



Meeting of the Hawke's Bay Regional Council Hearings Committee

Date: 2 March 2022
Time: 1pm
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	
3.	Confirmation of Minutes of the Hearings Committee meeting held on 23 June 2021	
Decision Items		
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Subject: Appointment of a Hearing Panel for the Tukituki Tranche 2 Resource Consent Applications

Reason for Report

1. This item seeks the appointment of a Hearing Panel for the Tukituki Tranche 2 resource consent applications.

Officers' Recommendations

2. Council officers recommend that the Committee appoints three commissioners to hear and decide the applications lodged by the following parties:
 - 2.1. APP-123563 – Te Awahohonu Forest Trust
 - 2.2. APP-123991 – Springhill Dairies Partnership
 - 2.3. APP-123541 – Tukituki Awa Ltd
 - 2.4. APP-123547 – Plantation Road Dairies
 - 2.5. APP-123565 and APP-124498 – Papawai Partnership
 - 2.6. APP-123566 and APP-124500 – I&P Farming Limited
 - 2.7. APP-123546 – Buchanan Trust No. 2
 - 2.8. APP-125281 – Purunui Trust

Background /Discussion

3. The Tukituki Tranche 2 applications are for taking groundwater from the Tranche 2 allocation block that has been set under the Tukituki Plan Change to the RRMP. There are eight applicants applying for the total of 15 million cubic metres of water per year across the two Ruataniwha plain zones. There are 65 submissions lodged.

Options Assessment

4. If a resource consent application is notified and submissions are made then, unless the submitters' issues can be resolved informally, a Hearing will be required. The Hearing Panel should comprise members with experience and expertise relative to the issues arising from the proposal.
5. The following have been contacted and are available to sit on this hearing panel.
 - 5.1. Paul Cooney (chair of the HBRC gravel application hearing)
 - 5.2. Brett Cowie (member of the TANK hearing panel)
 - 5.3. Tony Petch (groundwater scientist) (cv attached)
 - 5.4. Rau Kirikiri (commissioner for WDC and HBRC gravel hearing)
 - 5.5. Antoine Coffin (commissioner for TANK hearing)

Considerations of Tangata Whenua

6. The activity applied for will impact on Tangata Whenua interests and values and Tangata whenua are submitters to the applications. Tangata whenua submitters have expressed

concerns about the effect of takes on river flows, on the mana and wellbeing of the awa and of the local people. They have identified their responsibilities as kaitiaki and have pointed to the NPS FM concept of Te Mana o te Wai as being an important consideration. They are also concerned at the cumulative effects of these takes on indigenous species and on ecosystem health.

7. A panel member with an understanding of tikanga Māori and of the perspectives of local iwi and hapū has been recommended 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.
 - 9.5. Given the nature and significance of the issue to be considered and decided, and also the persons likely to be affected by, or have an interest in the decisions made, the Committee can exercise its discretion and make this decision without consulting directly with the community in accordance with its Terms of Reference.

Recommendations

That the Hearings Committee:

1. Receives and considers the "*Appointment of Hearing Panel for the Tukituki Tranche 2 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 in accordance with its Terms of Reference.
3. Appoints the following commissioners to hear and decide on resource consent applications APP-123563, APP-123991, APP-123541, APP-123547, APP-123565, APP-124498, APP-123566, APP-124500, APP-123546, APP-125281:
 - 3.1. Brent Cowie/Paul Cooney (back up)
 - 3.2. Tony Petch
 - 3.3. Rau Kirikiri or Antoine Coffin (one as back up).
4. Confirms that the commissioners are appointed under section 34A of the RMA and are delegated authority under RMA sections 37, 37A, 39, 39AA, 40 41, 41A, 41B, 41C, 41D, 42, 42A, 103B, 104 -108, 108A, 108AA, 109, and 113 - 115 to hear, consider and decide the applications and submissions.

Authored by:

Amelia Longley
Consents Planner

Malcolm Miller
Manager Consents

Approved by:

Katrina Brunton
Group Manager Policy & Regulation

Attachment

- 1** Curriculum vitae - Tony Petch Under Separate Cover

Subject: Appointment of a Hearing Panel for the Ravensdown Resource Consent Applications

Reason for Report

1. This item seeks the appointment of a Hearing Panel for the Ravensdown resource consent applications.

Officers' Recommendations

2. Council officers recommend that the Committee appoints four commissioners to hear and decide the resource consent applications lodged by Ravensdown Ltd.

