



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

**Date:** Wednesday 12 February 2020  
**Time:** 1.30pm  
**Venue:** Council Chamber  
Hawke's Bay Regional Council  
159 Dalton Street  
NAPIER

### Agenda

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1.	Welcome/Notices/Apologies	
2.	Conflict of Interest Declarations	
<b>Decision Items</b>		
3.	Confirmation of the Hearings Committee Terms of Reference	3
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# HAWKE'S BAY REGIONAL COUNCIL

## HEARINGS COMMITTEE

Wednesday 12 February 2020

Item 3

### Subject: CONFIRMATION OF THE HEARINGS COMMITTEE TERMS OF REFERENCE

#### Reason for Report

1. This item provides the proposed Terms of Reference for the Hearings Committee for the 2019-22 Triennium as adopted by Council resolution on 6 November 2019.

#### Officers' Recommendation(s)

2. Council officers recommend that the Terms of Reference is confirmed as proposed.

#### Executive Summary

3. As there was no feedback from councillors at the 6 November 2019 Council meeting to signal potential amendments to the Terms of Reference, the version presented for confirmation today is unaltered and provides, as delegated by Council, for the Hearings Committee to:
  - 3.1. Pursuant to Section 34(1) of the Resource Management Act (RMA)
    - 3.1.1. hear and make decisions on applications arising out of the Council's regulatory responsibilities under the Resource Management Act as delegated by Council
    - 3.1.2. determine other related discretionary process matters that may be associated with a hearing
    - 3.1.3. hear and make decisions on objections against costs
    - 3.1.4. hear and make decisions on lapsing of consents
    - 3.1.5. appoint Hearings Committee members or independent commissioners to a Hearing Panel and appoint the Chairperson of the Hearing Panel
  - 3.2. Pursuant to section 82 of the Biosecurity Act (BA):
    - 3.2.1. hear and make decisions on submissions received on statutory documents prepared by Council subject to a formal submission process under the Biosecurity Act
    - 3.2.2. 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 statutory documents prepared under the Biosecurity Act.
4. Under the Local Government Act 2002 (section 83 and Schedule 7) the Council may, on a case by case basis, delegate the powers, duties and functions to hear submissions and to decide or make recommendations to the Council on a proposal that is subject to a special consultative procedure, or to further delegate RMA functions under 3.1 to another subordinate decision making body, or to an officer of the Regional Council.

#### Background

5. In previous triennia the Hearings Committee has met infrequently, and most often to appoint a Hearing Panel to hear and decide a resource consent application.

#### Decision Making Process

6. Council and its committees are 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:

- 6.1. Council is required to (LGA sch.7 cl.19(1)) hold the meetings that are necessary for the good government of its region
- 6.2. Council may appoint (LGA sch.7 cl. 30(1)(a)) the committees, subcommittees, and other subordinate decision-making bodies that it considers appropriate
- 6.3. Given the provisions above, the Committee can exercise its discretion and make these decisions without consulting directly with the community or others having an interest in the decision.
- 6.4. The decision of the Committee is in accordance with the Terms of Reference and decision making delegations adopted by Hawke's Bay Regional Council resolution on 6 November 2019.

### **Recommendations**

1. That Hearings Committee:
  - 1.1. Receives and considers the "*Confirmation of the Hearings Committee Terms of Reference*" staff report
  - 1.2. Confirms the Terms of Reference for the Committee as proposed.
2. The Hearings Committee recommends that Hawke's Bay Regional Council:
  - 2.1. Agrees that the decisions to be made are not significant and that Council can exercise its discretion and make these decisions without consulting directly with the community or others having an interest in the decision.
  - 2.2. Confirms the Terms of Reference for the Hearings Committee, subject to the inclusion of the names of the Tangata Whenua appointees, for the 2019-22 triennium as follows.

*Insert text of agreed ToR*

#### **Authored by:**

**Leeanne Hooper**  
**GOVERNANCE LEAD**

#### **Approved by:**

**Liz Lambert**  
**GROUP MANAGER REGULATION**

**Joanne Lawrence**  
**GROUP MANAGER OFFICE OF THE**  
**CHIEF EXECUTIVE AND CHAIR**

**Iain Maxwell**  
**GROUP MANAGER INTEGRATED**  
**CATCHMENT MANAGEMENT**

#### **Attachment/s**

[↓](#)1 proposed Hearings Committee Proposed Hearings Committee Terms of Reference

## Hearings Committee Terms of Reference

*(adopted by Council resolution on 6 November 2019)*

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 may, on a case by case basis, delegate the following powers, duties and functions under the LGA:
  - 3.1 to hear submissions and to decide or make recommendations to the Council on a proposal that is subject to a special consultative procedure.<sup>2</sup>

<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.

