



Meeting of the Hawke's Bay Regional Council Hearings Committee

Date: Wednesday 23 June 2021
Time: 2.30pm
Venue: Council Chamber
Hawke's Bay Regional Council
159 Dalton Street
NAPIER

Agenda

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3.	Confirmation of Minutes of the Hearings Committee held on 14 April 2021	
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HAWKE'S BAY REGIONAL COUNCIL**HEARINGS COMMITTEE****Wednesday 23 June 2021****Subject: HEARINGS COMMITTEE TERMS OF REFERENCE AND ASSOCIATED DELEGATIONS****Reason for Report**

1. This item provides the Hearings Committee with clarification of the role of the Committee and its delegations as well as enabling a wider review and consideration of the Terms of Reference.

Executive Summary

2. The Hearings Committee is required to appoint commissioners to hearing panels.
3. Clarification was sought from members regarding their ability to appoint members on panels which may include themselves and for which they will be paid. The Local Authorities (Member's Interest) Act 1968 provides for this to occur. The Act, instructs that members must not take part in the discussion of or vote on, any matter before the local authority in which they may have a financial interest while providing an exception under Section 6(3)(c).
4. It is recommended that the Terms of Reference be amended to include these provisions and make clear the exceptions that apply. In reviewing the Terms of Reference other matters have been noted and recommended for amendment or inclusion.

Strategic Fit

5. The Hearings Committee has the role of appointing hearing panels to hear and decide resource consent applications that are notified and subject to submissions. This is an important process in the allocation and management of natural and physical resources and is a core function of the Regional Council. The Hearings Committee is also able to hear objections of applicants to staff decisions or to costs, or to appoint commissioners to do this.

Background/Discussion

6. The Hearings Committee has operated to appoint hearing panel members since the Regional Council was established. The Terms of Reference has not changed significantly over the past 10 years.
7. The Terms of Reference sets out the functions and duties that are delegated to the Hearings Committee. These include the hearing of, and/or the appointment of hearing commissioners to hear resource consent applications. The practice has been for the Hearings Committee to appoint a hearing panel rather than to convene the Hearings Committee to hear applications as a Committee. Over the past 10 years hearing panels have been made up of a mix of Councillors, appointees from the Māori or Regional Planning Committee and independent commissioners.
8. When appointing members to a panel, the question of pecuniary interest has not been raised in the past. There have been cases where the Chairperson has participated in the decision to appoint a panel that has included themselves.
9. The remuneration of Councillors (elected members) appointed to a hearing panel is regulated by the Remuneration Authority. A maximum rate has been fixed for the Chairperson and for panel members where they are members of the Council.

Discussion

10. The key issue raised is whether it is appropriate for a person to attend and partake in a decision that will appoint themselves to a hearing panel.
11. The Local Authorities (Member's Interest) Act 1968 addresses conflicts of interest and indicates when Councillors should not participate in decisions and what exclusions apply to this.
12. Section 6(3)(c) of the Act states that the prohibition against discussing or voting where a member may be paid for serving on the panel does not apply where the matter under discussion is:
 - 12.1. *"an election or appointment of a member of the local authority to any office, notwithstanding that any remuneration or allowance is or may be payable in respect of that office."*
13. Given this exclusion it is appropriate that Hearings Committee members can participate in decisions involved in appointing a hearing panel that may include themselves. This has been confirmed in advice from the Auditor General's Office.
14. It is proposed to amend the Terms of Conditions to make this clear by adding a footnote that Officers believe will allow Councillors to participate in decisions including the appointment of themselves to a hearing panel; being:
 - 14.1. NOTE: While the Local Authorities (Members Interest) Act 1968 requires Councillors not to participate in decisions where they will receive a financial benefit, Section 6(3)(c) of the Local Authorities (Member's Interests) Act 1968 provides for exceptions to this rule, stating *"an election or appointment of a member of the local authority to any office, notwithstanding that any remuneration or allowance is or may be payable in respect of that office."*
15. In reviewing the Terms of Reference other changes are also proposed. These are related to:
 - 15.1 the hearing of objections
 - 15.2 the delegation of authority to settle appeals and references through conferences and alternative dispute resolution processes.
16. With regard to the hearing of objections, an applicant may object to a number of decisions made by officers and to the imposition of additional charges. The Hearings Committee is able to hear or appoint commissioners to hear these. Not all sections of the Act that provide for these circumstances have been listed. It is proposed that the missing sections be added as follows.
 - 16.1. *1.4. objections to decisions made under delegated authority by staff, where they applicant wishes to be heard (s.357, s357A, s357AB, s357B, s357C, s357CA and s 357D)*
17. The Council does not receive a large number of objections and generally they are minor matters that officers endeavour to resolve first. If they are not resolved they must be heard. These objections are to be considered as soon as reasonably practical. To enable this to occur quickly it is proposed that the terms of reference be amended to provide for the Chairperson to hear these alone without the need to convene a Hearings Committee meeting to make the appointment. The following amendment is proposed:
 - 17.1. *1.7. To authorise the Hearings Committee Chairperson to hear and decide objections made under s.357, s357A or s357B in accordance with s357C and s 357D.*
18. When applications go to appeal it is common for the parties to be directed to carry out conferencing or Alternative Dispute Resolution such as mediation. Parties attending are expected to have authority to make decisions on behalf of the person or organisation that they represent. This has not always been clear in the Regional Councils case and it is proposed that this be provided for through the Terms of Reference and/or by the staff delegations.

