

Hearing Commissioners Policy

Meeting: Kaipara District Council Briefing
Date of meeting: 6 May 2020
Reporting officer: Kathie Fletcher, Policy Manager

Purpose/Ngā whāinga

- To seek direction on who the decision makers should be for various processes (covered by the Hearings Commissioner Policy) to inform the completion of the proposed policy.
- To seek further feedback on the proposed policy.

Context/Horopaki

The Draft Hearing Commissioners Policy (the Policy) was last discussed at the 05 February 2020 Council Briefing. The relevant report from the 05 February 2020 Council Briefing is included as **Attachment A**. At that meeting, the elected members:

- Determined they did not have sufficient time to fully discuss and reach conclusion on this item at that meeting;
- Requested a summary of what other councils do and if there is any guidance given on best practice across local government; and
- Requested a tracked changes version of the Policy so they could compare what had changed from the previous version.

This report presents this additional information and the tracked changes version of the Policy (**Attachment B**) to support further discussion of this matter.

Discussion/Ngā kōrerorero

Council staff have written to other Councils and to the Society of Local Government Managers (SOLGM), Local Government New Zealand (LGNZ) and to the New Zealand Planning Institute (NZPI), asking what approach they take to the use of hearing commissioners. The approaches taken by those councils who responded are compared in the following table. In addition, guidance from Quality Planning on industry best practice is included with this report as **Attachment C**.

Organisation	Approach to RMA Hearing Commissioners
Kaipara District Council (status quo).	<p>Kaipara District Council (KDC) currently relies exclusively on Independent Hearing Commissioners to hear all applications under the Resource Management Act 1991 (RMA) i.e. elected members currently do not serve as Internal Hearing Commissioners.</p> <p>KDC currently has no policy to guide how it appoints Independent Hearing Commissioners to its Independent Hearing Commissioners List (the List) or how it selects Independent Hearing Commissioners on the List to hear a given application.</p> <p>When appointing Independent Hearing Commissioners to the List, KDC staff advertise the positions available, shortlist the candidates and provide a recommended list to Council to approve by resolution. As part of this resolution, the commissioners on the list are also given the necessary delegations to hear and decide matters under the RMA.</p> <p>When selecting an Independent Hearing Commissioner/s to hear an application, KDC staff begin by shortlisting those who have the necessary skills to hear the matter at hand. They then proceed to contact the</p>

	<p>shortlisted commissioners to see which of them is available to hear the matter.</p> <p>There is no guidance on what order the shortlisted commissioners are contacted to be offered the position, however staff typically begin by offering available positions to those commissioners who have the best track record for professionalism.</p> <p>The majority of cases are heard by a single Independent Hearing Commissioner. Over the last reporting period, July 2018 to June 2019, there were no cases requiring more than one Independent Hearing Commissioner and there were no applications for private plan changes.</p>
Auckland Council	<p>Auckland Council has a Regulatory Committee who are responsible for appointing Independent Commissioners to carry out the council's functions or delegating that appointment power to staff. The Committee is also responsible for regulatory functions under other acts (such as the Dog Control Act 1996 and Sale and Supply of Alcohol Act 2012) and regulatory policies and bylaws.</p> <p>It is this Committee that appoints Independent Hearing Commissioners to the List and may either select which commissioner/s will be appointed to hear which matter or may leave this function to staff.</p> <p>Auckland Council also allow accredited local board members to sit on hearing panels alongside Independent Hearing Commissioners.</p>
Hawke's Bay Regional Council	<p>Hawke's Bay Regional Council has a Hearings Committee comprised of up to five elected "RMA Making Good Decisions" accredited Members of Council and up to four "RMA Making Good Decisions" accredited members of the Māori and/or Regional Planning Committee as nominated by the Chair of those Committees.</p> <p>The Hearings Committee is responsible for hearing and making decisions on RMA applications or for appointing Hearings Committee members and or Independent Hearing Commissioners to a hearing panel to undertake these functions. In this way, selection of Hearing Panel membership sits with the Hearings Committee although staff do have a role to play in making recommendations for personnel (given the factors in each case such as skill sets, potential conflicts, availability, price, etc).</p> <p>The Hearings Committee is not delegated the functions, powers and duties to hear and make decisions on submissions made in relation to a proposed plan, policy statement, plan change or variation under the RMA. Such functions, powers and duties are delegated to a Panel of accredited RMA hearings commissioners appointed by the Council on an as needed basis, based on recommendations from the Regional Planning Committee.</p>
Horowhenua District Council	<p>Horowhenua District Council have a Hearings Committee comprised of elected members. Some of the members of this committee are qualified under the Making Good Decisions programme and are used to hear some matters, particularly matters relating to bylaws, the Dog Control Act 1996 and some policies such as the local alcohol policy.</p> <p>When resource consent hearings arise, the Chairperson of the Hearings Committee is asked if they would like it to be heard by the Committee or an independent commissioner. If they choose to have the matter heard by an independent commissioner (which has been the decision consistently for the last few years), staff consult with the chairperson on who to use as the Independent Hearing Commissioner and they appoint them.</p>
Tauranga City Council	<p>Tauranga City Council's Hearing Commissioners Policy allows for plan change applications to be heard by either elected members, Independent Hearing Commissioners or a combination of the two. In practice however, it</p>

