

# Appointment of Hearing Commissioners Policy



## Appointment of Hearing Commissioners Policy

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## 1. Background

- 1.1 Both the Resource Consents and District Planning Teams require the appointment of external independent hearings commissioners from time to time to hold hearings on individual resource consent applications; plan changes (including private plan changes); and any reviews to the district plan. They may also be appointed to make other decisions under the Resource Management Act 1991 (RMA) relating to resource consent applications including but not limited to notification and non-notification decisions, to determine non-notified applications and to decide on objections in relation to resource consent applications (Resource Consent Determinations). In many cases these teams may only require one commissioner to be appointed, however usually more than one commissioner is required for Council processes.
- 1.2 This policy outlines:
- how Kaipara District Council (the Council) will appoint External Hearings Commissioners under the Resource Management Act 1991 (RMA) and delegate to them, the functions, powers and duties under section 34A(1) of the RMA to decide on RMA matters or hear and decide RMA hearing matters also having regard to section 34A(1A) of the RMA referring to tikanga Māori knowledge.
  - how Council will appoint appropriately accredited elected members to act as Council Hearing Commissioners alongside External Hearing Commissioners.
- 1.3 Hearing Commissioners are required to provide sound advice and make sound decisions, following robust practice, without any conflicts of interest or bias. The processes outlined in this Policy are designed to support Hearing Commissioners to achieve this.
- 1.4 While this policy outlines the process to be followed in appointing accredited hearing commissioners, nothing in this policy will restrict the ability of Council to appoint accredited hearing commissioners to a hearing on a needs basis.

## 2. Objectives

- 2.1 Provide guidance, transparency and consistency on:
- recruitment of External Hearing Commissioners to the Council's External Hearing Commissioners List.
  - the process for selecting and appointing External Hearing Commissioners to a hearing/hearing panel.
  - elected members serving as Council Hearing Commissioners.
- 2.2 Ensure hearings involving Hearing Commissioners comply with legislation and the principles of fairness and natural justice.
- 2.3 Ensure appropriate expertise is available and that Commissioners have an understanding of local issues and context.

### 3. Definitions

3.1 In this policy, the following terms and phrases shall have these meanings:

**Appointment** means the formal process by which the Council appoints individuals to serve as Hearing Commissioners on behalf of the Council under this Policy.

**Authorisation** means the formal process by which the Council delegates specific authority to individuals to undertake RMA functions of Hearing Commissioners on Council's behalf.

**Council**, unless stated otherwise, means the Kaipara District Council.

**External Hearing Commissioner** means a person who is not an elected member, nor an employee of the Council, who has been appointed by the elected Council to make Resource Consent Determinations, be a Hearing Commissioner to conduct hearings and/or who has been authorised to either make decisions on behalf of, or recommendations to, the elected Council.

**External Hearing Commissioner List** ('the List') means a list of those persons who have been appointed and authorised by resolution of the elected Council to be External Hearing Commissioners.

**Council Hearing Commissioner** means an elected member of the Council, who has been appointed by the elected Council to be a Hearing Commissioner to conduct hearings, who is appropriately accredited and who has been authorised to either make decisions on behalf of, or recommendations to, the elected Council.

**Recruitment** means the process of advertising for, interviewing and recommending External Hearing Commissioners to the elected Council for appointment to the External Hearing Commissioner list.

**Selection** means the selection of an appropriate External Hearing Commissioner from the External Hearing Commissioner List or a Council Hearing Commissioner to hear a specific matter on behalf of the elected Council.

*NB: All statutory references are references to the Resource Management Act 1991 unless stated otherwise.*

### 4. External Hearing Commissioners List

- 4.1 Council will maintain a list of External Hearing Commissioners who collectively have the range of skills needed for future hearings. There is no set number of External Hearing Commissioners that can be included on the List.
- 4.2 Council must review this list at least every three years, following the triennial local body elections, or as required if the number of commissioners drops below the minimum number required or if there are any specialist skills required that are not available on the existing list.
- 4.3 Council will advertise for applications from External Hearing Commissioners to be on the List every three years, or as required.