19. The following amendment is proposed to the Terms of Reference:
- 19.1. *1.6. 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 resource consent applications and to either generally or from time to time delegate to officers the authority to resolve and settle appeals and references through conferencing and formal mediation (RMA s267 and s268A).*
20. The following subsequent amendment is proposed to the Delegation Register as well.

Section	Description of function, power, or duty	Delegated To							
		CE	GMPR	MC	TLC	SCP	CP	CAdm	CAdv
267	Decide on matters arising at a conference	D	D	D	D				
268A	Decide on matters arising at Alternative dispute resolution processes (ADR)	D	D	D	D				

21. If the change is made to the delegations Register it may not be necessary to include this in the Terms of Reference, unless there are circumstances when the Hearings Committee wishes to hold this delegation.
22. There is an error in the Terms of References in clause 2. This refers to s82 of the Biosecurity Act. This should be s72.

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 receives and considers the "*Hearings Committee Terms of Reference and Associated Delegations*" staff report.
- That the Hearings Committee recommends that Hawke's Bay Regional Council:
 - 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.
 - Amends the Terms of Reference for the Hearings Committee as tracked in the attached document to:

- 2.2.1. add a footnote to 1.5. referring to the Local Authorities (Members Interest) Act 1968
- 2.2.2. amend 1.1.4. to reference additional sections of the act that provide for objections to resource consent decisions
- 2.2.3. add clause 1.7. to provide for the Hearings Committee Chairperson to hear objections lodged by applicants to staff decisions and to costs
- 2.2.4. add clause 1.6 to authorise the settlement of appeals and references through conferencing or alternative dispute resolution (if required)
- 2.2.5. amend clause 2 to refer to s72.

Authored by:

Malcolm Miller
MANAGER CONSENTS

Approved by:

Katrina Brunton
GROUP MANAGER POLICY & REGULATION

Attachment/s

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

Hearings Committee Terms of Reference

Adopted by Council resolution on 6 November 2019 and confirmed by the Hearings Committee on 12 February 2020. Updated by Hearings Committee on 16 June 2021 and adopted by Council resolution xxx 2021.

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 RMA¹:
 - 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 applicant wishes to be heard (s.357, s357A, s357AB, s357B, s357C, s357CA and s 357D)
 - 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 Panel².
 - 1.6. 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 resource consent applications and to either generally or from time to time delegate to officers the authority to resolve and settle appeals and references through conferencing and formal mediation (RMA s267 and s268A).
 - 1.7. To authorise the Chairperson to hear and decide objections made under s.357, s357A or s357B in accordance with s357C and s 357D.
2. Pursuant to section 82~~72~~ 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

¹ 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.

² NOTE: While the Local Authorities (Members Interest) Act 1968 requires Councillors not to participate in decisions where they will receive a financial benefit there are exceptions to this rule which allow Councillors to participate in decisions including the appointment of themselves to a hearing panel. Refer to section 6(3)(c) of the Local Authorities (Member's Interests) Act 1968.

- 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 procedure³
- 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.
- The Hearing Panel Chairperson has a Casting vote.
- Chair:** An "RMA Making Good Decisions" Accredited member of the Committee as elected by the Council being:
- Councillor Martin Williams
- Deputy Chair:** 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 to undertake the functions set out above in 1 and 2 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.

³ 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.

HAWKE'S BAY REGIONAL COUNCIL

HEARINGS COMMITTEE

Wednesday 23 June 2021

Subject: DELEGATION REGISTER – RESOURCE MANAGEMENT ACT 1991 AND ITS AMENDMENTS

Reason for Report

1. This item informs the Committee of the current delegations that are provided to staff for processing and deciding on resource consents under the Resource Management Act and provides an opportunity to review and update these. An amendment has been proposed in the report on the Hearings Committee Terms of Reference.

Executive Summary

2. The process of receiving processing and issuing consents under the RMA requires a lot of decisions to be made along the way. Council staff have been delegated a number of powers, duties and functions to enable the effective and timely processing of resource consent applications.
3. These delegations are made under s34A(1) of the RMA. They are delegations from the Council. They cannot be sub-delegated. The delegations are recorded in the Delegation Register. This was updated in September 2018.
4. This item provides an opportunity for the Hearings Committee to review these delegations and for staff to recommend any amendments to update the Delegation Manual.

Strategic Fit

5. The Council has functions and duties under the Resource Management Act. These include the consenting function to enable the allocation and use of natural and physical resources and the management of the effects of activities on the environment. The consenting of activities is necessary, in order to contribute to a healthy environment, a vibrant community and a prosperous economy. An effective and efficient approach to the consenting process is important.

Background

6. The delegations are made under RMA S34A(1). These allow staff to carry out the day to day processing of resource consents.

