

MEETING — AGENDA —

Ngā Take

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REGULATORY HEARINGS COMMITTEE

Komiti Whakariterite Kōrero



RH16
Wednesday, 27 February 2019
Council Chambers
Barkes Corner, Tauranga
9.30am

Notice of Meeting No RH16 Te Karere

Regulatory Hearings Committee Komiti Whakariterite Korero

Wednesday, 27 February 2019
Council Chambers
Barkes Corner
9.30am

His Worship the Mayor:
Councillors:

G J Webber (Chairperson)
M Dean
P Mackay
D Marshall
M Murray-Benge
J Scrimgeour
M Williams

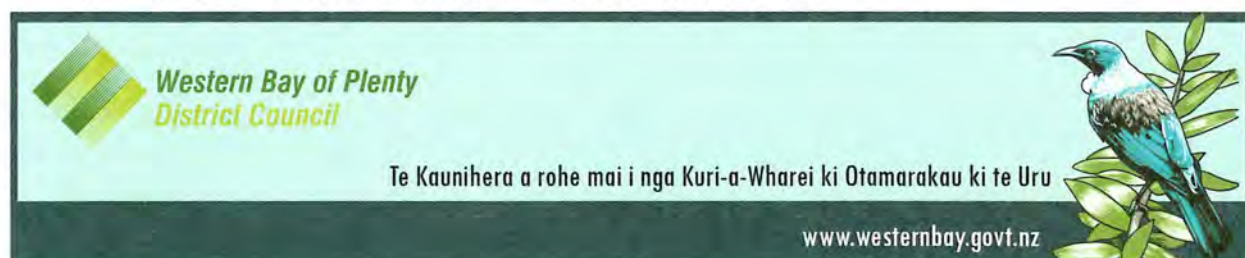
Media
Staff

Miriam Taris
Chief Executive Officer
Western Bay of Plenty District Council

Agenda approved for distribution:



Rachael Davie
Group Manager Policy, Planning and Regulatory Services



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.

Hearing Panels

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.

Agenda for Meeting No. RH16

Pages

**Present
In Attendance
Apologies**

RH16.1

**Appointment of Independent Hearings Commissioners - 6-12
February 2019**

Attached is a report from the Environmental Consents Manager dated 13 February 2019.

Western Bay of Plenty District Council

Regulatory Hearings Committee

Appointment of Independent Hearings Commissioners – February 2019

Purpose

This report seeks from the Regulatory Hearings Committee, the appointment of Independent Hearings Commissioners individually, sitting as a panel or with Council's Regulatory Hearings Committee members, to consider and determine a number of resource consent applications.

Recommendation

- 1. THAT the Environmental Consent Manager's report dated 13 February 2019 and titled "Appointment of Independent Hearings Commissioners – February 2019" be received.***
- 2. THAT the report relates to issues that are 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 Commissioners as a panel to consider and determine the resource (subdivision) consent RC11154S by Group 7 Limited at Pukehina Beach Road, Pukehina.***

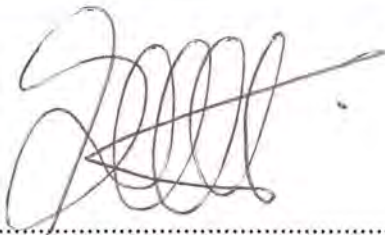
Commissioner Alan Withy (Chairperson)
Commissioner Antoine Coffin
Commissioner Richard Bax

- 4. THAT the Regulatory Hearings Committee appoints the following Independent Hearings Commissioner as Chairperson with a panel of Regulatory Hearings Committee members to consider and determine the resource (Land Use) consent RC11138L at 87 Old Highway, Pahoia.***

Commissioner William Wasley (Chairperson)
Councillors sitting as Regulatory Hearings Committee

- 5. THAT the Regulatory Hearings Committee appoints the following Independent Hearings Commissioner as Chairperson with a panel of Regulatory Hearings Committee members to consider and determine the resource (Land Use) consent RC11185L at 197 Reid Road, Papamoa.**

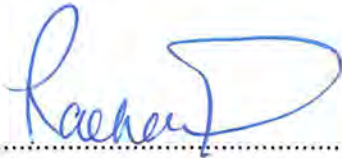
**Commissioner Russell De Luca (Chairperson)
Councillors sitting as Regulatory Hearings Committee**



.....
Chris Watt

Environmental Consents Manager

Approved for release to the Regulatory Hearings Committee



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Rachael Davie

Group Manager – Policy, Planning & Regulatory Services

1. Background

On 19 May 2016 the Council's Policy & Strategy Committee set in place a new Policy for the Appointment of Independent Hearings Commissioners. This replaced the earlier 2007 policy C1.13. Since this Policy was set, Council have appointed thirteen Independent Hearings Commissioners to the register.

On 20 October 2017, Council's Policy Committee adopted the "*Final Amended Policy - Appointment of Independent Hearings Commissioners Policy - 20 October 2017*".

In accordance with Section 4.1 of the Policy it may be necessary to appoint Independent Hearings Commissioners as the resource consent applications requiring consideration and decision making have been submitted by the Western Bay of Plenty District Council as applicant; or there is a benefit to Council arising from the decision if consent is granted. Against the latter application type, an appointment of an Independent Commissioner removes any potential for challenge on the basis of 'conflict of interest'.