- 4.4 Applicants should complete the Standardised Commissioner Curriculum Vitae (Appendix 1) which may be accompanied by a full curriculum vitae and such other supporting information as the applicant desires.
- 4.5 Skilled persons sought will generally have some legal, planning, community, political, scientific, technical, landscape, heritage, ecological, urban design, engineering, or tikanga knowledge and experience. Their previous work should demonstrate sound unbiased decision-making, effective report writing, and analytical skills and demonstrate their process of thought (i.e. how and why the decision was reached).

## 5. Hearing Panel Members

- 5.1 Final approval and inclusion on the list of selected External Commissioners will be based on the following attributes:
- 5.1.a Mandatory Pass or Fail
- i. Must be accredited by the Ministry for the Environment as a Commissioner with evidence provided and not due to expire.
  - ii. Must accept all terms and conditions of the Council contract provided.
  - iii. Applicants must provide written acceptance of proposed charge-out rates.
- 5.1.b Relevant skills – 40% ranking
- i. Ability and experience to work efficiently and effectively on a hearing panel.
  - ii. Demonstrates a personable, but professional approach to being a member of the Hearing Panel and ensuring lay people understand the process.
  - iii. Ability to assess information and facts, with a working knowledge of the RMA.
  - iv. Sufficient cultural, legal, planning or technical background and wide experience across a range of matters anticipated to arise in future hearings e.g. tikanga Māori, coastal development, engineering, landscape architecture, highly productive soils, and freshwater issues.
- 5.1.c Relevant experience - 40% ranking
- i. Ability to assess information, with a working knowledge of the RMA.
  - ii. Have been involved in projects with successful outcomes over the last five years.
  - iii. Sound references.
  - iv. Demonstrate other relevant life experience e.g. experience operating a local business, developing properties, or managing a farming operation.
- 5.1.d Local knowledge and proximity - 20% ranking
- i. Local knowledge particularly knowledge of local and regional strategic documents e.g. District Plan, Spatial Plan, and Regional Policy Statement (RPS).
  - ii. Proximity to Kaipara District in relation to accessibility and minimising travel costs/disbursement.

## 6. Hearing Panel Chairs

- 6.1 Hearing Commissioners who are endorsed as Chair by the Ministry for the Environment are required in order to convene a hearing.
- 6.2 Where the hearing panel consists of an even number of members, the Chair shall have a casting vote.
- 6.3 Final approval and listing of Chairs will be based on the following attributes:
  - 6.3.a Mandatory pass or fail
    - i. Must be accredited by the Ministry for the Environment as an RMA Commissioner with evidence provided of Chair endorsement and not due to expire.
    - ii. Must accept all terms and conditions of the KDC contract provided.
    - iii. Applicants must provide written acceptance of proposed charge-out rates.
  - 6.3.b Report writing skills - 20% ranking
    - i. Proven ability to write good reports including effective analysis, demonstration of process of thought and clear written decisions.
  - 6.3.c Relevant skills - 30% ranking
    - i. Ability and experience to work efficiently and effectively when chairing a Hearing Panel or as a sole Commissioner.
    - ii. Demonstrates a personable, but professional approach to chairing a Hearing Panel and ensuring lay people understand the process.
    - iii. Ability to assess information and facts, with a working knowledge of the RMA.
    - iv. Sufficient cultural, legal, planning or technical background and wide experience across a range of matters anticipated to arise in future hearings e.g. tikanga Māori, coastal development, engineering, landscape architecture, highly productive soils, freshwater issues.
  - 6.3.d Relevant experience - 30% ranking
    - i. Experience in assessing information, with a working knowledge of the RMA.
    - ii. Have been involved in projects with successful outcomes over last five years, as a Commissioner and/or as a Chair.
    - iii. Sound references.
    - iv. Demonstrate other relevant life experience e.g. experience operating a local business, developing properties or managing a farming operation.
  - 6.3.e Local knowledge - 20% ranking
    - i. Local knowledge particularly knowledge of local and regional strategic documents e.g. District Plan, Spatial Plan and Regional Policy Statement (RPS).
    - ii. Proximity to Kaipara District in relation to accessibility and minimising travel costs/disbursements.