Discussion

7. Some changes have occurred since the Delegation Register was last approved in September 2018. These include changes to staff titles.
8. The following changes are recommended.
 - 8.1. Amend Group Manager Regulations to Group Manager Policy and Regulation and change the abbreviation to GMRP.
 - 8.2. Amend Principal Consents Officer to Team Leader Consents and change the abbreviation to TLC
 - 8.3. Add the position of Engineering Officer Schemes to recognise the staff level at which gravel consents are issued
 - 8.4. Amend 36AB(1) to 36AAB(1)
 - 8.5. Add delegations to provide for Environment Court conferencing and Alternative Dispute Resolution

- 8.6 Add delegation decision on fixing a notice to a site. (Resource Management (Forms, Fees, and Procedure) Regulations 2003) - Regulation 10A.

Decision Making Process

9. 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:
10. The decision does not significantly alter the service provision or affect a strategic asset, nor is it inconsistent with an existing policy or plan.
 - 10.1. The use of the special consultative procedure is not prescribed by legislation.
 - 10.2. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
 - 10.3. 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.
11. 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.

Recommendation

1. That the Hearings Committee receives and considers the *"Delegation Register – Resource Management Act 1991 and its Amendments - Update"* staff report.
2. The Hearings Committee recommends that Hawke's Bay Regional 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 or persons likely to have an interest in the decision.
 - 2.2 Amends the Delegations Register to:
 - 2.2.1 Change Group Manager Regulation to Group Manager Policy and Regulation and change the abbreviation to GMRP
 - 2.2.2 Change Principal Consents Officer to Team Leader Consents and change the abbreviation to TLC
 - 2.2.3 Add the position of Engineering Officer Schemes to recognise the staff level at which gravel consents are issued
 - 2.2.4 Change 36AB(1) to 36AAB(1)
 - 2.2.5 Add delegations to provide for Environment Court conferencing and Alternative Dispute Resolution
 - 2.2.6 Add delegation for fixing a notice to a site (Resource Management (Forms, Fees, and Procedure) Regulations 2003) - Regulation 10A.

Authored by:

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Katrina Brunton
GROUP MANAGER POLICY & REGULATION

Attachment/s

- 1 [↓](#) Recommended Amendments to Consents Delegations for 2021

Delegation Register – Resource Management Act 1991 and its Amendments

Resource Consent Processes ~~(September 2018)~~ (June 2021)















Authorisation

Under the provisions of Section 34A(1) of the Resource Management Act 1991 the persons specified in this manual are delegated the powers, duties and functions specified below.

On the Table following, "D" denotes that delegation is to the person(s) specified.

Delegated by Council resolution ~~26th September 2018.~~ xx30 June 2021

Abbreviations

	CE	–	Chief Executive
	GM PR	–	Group Manager – <u>Policy and Regulations</u>
	MC	–	Manager Consents
	<u>PCPTLC</u>	–	Principal Consents Planner
	SCP	–	Senior Consents Planner
	CP	–	Consents Planner
	CAdm	–	Consents Administration
	CAdv	–	Consents Advisor
	GMAM	–	Group Manager Asset Management Group
	MRA	–	Manager Regional Assets
	TLE	–	Team Leader Engineering
	TLS	–	Team Leader Schemes
	SEOS	–	Senior Engineering Officer – Schemes
	<u>EOS</u>	–	<u>Engineering Officer Schemes</u>

Administrative Charges

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GM P R	MC	RCPTL C	SCP	CP	CAdm	CAdv	
36(3)	Require payment of additional charges to those fixed to enable recovery of actual and reasonable costs	D	D	D	D			D	D	This involves producing a record of the actual costs recorded in Council systems. Any reduction of the charge will need to be approved under s 36(5).
36(5)	Additional charges in order to recover actual and reasonable costs	D	D	D	D			D	D	
36(6)	Provide on request an estimate of any additional charge likely to be imposed.	D	D	D	D	D	D	D	D	
36AAB(1)	Remit whole or part of a charge.	D	D	D	D			D	D	Some of the circumstances where it may be appropriate to remit part or all of charge are where an application is withdrawn, where the charge is unreasonable or it is impractical to try and collect it e.g. any remittance will be signed off by the MC or GM P R on the "draft invoice" and details entered onto the 402 write offs spreadsheet.
36AAB(2)	Decision whether or not to perform the action to which a charge relates until the charge has been paid in full.	D	D	D	D	D	D	D	D	Note: When using this provision the application remains effectively "on hold" until the correct payment is made by the applicant.