Background /Discussion

3. The Ravensdown applications APP-126684 are for the discharge of contaminants to air; the discharge of stormwater to land, the discharge of stormwater to water; vegetation clearance and soil disturbance activities in the Coastal Margin associated with the erection, reconstruction, placement, alteration, extension, removal, or demolition of stormwater and process water treatment and discharge structures and wetland restoration activities; and the taking of groundwater.
4. Twelve submissions have been received. The main concerns raised by submitters are around the effects of the stormwater discharge to land and water on the receiving waters and on cultural values associated with these waters.

Options Assessment

5. If a resource consent application is notified and submissions are made then, unless the submitters' issues can be resolved informally, a Hearing will be required. In this case Ravensdown did engage with the majority of the submitters prior to lodging their applications and may wish to continue this with a prehearing before advancing to a hearing.
6. The Hearing Panel should comprise members with experience and expertise relative to the issues arising from the proposal. In this case the issues are effects of the discharge to air, effects of discharges to land and water on water values and tangata whenua values, the effects of works on the Tutaekuri River and Waitangi wetland.
7. The following have been contacted and are available to sit on this Hearing Panel.
 - 7.1. Councillor Martin Williams
 - 7.2. Rau Kirikiri (commissioner for WDC and HBRC gravel hearing)
 - 7.3. Louise Wickham – air quality scientist (commissioner for Te Mata Mushrooms)
 - 7.4. Malcolm Green – expertise in river processes/effects on river ecosystems and water quality.

Considerations of Tangata Whenua

8. The activity will impact on Tangata Whenua interests and values and Tangata whenua are submitters to the applications. Tangata whenua submitters have raised concerns about and seek an approach which provides greater mana whenua recognition and provision. One

submitter seeks “adequate conditions that acknowledge mana whenua values, rights and responsibilities are incorporated within the consent conditions”.

9. 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. Staff have recommended Rau Kirikiri who has provided this service for a number of hearings in Hawke’s Bay. There is discussion that more opportunity should be given to local Māori experts to sit on consent hearings panels. The Hearings Committee may wish to consider whether there are other local people who could fill this role.

Financial and Resource Implications

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

Decision Making Process

11. 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, nor is it inconsistent with an existing policy or plan.
 - 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 all persons with an interest in the region’s management of natural and physical resources under the RMA.
 - 11.5. 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, the Committee can exercise its discretion and make this decision without consulting directly with the community in accordance with its Terms of Reference.

Recommendations

That the Hearings Committee:

1. Receives and considers the “*Appointment of Hearing Panel for the Ravensdown 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 in accordance with its Terms of Reference.
3. Appoints the following commissioners to hear and decide the resource consent applications APP-126684 to undertake activities associated with the Ravensdown Fertiliser plant at Awatoto:
 - 3.1. Councillor Martin Williams
 - 3.2. Rau Kirikiri
 - 3.3. Louise Wickham
 - 3.4. Malcolm Green.
4. Confirms that the commissioners are appointed under section 34A of the RMA and are delegated authority under RMA sections 37, 37A, 39, 39AA, 40 41, 41A, 41B, 41C, 41D, 42, 42A, 103B, 104 - 108, 108A, 108AA, 109, and 113 - 115 to hear, consider and decide the applications and submissions.

Authored by:

**Amelia Longley
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**Malcolm Miller
Manager Consents**

Approved by:

**Katrina Brunton
Group Manager Policy & Regulation**

Attachment/s

There are no attachments for this report.

Subject: Conflict of Interest Management for Tangata Whenua Commissioners

Reason for Report

1. This report presents proposed guidance for the management of conflicts of interest for local Māori commissioners for the Committee's feedback and support for implementation.

Officers' Recommendations

2. Council officers recommend that the Hearings Committee considers the proposed guidance and how it can support the involvement of more local tangata whenua as Resource Consent Hearing Commissioners, and provides any additional feedback to enable its implementation.

