

 <b>KAIPARA DISTRICT</b> <small>Two oceans Two Harbours</small>	<b>Title of Policy</b>	Hearing Commissioners Policy		
	<b>Sponsor</b>	General Manager Engagement and Transformation / Chief Executive	<b>Authorised / adopted by</b>	Council
	<b>Author</b>	Policy Manager	<b>Date authorised / adopted</b>	27 May 2020
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Document Control			
Version	Date	Author(s)	Comments
1	27 May 2020	Policy Manager	Draft Hearing Commissioners Policy adopted by Council.

## 1 Background

This policy outlines how Kaipara District Council (the Council) will appoint Independent 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 hear or hear and decide RMA hearing matters also having regard to section [34A\(1A\)](#) of the RMA referring to tikanga Māori knowledge.

This Policy also outlines how Council will appoint appropriately accredited elected members to act as Internal Hearing Commissioners alongside Independent Hearing Commissioners.

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.

## 2 Objectives

- a) Provide guidance, transparency and consistency on:
  - Recruitment of Independent Hearing Commissioners to the Council's Independent Hearing Commissioners List.
  - The process for selecting and appointing Independent Hearing Commissioners to a hearing/hearing panel.
  - Elected members serving as Internal Hearing Commissioners.
- b) Ensure hearings involving Hearing Commissioners comply with legislation and the principles of fairness and natural justice.
- c) Ensure appropriate expertise is available for complex or joint hearings (e.g. with Northland Regional Council (NRC)).

## 3 Definitions

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.

**Independent 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 be a Hearing Commissioner to conduct hearings and who has been authorised to either make decisions on behalf of, or recommendations to, the elected Council.

**Independent 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 Independent Hearing Commissioners.

**Internal 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 Independent Hearing Commissioners to the elected Council for appointment.

**Selection** means the selection of an appropriate Independent Hearing Commissioner from the Independent Hearing Commissioner List or an Internal 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 Policy Statement**

### **4.1 Appointment to Independent Hearing Commissioners List**

Council will maintain a list of Independent Hearing Commissioners who collectively have the range of skills needed for future hearings. There is no set number of Independent Hearing Commissioners that can be included on the List. However, it is recommended that 10 to 15 Independent Hearing Commissioners be included to meet potential demand.

Council will review this list every three years, following the triennial local body elections, or as required to assess if there are any specialist skills required that are not available in the existing pool.

Council will advertise for applications from Independent Hearing Commissioners to be on the List every three years following the triennial local body elections, or as required. This may be advertised in numerous ways but will always include a notice in a newspaper circulating in the district.

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.

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 process of thought (i.e. how and why the decision was reached).

#### **4.1.1. Panel members**

Final approval and listing will be based on the following attributes:

- a) Mandatory Pass or Fail
  - Must be accredited by the Ministry for the Environment as a RMA Commissioner with evidence provided.
  - Must accept terms and conditions of contract.
  - Applicants must provide written acceptance of proposed charge-out rates.
- b) Relevant skills 40% ranking
  - Ability and experience to undertake work successfully and efficiently on a hearing panel or as the sole Commissioner.
  - Ability to assess information and facts, with a working knowledge of the RMA.  
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.
- c) Relevant experience 40% ranking
  - Ability to assess information, with a working knowledge of the RMA.
  - Have been involved in projects with successful outcomes over last five years.
  - Sound references.
  - Demonstrate other relevant life experience e.g. experience operating a local business, developing properties or managing a farming operation.
- d) Local knowledge 20% ranking
  - Local knowledge particularly knowledge of local strategic documents e.g. District Plan and Regional Policy Statement.

#### **4.1.2. Panel chairs**

Independent Hearing Commissioners who are endorsed as Chair by the Ministry for the Environment will also be required.

Final approval and listing of Chairs will be based on the following attributes:

- a) Mandatory Pass or Fail
  - Must be accredited by the Ministry for the Environment as a RMA Commissioner with evidence provided of Chair endorsement.
  - Must accept terms and conditions of contract.
  - Applicants must provide written acceptance of proposed charge-out rates.
- b) Report writing skills 20% ranking
  - Proven ability to write good reports including effective analysis, demonstration of process of thought and clear written decisions.