Waivers and Extension of Time Limits

Section	Description of function power or duty	Delegated To								Staff Notes
		CE	GMER	MC	RCPTL C	SCP	CP	CAdm	CAdv	
37 & 37A	Extend a time period with applicant's approval, and waive a failure to comply with a requirement	D	D	D	D	D	D	D	D	For routine processes and minor failure e.g. deposit
37 & 37A	Extend a time period under special circumstances, and waive a failure to comply with a requirement	D	D	D	D					See practice note

Enforcement Officers

Section	Description of function power or duty	Delegated To								Staff Notes
		CE	GMER	MC	RCPTL C	SCP	CP	CAdm	CAdv	
38	Authorise persons to carry out all or any of the functions and powers as an enforcement officer under this Act.	D								

Hearings

Section	Description of function power or duty	Delegated To								Staff Notes
		CE	GMER	MC	RCRIL C	SCP	CP	CAdm	CAdv	
41B 41C	In consultation with the Chairperson of a hearing panel or a sole Commissioner, power to issue directions or requests to applicants and/or submitters, including to provide briefs of evidence before commencement of a hearing, and to direct certain procedural aspects of the hearing before the hearing.	D	D	D	D	D				
41D (1) and (2)	The power to strike out a submission	D	D	D	D					May strike out if frivolous or vexatious, no reasonable or relevant case, an abuse of process to allow to be taken further, person is not an expert, or offensive. (Right of objection via s357). <i>Most likely to be exercised by Hearing Panel, but staff may decide where it is appropriate to do so and it will mean there is no need for a hearing.</i>

Reports

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GM/R	MC	PCPTLC	SCP	CP	CAdm	CAdv	
42(1),(2) & (3)	Make order for protection of sensitive information	D	D	D	D	D				
42A (1)	Require a report on any matter described in s 39(1)	D	D	D	D	D				
42A(1AA) (a)	Obtain a report from a Council employee on any matter described in s 39(1)	D	D	D	D	D	D			Principally for PCPTLC, SCP and CP to exercise. Use Work request forms to set scope.
42A(1AA) (b)	Obtain a report from a person who is not a Council employee on any matter described in s39(1)	D	D	D	D	D	D			
42A(5)	Waive compliance with s42A(3) or (4)(b)	D	D	D	D					

Application for Resource Consent

Section	Description of function, power, or duty	Delegated To												Notes for staff
		CE	GM/R	MC	PCPIL C	SCP	CP	CAdm	CAdv	GMAM/ MRA	TLE	TLS	SOES/ EOS	
87E(5), (6), 6A	Decide on a request that an application(s) be directly referred to The Environment Court, in circumstances where the application(s) would eventually be appealed.	Elected Council												Streamlining decision making – direct referral to Environment Court. Initial decisions made by staff under s88.
87F(3) & (5)	Prepare a report on the direct referral application and provide copies	D	D	D	D	D	D							
87BB	Determine and process activities as Deemed Permitted Activities	D	D	D	D	D	D							Marginal or temporary non-compliance
88(3)	Determine that an application for resource consent is incomplete.	D	D	D	D	D				D	D	D	D	GMAM, MRA, TLE, TLS, SOES, EOS delegation for gravel extraction consents as provided for under Rule 74 non-notified If incomplete, immediately return the application after decision under 88(3) and provide reasons for the determination.
91(1) & (2)	Deferral pending application for additional consents and notification to applicant of deferral.	D	D	D	D	D				D	D	D	D	
91C(2)	Decide whether to return an application or to continue to process the application after an application has been suspended for 130 days.	D	D	D	D	D								There is a need to provide reasons if it is returned. There is a s357(3A) right of objection.

Section	Description of function, power, or duty	Delegated To												Notes for staff
		CE	GM/PR	MC	PCP/TLC	SCP	CP	CAdm	CAdv	GMAM/MRA	TLE	TLS	SEOS/EOS	
92(1) & 92(3)(a)	Request further information be provided by the applicant and notify applicant of reasons for request.	D	D	D	D	D	D			D	D	D	D	For significant or continuous s92 requests, discussion with Manager Consents or Group Manager- Policy and Regulations should occur. (Note only one "stop the clock" s92 (1) request is now allowed and must be pre notification).
92(2) & 92(3)(b)	Commission a Council employee to prepare a report on any matter relating to an application and notify applicant of reasons for wanting to commission a report.	D	D	D	D	D	D			D	D	D	D	The commissioning of a report requires the agreement of the applicant. As per s92 (B) (1).
92(2) & 92(3)(b)	Commission a person who is not a Council employee to prepare a report on any matter relating to an application and notify applicant of reasons for wanting to commission a report.	D	D	D	D	D	D			D	D			The terms of the contract including price require approval by PCP-TLC up to the value of \$5000 or MC up to the value of \$15000. The commissioning of a report requires the agreement of the applicant.
92A(2)	Set time limit for applicants to provide information.	D	D	D	D	D	D			D	D	D	D	

Notification/Non-Notification

Section	Description of function, power, or duty	Delegated To													Notes for staff
		CE	GMFR	MC	PCPTL	SCP	CP	CAdm	CAdv	GMAW	MRA	TLE	TLS	SEOS/ Eos	
95, 95(A) and 95D	Determine whether to publicly notify an application for resource consent, including if special circumstances exist, and to publically notify the application ¹ .	D	D	D	D	D				D	D	D	D		In deciding refer to 95D Note s2AB and the meaning of "public notification" <i>Notification decision to be made by Manager Consents in the first instance.</i>
95B and 95E	Determine whether to limited notify an application for resource consent including if special circumstances exist and who to notify.	D	D	D	D	D				D	D	D	D		If decide not to notify under 95(a) or 95A (1), must decide if there are any affected persons. In deciding refer to 95E, 95F and 95G.
95F and 95G	Decide if an activity may have effects on a protected customary right. Decide if an activity may have effects on the exercise of the rights applying to a customary marine title group.	D	D	D	D	D									If these groups rights are considered to be affected and they have not provided their written approval they should be regarded as an affected party and notified.
97(4)	Adopt an earlier closing date	D	D	D	D	D									Where all parties notified of a limited notified application submit before the formal closing date