Executive Summary

3. The Hearings Committee recognises the need for local tangata whenua to sit as commissioners on resource consent Hearings Panels. This discussion looks at potential conflicts of interest and how these can be avoided. Legal advice and staff guidance is provided.

Background

4. At the previous Hearing Committee meeting, the members noted that they wished to see local Māori appointed onto resource consent hearings panels more often. This raised the question of what happens when hapū, Taiwhenua, Post Settlement Group Entities (PSGEs) or Ngāti Kahungunu Iwi Inc (NKII) or other iwi are submitters to an application and when is a person conflicted because of their association with any of these groups such that they should not sit on the panel to decide the matter?
5. The Hearings Committee requested that this matter be brought to the Māori Committee and Regional Planning Committees to discuss and seek guidance on appointing Māori experts as commissioners for resource consent hearings and on determining when a person might be conflicted in this situation. The Resource Management Act provides for hearings for resource consent applications where they are notified, submissions are lodged, and submitters wish to be heard.
6. The proposed Guidance has been discussed at the Māori Committee and Regional Planning Committee (RPC). Both committees supported the recommendations. The RPC members advised that there were some points that they would like to add to the report. Staff have not received these points prior to this report and have not been able to discuss them. It is hoped that there will be opportunity to do this at the Hearings Committee meeting.
7. A second observation was that there is a limited pool of Making Good Decision qualified with expertise in tikanga Māori and in Māori values (a Māori expert) Māori experts in Hawke's Bay and a need to build capacity.

Discussion

8. The Hearings Committee is delegated the function of appointing commissioners to each Resource Consent Hearings Panel. These may be Councillors or other Council committee members, or they may be independent appointees. They are required to have current Making Good Decisions (MGD) accreditation.
9. Typically, staff have recommended, and the Hearings Committee have appointed a panel comprising of a commissioner with RMA expertise, a commissioner with technical expertise

relevant to the proposal and a commissioner with expertise in tikanga Māori and in Māori values (a Māori expert). On occasions a resource consent application could be heard by a single commissioner where the issues are narrowed down to a few matters and on other occasions the panel could be made up of more than three commissioners.

10. There is no legislative requirement to consult with tāngata whenua when appointing commissioners to a resource consent Hearing Panel. However, the HBRC Hearing Committee is made up of four Councillors and two appointees from the Māori Committee and two tāngata whenua representatives from the Regional Planning Committee so by its constitution, the Hearing Committee provides the opportunity for consultation with and involvement of tāngata whenua. In doing so, tāngata whenua representatives are able to provide guidance and recommendations on when to appoint someone with understanding of tikanga Māori and of the perspectives of local iwi or hapū, and who would be suitable.
11. It is recognised that at times there may be conflicts of interest and it is this matter that is discussed in this report.

Options Assessment

12. Staff have sought advice from Simpson Grierson on this matter. The essence of this advice (attached and following) is that basic conflict of interest principles should apply. People appointed as commissioners should not hold a bias or an apparent bias nor should they predetermine the matter. Where there is doubt about whether a conflict of interest exists, it can be prudent to err on the side of caution and to look to another appointee.
13. Where the person is a member of an iwi/hapū or can whakapapa to parties involved in the hearing process, this alone will not necessarily raise a conflict of interest. The Office of the Auditor General Managing Conflicts: A Guide for The Public Sector provides guidance. This states:
 - 13.1. *Some cultures, including Māori culture, have a broad concept of family. In our view, a conflict of interest will not often arise where the connection is a common ancestor, such as another iwi or hapū member. Sometimes an iwi connection could create a conflict of interest in and of itself. For example, if the person is working for a public organisation on a Treaty settlement where they are likely to end up as a beneficiary, this might create a conflict of interest. In this situation, the interest is personal.*
14. The advice recommends that conflicts of interest will need to be assessed on a case-by-case basis. The following circumstances are identified as risk factors for conflicts of interest or apparent bias:
 - 14.1. If the commissioner has an official role like as a trustee or director of an iwi entity making an application or submission or was a senior member of the iwi
 - 14.2. If the hearings panel is asked to adjudicate on issues of who holds mana whenua over an area and the commissioner is a member of one of the iwi involved
 - 14.3. If the commissioner has a financial or property interest in the matter
 - 14.4. If the commissioner assisted the iwi with the application or submission
 - 14.5. If there are significant and/or direct impacts on the commissioner's iwi.
15. The advice identifies risk mitigation measures. These include:
 - 15.1. preparing a longlist of commissioners so there is choice and alternatives
 - 15.2. recording the interests of commissioners on the list to help determine risk of conflict
 - 15.3. consider providing training to help potential commissioners to identify risks of conflict
 - 15.4. set out in the contract brief the need to avoid conflict
 - 15.5. engage with Commissioners at appointment stage to check on any financial, property,

