

Appointment of Commissioners for the Hearing on Private Plan Change 84 Mangawhai Hills Limited

Meeting: Kaipara District Council – Extraordinary Meeting
Date of meeting: 3 April 2024
Reporting officer: Paul Waanders - District Planner
Michael Day, GM - Engagement & Transformation

Purpose | Ngā whāinga

This report discusses the appointment of commissioners and the composition of a panel with internal Council Commissioners and external Independent Commissioners to hear and recommend outcomes on the Private Plan Change application for Mangawhai Hills Limited and submissions received on the Private Plan Change.

The purpose of this report is to:

- Seek approval to delegate functions, powers, and duties to a Hearing Panel.
- Confirm the number of Commissioners to be appointed to the Hearing Panel and the composition of the Hearing Panel.

Executive summary | Whakarāpopototanga

Private Plan Change 84 – Mangawhai Hills Limited is currently working its way through the statutory process under the Resource Management Act 1991 (RMA).

The next step in the process is to hold a hearing, but before this can occur commissioners must be appointed. This report recommends that three Hearings Commissioners be appointed to a Hearings Panel for the Private Plan Change and that the composition of the Hearings Panel be comprised of two 'Independent' Hearings Commissioners and one 'Internal' Commissioner.

Recommendation | Ngā tūtohunga

That the Kaipara District Council:

- Delegates functions, duties, and powers under section 34A(1) of the Resource Management Act 1991 to a Hearing Panel to **hear and recommend** to Council outcomes on Private Plan Change 84 (Mangawhai Hills Limited) and the submissions received;
- Approves three commissioners to be appointed to the Hearing Panel.
- Approves the composition of the Hearing Panel as two 'Independent' Hearing Commissioners and one 'Internal' Commissioner; with the Independent Commissioners being **Commissioner Greg Hill (Chair)** and **Commissioner Barry Moseley (member)**.
- Appoints **Councillor Gordon Lambeth** as the Internal Hearing Commissioner.
- Notes that staff have followed Council's Hearings Commissioner Policy when recommending Hearings Commissioners.

Context | Horopaki

Council is currently processing Private Plan Change 84 – Mangawhai Hills Limited. Council accepted the Private Plan Change for processing on Wednesday 26 July 2023 and publicly notified the application on 29 August 2023. The submission period closed on Tuesday 26 September 2023. A total of 76 submissions were received. Further submissions were notified on 5 December 2023 and closed 10 working days later. Twelve further submissions were received.

The next step in the RMA statutory process is to hold a hearing, which is scheduled for 28-30 May 2024. Accordingly, Commissioners need to be appointed to consider the application and hear the submissions on the application.

Kaipara District Council (KDC) has a Hearing Commissioner Policy (adopted in December 2023, included in this report at **Attachment A**) and a pool of contracted Independent Hearing Commissioners.

Discussion | Ngā kōrerorero

Under the RMA, Council can delegate its functions, powers, and duties to a Hearings Panel to **'hear and decide'** or **'hear and recommend'** the Private Plan Change application and submissions. If the function is to 'hear and decide,' the hearings panel makes the decision on behalf of Council (it does not come back to full Council for a decision). If the function is to 'hear and recommend,' the hearings panel will make a well formulated recommendation and ultimately Council makes the decision. However, it is noted that Council in making its decision on the Private Plan Change application generally cannot deviate from the Hearings Panel's recommendation, as it did not hear all the evidence itself, but Council can refer matters back to the Hearings Panel for further recommendations.

The recommendation is to delegate functions, duties, and powers under section 34A(1) of the RMA to a Hearing Panel to **hear and recommend** on Private Plan Change 84 - Mangawhai Hills Limited, meaning that Council will make the final decision on the application.

Appointment of number of Commissioners on the panel

There is no limitation on the number of commissioners that are appointed to hear a Private Plan Change. It is preferable to have an uneven number of commissioners in case there are differences of opinion which can lead to a hung decision unless the chair has a casting vote. Staff recommend having **three** commissioners on the hearing panel to ensure a decision can be made without the chair having to use a casting vote.

According to Council's Hearing Commissioners Policy, Council decides whether there is a preference for utilising only internal commissioners, independent commissioners, or a combination of both. Council has engaged a 'pool' of 15 Independent Commissioners accredited in terms of Section 39A of the RMA. The accreditation distinguishes between Commissioners that are Chair endorsed with the other Commissioners being members only.

