



Meeting of the Hawke's Bay Regional Council Hearings Committee

Date: Wednesday 14 April 2021
Time: 8.30am
Venue: Council Chamber
Hawke's Bay Regional Council
159 Dalton Street
NAPIER

Agenda

Item	Title	Page
1.	Karakia/Welcome/Notices/Apologies	
2.	Conflict of Interest Declarations	
3.	Confirmation of Minutes of the Hearings Committee held on 16 September 2020	
Decision Items		
4.	Omarunui Landfill Resource Consent Applications	3
5.	HBRC Gravel Consent applications	9

HAWKE'S BAY REGIONAL COUNCIL**HEARINGS COMMITTEE****Wednesday 14 April 2021****Subject: OMARUNUI LANDFILL RESOURCE CONSENT APPLICATIONS****Reason for Report**

1. There is a need to appoint a hearing panel to consider and decide on resource consent applications and a notice of requirement for the proposal to expand the Omarunui landfill.

Officers' Recommendation(s)

2. It is recommended that three commissioners be appointed to hear the applications lodged by Napier City Council and Hastings District Council (APP-125003 and others). One person with RMA expertise; one person with expertise in landfill management and operation; and one person with an understanding of tikanga māori and of the perspectives of local iwi or hapū.
3. The following commissioners are recommended:
 - 3.1. Councillor Martin Williams (Chair)
 - 3.2. Nigel Mark-Brown
 - 3.3. Rau Kirikiri
4. Alternates recommended:
 - 4.1. Christine Scott (or another person determined by the Hearings Committee)
 - 4.2. Dr Roger Maaka (or another person determined by the Hearings Committee)
 - 4.3. No alternative is proposed for Nigel Mark-Brown.
5. 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.

Executive Summary

6. A Hearings Panel needs to be appointed to jointly hear and decide on the resource consent applications and the notice of requirement to expand the Omarunui Landfill.
7. In case the appointees can't sit on the panel due to subsequent unavailability or other reasons, alternates are also recommended to be appointed as back-up.
8. The Hawke's Bay Regional Council (HBRC) is only able to appoint commissioners to hear and decide on the resource consent matters. It is anticipated that Hastings District Council (HDC) will appoint the same commissioners to hear and decide on the notice of requirement.

Background/Discussion

9. Hastings District Council and Napier City Council (NCC) jointly operate the Omarunui land fill. They have applied to the Regional Council for resource consents to enable the landfill area to be expanded. They have also given notice of requirement to Hastings District Council for a designation for the expanded area. These applications were notified in January/February and received 24 submissions. A Hearing is required. It is proposed to hear these resource consent applications and notice of requirement jointly.
10. A hearing panel needs to be appointed to hear these applications. The Council has delegated this function to the Hearings Committee. The panel will need to be appointed

and given appropriate delegations by both the Regional Council and Hastings District Council. Through appointment by the HBRC Hearings Committee the Hearing Panel will have the authority to hear and decide on the resource consent applications made to the Regional Council, as per s104 RMA.

11. The Hearing Panel will also need to receive delegated authority from HDC to make a recommendation to the requiring authority on the requirement, as per RMA s171(2).
12. It is suggested that a panel of at least three people be appointed, but consideration could be given to appointing more if that can be justified. The following commissioners are recommended:
 - 12.1. Councillor Martin Williams as RMA expert and Chair
Nigel Mark-Brown – Civil Engineer with landfill management and operation experience. A summary of expertise and experience is attached
 - 12.2. Rau Kirikiri understanding of tikanga māori and of the perspectives of local iwi or hapū.
13. These people have all indicated their interest, but their availability varies. The most likely time to have all three available is July, but they have advised that this availability may change.
14. It is recommended that alternates be proposed in case any one of the recommended commissioners find they are unable to sit on the panel and need to be replaced.
15. Other options for people with RMA expertise and chair accreditation are Paul Cooney (who has indicated his interested but is unlikely to be available in July) and Christine Scott (former HBRC Councillor). Landfill experts are limited but others with experience in aspects of landfill management (odour) include Louise Wickham and Andrew Curtis. Louise Wickham was a commissioner on the Te Mata Mushrooms hearing, and Andrew Curtis was engaged as an air expert. However, it would be preferable to ensure Nigel Mark-Brown is available for his more complete understanding of landfill management, so no alternate is recommended. Alternatives with an understanding of tikanga māori and of the perspectives of local iwi or hapū could include Dr Roger Maaka, or other accredited members of the RPC or Māori Committee. We have excluded Hastings District Council's accredited councillors from consideration as they are also the applicant in this matter.
16. Anyone selected will need to consider whether they have any conflict of interest that would exclude them from sitting on the panel and deciding on the matters before them.