- relevant family ties (including whakapapa) and any other roles they hold (such as directorship or trustee roles)
- 15.6. declaring possible conflict at the time it is realised and testing acceptance of other parties
 - 15.7. recusing appointment if possible, conflict is identified and/or not accepted or dismissed as a concern by other parties.
 16. While some recommendations are made, the Regional Planning Committee members may have other ideas about how this can be done differently and/or more effectively.
 17. The approach going forward can be improved to enable MGD qualified Māori Committee and Regional Planning Committee members and other local tangata whenua more opportunity to sit on hearings panels. Further training could be arranged for potential commissioners if this is seen as beneficial (over and above the Making Good Decisions training).
 18. It is proposed that the following staff guidance be followed for all potential commissioners. Specific questions are identified for Māori experts to check that they are not conflicted due to their association with their iwi or hapū.

Proposed guidance for staff when recommending commissioners for appointment

19. Proposed guidance for appointment of commissioners who are Māori experts:
 - 19.1. Prepare a longlist of local people with Making Good Decisions accreditation and with Māori expertise.
 - 19.2. Check with each potential commissioner that they don't perceive a conflict of interest. The questions to be asked of Māori experts would include:
 - 19.2.1. Do you have an official role (e.g. trustee, director or senior member of an iwi / hapū or other entity making an application or submission on the application)?
 - 19.2.2. If the Hearing panel is asked to adjudicate on issues of who holds mana whenua over an area, are you a member of one of the iwi / hapū involved?
 - 19.2.3. Do you have a financial or property interest in the matter?
 - 19.2.4. Have you assisted the iwi with the application or submission?
 - 19.2.5. Are there significant and/or direct impacts on your iwi / hapū or other entity of which you are a trustee, director or senior member?
 - 19.3. Appoint a backup person in case the first person is unavailable closer to the time of the Hearing. This is standard practice for all commissioner appointments (where practical).
 - 19.4. Include a clause in the contract (where one is required) informing the pending Commissioner that they should be familiar with the Auditor-General's "Managing Conflicts: A Guide for the Public Sector" and that they will be required to sign a declaration that confirms that they do not consider they have any conflict of interest prior to the Hearing. This is required for all commissioners on the Panel.
 - 19.5. Require, prior to commencing a Hearing, that Commissioners complete a Declaration of Interests form to confirm that they have considered their interests in relation to the application and the parties involved and that they do not have a conflict of interest. This is standard practice for all commissioner appointments.

Examples from other areas

20. The advice from Simpson and Grierson refers to Joint Management Agreements established between Tūwharetoa Māori Trust Board and Taupo District Council (2009) and also between Te Runanganui O Ngāti Porou Trustee Ltd and Gisborne District Council (2015) and a mana whakahono a rohe or iwi participation arrangement between Poutini Ngai Tahu and West Coast

Regional Council (2020). These establish joint management agreements across a range of matters including the appointment of consent hearing commissioners.

21. Taupo and Gisborne agreements have the same conflicts of interest clause:
 - 21.1. Conflicts of Interest shall be considered and identified at the earliest possible moment and brought to the attention of the Panel at the earliest possible time, and in accordance with the Controllers and Auditor General's Guidelines: Managing conflicts of interest: Guidance for public entities.
22. The Gisborne agreement adds a second paragraph:
 - 22.1. A panel member is not precluded by the Local Authorities (Members' Interests) Act 1968, or any other regulatory mechanism, from discussing or voting on a matter merely because the member has Ngāti Porou whakapapa. The conflict would have to be direct e.g. ownership of land that is subject to a consent application.
23. The West Coast protocol addresses conflict of interest with the following statement:
 - 23.1. Where perceived conflicts of interest arise in relation to hearing commissioner appointments, the Parties agree that a registered Ngāi Tahu tribal member who is trained as a hearing commissioner will continue to sit on the hearing panel on matters related to Poutini Ngāi Tahu rights, interests and values, and that their Ngāi Tahu whakapapa does not in itself constitute a conflict of interest. It should be noted that the principles of fairness and natural justice apply to all hearings.
24. These statements incorporate and reflect the Auditor General's guidance. The West Coast protocol is saying that if someone is conflicted, they will be replaced by another person who is a registered Ngāi Tahu tribal member.

