

Appointment of Independent Hearings Commissioners

Relevant Legislation

Resource Management Act 1991

Local Government Act 2002

1 Policy Objective

- 1.1 To provide a clear process for the establishment and review of a register of no more than 12 accredited *Independent Hearings Commissioners* representing a range of relevant skills, experience and expertise.
- 1.2 To provide a clear process for the use and *selection* of accredited *Independent Hearing Commissioners* to undertake decision making functions on behalf of Council under the Resource Management Act 1991.
- 1.3 To describe the circumstances for *selection* of an *Independent Hearing Commissioner*.

2 Definitions

Accredited means to hold a qualification approved and notified under section 39A, 39B and 39C of the Resource Management Act 1991.

Independent Hearings Commissioner means an *accredited* person who is not an elected member, nor an employee of Western Bay of Plenty District Council who has been appointed by the Council to be a hearings commissioner to conduct hearings and who has been authorised to either make decisions on behalf of, or recommendations to, Council.

Recruitment means the process of advertising for, interviewing and recommending *Independent Hearings Commissioners* to Council for appointment onto the Register.

Register means a register of those persons who have been appointed and authorised by resolution of Council to be *Independent Hearings Commissioners* available for selection.

Relevant GM means the Group Manager responsible for Resource Management Act 1991 plan development and consenting.

Relevant Iwi Authorities means (for the purposes of this policy) those identified by Council on the basis of interests described in current Iwi and Hapū Management Plans, Mana Whakahono A Rohe and/or settlement deeds, and for any plan making matter under Part 1 or 5 of Schedule 1 of the Resource Management Act 1991 that may impact on that iwi or hapū's rohe.

Selection means the selection of an appropriate *Independent Hearings Commissioner* from the *register* to hear and/or hear and determine a specific matter on behalf of Council.

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3 Recruitment of Independent Hearing Commissioners

3.1 Council will maintain a *register* of no more than 12 accredited *Independent Hearing Commissioners* and will review the *register* at least once every three years.

Advertising and Recruitment

3.2 The *Relevant GM* will publically advertise the review of the *register* (in newspapers, online and by any other appropriate media) and seek expressions of interest.

3.3 Shortlisting and interviewing of candidates who submit an expression of interest will be undertaken by a selection panel comprised of the following:

- The Relevant GM;
- Environmental Consents Manager; and
- Resource Management Manager.

3.4 The *Independent Hearings Commissioners* recommended for appointment onto the *register* will be reported to Council by the *Relevant GM* for authorisation.

3.5 Appointment to the *register* will be confirmed in writing by the *Relevant GM* on behalf of Council.

Knowledge and Experience Sought

3.6 All those seeking to be appointed to the *register* must meet the accreditation requirements outlined in the Resource Management Act 1991. Successful completion of the Ministry for the Environment's 'Making Good Decisions' programme is an accepted qualification for accreditation.

3.7 Candidates must demonstrate knowledge and experience of hearings processes and of the roles and responsibilities of a consent authority under the Resource Management Act 1991.

3.8 In addition, candidates will need to demonstrate specific expertise in an area such as:

- Planning, resource management and heritage protection
- Architecture, engineering, surveying, traffic and noise
- Treaty of Waitangi, tikanga Māori, Te Ao Māori, perspectives of local iwi or hapū
- Law, local government and community affairs
- Environmental science (including physical and social sciences)
- Landscape and urban design

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4 Use of Independent Hearing Commissioner(s)

- 4.1 The Regulatory Hearings Committee / District Plan Committee may determine that *Independent Hearings Commissioner(s)* should be used, due to one or more the following circumstances occurring:

Circumstance	Explanation
Requests from applicants or submitters	In accordance with Section 100A of the Resource Management Act 1991, the applicant or submitter to a notified application is entitled to request that one or more <i>Independent Hearings Commissioners</i> hear, decide and/or recommend the application.
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 (e.g. involving a claim, or legal action).
Timeframe constraint	Where there is a request from an applicant due to a Regulatory or District Plan Committee meeting not being available in sufficient time and/or; where the Regulatory or District Plan Committee may be committed to a hearing process for a long period due to a large number of submitters.
Complex technical, legal or cultural issues	Where specialist knowledge and experience is necessary to assist with consideration of submissions and evidence.
Other	Requests by the Chair of the Regulatory Hearings Committee, District Plan Committee (or other relevant committee) or as required by legislation other than the Resource Management Act 1991.

- 4.2 Dependent on the level of community interest, scope, complexity and technical issues associated with the matter to be heard, the Regulatory Hearings Committee / District Plan Committee may appoint an *Independent Hearings Commissioner* (sitting alone or alongside the Committee), or a panel of three *Independent Hearings Commissioners*. An *Independent Hearings Commissioner* can be appointed as either the Chair or a member of the hearings panel.
- 4.3 In determining the composition of any hearings panel (or appointment of an individual *Independent Hearings Commissioner*), consultation must be undertaken through *Relevant Iwi Authorities* to determine whether it is appropriate to appoint an *Independent Hearings Commissioner* with an understanding of tikanga Māori and of the perspectives of local iwi or hapū.

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- 4.4 For hearings requiring specific technical expertise, and where such expertise is beyond that held by any of the *Independent Hearings Commissioners* on the *register*, the District Plan Committee / Regulatory Hearings Committee may direct the *Relevant GM* to source the necessary expertise from any other person provided that they are appropriately accredited to act as an *Independent Hearings Commissioner* and have the specific technical expertise required for that hearing.
- 4.5 Prior to *selection*, the Regulatory Hearings Committee / District Plan Committee will consider a recommendatory report from the *Relevant GM*, and confirm by resolution:
- The number of Independent Hearings Commissioners to be appointed;
 - The outcome of consultation with *Relevant Iwi Authorities* (as set out in section 4.3 of this policy);
 - Whether any other person (aside from the those on the register) is to be appointed to provide specific technical expertise;
 - How the Chair of a panel will be determined (where applicable);
 - The delegations that apply, being either to:
 - Hear and determine the resource consent application;
 - Sit with the Regulatory Hearings Committee to hear and determine the resource consent application;
 - Hear the District Plan change application and make a recommendation to the District Plan Committee; or
 - Sit with the District Plan Committee to hear and determine the District Plan change application.

5 Selection of Independent Hearings Commissioner(s)

- 5.1 The *selection* of appropriate *Independent Hearings Commissioners* from the *register* will be approved in all cases by the *Relevant GM* under direction by way of resolution from the Regulatory Hearings Committee / District Plan Committee.
- 5.2 The *Relevant GM* will confirm *selection* of *Independent Hearings Commissioners* in writing, specifying:
- The matters resolved by the Regulatory Hearings Committee / District Plan Committee (as set out in clause 4.4); and
 - Details of the anticipated time, date and location of the hearing.

6 Payment of Independent Hearings Commissioner(s)

- 6.1 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.

Council Policy

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Associated Policies

Conflict of Interest Policy

Group	Policy, Planning and Regulatory Services	Contact (3rd Tier Manager)	Policy and Planning Manager
Supersedes	Resolution C1.13–22.11.07		
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