

MEETING – AGENDA –

Ngā Take



REGULATORY HEARINGS COMMITTEE

Komiti Whakariterite Kōrero

RH1
Thursday, 5 December 2019
Council Chambers
Barkes Corner, Tauranga
9.00am



**Western Bay of Plenty
District Council**

Regulatory Hearings Committee

Mangai o Te Kaunihera

Quorum:

The quorum for this meeting is three members.

Role:

Subject to compliance with Council strategies, policies, plans and legislation:

- To carry out quasi-judicial decision-making on statutory and regulatory matters, and to ensure the proper exercise of statutory and regulatory functions
- To administer and determine applications relating to:
 - Animal Enforcement Notices
 - Regulatory Hearings (Building and Health)
 - Building Consent Objections
 - Stock Droving Applications
 - Bylaw Administration and enforcement
 - Notified Planning Hearings and Resource Consents
- To monitor and review the Chief Executive Officer's management of policy decisions and programmes for which the Committee is responsible under delegated authority
- To make decisions on matters not delegated to the Chief Executive Officer
- To exercise all decision-making powers of Council within the Committee's delegated functions and in accordance with its role and to monitor performance of the delegated functions
- To monitor matters relating to consents functions as decided under delegated authority and make decisions on matters not delegated

Pursuant to the Resource Management Act 1991 to receive reports on appeals to the Environment Court on Committee or Commissioner decisions made in relation to Resource Management Act matters and to provide guidance to staff authorised to negotiate and settle appeals on Council's behalf

Chairperson Delegations:

- Pursuant to the Resource Management Act 1991 should there be insufficient time for staff to consult with the Committee on appeals to the Environment Court (in relation to decisions from the Regulatory Hearings Committee or Independent Commissioner decisions), the authority to provide guidance be delegated to the relevant Independent Chairperson with a report back to the Committee at the next scheduled meeting.
- The power to appoint hearings panels of appropriately qualified members and/or Independent Hearings Commissioners to hear and decide on specific applications should there be insufficient time for the Committee to meet to establish a Hearings Panel provided there be a report back to the Committee at the next scheduled meeting.
- Pursuant to the provisions of the Sale and Supply of Alcohol Act 2012 the power

to appoint from the District Licensing Committee list of members a quorum of appropriately qualified members to hear and decide on specific applications.

General Delegations:

All delegated decision-making powers in respect to the following functions:

- a) Resource Management
 - Decisions on subdivisions and other non-notified applications for discretionary or non-complying activities recommended for refusal or otherwise referred to the Committee by the Group Manager Policy, Planning and Regulatory Services
 - Hearings of and decisions on notified applications to which there have been objections
 - Conditions of approval, extensions
 - Changes or cancellation of consent
 - Conditions of surrender of consents
 - Hearings of and decisions on objections to decisions and conditions of resource consents in relation to applications decided under staff delegated authority
 - Hearings of and decisions on notices of requirement
- b) Animal Enforcement Notices, including:
 - Objection to classification as probationary owner
 - Objection to disqualification
 - Objection to classification as a dangerous dog
 - Objection to abatement notice – barking dogs
 - Application for return of dog
 - Application for release of dog retained for threatening public safety
- c) Stock Droving and Speed Restriction Applications under the relevant bylaws
- d) Regulatory Hearings (Building and Health)

Joint Hearings

- The power to conduct Joint Hearings with other local authorities where considered necessary in accordance with the provisions of the First Schedule of the Resource Management Act and as mutually approved by Council and the relevant other authority(ies).
- The power to appoint members and/or Commissioners to Joint Hearings Committees.
- Subject to the provisions of the Act Joint Hearings within the Western Bay of Plenty District shall be conducted in accordance with operational protocols and procedures approved by the Regulatory Hearings Committee from time to time.

Hearings

The power to appoint hearings panels of appropriately qualified members and/or Independent Hearings Commissioners to Chair, hear, and decide on all Resource Consent applications.

Other

The Committee may delegate any of its functions, duties or powers to a subcommittee or joint committee subject to the restrictions on its delegations and provided that any sub delegation to subcommittees or joint committees includes a statement of purpose and specification of task.

The Committee may, without confirmation by Council, exercise or perform any function, power or duty in like manner, and with the same effect, as the Council could itself have exercised or performed them.