Strategic Fit

25. The Strategic Plan emphasises the need to work together. Representation of local tāngata whenua on Consent Hearings Panels will assist in making decisions that align with desired outcomes expressed in the Strategic Plan and in the RMA suite of documents that HBRC implement.

Significance and Engagement Policy Assessment

26. This is not a change of policy. Resource consent applications can be small to major in effect. Effects on Tāngata whenua values and relationships must always be taken into account. Commissioners with expertise in tikanga māori and in Māori values have been appointed to Hearing Panels in the past. This discussion is around achieving more involvement of local people with expertise in tikanga Māori and in māori values in the decision-making process while avoiding any conflicts of interest.

Considerations of Tāngata Whenua

27. As mentioned above this discussion is around achieving the involvement of local people with expertise in tikanga Māori and in Māori values as commissioners on resource consent Hearing panels. The aim is to develop options to facilitate their appointment while ensuring that they do not have a conflict of interest.

Financial and Resource Implications

28. There are no financial and resource implications for the Council. Hearing Commissioners are paid for their time and costs associated with preparing for, attending and deciding on a resource consent application. These costs are recovered from the applicants.

Decision Making Process

29. 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:
 - 29.1. The decision does not significantly alter the service provision or affect a strategic asset, nor is it inconsistent with an existing policy or plan.
 - 29.2. The use of the special consultative procedure is not prescribed by legislation.
 - 29.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
30. Given the nature and significance of the issue to be considered and decided, and also the persons likely to be affected by, or have an interest in the decisions made, Council can exercise its discretion and make a decision without consulting directly with the community or others having an interest in the decision.

Recommendations

1. That the Hearings Committee receives and considers the "*Conflict of Interest Management for Tangata Whenua Commissioners*" staff report and feedback provided to staff by the Māori and Regional Planning committees.
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. Supports the involvement of more local tangata whenua as Resource Consent Hearing Commissioners.
 - 2.3. Supports the proposed guidance to avoid conflicts of interest (with agreed amendments incorporated if required).

Authored by:

Malcolm Miller
Manager Consents

Approved by:

Katrina Brunton
Group Manager Policy & Regulation

Attachment/s

- 1 [↓](#) Simpson Grierson Tangata Whenua Conflicts of Interest Guidance
- 2 [↓](#) List of local tangata whenua Making Good Decisions qualified Hearings Commissioners



To Malcolm Miller 20 September 2021
From Matt Conway, Judith Cheyne and Madeline Ash
Subject Conflicts of Interest (Tangata Whenua Commissioners)

1. This memorandum has been prepared for Hawke's Bay Regional Council (**the Council**) to assist it in managing conflicts of interest. The context is that the Council wishes to appoint more tangata whenua commissioners for Resource Management Act 1991 (**RMA**) hearings, and wants to understand how to avoid conflicts of interest, particularly with tangata whenua commissioners who belong to Hawke's Bay iwi/hapū.
2. The standard principles of conflicts of interest apply in this situation, including considerations of bias and pre-determination. We note that membership of an iwi/hapū or whakapapa alone will not necessarily raise a conflict of interest.
3. Therefore, each situation needs to be considered on a case-by-case basis. We provide some factors that may be relevant to whether a conflict exists and some example situations to illustrate conflicts in real-life situations.
4. We also outline some general steps that Council can take to mitigate risk and follow best practice for handling conflicts, steps when selecting a long-list of commissioners and steps when selecting commissioners for particular hearings.