¹ Council resolved on December 2016 and 31 May 2017 that applications to take water for water bottling purposes including changes of conditions and transfers are to be notified.

http://hawkesbay.infocouncil.biz/Open/2016/12/RC_14122016_MIN.HTM#PDF2_ReportName_11000

http://hawkesbay.infocouncil.biz/Open/2017/05/ESC_17052017_MIN.HTM#PDF2_ReportName_11396

Pre-hearing Meetings and Mediation

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GM/R	MC	POPTL Q	SCP	CP	CAdm	CAdv	
99(1) to (3)	Arrange pre-hearing meetings for the purpose of clarifying, mediating or facilitating resolution of any matter or issue. If appropriate, to require persons to attend.	D	D	D	D	D	D	D	D	A pre-hearing meeting is not mandatory, but if convened there is discretion to require persons to attend.
99(4)	The authority to decide if a person who is a member, delegate or staff who have the power to make a decision on an application may attend and participate in a pre-hearing meeting	D	D	D	D	D		D		This will also be subject to all persons at the meeting agreeing that this is appropriate.
99(8)	Decline to process an application or consider a submission.	D	D	D						Discretion is available to decline to process a resource consent or to decline to consider a submission if the applicant or submitters who are required to attend a prehearing meeting fail to attend.
99A(1) & (2)	Refer to mediation a person who has made an application for a resource consent and some or all of the persons who have made submissions on the application.	D	D	D						

Hearings

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GM/PR	MC	PCPTL C	SCP	CP	CAdm	CAdv	
100	Determine whether a hearing is necessary.	D	D	D	D					A hearing is not needed unless consent authority decides there should be one or applicant or submitter requests to be heard. Staff discretion here is to decide to hold a hearing when not otherwise required. This decision will be made by the Manager Consents in the first instance.
101	Set hearing dates and give notice	D	D	D	D			D		
102	Determine whether a joint hearing is necessary and when a joint hearing is necessary to take steps in relation to notification and other matters.	D	D	D	D					
103	Determine whether a combined hearing in respect of 2 or more applications is necessary	D	D	D	D					

Decisions

Section	Description of function, power, or duty	Delegated To												Notes for staff
		CE	GM/R	MC	ACOPT LG	SCP	CP	CAdm	CAdv	GMAM/ MRA	TLE	TLS	SEOS	
104,104A, 104B 104C 104D, 104E & 105, 107	Consider and determine non notified applications for resource consents.	D	D	D	D	D			D	D	D	D	D	<p>SCP delegation is only when specifically instructed to do so by Manager Consents or Group Manager Regulations.</p> <p>CAdv delegation is to decide non-notified resource consent applications to install or alter a bore.</p> <p>Where the staff recommendation is to decline any application for reasons other than inadequate information the hearings panel must decide the application</p>
	Determine publicly notified applications and limited notified applications for resource consents, when no submissions are received, or when submissions have been withdrawn or where submitters do not wish to be heard.	D	D											
104F	Grant consents with conditions to implement national environmental standards to control the effects on climate change of the discharge into air of greenhouse gases.	D	D	D	D	D								
108, 108A and 108AA	Grant consents on any condition consistent with s 108, 108B and 108AA	D	D	D	D	D				D	D	D	D	

Notification of Decision

Section	Description of function, power, or duty	Delegated To												Notes for staff
		CE	GMER	MC	PCPIL C	SCP	CP	CAdm	CAdv	GMAM/ MRA	TLE	TLS	SEOS	
114	Serve notice of the decision and determine any other persons and authorities to be served	D	D	D	D	D		D	D	D	D	D	D	
116(1A)	Determine the commencement date of consent if not the date of notification of decision under s 114	D	D	D	D	D	D	D	D	D	D	D	D	

Duration of Consent

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GMR	MC	PCPILC	SCP	CP	CAdm	CAdv	
124(1)	Check whether the circumstances in s 124(1) have been met thereby allowing the applicant to continue to operate pending determination of an application for a replacement consent	D	D	D	D					Section 124(1) provides that an applicant may continue to operate under a consent if expired as long as the new application is made at least six months prior to expiry of the existing consent and the other circumstances in s 124(1) are met
124(2)	Permit or refuse an applicant to continue to operate pending determination of an application for a replacement consent	D	D	D	D					The staff listed have the discretion to allow the consent holder to continue to operate if an application for a new consent is made in the period that— (i) begins 6 months before the expiry of the existing consent; and (ii) ends 3 months before the expiry of the existing consent; and the other circumstances in s 124(2) are met. If the view is that the applicant should not be allowed to continue to operate then the matter should be referred to the CE and GMR.
124A	Determination of whether sections 124B and 124C apply	D	D	D	D					Sections 124A, 124B and 124C deal with the issue of priority when a person applies for a new resource consent to undertake an activity using a natural resource. A regional plan can allocate resources amongst competing activities. A regional plan cannot reallocate a resource that is subject to existing resource consents. However, a plan can set rules that provide for reallocation when existing consents expire.
124B	Determination of application in accordance with s 124B	D	D	D	D					