Notice is hereby given that a Regulatory Hearings Committee Meeting will be held in the Council Chambers, Barks Corner, Tauranga on:
Thursday, 5 December 2019 at 9.00am

Order Of Business

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- 1 PRESENT**
- 2 IN ATTENDANCE**
- 3 APOLOGIES**
- 4 DECLARATIONS OF INTEREST**
- 5 PUBLIC EXCLUDED ITEMS**
- 6 HEARINGS**

7 REPORTS

7.1 APPOINTMENT OF INDEPENDENT HEARINGS COMMISSIONER - DECEMBER 2019

File Number: A3629869

Author: Chris Watt, Environmental Consents Manager

Authoriser: Rachael Davie, Group Manager Policy Planning And Regulatory

EXECUTIVE SUMMARY

This Committee is asked to approve the appointment of an Independent Hearings Commissioner to consider and determine an Objection under s.357 of the Resource Management Act 1991.

RECOMMENDATION

1. That the Environmental Consent Manager's report dated 18 November 2019 and titled Appointment of Independent Hearings Commissioner – December 2019 be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That the Regulatory Hearings Committee appoints the following Independent Hearings Commissioner to consider and determine the Objection for RC11665V01L at 707 Pukehina Parade, Pukehina Beach:
 - Commissioner Russell De Luca.

BACKGROUND

Council staff have received an objection to a consent condition under section 357A of the Resource Management Act. The applicant who has submitted the objection has requested a hearings commissioner who is not a member of the consent authority determine the objection in accordance with section 357AB of the Act. Section 357AB provides:

357AB Objection under section 357A(1)(f) or (g) may be considered by hearings commissioner

- (1) An applicant for a resource consent who has a right of objection under section 357A(1)(f) or (g) (as applied by section 357A(2) to (5)) may, when making the objection, request that the objection be considered by a hearings commissioner.*
- (2) If a consent authority receives a request under this section, the authority must, under section 34A(1), delegate its functions, powers, and duties under sections 357C and 357D to 1 or more hearings commissioners who are not members of the consent authority.*

Staff have confirmed with Mr Russell De Luca his availability to consider and determine the application as an independent hearings commissioner.

Following appointment of the commissioner, staff will undertake the necessary engagement and provision of application material for their consideration.

Details of the application are included below:

1. Applicant: Eddie Goldsmith
 Location: 707 Pukehina Parade, Pukehina Beach
 Application: RC11665V01L: Objection to RC11665L Application being returned under s.88(3) Resource Management Act 1991.
 Application Process: S.357A Resource Management Act 1991: "Right of objection to consent authority against certain decisions or requirements".
 Reporting Planner: Anna Price, Senior Consents Planner, WBOPDC
 Commissioner: Mr Russell De Luca.

SIGNIFICANCE AND ENGAGEMENT

The Local Government Act 2002 requires a formal assessment of the significance of matters and decisions in this report against Council's Significance and Engagement Policy. In making this formal assessment there is no intention to assess the importance of this item to individuals, groups, or agencies within the community beyond the statutory process under the Resource Management Act 1991.

The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.

ENGAGEMENT, CONSULTATION AND COMMUNICATION

There is no requirement for an engagement or communication plan as the Resource Management Act prescribes the process for considering an objection to a condition.

ISSUES AND OPTIONS ASSESSMENT

THAT the Regulatory Hearings Committee appoint Independent Hearings Commissioner(s) as per the above resolution.	
Reasons why no options are available	Legislative or other reference
The applicant has a statutory right to request that the objection be heard and determined by a hearings commissioner that is not a member of the consent authority.	Council's "Appointment of Independent Commissioners" Policy at Section 4.1: Conflict of Interest. Where Council has a material conflict of interest as applicant, submitter or land-owner, or circumstances may create a perception of bias (eg: involving a claim, or legal action). In accordance with s.357AB of the Resource Management Act 1991

STATUTORY COMPLIANCE

The Objection has been received and processed in accordance with the statutory processes under the Resource Management Act 1991.

FUNDING/BUDGET IMPLICATIONS

Budget Funding Information	Relevant Detail
Independent Hearings Commissioner Charges	In accordance with Section 6.1 of the Independent Hearings Commissioners Policy: <i>“The costs of an Independent Hearings Commissioner, as negotiated at the time of appointment, will be funded by the applicant in accordance with Council’s schedule of Fees and Charges”.</i>