Options Assessment

17. The applicant has asked to proceed to a hearing. There is no option other than to do this. A Hearing is required to consider these applications. There are options as to who may be appointed to the hearing panel. The persons recommended are recommended because of their experience and expertise relative to the issues arising with this joint hearing.

Considerations of Tangata Whenua

18. Tangata whenua are submitters to the applications. A panel member with an understanding of tikanga māori and of the perspectives of local iwi or hapū has been recommended to sit on the panel.

Financial and Resource Implications

19. The cost of this Hearing will be borne by the applicants.

Other Considerations

20. The delegation for appointing hearing panels for the hearing of resource consent applications has been transferred to the Hearings Committee as set out in the Hearings Committee Terms of Reference.

Decision Making Process

21. 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:
 - 21.1. The decision does not significantly alter the service provision or affect a strategic asset, nor is it inconsistent with an existing policy or plan.
 - 21.2. The use of the special consultative procedure is not prescribed by legislation.
 - 21.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
 - 21.4. The persons affected by this decision are all persons with an interest in the region's management of natural and physical resources under the RMA.
 - 21.5. 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

That the Hearings Committee:

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 under Sections 79(1)(a) and 82(3) of the Local Government Act 2002 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. Appoints the following people as commissioners to hear the resource consent applications required to undertake activities and discharges associated with the construction and operation of Area B of the Omarunui Landfill (APP-125003):
 - 2.1. Councillor Martin Williams (chair)
 - 2.2. Nigel Mark-Brown
 - 2.3. Rau Kirikiri.
3. Appoints the following people as alternatives:
 - 3.1. Christine Scott (or another person determined by the Hearings Committee)
 - 3.2. Dr Roger Maaka (or another person determined by the Hearings Committee)
 - 3.3. No alternative is proposed for Nigel Mark-Brown.
4. That the 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.

Authored by:

Malcolm Miller
MANAGER CONSENTS

Approved by:

Katrina Brunton
GROUP MANAGER POLICY &
REGULATION

Attachment/s

- 1 [↕](#) Curriculum Vitae Nigel Mark-Brown

Environmental Context Ltd



Nigel Mark-Brown's Summary of Expertise and Experience

Nigel is a degree qualified civil engineer, a member of the Institution of Professional Engineers New Zealand and a chartered professional engineer in New Zealand.

Nigel has over 35 years experience in a broad range of environmental and civil engineering projects. Recent representative projects include:

Flood assessment and reporting

- Flood assessment and reporting and design of overland flow paths for flood protection for houses and a large rest home, Auckland, 2008-2012
- Providing specialist consulting services including assessment and prioritisation of flood management for catchment management planning.

Sustainable stormwater management and Low Impact Development (LID)

- Feasibility investigations and conceptual and detail design for raingardens for 14 hectare urban development in Papakura (as subcontractor to Stormwater Solutions Consulting Ltd), 2006 .
- Design of swales and wetland for treatment of stormwater for large carparks and associated development, for resource consent application, Pacific Events Centre site Manukau City, 2004 - 2009.
- Lead author- preparation of on-site stormwater management guidelines for New Zealand, NZ Water Research Environment Foundation, 2004.