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GMFR	MC	PCPTLC	SCP	CP	CAdm	CAdv	
124C	Steps pursuant to s 124C including holding an application, notification to holder of existing consent and processing and determination of application	D	D	D	D	D				
125	Set a lapse date when determining non-notified or notified applications, determine that a consent has been given effect to and extend (on application) the time period within which a consent must be exercised before it lapses. Except for water takes in catchments which are fully allocated or are identified as sensitive groundwater zones.	D	D	D	D	D				Delegation for exceptions and for any activity that was originally notified lies with the Hearings Committee. Refer papers November 2009 and July 2010. Hearings Committee TOR 2017
126(1) and (2)	Cancellation of consent not exercised for the preceding 5 years and power to revoke notice of cancellation of consent	D	D	D						
127	Determine whether an application for a change or cancellation of a condition of consent shall be notified	D	D	D	D					

Review of Consent Conditions

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GM ^{PR}	MC	PCPT LC	SCP	CP	CAdm	CAdv	
128(1)(a) & 129	Serve notice of a review of consent as specified in consent.	D	D	D	D	D	D	D	D	
128(1)(b) and 128 (1) (ba), 1(c) & 129	Serve notice of review of consent in line with Regional Plan rules, if a relevant national environmental standard has been made or if information made available for the application contained inaccuracies which materially influenced the decision and effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.	D	D	D	D	D	D	D		Decision to review due to inaccurate information will be made by MC or higher.
130	Process a review of consent with all necessary modifications. Determine whether a review shall be notified.	D	D	D	D					
131-132	Consider and decide on non-notified review of consent conditions.	D	D	D	D	D				SCP delegation is only when specifically instructed to do so by MC or GM ^{PR}
133A	Correct minor mistakes or defects in a resource consent.	D	D	D	D	D				This is normally done by consents administration with approval from MC

Transfer of Consents

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GMER	MC	POPTL C	SCP	CP	CAdm	CAdv	
134	Receive on behalf of Council written notice of transfer of a land use consent.							D	D	The s 134 function is only for receipt of written notice of transfer of s 13 land use consents and not s 9 land use consents.
135	Receive on behalf of Council written notice of transfer of a coastal permit.							D	D	
136 (1), (2)(a) and (2)(b)(i)	Receive on behalf of Council written notice of transfer of a water permit.							D	D	
136 (4) and (5)	Approve the transfer of a water permit to another site if change is non-notified.	D	D	D	D					If the transfer is notified and needs to be heard the hearings panel will hear and decide. If there is no hearing required CE or GMER shall decide. If the transfer is recommended to be declined then it should be heard by a hearing panel.
	If notified or limited notified applications for resource consents, when no submissions are received, or when submissions have been withdrawn or where submitters do not wish to be heard.	D	D							

Transfer of Consents

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GM ^R	MC	PC ^{PTL} _C	SCP	CP	CAdm	CAdv	
137(1) and (2)	Receive on behalf of Council written notice of transfer of a discharge permit.							D	D	
137(3), (4) and (5)	Approve or decline the transfer of a discharge permit to another site if change is non-notified.	D	D	D	D					If the transfer is notified and needs to be heard the hearings panel will hear and decide. If there is no hearing required CE or GM ^R shall decide. If the transfer is recommended to be declined then it should be heard by a hearing panel
	If notified or limited notified applications for resource consents, when no submissions are received, or when submissions have been withdrawn or where submitters do not wish to be heard.	D	D							
138	Accept the surrender or part surrender of a resource consent or refuse surrender of part of a resource consent.	D	D	D	D	D	D	D	D	Prior to exercising this power Council Staff should discuss the matter with the compliance officer responsible for monitoring the resource consent.
138A	Consider special provisions relating to coastal permits for dumping and incineration.	D	D	D	D					

Certificate of Compliance or Existing Use

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GMFR	MC	PCPT LC	SCP	CP	CAdm	CAdv	
139	Grant certificate of compliance.	D	D	D	D	D				Note not to issue a COC if notice issued under s 87BB
139A	Issue existing use certificate	D	D	D						

Reclamations

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GMFR	MC	PCPT LC	SCP	CP	CAdm	CAdv	
245	Give approval to a plan of survey of a reclamation subject to criteria in the Act.	D	D	D						

Environment Court – Conferences and Alternative Dispute Resolution

<u>Section</u>	<u>Description of function, power, or duty</u>	<u>Delegated To</u>								<u>Notes for staff</u>
		<u>CE</u>	<u>GM/R</u>	<u>MC</u>	<u>TLC</u>	<u>SCP</u>	<u>CP</u>	<u>CAdm</u>	<u>CAdv</u>	
<u>267</u>	<u>Decide on matters arising at a conference</u>	<u>D</u>	<u>D</u>	<u>D</u>	<u>D</u>					
<u>268A</u>	<u>Decide on matters arising at Alternative dispute resolution processes (ADR)</u>	<u>D</u>	<u>D</u>	<u>D</u>	<u>D</u>					