In the matters that follow, it is necessary to appoint a chairperson to each hearing; the reason being that His Worship the Mayor, Garry Webber, Council's only accredited chairperson is no longer sitting on the Regulatory Hearings Committee. To that end it is necessary to appoint an Independent Hearings Commissioner as Chairperson with the following matters heard in conjunction with the Council's Regulatory Hearings Committee members, individually or with other Independent Hearings Commissioners as a panel.

Staff have confirmed with the following Independent Hearings Commissioners their availability.

1. Applicant:

Group 7 Limited

Location:

Pukehina Beach Road, Pukehina Beach

Application:

RC11154S: "Eco Village" for 137 lots on 139ha of Rural zoned land. Comprehensive site works, wetlands and storm-water management.

We note that 59 of the 222 submitters requested under Section 100A of the Resource Management Act 1991 (Hearing by Commissioner if requested by applicant or submitter) that Council delegates their functions, powers, and duties to hear and decide the application to one or more hearings commissioners who are not members of the local authority. Of these 222 submissions, 47 have said they wish to be heard. The applicant agrees that Commissioner(s) should be appointed as sought by submitters (including one with an engineering background). Their view is that this will ensure that technical engineering matters can be fully canvassed and understood. In addition they noted that appointing independent

Commissioners to hear and decide the application (quote) "*will remove any risk of actual or perceived bias in relation to decision making (as we understand some Councillors may have been contacted by various parties in relation to the proposal)*".

Application Process: Subdivision Consent. Full Public Notification
Reporting Planner: Rochelle Friend, Senior Consents Planner, Western Bay of Plenty District Council
Commissioners: Mr Alan Withy (Chairperson)
Mr Antoine Coffin
Mr Richard Bax (Engineering Commissioner).

2. Applicant: Flying Mile Trust (Dan McGovern)

Location: 87 Old Highway, Pahoia
Application: RC11138L: Place of Assembly for use as a function venue for up to 150 persons.
One submitter in opposition.
Application Process: Land Use Consent. Limited Notification
Reporting Planner: Anna Price, Senior Consents Planner, Western Bay of Plenty District Council
Commissioner: Mr William Wasley (Chairperson)
Certified Councillors sitting as the Regulatory Hearings Committee panel.

3. Applicant: Rush Valley Limited

Location: 197 Reid Road, Papamoa
Application: RC11185L: Land consent for a place of assembly for adventure park activities and facilities with car-parking and height matters.
Application Process: Land Use Consent. Limited Notification. A number of submissions received from persons not considered affected.
Reporting Planner: Harrison Grierson Consultants on behalf of WBOPDC
Commissioner: Mr Russell De Luca (Chair)
Certified Councillors sitting as the Regulatory Hearings Committee panel.
NOTE: As of 12 February 2019, the applicant has formally requested the Council place the matter on-hold pursuant to Section 91A of the Resource Management Act. They envisage advising Council by mid-April whether they will proceed or withdraw the application. In the meantime it remains efficient to prepare and appoint the Chair/ panel at this time and hold in abeyance.

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

In order to keep the Regulatory Hearings Committee apprised of other applications in the Limited Notification/ Notification space, I advise as follows:

- 1. Applicant:** **394 Te Puke Quarry Road (John & Warren Dohnt)**

Location: 394 Te Puke Quarry Road, Te Puke

Application: RC11120S: Thirty two lifestyle lots over four stages; creating 27 additional lots overall with roads and reserves to vest along with 5 local purpose allotments (walkways)

No submitters in opposition. Limited notification to one person who did not submit within statutory time. Submission was a number of days late and has no standing.

Application Process Subdivision Consent. Limited Notification

Reporting Planner: James Danby, IPlan Consultants on behalf of WBOPDC

Commissioner: Not applicable. Subdivision Consent can be determined under delegated authority by the Environmental Consents Manager

- 2. Applicant:** **Western Bay of Plenty District Council**

Location: Two-Mile Creek, Waihi Beach

Application: RC10347L: Culverting of Two-Mile Creek, Waihi Beach

One submitter in opposition.

Application Process Land Use Consent. Limited Notification

Reporting Planner: James Danby, IPlan Consultants on behalf of WBOPDC

Commissioner: Alan Withy as Independent Hearings Commissioner sitting alone. Mr Withy is already appointed and the applicant and agent (Tonkin & Taylor) have asked us to set the hearing date.

2. 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.

3. Engagement, Consultation and Communication

There is no requirement for an engagement or communication plan.

The resource consent applications are bound by its own statutory process under the Resource Management Act 1991 which has its own statutory requirement on engagement through 'affected persons' assessment and subsequent public or limited notification processes (if required).

4. 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
<p>In accordance with the Policy, as the applications are made by Western Bay of Plenty District Council; or, there is an outcome from the application that benefits the Western Bay of Plenty District Council, the appointment of Independent Hearings Commissioner(s) are sought to consider and determine the resource consent applications.</p>	<p>Council's "Appointment of Independent Commissioners" Policy at Section 4.1: Conflict of Interest:</p> <p>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).</p>

5. Statutory Compliance

The resource consent applications have been received and processed in accordance with the statutory processes under the Resource Management Act 1991.

6. 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>