosecurity Act by the Council and to either generally or from time to time delegate to officers the authority to resolve and settle appeals and references through formal mediation.
3. Pursuant to section 83 and Schedule 7 (clause 32) of the Local Government Act 2002 the Hawkes Bay Regional Council delegates the following powers, duties and functions under the LGA:
  - 3.1 to hear submissions and to decide and/or make recommendations to the Council on a proposal that is subject to a special consultative procedure.
  - 3.2 to delegate the functions under 3.1 to other subordinate decision making bodies, or to an officer of the Regional Council.

<sup>1</sup> NOTE: For the avoidance of doubt, the Hearings Committee is not delegated the functions, powers and duties to hear and make decisions on submissions made in relation to a proposed plan, policy statement, plan change or variation under the RMA. Such functions, powers and duties are delegated to a Panel of accredited RMA hearings commissioners appointed by the Council on an as needed basis, based on recommendations from the Regional Planning Committee.

4. The Hawke's Bay Regional Council delegates to the Hearings Committee Chairperson and Council Chairperson, the ability to appoint Hearings Committee members or Independent Commissioners to a Hearing Panel to undertake the functions set out above in 1 and 2 above and the appointment of the Chairperson of the Hearing Panel.

<b>Members:</b>	<p>Up to five elected "RMA Making Good Decisions" accredited Members of Council; being:</p> <ul style="list-style-type: none"> <li>- Councillors Paul Bailey, Peter Beaven and Rick Barker</li> </ul> <p>And up to four "RMA Making Good Decisions" accredited members of the Maori <u>and/or Regional Planning</u> Committee as nominated by the Chairperson of those Maori Committees; being:</p> <ul style="list-style-type: none"> <li>-</li> </ul>
<b>Hearing Panel Composition:</b>	<p>The Hearing Panel sitting to make decisions relating to 1. and 2. above shall comprise any combination of:</p> <ul style="list-style-type: none"> <li>- The Chairperson sitting alone</li> <li>- Up to three members of the Hearings Committee</li> <li>- Up to five accredited Commissioners</li> <li>- If considered advisable in any particular case by the Chairman of the Hearings Committee, a member of the Council's Maori Committee.</li> <li>- Also, when appropriate, the Chairman of the Standing Committee when hearings directly relate to policy originating from that Committee.</li> </ul>
<b>Chairman:</b>	<p>The Hearing Panel Chairperson has a Casting vote.</p> <p>An "RMA Making Good Decisions" Accredited member of the Committee as elected by the Council being:</p> <ul style="list-style-type: none"> <li>- Peter Beaven</li> </ul>
<b>Deputy Chairman:</b>	<p>A member of the Committee as elected by the Council being:</p> <ul style="list-style-type: none"> <li>- Paul Bailey</li> </ul>
<b>Meeting Frequency:</b>	As is required
<b>Quorum:</b>	The Chairman of the Hearings Committee plus one other member of the Hearings Committee or the Chairman of the Regional Council
<b>Staff Executive:</b>	Group Manager Resource Management, <del>and</del> Group Manager Asset Management <u>and/or Group Manager External Relations</u>
<b>Qualifications:</b>	In accordance with s39B all persons appointed to a Hearing Panel shall be accredited, except that where there is a group, and over half of all the persons in the group are accredited and there are exceptional circumstances that do not provide the time or opportunity to ensure that all persons in the group are accredited.

# HAWKE'S BAY REGIONAL COUNCIL

## HEARINGS COMMITTEE

Tuesday 06 June 2017

Item 4

### Subject: APPOINTMENTS TO HEARING PANELS

#### Reason for Report

1. The report seeks the Committee's appointment of appropriate Hearing Panels to hear resource consent applications.

#### RMA Hearings

2. There are no resource consent applications lodged that are definitely proceeding to a hearing at this time.
3. Te Mata Mushroom discharge to air is the one application that was publically notified on Saturday 13 May 2017 and the submissions process closes Monday 12 June 2017. Submissions have been lodged already so it is likely that this application will need to proceed to a Hearing.
4. There is, however, an option to seek direct referral to the Environment Court, and the applicant has indicated that they are considering this. The applicant will need to make a request to the Council to allow the application to go directly to the Environment Court (s87D(1)). This request may be made up until 5 days after the submission period closes.
5. Upon receipt of an application, the Council has 15 working days to decide to grant or decline the request. There is no delegation of this decision, and so this must be decided by the Council. If such an application is made, the latest date for Council make its decision on the application would likely be in the first week of July 2017.
6. If the application does not proceed to the Environment Court by direct referral then it will be necessary for a Hearing Panel to be appointed to hold a Hearing and decide on the application. This is likely to occur in August or September. Staff propose that the Committee wait until it is known whether or not the application has been referred to the Environment Court before establishing a hearing panel.
7. Other applications that may lead to future hearings, and the requirement for a Hearing Panel, are the Port of Napier mooring expansion, dredging extensions and sediment discharge applications.

#### Other Hearings

8. The Council has been running a Special Consultative Procedure as outlined in Section 83 of the Local Government Act 2002, seeking submissions on the Proposed Hawke's Bay Gravel Management Plan and Draft Environmental Code of Practice for River Control and Waterway Works – 2017.
9. On 29 March 2017, the Council resolved:
  - 9.1. Agrees to the appointment of an Independent Panel under the Local Government Act, to hear submissions and make recommendations on the Proposed Hawke's Bay Gravel Management Plan and Draft Environmental Code of Practice for River Control and Waterway Works - 2017 to the Council's Regional Planning Committee.
  - 9.2. Delegates the appointment of the Independent Panel to the Chairman of the HBRC Hearings Committee and the Chief Executive or Interim Chief Executive.

#### Decision Making Process

10. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

**Recommendations**

That the Hearings Committee receives and notes the “Appointments to Hearing Panels” staff report:

**Authored by:**

**Annette Brosnan  
CONSENT ADVISOR**

**Louise McPhail  
CONSENTS PLANNER (PART TIME)**

**Approved by:**

**Malcolm Miller  
MANAGER CONSENTS**

**Liz Lambert  
GROUP MANAGER  
EXTERNAL RELATIONS**

**Attachment/s**

There are no attachments for this report.



# **HAWKE'S BAY REGIONAL COUNCIL**

## **HEARINGS COMMITTEE**

**Tuesday 06 June 2017**

**Item 5**

### **Subject: RESOURCE CONSENT APPLICATION AND HEARINGS PROCESSES**

#### **Reason for Report**

1. This report provides the opportunity for Committee members to understand and discuss the resource consent application and hearings processes.
2. A presentation will be given covering the policy, notification processes and the hearing process. The presentation will also cover some consent statistics and existing staff delegations.
3. A handout with an overview of the compliance monitoring matrix will be provided.
4. This report also provides members an opportunity to discuss the MFE making good decisions panel certification.
5. An update on current consent processes "what's on the books" will be given

#### **Decision Making Process**

6. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision making provisions do not apply.

#### **Recommendations**

That the Hearings Committee receives and takes note of the "Resource Consent Application and Hearings Processes" staff report and presentation.

#### **Authored by:**

**Annette Brosnan**  
**CONSENT ADVISOR**

**Malcolm Miller**  
**MANAGER CONSENTS**

#### **Approved by:**

**Liz Lambert**  
**GROUP MANAGER**  
**EXTERNAL RELATIONS**

#### **Attachment/s**

There are no attachments for this report.