Rights of Objection

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GMER	MC	PCPT LC	SCP	CP	CAdm	CAdv	
357A	Consider and make decisions on objections where: • the objection is upheld; or • the outcome is agreed with the objector.	D	D	D	D					Other objections to decisions will be heard by a Hearing Panel. Costs re recoverable.
357B	Consider and make a decision on objections where the additional costs that are the subject of the objection are less than \$10,000 and where agreement is reached with the objector.	D	D	D						For objection to costs. If cannot resolve will go to Hearing Panel.
357C(1)	Allow a longer time for making an objection	D	D	D	D	D				
S357C(3)(b)	Give appropriate notice to parties.	D	D	D	D	D	D	D		
S357C(4)(b)	Give appropriate notice of objection hearing to parties.	D	D	D	D	D	D	D		
S357D(2)	Give appropriate notice of decision to parties.	D	D	D	D	D	D	D		

Resource Management (measurement and reporting of water takes) Regulations 2010

Section	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GM/R	MC	PCPT/LC	SCP	CP	CAdm	CAdv	
9	Approval to measure water taken each week (instead of each day)	D	D	D	D	D				
10	Approval to use device or system installed near (instead of at) location from which water taken	D	D	D	D	D				
11	Revoke approval of 9 or 10	D	D	D	D	D				

Resource Management (Forms, Fees, and Procedure) Regulations 200310A Discretion to require notice to be affixed to site

Regulation	Description of function, power, or duty	Delegated To								Notes for staff
		CE	GM/R	MC	TLC	SCP	CP	CAdm	CAdv	
<u>10A</u>	<u>Discretion to require a notice to be affixed to a site</u>	<u>D</u>	<u>D</u>	<u>D</u>	<u>D</u>	<u>D</u>	<u>D</u>			<u>A consent authority may require the following to be affixed to a conspicuous place on or adjacent to the site to which the application relates:</u> <u>(a) a short summary of the notice; and</u> <u>(b) details of the internet site where the full public notice in form 12 can be accessed.</u>

HAWKE'S BAY REGIONAL COUNCIL**HEARINGS COMMITTEE****Wednesday 23 June 2021****Subject: APPOINTMENT OF AN ADDITIONAL COMMISSIONER FOR THE
OMARANUI LANDFILL EXPANSION HEARING****Reason for Report**

1. This item provides the means for appointing a Māori representative to the 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. Council officers seek the Committee's confirmation of a person with an understanding of tikanga Māori and of the perspectives of local iwi or hapū from amongst the potential candidates provided.

Executive Summary

3. A Māori representative is proposed to be appointed to the Hearing Panel to jointly hear and decide on the resource consent applications and the notice of requirement to expand the Omarunui Landfill.
4. A suitable recommendation from Tangata Whenua members of the Committee is to be provided for appointment by the Hearings Committee.

Options Assessment

5. This matter needs to be heard as per the provisions of the RMA. A Hearing Panel needs to be appointed to do this as submitters wish to be heard.

Strategic Fit

6. HBRC has a functional duty to implement and enforce and its regional plan in accordance with the provisions of the RMA. The Council's Strategic Plan identifies sustainable and climate-resilient services and infrastructure as a priority area.

Considerations of Tangata Whenua

7. Tangata whenua are submitters to the applications. This process allows for a panel member with an understanding of tikanga Māori and of the perspectives of local iwi or hapū to be appointed to sit on the panel.

Financial and Resource Implications

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

Decision Making Process

9. 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:
 - 9.1. The decision does not significantly alter the service provision or affect a strategic asset, nor is it inconsistent with an existing policy or plan.
 - 9.2. The use of the special consultative procedure is not prescribed by legislation.

- 9.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
- 9.4. 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.
10. 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 notes the "*Appointment of an Additional Commissioner for the Oamaru Landfill Expansion Hearing*" staff report.
2. Agrees that the decisions to be made are not significant under the criteria contained in Hawke's Bay Regional Council's adopted Significance and Engagement Policy, and that the Committee 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.
3. Appoints _____ as a commissioner to the Hearing Panel to hear the resource consent applications required to undertake activities and discharges associated with the construction and operation of Area B of the Oamaru Landfill (APP-125003).

Authored by:

Malcolm Miller
MANAGER CONSENTS

Approved by:

Katrina Brunton
**GROUP MANAGER POLICY &
REGULATION**

Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL

HEARINGS COMMITTEE

Wednesday 23 June 2021

Subject: APPOINTMENT OF HEARING PANEL FOR THE CLIVE RIVER DREDGING RESOURCE CONSENT APPLICATIONS

Reason for Report

1. The Assets Group of HBRC has applied for consents to dredge the Clive River and discharge the dredged material to the coastal marine area (CMA). That application is likely to proceed to a formal hearing and as such, there is a need to have a Hearing Panel appointed ready to consider and decide on the resource consent applications.