- c) Relevant skills 30% ranking
  - Ability and experience to undertake work successfully and efficiently when chairing a Hearing Panel.
  - Ability to assess information and facts, with a working knowledge of the RMA.
  - 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.
- d) Relevant experience 30% ranking
  - Experience in assessing information, with a working knowledge of the RMA.
  - Have been involved in projects with successful outcomes over last five years, as a Commissioner and as a Chair.
  - Sound references.
  - Demonstrate other relevant life experience e.g. experience operating a local business, developing properties or managing a farming operation.
- e) Local knowledge 20% ranking
  - Local knowledge particularly knowledge of local strategic documents e.g. District Plan and Regional Policy Statement.

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 Independent Hearing Commissioners to the List will include conferring on them the necessary delegations under the RMA e.g. section [34A\(1\)](#). Once approved by Council, final contracts will be issued to the successful Independent Hearing Commissioners.

## 4.2 Internal Hearing Commissioners List

The Council will maintain a list of current elected members who are accredited to serve as Internal 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. On the successful completion of the Ministry for the Environment Making Good Decisions training programme, the elected member will be listed as an Internal Hearing Commissioner.

## 4.3 Appointment of Independent Hearings Commissioners to a Hearings Panel

When appointing Independent Hearing Commissioners to hear an application, appeal etc., Staff will follow these steps:

- a) Review the List and shortlist those Independent Hearing Commissioners who have the relevant subject knowledge, necessary skills and experience to hear a consent application or plan change.
- b) Arrange the Independent Hearing Commissioners on the short list in alphabetical order and further prioritise them based on additional disbursements they will incur i.e. those who will incur less travel and accommodation costs will be ranked higher than those who will incur higher costs.

- c) Contact the Independent Hearing Commissioners on the short list one after the other in order (as per above), to confirm their availability. In the event that the first on the short list refuses, staff will check the availability of the next person on the short list and so forth in order until an Independent Hearing Commissioner is found to be available.
- d) If selection is required for another hearing panel and the same names are selected for the short list, 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 the equal opportunity is afforded to all those on the List.
- e) Council reserves the right to appoint Independent 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.
- f) The Independent Hearing Commissioners appointed to any given hearing panel and the process used to appoint them shall be disclosed to the public and communicated to the applicant.
- g) Council staff will record when an Independent Commissioner is used, including what knowledge was required, the short list and why selected. This information will be made available upon request.
- h) At least one of the hearing panel Commissioners must have an understanding of tikanga Māori and the perspective of local iwi or hapū.

#### **4.4 Appointment of Internal Hearing Commissioners to a Hearings Panel**

Suitably qualified elected members of the Council may be appointed to serve as Internal Hearing Commissioners provided they:

- a) Fulfil the accreditation requirements of the RMA by holding a current Ministry for the Environment certificate under the Making Good Decisions programme.
- b) Do not have any actual or perceived conflict of interest or potential bias.
- c) Are able to take on the workload involved (e.g. the need to read through and analyse all submissions).
- d) Can be available as required for the duration of the hearing and any work associated with supporting the Chair to write the decisions report.

Subject to the other requirements of this policy (e.g. conflict of interest) and availability, elected members may be appointed to serve as Internal Hearing Commissioners on hearing panels of two or more panel members.

The panel Chair shall be an Independent Hearing Commissioner. Where the hearing panel consists of an even number of members, the Chair shall have a casting vote.

Qualified Internal 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 Internal Hearing Commissioners is selected.

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.

Appointment of an Internal Hearing Commissioner to a hearing panel shall be by Council resolution, with that resolution to include the necessary delegations under the RMA.

#### **4.5 Disputes over Appointments**

Where any person wishes to dispute one or more appointments under 4.3 and 4.4 to the hearing panel, the matter shall be referred to the Chief Executive Officer of the Council for resolution.

#### **4.6 Independent Hearing Commissioner Remuneration to be Standardised**

Independent Hearing Commissioners' remuneration shall be standardised and will be reviewed not less than every three years.

All Independent 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.

In such cases that Independent 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.

The Council will on-charge remuneration costs to applicants or submitters as the case may require.

*NB: Remuneration for Internal Hearing Commissioners is set by the current Local Government Members Determination.*

#### **4.7 Independent Hearing Commissioners on non RMA Hearing Panels**

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.

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 Independent Hearing Commissioners depending on the nature of the matter being discussed.

This Policy directs that one or more Independent Hearing Commissioners may be appointed to non RMA hearings panels where Council determines that specialist expertise would benefit the panel's deliberations.

*NB: Elected members serving on non RMA hearings panels are acting as elected members, not as Internal Hearing Commissioners, and as such no special qualifications are required.*

#### 4.8 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</b>																												
<b>Address:</b>	<b>Postal:</b>	<b>Physical:</b>																										
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<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>																								
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