Basic principles of bias/predetermination apply:

5. A Panel member will have a conflict of interest if there is actual or apparent bias or predetermination brought to their decision-making.
 - (a) **Actual bias**— Where the decision-maker actually demonstrates favouritism in making a decision.
 - (b) **Apparent bias**— Where the decision-maker has a financial or other interest in the decision. It arises in less tangible situations and is not concerned with whether the person is actually biased but whether the person could be seen to be biased.
 - (c) **Predetermination**— Where the decision-maker does not approach the matter with an "open mind". A decision-maker may have expressed a view on a matter but if they can show they are open to being persuaded (haven't made up their mind already), then there is no predetermination.
6. The concern is maintaining impartiality in the exercise of decision making powers. Given the relevance of perceptions in relation to apparent bias in particular, in situations where there is doubt about whether a conflict of interest exists, it can be prudent to err on the side of caution.

Membership of an iwi/hapū or whakapapa alone will not necessarily raise a conflict of interest

7. Several sources indicate that, applying the above standards, membership of an iwi/hapū, whakapapa or other kinship connections are unlikely to be a conflict of interest of

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themselves. For instance, the Office of the Auditor-General's (OAG's) [Managing Conflicts: A Guide For The Public Sector](#) states:

Some cultures, including Māori culture, have a broad concept of family. In our view, a conflict of interest will not often arise where the connection is a common ancestor, such as another iwi or hapū member. Sometimes an iwi connection could create a conflict of interest in and of itself. For example, if the person is working for a public organisation on a Treaty settlement where they are likely to end up as a beneficiary, this might create a conflict of interest. In this situation, the interest is personal.

8. Similarly, the Quality Planning website's [Conflicts of Interest: A Guide to the Local Authorities \(Members' Interests\) Act 1968 and Non-pecuniary Conflicts of Interest](#) guide states:

Some cultures, including Maori culture, have a broad concept of who is regarded as a family member or relative. This can make it difficult to assess whether a conflict of interest exists. In general, you should apply the same principles as for personal relationships set out above. However, we do not think that a person needs to be regarded as part of your immediate family just because they are part of your wider kin group descended from a common ancestor (such as an iwi or hapū).

9. Therefore, membership of an iwi/hapū or whakapapa alone will not necessarily raise a conflict of interest. Despite this, such connections should still be managed according to best practice, so that decisions are transparent and not subject to challenge.

Conflicts will need consideration on a case-by-case basis

10. Therefore, we consider that each situation will need to be assessed on a case-by-case basis. We provide some examples below of situations that may raise conflict of interest considerations. Generally, risk factors for conflicts of interest or apparent bias may include:

- (a) If the commissioner has an official role like as a trustee or director of an iwi entity making an application or submission or was a senior member of the iwi.
- (b) If the hearings panel is asked to adjudicate on issues of who holds mana whenua over an area and the commissioner is a member of one of the iwi involved.
- (c) If the commissioner has a financial or property interest in the matter.
- (d) If the commissioner assisted the iwi with the application or submission.
- (e) If there are significant and/or direct impacts on the commissioner's iwi.

Example situations:

11. The appendix to this advice sets out some hypothetical examples by way of general guidance about how conflicts of interest could arise. If situation arises that you are unsure about, we suggest seeking advice.

Risk mitigation steps generally:

12. Clarify the Council's conflict of interest policy in the terms of reference. At its simplest, it could do this by saying conflicts of interest will be managed according to the OAG's *Managing Conflicts: A Guide For The Public Sector*. The OAG's guide contains best practice for managing conflicts and referencing it would ensure that the Committee

understands how to identify conflicts, what to do when conflicts occur, and where to locate further information about conflicts.

13. Clarify the Council's approach to conflicts of interest in other documents such as relationship agreements with iwi authorities. Relationship agreements between iwi and local authorities sometimes reference the OAG's guide (see [Taupō District Council's Joint Management Agreement with Ngāti Tūwharetoa](#) or [Gisborne District Council's Joint Management Agreement with Ngāti Porou](#)) or contain their own protocols for handling conflicts of interest (see [West Coast Regional Council's Mana Whakahono ā Rohe Documents with Ngāti Waewae, Makaawhio and Ngāi Tahu](#)).