Officers' Recommendations

2. Council officers recommend that the Committee appoints three commissioners to hear and decide the applications lodged by the HBRC Asset Management Group (APP) to dredge the Clive River. 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 Hearings Committee members.
3. There is a similar panel appointed to hear the HBRC gravel take consents. It is proposed that this same panel be convened to hear this application.
4. The following commissioners are recommended:
 - 4.1. Paul Cooney (Chair)
 - 4.2. Dr Malcolm Green
 - 4.3. Rau Kirikiri.

Executive Summary

5. The application to dredge the Clive River has been in process for some time and is currently on hold for further information, mainly an assessment of cultural values. At the same time, there is also increasing pressure from the users of the Clive River to get the consent process concluded and the works undertaken as quickly as possible.
6. The appointment of a Hearings Panel is proposed now to ensure the Council's regulatory functions are not causing any further delays to the consent process and that preparations are in place for the likely scenario that a hearing is needed.

Background /Discussion

7. HBRC Assets Management Group is proposing dredge the lower end of the Clive River and to discharge the dredged material onto the foreshore and into the CMA.
8. Resource consents are required for these activities. More information has been requested from the applicant and this may take some time and may delay the work. The applicant has the option of pressing on without all the information by declining to provide it and /or by requesting the notification of the application and having it proceed to a hearing.
9. In anticipation of the applicant requesting notification and proceeding to a Hearing, it is proposed to appoint a hearings panel. A suitable panel has already been appointed to hear the HBRC Gravel consents.

Options Assessment

10. If a resource consent application is notified and submissions are made, unless the submitters' issues can be resolved informally there will be a need for a hearing. The Hearing Panel should comprise members with experience and expertise relative to the issues arising from the proposal.

Strategic Fit

11. HBRC has a functional duty to implement and enforce its Regional Plan in accordance with the provisions of the RMA. The Council's Strategic Plan vision is a healthy environment, a vibrant community and a prosperous economy. The works proposed will enable the use of the lower river for recreation and other activities. The effects of the work will need to be assessed against the policies of the plan and considered in light of any submissions that are made.

Significance and Engagement Policy Assessment

12. HBRC Assets Management Group staff have engaged and consulted with parties as the proponent of the dredging works. This phase is a process carried out under RMA. Opportunity for involvement is provided through the notification, submission and hearing processes.

Climate Change Considerations

13. Climate change matters can be considered in the process of the hearing.

Considerations of Tangata Whenua

14. The activity will impact on tangata whenua interests and values and tangata whenua are likely to be 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

15. The costs of this Hearing will be borne by HBRC as the applicant.

Decision Making Process

16. 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:
 - 16.1. The decision does not significantly alter the service provision or affect a strategic asset, nor is it inconsistent with an existing policy or plan.
 - 16.2. The use of the special consultative procedure is not prescribed by legislation.
 - 16.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
 - 16.4. 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 and particularly those with an interest in the Clive River and environs.
 - 16.5. 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. Receives and considers the “*Appointment of Hearing Panel for the Clive River Dredging Resource Consent Applications*” staff report.
2. Agrees that the decisions to be made are not significant under the criteria contained in Hawke’s Bay Regional Council’s adopted Significance and Engagement Policy, and that the Committee 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.
3. Appoints the following commissioners to hear the resource consent applications required to undertake activities and discharges associated with the Clive River Dredging (APP-126090):
 - 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:

Amelia Longley
CONSENTS ADVISOR

Malcolm Miller
MANAGER CONSENTS

Approved by:

Katrina Brunton
GROUP MANAGER POLICY & REGULATION

Attachment/s

There are no attachments for this report.

HAWKE'S BAY REGIONAL COUNCIL

HEARINGS COMMITTEE

Wednesday 23 June 2021

Subject: MFE NATIONAL MONITORING SYSTEM (NMS) REPORT**Reason for Report**

1. This item provides a summary of results of the Ministry for the Environment's 2019-20 National Monitoring System (NMS) report. The NMS for the 2019-20 year is about to be published and will be provided in full once received.

Background

3. The Ministry for the Environment gathers and reports on Resource Management Act (RMA) processes including resource consenting across all Councils in the country annually on their consenting for the year. It was anticipated that Council's report would be published in time for this meeting however as it has not been, a quick summary of results is provided following.
4. Some quick observations:
 - 4.1. 501 consents were processed to their conclusion
 - 4.2. 63 applications were withdrawn or returned as incomplete
 - 4.3. 1 was notified
 - 4.4. 501 were granted
 - 4.5. 0 were declined
 - 4.6. All but 1 consents were processed within statutory timelines
 - 4.7. Average cost \$2000 (1460 after removing top 5)
 - 4.8. 22 consents cost \$5,000 to \$10,000 to process
 - 4.9. 5 consents cost > \$10,000 to process
 - 4.10. Maximum cost \$222,087. (Notified, 4-day hearing).

Decision Making Process

5. 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 "MFE National Monitoring System (NMS) Report"* staff report.

Authored by:

Malcolm Miller
MANAGER CONSENTS

Approved by:

Katrina Brunton
GROUP MANAGER POLICY & REGULATION

Attachment/s

There are no attachments for this report.