Roof water harvesting and re-use

- Feasibility modelling, sizing and conceptual design for a range of sites including a large rest home, Auckland, 2012.

Assessment of environmental effects for stormwater including expert evidence for consent and Environment Court hearings

- Preparation of evidence for an appeal against a consent to discharge stormwater from a proposed timber treatment plant at Ruakaka, 2008. Participated in caucusing with experts as part of mediation.
- Preparation of evidence to support an appeal against consents granted to discharge stormwater for a proposed timber mill, Coromandel peninsula, 2005. Presentation of evidence at Environment Court.

Independent commissioner

- Auckland Manukau Eastern Transport Initiative (Ameti), Phase 1a, 2011 and Phase1, 2012, Auckland Council. Designation of land and resource consents for stormwater disposal for major new highway at Panmure, Auckland.
- Consent to divert additional floodwaters from the Oroua River into the Taonui basin, part of the lower Manawatu Scheme, Horizons Regional Council, September 2009 and December 2012.
- Waikato Regional Council, various consents for dam and divert floodwater, discharge wastewater, discharge contaminants, 2009 -2012.

Teaching and training

- University of Auckland, Department of Environmental Science. Co-teaching course ENVSCI 711 Assessing Environmental Effects for post-graduate students, 2009 to 2013.
- Guest lecturer for Governance and Planning 305, University of Auckland, School of Architecture and Planning
- Surface water effects of development; effects and management

Peer review

- Member of independent peer review panel to review design, construction, operation and maintenance of the Northern Waikato Regional Landfill (Hampton Downs). Reporting to the Waikato Regional Council, 2010 to date.
- Reporting for call-in of proposed Turitea wind farm, Manawatu. Preparation of (S42a) report for the Board of Enquiry on the construction effects of the proposed Turitea Wind Farm, involving significant earthworks in a sensitive area with very steep topography, 2010.

Nigel Mark-Brown

BE (Civil) MIPENZ Chartered Professional Engineer

HAWKE'S BAY REGIONAL COUNCIL**HEARINGS COMMITTEE****Wednesday 14 April 2021****Subject: HBRC GRAVEL CONSENT APPLICATIONS****Reason for Report**

1. There is a need to appoint a Hearing Panel to consider and decide on resource consent applications by the Hawke's Bay Regional Council (HBRC) for gravel extraction from the rivers and streams within the Tutaekuri, Ngaruroro and Tukituki catchments.

Officers' Recommendation(s)

2. It is recommended that three commissioners be appointed to hear the applications lodged by HBRC Assets Management Group (APP). One person with RMA expertise; one person with expertise/experience in river process and river ecosystems; and one person with an understanding of tikanga māori and of the perspectives of local iwi or hapū. In this case because the applicant is HBRC, it is considered that the commissioners should not be HBRC Councillors or committee members.
3. The following commissioners are recommended:
 - 3.1. Paul Cooney (Chair).
 - 3.2. Dr Malcolm Green
 - 3.3. Rau Kirikiri.
4. Alternates recommended:
 - 4.1. Christine Scott (or another person determined by the Hearings Committee)
 - 4.2. Dr Jim Cooke
 - 4.3. Reginald Proffitt (or another person determined by the Hearings Committee).
5. 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.

Executive Summary

6. A Hearings Panel needs to be appointed to hear and decide on the resource consent applications for gravel extraction from the rivers and streams within the Tutaekuri, Ngaruroro and Tukituki catchments.
7. In case the appointees can't sit on the panel due to subsequent unavailability or other reasons, alternates are also recommended to be appointed as back-up.