Risk mitigation steps at the longlist stage:

14. Select several suitable commissioners with various affiliations. This provides Council with a larger group of people from which to choose the most suitable commissioner. It also means that, if an individual is conflicted and cannot be a commissioner, there are other individuals available with relevant expertise in tikanga.
15. Develop processes to identify and manage potential conflicts when selecting commissioners, including ensuring disclosure of any potential interests that could give rise to a conflict. This could be through a register of interests, or on an ad hoc basis. Ideally, there would be a process for identifying conflicts at both the longlist stage and the appointment stage (discussed below). A register of interests may be more suitable for the longlist stage because it provides a general idea of what commissioner's interests are and more detailed interests could be obtained when considering potential appointments.
16. Consider providing training for those on the Council's list of potential commissioners to help them identify and manage conflicts. We would be happy to assist with your training needs, if the Council wished.
17. Consider adding a clause to commissioners' contracts requiring commissioners to disclose their interests and to take all practicable steps to avoid conflicts of interest. Requirements to disclose could also be included in the 'Project Brief' section of the contract as a reporting requirement. Such additions would need to cover any interests that arise before or during the hearing. We would be happy to assist with drafting such additions, if the Council wished.

Risk mitigation steps at the appointment stage:

18. Identify whether the application is likely to raise any particular matters of interest to local iwi/hapū. Particular attention might be paid where the application relates to water, wastewater, wahi tapu or significant landmarks (like mountains) or if there has been previous iwi/hapū involvement in an application. Whether an application is likely to raise matters of interest to local iwi/hapū is highly fact specific. Being alert to such applications allows the Council to carefully select a commissioner who it considers will bring relevant expertise to the hearing but would not be conflicted.
19. Develop processes to identify and manage potential conflicts when appointing commissioners to hearings. The Council should engage with commissioners to assist them in identifying any conflicts of interest at the appointment stage. The Council could ask commissioners about any financial or property interests, relevant family ties (including whakapapa) and other roles they hold (such as directorships or trustee roles).

20. If the commissioner has an interest that it considers would not amount to a conflict but may still have the potential to create a perception of a conflict, like whakapapa, we suggest that the Council inform the other members of the panel and the parties and allow them to register any objections to the appointment. The Council would need to obtain the commissioner's permission to share the information first. If anyone objects, in general it would be safest if that commissioner is not appointed. If no one objects, the commissioner may be appointed. This allows any interests to be identified and handled transparently, thereby reducing risk.
21. Appoint a commissioner who the Council is confident will give fair and proper consideration to questions of bias/conflicts.

Risk mitigation steps during the hearing:

22. In the unfortunate event that a conflict of interest arises or becomes known during a hearing, the commissioner should immediately recuse themselves. The hearing may need to be recommenced, depending on what stage it has reached and the specific conflict.
23. If an interest arises or becomes known during a hearing that does not amount to a conflict, but is relevant to the hearing, it may be acceptable for the commissioner to inform the panel and the parties and allow them to register any objections. If anyone objects, the safest course of action is likely to be for the commissioner to recuse themselves. If no one objects, the commissioner may consider continuing in their role. For instance, this solution might be appropriate if the commissioner had a whakapapa connection that they were not aware of but became aware of during the hearing.

Appendix – hypothetical examples of potential conflict of interest situations

Example one:

24. The hearing is for a water take application. One of the commissioners is a member of a hapū who is submitting against the application because they believe the water take will diminish the stream's flow, thereby affecting their own water take for their marae, and affect the mauri of the water source. The commissioner is a senior member of their hapū and is considered a leader of the marae. The commissioner has sat in on meetings where those leading the hapū submission discussed the submission and strategy for the hearing (amongst other topics).
25. We consider this would be a conflict of interest for several reasons. While one reason alone may not raise a conflict, cumulatively, they do. The relevant reasons are:
 - (a) The hearing is for an application that could directly affect the hapū with which the commissioner affiliates: the hapū submitters consider the application will affect them both culturally and in terms of resources.
 - (b) The connection is to a smaller grouping—a hapū rather than an iwi— this may mean the commissioner has more direct ties to those who are leading the hapū's submission.
 - (c) The commissioner is in a leadership role in the hapū. It could be expected that they might share the views expressed in the submission and potentially have discussed it with their hapū.
 - (d) The commissioner has been present while the submission and strategy have been discussed. While the commissioner may not have directly participated in developing the submission, perception is crucial, particularly in relation to apparent bias.