- 6.4 All applicants who demonstrate that they have the above attributes will be put forward to a Council meeting for a resolution that they be approved and included on the List. This resolution appointing Hearing Panel Chairs to the List will include conferring on them the necessary delegations under the RMA e.g. sections [34A\(1\)](#), [37](#), [41](#), [41A](#), [41B](#), [41C](#), [41D](#), [42](#), [99](#) and [99A](#). Once approved by Council, final contracts will be issued to the successful External Hearing Panel Chairs.
- 6.5 Council Hearing Commissioners List (Elected Members) The Council will maintain a list of current elected members who are accredited to serve as Council Hearing Commissioners. The Council will review this list every three years, following the triennial local body elections, or as required. Training will be offered to elected members who are interested in becoming Hearing Commissioners at the beginning of their term. On the successful completion of the Ministry for the Environment Making Good Decisions training programme, the elected member is be included on the list as a Council Hearing Commissioner.

## 7. Council Hearing Commissioners List (Elected Members)

- 7.1 The Council will maintain a list of current elected members who are accredited to serve as Council Hearing Commissioners. The Council will review this list every three years, following the triennial local body elections, or as required. Training will be offered to elected members who are interested in becoming Hearing Commissioners at the beginning of their term. On the successful completion of the Ministry for the Environment Making Good Decisions training programme, the elected member is included on the list as a Council Hearing Commissioner.

## 8. Delegations and Approval

This policy is predicated on the following delegations:

### 8.1 Resource Consent Hearings and other determinations

- 8.1.a For resource consent hearings and other Resource Consent Determinations, authority is delegated to the Mayor and Chief Executive Officer (jointly) to decide appointments and the composition of hearing panels in accordance with the process set out in the policy. However, for resource consent hearings where a panel is appointed, and Council hearings commissioners are available, at least one will be appointed to the hearing panel.
- 8.1.b In exercising the delegation staff will provide Council with a quarterly summary of hearing commissioners appointed to consent hearings.

### 8.2 Proposed Plan/ Plan Change Hearings

- 8.2.a For proposed plan and plan change hearings, recommendations will be made using the process set out in the policy, however the final decision on panel composition will be made by Council resolution.

### 8.3 Appointment of External Hearings Commissioners to a Hearings Panel



- 8.3.a When recommending the appointment of External Hearing Commissioners to hear an application, appeal, plan change etc., or make a Resource Consent Determination staff will apply the following selection criteria:
- i. for technical/ special hearings, the expertise (specialist subject knowledge, skills, or experience of the Commissioner(s) in relation to likely issues to be heard and good decision-making;
  - ii. the availability of Commissioners and minimising travel/ disbursement costs.
- 8.4 Secondary to the above two criteria, the workload of hearings will be shared amongst the Commissioners. Commissioners will be listed alphabetically (by surname). Once selected and used Commissioners will drop to the bottom of the selection list unless overridden by the other criteria.
- 8.5 Appointed Commissioners will be expected to identify and declare any actual or perceived conflicts of interest. A declaration to that effect will be signed as a condition of engagement. All External Hearing Commissioners must confirm, as part of their engagement agreement, that they will comply with the direction set out in the Chief Executive's memorandum to all staff, consultants and contractors dated 8 June 2023.
- 8.6 Council reserves the right to appoint External Hearing Commissioners who are not on Council's List to a hearing panel on a case-by-case basis. This will typically only be done for hearings where the necessary subject knowledge to hear an application cannot be sourced from the List. In such cases, the appointment and delegation must be approved by Council resolution.
- 8.7 The External Hearing Commissioners appointed to any given hearing panel or to make a Resource Consent Determination and the process used to appoint them shall be disclosed to the public and communicated to the applicant.
- 8.8 Council staff will record when an External Hearing Commissioner is used, including what knowledge was required, the shortlist and why selected. This information will be made readily available upon request.
- 8.9 Ideally at least one of the hearing panel Commissioners will have an understanding of tikanga Māori.

## **9. Appointment of Council Hearing Commissioners to a Hearings Panel (Elected Members)**

- 9.1 Suitably qualified elected members of the Council may be appointed to serve as Council Hearing Commissioners provided they:
- 9.1.a fulfil the accreditation requirements of the RMA by holding a current Ministry for the Environment certificate under the Making Good Decisions programme;
  - 9.1.b do not have any actual or perceived conflict of interest or potential bias;
  - 9.1.c are able to take on the workload involved; and
  - 9.1.d can be available as required for the duration of the hearing and any workload associated with supporting the Chair to write the decisions report.