<sup>2</sup> NOTE: For the avoidance of doubt, it is not intended that the Hearings Committee will be delegated to hear or make decisions on Long Term Plan, Annual Plan or Transport Plan submissions received.

3.2 to further delegate the functions under 3.1 to another subordinate decision making body, or to an officer of the Regional Council.

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.

- Members:** Up to five elected "RMA Making Good Decisions" accredited Members of Council; being:
- Councillors Martin Williams, Rick Barker, Craig Foss, and Hinewai Ormsby
- And up to four "RMA Making Good Decisions" accredited members of the Māori and/or Regional Planning Committee as nominated by the Chair of those Committees; being:
- to be appointed
- Hearing Panel Composition:** The Hearing Panel sitting to make decisions relating to 1. and 2. above shall comprise any combination of:
- The Chairperson sitting alone
  - Up to three members of the Hearings Committee
  - Up to five accredited Commissioners
  - If considered advisable in any particular case by the Chairman of the Hearings Committee, a member of the Council's Māori Committee.
  - Also, when appropriate, the Chairperson of the Standing Committee when hearings directly relate to policy originating from that Committee.
- Chairman:** The Hearing Panel Chairperson has a Casting vote.  
An "RMA Making Good Decisions" Accredited member of the Committee as elected by the Council being:
- Councillor Martin Williams
- Deputy Chairman:** A member of the Committee as elected by the Council being:
- Councillor Rick Barker
- Meeting Frequency:** As is required
- Quorum:** The Chairman of the Hearings Committee plus one other member of the Hearings Committee or the Chairperson of the Regional Council
- Staff Executive:** Group Manager Regulation and/or Group Manager Asset Management
- Qualifications:** 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

Wednesday 12 February 2020

### Subject: HEARING PANEL APPOINTMENT FOR WAIROA DISTRICT COUNCIL WASTEWATER DISCHARGE RESOURCE CONSENT APPLICATION

Item 4

#### Reason for Report

1. To provide information relating to the upcoming resource consent hearing for Wairoa District Council and to enable the appointment of commissioners to the Hearing Panel.
2. The application is **APP-123774 – Wairoa District Council** – Activities and discharges associated with the receipt, treatment, storage and general management of wastewater received at the Wairoa Wastewater Treatment Plant
3. This application is to replace the expired resource consents for the Wairoa waste water treatment plant discharge to the Wairoa River.
4. The application was publicly notified in August 2019 and 22 submissions were received.
5. A pre-hearing meeting with submitters was held on 17 October 2019 and a further pre-hearing is scheduled for 28 February 2020. This is being chaired by Matanuku Mahuika.
6. The second pre-hearing may lead to resolution of the issues raised by submitters, but in the event that it doesn't, we are seeking the appointment of a hearings panel. No date has been set for the hearing and this will be confirmed and scheduled following the pre-hearing meeting.
7. The following people are recommended as commissioners for this hearing: Mr Bill Wasley (chair), Mr Rauru Kirikiri and Dr Jim Cooke. Mr Wasley has Resource Management expertise and has chaired a number of resource consent hearings for the Regional Council recently, including the Port of Napier and the Te Mata Mushrooms hearings. Rauru Kirikiri has Māori cultural expertise and was a commissioner on the Port of Napier consent hearing panel. Dr Jim Cooke has expertise in environmental flows, wastewater discharges, and water quality.
8. The CVs of the proposed commissioners are attached to this paper. All three are accredited RMA decision makers.
9. These commissioners are appointed under section 34A of the RMA and are delegated authority under sections 39, 40, 41, 41A, 41B, 41C, 42, 42A, and 104 – 108 to hear, consider and decide the application and submissions.
10. Staff haven't discussed how members of the Hearings Committee want to be involved in hearings. The committee may wish to discuss whether they would want members to be involved on this panel and/or how they wish to be involved in the future. The three recommended commissioners have been nominated because of their experience and expertise relative to the issues arising with this application. All have advised they are interested and able to sit on the panel.

#### Decision Making Process

11. Hawke's Bay Regional Council and its committees are 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:
  - 11.1. The decision does not significantly alter the service provision or affect a strategic asset.
  - 11.2. The use of the special consultative procedure is not prescribed by legislation.

- 11.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
- 11.4. The persons affected by this decision are the applicant and submitters.
- 11.5. The decision is not inconsistent with an existing policy or plan.
- 11.6. 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

That the Hearings Committee:

1. Receives and considers the "*Hearing Panel Appointment for Wairoa District Council Wastewater Discharge Resource Consent Application*" staff report.
2. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted Significance and Engagement Policy, and that the Hearings Committee Council can exercise its discretion in accordance with its delegated authority as provided in the Terms of Reference for the Committee, and make decisions on this issue without conferring with the community.
3. Appoints the following to the Hearing Panel to hear and decide on the Wairoa District Council resource consent application (APP-123774) to discharge waste water to the Wairoa River:
  - 3.1. Mr Bill Wasley as Chair of the Panel
  - 3.2. Rauru Kirikiri
  - 3.3. Dr Jim Cooke.