Example two:

26. The hearing is for a discharge to land application. One of the commissioners is a member of the wider iwi within whose rohe the application falls. However, the iwi is large with approximately 50,000 members and a significant rohe (in size). There are submitters on the application from the same iwi but from a different hapū to the commissioner. Further, the area to which the application applies is far outside the rohe of the commissioner's hapū. The application does not concern a shared resource for the iwi. The commissioner does not have a leadership role within the iwi.
27. We would not consider this to be a conflict of interest for the following reasons:
 - (a) Whakapapa or membership of an iwi/hapū alone is unlikely to raise conflict of interest issues. The iwi is large and therefore, the commissioner's interest is sufficiently similar to an interest in common with the general public.
 - (b) The commissioner does not hold a leadership role within the iwi. Therefore, there is not another specific role which might conflict with their role as a commissioner.
 - (c) The application has hapū submitters, however the hapū is located very far away from the commissioner's hapū's rohe and there is no indication that the

commissioner has any more involvement with the hapū than another member of the public.

28. However, it would be best practice for the commissioner to disclose their membership of the iwi so that the Council could contact the parties to see if there were any objections to appointing the commissioner. This provides greater transparency and allows parties to object before the hearing, thereby reducing any risk.

Example two, variation:

29. Assume all facts are the same as in example two, except a neighbouring iwi has submitted on the application, claiming that it is also within their rohe. Assume that the commissioner's iwi is currently in conflict with this neighbouring iwi over who has mana whenua status in that area.
30. We consider that this could be a conflict of interest because the commissioner would likely need to decide how much weight to afford each submission, which could involve some weighing of which iwi has mana whenua status. This would involve adjudicating on a matter of significant importance to the commissioner's own iwi.
31. Further, regardless of whether the commissioner can bring an open and impartial mind to the decision, other parties may not consider that the commissioner will be impartial. As noted above, perception is important in conflicts of interest.

Example three:

32. The hearing is for a discharge to air application for a poultry farm. One of the commissioners is a trustee of the trust that owns a neighbouring property. The trust is developing the property into an Airbnb/farm-stay. The trust has previously made multiple odour complaints to the Council and submitted on the application.
33. We consider that in this scenario there is likely to be a conflict of interest. The commissioner has a financial and property interest in whether or not the application is granted: If it is refused, they may have a more profitable Airbnb/farm-stay however, if it is approved, the discharges to air may affect the popularity of their business. This is a conflict.

Example four:

34. The hearing is for a water take application. One of the commissioners regularly takes eels for mahinga kai purposes.
35. We do not consider that this is a conflict of interest in and of itself. While the application might be relevant to eel habitat, and the commissioner likely supports a plentiful eel population, without any other factors being present, there is nothing to indicate that the taking of eels for mahinga kai will influence their decision as a commissioner.

Example four, variation:

36. Assume all facts are the same as in example four, except the commissioner has made several comments on social media that "any take of water from a river will be adverse on the eel habitat and the eel population and should never be granted".

37. We consider this variation would raise a conflict of interest. The commissioner has raised a firm view that is pre-determined. They are not bringing an open mind to the decision and are therefore conflicted.

Local tangata whenua Making Good Decisions qualified Hearings Commissioners

Name		Expiry Date
Hinewai Ormsby	HBRC Councillor	31 December 2022
Apiata Tapine	NCC Councillor	31 December 2023
Bonny Hatami	Ngāti Pahauwera Development Trust	31 December 2022
Brian Gregory	Tai Whenua o Tamatea	31 December 2021
Benita Wakefield	Maiora Wekepiri Consultancy	31 December 2021
Joinella Maihi-Carroll	Mana Ahuriri Trust	30 June 2023
Marei Apatu	Te Taiwhenua o Heretaunga	31 December 2022
Peter Eden	Tai Whenua o te Whanganui ā Orotū	31 December 2024
Tania Hopmans	Maungaharuru-Tangitū Trust	31 December 2022
Tania Huata-Kupa	Ngāti Pahauwera Development Trust	31 December 2022
Toro Waaka	Ngāti Pahauwera Development Trust	31 December 2024
<i>Outside the Region</i>		
Rauru Kirikiri	RK Associates Ltd	30 June 2023
Reginald Proffit	WSP	30 June 2025