- 9.2 Qualified Council Hearing Commissioners will be contacted in alphabetical order, to confirm their availability for a hearing. In the event that the first person refuses, staff will check the availability of the next person and so forth in order, until the required number of Council Hearing Commissioners is selected.
- 9.3 If selection is required for another hearing panel, the listing order will start from where it finished for the previous selection process (i.e. the person who accepted the position last time shall be the last to be offered the position next time) so that an equal opportunity is afforded to all.
- 9.4 Appointment of a Council Hearing Commissioner to a plan change or private plan change the hearing panel shall be by Council resolution, with that resolution to include the necessary delegations under the RMA.

## **10. Appointment of a Council Hearing Commissioner to chair a Hearing Panel**

- 10.1 Suitably qualified elected members of the Council may be appointed to serve as Hearing Panel Chairs provided they:
  - 10.1.a fulfil the accreditation requirements of the RMA by holding a current Ministry for the Environment certificate under the Making Good Decisions programme with a chair's endorsement; and
  - 10.1.b do not have any actual or perceived conflict of interest or potential bias; and
  - 10.1.c are able to take on the workload involved with being a chair; and
  - 10.1.d can be available as required for the duration of the hearing and any workload associated to co-ordinate the writing of the decisions report.

## **11. Disputes over Appointments**

- 11.1 Where any person wishes to dispute one or more appointments under 4.6, 4.7, and 4.8 to the hearing panel, the matter shall be referred to the Chief Executive Officer of the Council for resolution.

## **12. External Hearing Commissioner Remuneration to be Standardised**

- 12.1 External Hearing Commissioners' remuneration shall be standardised and will be reviewed not less than every three years.
- 12.2 All External Hearing Commissioners must agree to these standard rates as part of their contract when being appointed to the List. Disbursements such as travel and accommodation expenses shall be negotiated individually.
- 12.3 In such cases that External Hearing Commissioners with special skills are required and are not available through the List, Council shall engage and remunerate such Commissioners at a rate agreed between Council and that Commissioner. In the event that the agreed rate is higher than the standard rates, the agreed rate must be approved by Council's Chief Executive Officer.
- 12.4 Remuneration for Council Hearing Commissioners is set by the current Local Government Members Determination.

### 13. External Hearing Commissioners on non-RMA Hearing Panels

- 13.1 Beyond the RMA, there are numerous situations within local government which require consultation and the presenting of submissions to a hearing e.g. Bylaws, Reserve Management Plans and the Long Term Plan.
- 13.2 These hearings may be heard by the full elected Council or by a hearing panel consisting of a subset of elected members. Depending on the situation, the elected Council may delegate the function to hear and make decisions and then report back, or delegate to hear and make recommendations to the elected Council, for the elected Council to adopt. Non-elected members may also be appointed, by resolution of the elected Council, to sit on these hearing panels alongside elected members. These individuals may be representatives from Mana Whenua, members of a Council Committee (e.g. the Taharoa Domain Governance Committee) or External Hearing Commissioners depending on the nature of the matter being discussed.
  - 13.2.a This Policy directs that one or more External Hearing Commissioners may be appointed to non-RMA hearing panels where Council determines that specialist expertise would benefit the panel's deliberations.
  - 13.2.b Elected members serving on non-RMA hearings panels are acting as elected members, not as Council Hearing Commissioners, and as such no special qualifications are required.

## Appendix 1: Standardised Hearing Commissioner Curriculum Vitae

Hearing Commissioner Contact Details				
<b>Name:</b>				
<b>Company:</b>				
<b>Contact Phone:</b>	<b>Mobile:</b>	<b>Work:</b>		
<b>Contact E-mail:</b>				
<b>Relevant Qualifications and Experience:</b>				
	<b>Postal:</b>	<b>Physical:</b>		
	<b>Post Code:</b>			
<b>Identify the last five Hearings you have been involved in.</b>	<b>Hearing Title</b>	<b>Date</b>	<b>Organisation</b>	<b>Outcome</b>
<b>References:</b>				