Council's Hearing Commissioners Policy 2023 describes that an internal Council Commissioner must be accredited in accordance with Section 39A of the RMA.

Currently, there are four Elected Members that are formally accredited, being:

- Cr Howard
- Cr Lambeth
- Deputy Mayor Larsen (chair endorsed)
- Cr Paniora

Note that Cr Howard was appointed to the Hearings Panel for the last Private Plan Change (PPC 83 The Rise Limited) and that Deputy Mayor Larsen was appointed to the hearings panel of the two previous Private Plan Change applications (PPC 81 and PPC 82). Following the Hearings Commissioner Policy, the next Internal Hearing

Commissioner on the list is **Cr Lambeth**.

Options

Depending on the direction provided from Council to delegate functions, duties, and powers under section 34A(1) of the RMA, there are four options for Council to consider in terms of the composition of the Panel.

- **Option 1** - Appoint three independent Commissioners from the list of Commissioners to **hear and recommend** on Private Plan Change 84 – Mangawhai Hills Limited, meaning the independent commissioners would make a recommendation to Council, but Council would make the final decision.
- **Option 2** - Appoint three independent Commissioners from the list of Commissioners to **hear and decide** on Private Plan Change 84 – Mangawhai Hills Limited, meaning the independent Commissioners would make the final decision.
- **Option 3** - Appoint a Council Commissioner and two Independent Commissioners to **hear and recommend** on Private Plan Change 84 – Mangawhai Hills Limited, meaning the panel would make a recommendation to Council, but Council would make the final decision.
- **Option 4** - Appoint a Council Commissioner and two independent Commissioners to **hear and decide** on Private Plan Change 84 – Mangawhai Hills Limited, meaning the panel would make the final decision.

Staff recommend that three commissioners are appointed to the Hearing Panel, comprising of two Independent Commissioners and one Council Commissioner to hear and recommend on Private Plan Change 84 – Mangawhai Hills Limited, meaning the panel would make a recommendation to Council, but Council would make the final decision.

Option 3 is therefore the preferred option, as having the local knowledge and understanding of Council's activities and policies of an internal (Council) Commissioner will be an advantage during the hearing and in the deliberations of the application.

Following the policy and the list of accredited Commissioners, recommendation to the panel will be based upon specialist subject knowledge and experience of Commissioners, the availability of members and those who are Chair endorsed. The selection of Commissioners will follow alphabetically from the last Commissioner appointed to a Hearing. Staff have used this process and recommend that Council engage Commissioners **Greg Hill** as Chair, and **Barry Moseley** as a Hearing Panel Member. As per the Policy, once selected and used, Commissioners will drop to the bottom of the selection list, unless overridden by other criteria.

Policy and planning implications

It is noted that should Private Plan Change 84 for Mangawhai Hills Limited be approved by Council, it will be incorporated into the Operative District Plan 2013.

Financial implications

The Commissioners are contractually appointed by Kaipara District Council with set rates. The Council Commissioner is remunerated according to the Local Government Members (2022/23) Determination. The full cost of the hearing is on-charged to the applicant as the application is for a Private Plan Change.

Risks and mitigations

The risk of not appointing Commissioners could lead to the delay of the hearing, which could pose a risk to Council meeting the statutory timeframes set out in Schedule 1 of the RMA for processing a Private Plan Change application.

Impacts on Māori

There are no known impacts on Tangata Whenua / Mana Whenua. However, it is noted

that Te Uri o Hau Settlement Trust (Environs) has provided a Cultural Impact Assessment for the applicant as requested by Council as part of the Clause 23 of Schedule 1 of the RMA request for further information.

Significance and engagement | Hirahira me ngā whakapāpā

The decisions of this report are considered to have a low degree of significance in accordance with Council's Significance and Engagement Policy. No feedback is required, and the public will be informed of Council's decision via publication of the agenda and minutes of this meeting on the website and through other channels if appropriate. The appointment of commissioners is undertaken in accordance with Council's adopted Hearings Commissioners Policy, and it is noted that the public hearing is part of the RMA Schedule 1 (formal) process.

Next steps | E whaiake nei

Following this decision, staff will begin planning for the hearing, which is scheduled for 28-30 May 2024.

Attachments | Ngā tapiritanga

	Title
A	Kaipara District Council's Appointment of Hearing Commissioners Policy