**Authored by:**

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

**Approved by:**

**Liz Lambert**  
**GROUP MANAGER REGULATION**

### Attachment/s

- |                   |                                 |                      |
|-------------------|---------------------------------|----------------------|
| <a href="#">1</a> | Bill Wasley Curriculum Vitae    | Under Separate Cover |
| <a href="#">2</a> | Rauru Kirikiri Curriculum Vitae | Under Separate Cover |
| <a href="#">3</a> | Jim Cooke Curriculum Vitae      | Under Separate Cover |



# HAWKE'S BAY REGIONAL COUNCIL

## HEARINGS COMMITTEE

Wednesday 12 February 2020

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

**Item 5**

### 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**  
**CONSENTS ADVISOR**

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

### Approved by:

**Liz Lambert**  
**GROUP MANAGER REGULATION**

### Attachment/s

There are no attachments for this report.



# HAWKE'S BAY REGIONAL COUNCIL

## HEARINGS COMMITTEE

Wednesday 12 February 2020

### Subject: BIOSECURITY ACT & OTHER STATUTORY FUNCTIONS OF THE HEARINGS COMMITTEE

Item 6

#### Reason for Report

1. To inform the Hearings Committee about the Hawke's Bay Regional Pest Management Plan, which operates under the Biosecurity Act, and to provide an update on the recent Regional Pest Management Plan review to provide context to the role of the Hearings Committee.

#### Executive Summary

2. The Hawke's Bay Regional Pest Management Plan (RPMP) is the main statutory document implementing the Biosecurity Act 1993 in the region; providing a framework for the management of animal, plant, marine and horticultural pests in Hawke's Bay.

#### Background

3. Regional councils have a mandate under Part 2 of the Biosecurity Act 1993 (the Act) to provide regional leadership in activities that prevent, reduce, or eliminate adverse effects from harmful organisms that are present in their region. Council therefore has this leadership role in the Hawke's Bay region.
4. The purpose of the RPMP is to provide for the efficient and effective management or eradication of specified harmful organisms in the Hawke's Bay Region.
5. The RPMP empowers the Hawke's Bay Regional Council to exercise the relevant advisory, service delivery, regulatory and funding provisions available under the Act to deliver the specific objectives identified in the Plan. Regional pest management sits within a biosecurity framework for the Hawke's Bay region, which includes the RPMP, the Hawke's Bay Biodiversity Strategy and the HBRC Strategic Plan. Neighboring Regional Pest Management Plans and national legislation, policy and initiatives have also influenced the RPMP.
6. The RPMP operates within the administrative the boundaries of the Hawke's Bay region and covers a total area (land and sea) of 1,419,153 hectares. The RPMP proposes to remain in force for a period of 20 years with a review being undertaken after 10 years from the date of commencement.

#### Discussion

7. In September 2014 the Biosecurity Act 1993 (the Act) was amended with the National Policy Direction (NPD) becoming active on 17 August 2015. HBRC's RPMP 2013 was inconsistent with the NPD therefore required a full review to be undertaken.
8. A Biosecurity Working Party (BWP) was formed to assist in this review, which consisted of three appointed Councillors and three appointed members of the Regional Planning Committee. The BWP also heard submissions and made recommendations to Council on further amendments required prior to adoption of the final Regional Pest Management Plan. One independent, out of region member was also engaged, with both Biosecurity and hearings process experience, to sit on the panel as a Biosecurity expert (please see Hearings Committee Hearing Panel Appointment paper on 21 February 2018 or Council Paper on 31 January 2018 for further information).
9. The Hearing Panel presented its recommendations on the provisions of and submissions on the Hawke's Bay Regional Pest Management Plan on 30 November 2018 which was adopted by Council.

10. The RPMP came into effect on 1 February 2019 and in the absence of any change to the Act or associated legislation, does not require any further review until 1 February 2029.

**Decision Making Process**

11. 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.

**Recommendation**

That the Hearings Committee receives and notes the *“Biosecurity Act & Other Statutory Functions of the Hearings Committee”* report.

**Authored by:**

**Mark Mitchell  
TEAM LEADER/PRINCIPAL ADVISOR,  
BIOSECURITY/BIODIVERSITY**

**Approved by:**

**Iain Maxwell  
GROUP MANAGER INTEGRATED  
CATCHMENT MANAGEMENT**

**Attachment/s**

There are no attachments for this report.