Background /Discussion

8. HBRC Asset Management Group has applied to take gravel from the rivers and streams within the Tutaekuri, Ngaruroro and Tukituki catchments. This is a comprehensive application to allow the extraction of sand, gravel or other material to occur anywhere within river beds in these catchments.
9. The applications were notified in 2019. There were eight submitters. Initially the applicant chose to suspend the process and have individual meetings with the submitters to see if they could resolve any issues. More recently four pre-hearing meetings have been held. This has allowed all parties to discuss outstanding issues and participate in developing a conditions package.

10. While this process has been constructive some parties still wish to be heard. Consequently, there is a need for a hearing.
11. A Hearing Panel needs to be appointed to hear these applications. The Council has delegated this function to the Hearings Committee. The panel will need to be appointed and given appropriate delegations by the Regional Council. Through appointment by the HBRC Hearings Committee the Hearing Panel will have the authority to hear and decide on the resource consent applications made to the Regional Council, as per s104 RMA.
12. There is a possibility that this may lead to a joint hearing as consents are required for gravel extraction in certain areas in Central Hawke's Bay District under the District Plan. This process hasn't advanced to the same stage as these applications.
13. It is suggested that a panel of at least three people be appointed but consideration could be given to appointing more if that can be justified. The following commissioners are recommended.
14. The following commissioners are recommended:
 - 14.1. Paul Cooney (chair)
 - 14.2. Dr Malcolm Green
 - 14.3. Rau Kirikiri.
15. These people have all indicated their interest. It is likely that the hearing would occur in July or later.
16. It is recommended that alternates be proposed in case any one of the recommended commissioners find they are unable to sit on the panel and need to be replaced.
17. Other options for people with RMA expertise and chair accreditation are Christine Scott (former HBRC Councillor). An alternate with river process and river environment expertise/ experience is Jim Cooke. An alternative with an understanding of tikanga māori and of the perspectives of local iwi or hapū is Reginald Proffit (WSP Gisborne). He has been contacted but has not replied yet), or the panel could include others proposed by the Hearings Committee.
18. Anyone selected will need to consider whether they have any conflict of interest that would exclude them from sitting on the panel and deciding on the matters before them.
19. Alternates recommended:
 - 19.1. Christine Scott (or another person determined by the Hearings Committee)
 - 19.2. Dr Jim Cooke
 - 19.3. Reginald Proffit (or another person determined by the Hearings Committee).

Options Assessment

20. Although there have been efforts to resolve this through pre-hearing meetings, some of the submitters still wish to be heard. Unless they change their position there is no option other than to hold a hearing. There are options as to who may be appointed to the Hearing Panel. The persons recommended are recommended because of their experience and expertise relative to the issues arising with this.

Considerations of Tangata Whenua

21. Tangata whenua are submitters to the applications. A panel member with an understanding of tikanga māori and of the perspectives of local iwi or hapū has been recommended to sit on the panel.

Financial and Resource Implications

22. The cost of this hearing will be borne by the applicants.

Decision Making Process

23. 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:
 - 23.1. The decision does not significantly alter the service provision or affect a strategic asset, nor is it inconsistent with an existing policy or plan.
 - 23.2. The use of the special consultative procedure is not prescribed by legislation.
 - 23.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
 - 23.4. The persons affected by this decision are all persons with an interest in the region's management of natural and physical resources under the RMA.
 - 23.5. 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

That the Hearings Committee:

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 or persons likely to have an interest in the decision.
2. Appoints the following people as commissioners to hear the resource consent applications required to undertake activities and discharges associated with the construction and operation of Area B of the Omarunui Landfill (APP-125003):
 - 2.1. Paul Cooney (chair)
 - 2.2. Dr Malcolm Green
 - 2.3. Rau Kirikiri.
3. Appoints the following people as alternatives:
 - 3.1. Paul Cooney (chair)
 - 3.2. Dr Malcolm Green
 - 3.3. Rau Kirikiri.
4. Confirms that the 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.

Authored by:

Malcolm Miller
MANAGER CONSENTS

Approved by:

Katrina Brunton
**GROUP MANAGER POLICY &
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Attachment/s

There are no attachments for this report.