	is understood that Tauranga City Council rely exclusively on Independent Hearing Commissioners for all applications under the District Plan.
Western Bay of Plenty District Council	Western Bay of Plenty District Council have a Regulatory Hearings Committee and District Plan Committee comprised of elected members. These committees either hear applications under the District Plan themselves or appoint an Independent Hearing Commissioner (sitting alone or alongside the Committee), or a panel of three Independent Hearings Commissioners to hear the application. In this way they utilise a mix of Internal and Independent Hearing Commissioners.
Kaikōura District Council	Kaikōura District Council use Independent Hearing Commissioners to hear plan change applications but with the full council deciding on the scope of what is notified. Applications for designations are heard by the full council however resource consents are either addressed by staff if they are non-notified or by Independent Hearing Commissioners if they are notified.

From the above we see that different Councils take different approaches in how they use Internal and Independent Hearing Commissioners. In practice, many council's use predominantly Independent Hearing Commissioners with limited use of elected members. The RMA requisite is that before any elected members can fulfil an Internal Hearing Commissioner role, they must have completed the Making Good Decisions accredited training.

The preference amongst councils for using Independent Hearing Commissioners over Internal , therefore, largely reflects the need to avoid risks, both actual and perceived, to ensure district planning processes are streamlined and clear boundaries are established between the spheres of governance and operations.

Governance versus operations

Setting direction for the district through the District Plan is the role of governance. However, the day to day implementation of the District Plan by assessing individual applications against the Plan rules is predominantly an operations role, hence why many councils rely primarily on staff and Independent Hearing Commissioners to perform this function. Even in the case of private plan changes, these applications are assessed against the Strategic Direction stated in the District Plan.

Streamlining processes

Relying on staff and Independent Hearing Commissioners to undertake the day to day implementation of the District Plan also allows for operational efficiencies, providing applicants with a professional, timely and affordable service. Timeliness of the process is partly improved by not needing to align with the Council meeting schedule and partly through not requiring staff to undertake the necessary support work associated with the use of elected members as Internal Hearing Commissioners (e.g. the need to assess the risks of political pressure and potential perceptions of predetermination or conflicts of interest). In addition, the use of Independent Hearing Commissioners prevents placing excessive workloads on elected members who are already tasked with the governance of the council.

Avoiding risk

Lastly, relying on Independent Hearing Commissioners is the most risk adverse approach, reducing the risk of allegations of predetermination and conflicts of interest. Such allegations may expose decisions to appeal in the Environment Court, resulting in further costs to submitters, applicants and council.

In light of the above, Kaipara District Council, together with many other councils, currently makes extensive use of Independent Hearing Commissioners for most applications under the District Plan.

Next steps/E whaiake nei

Staff will prepare a final version of the draft Policy based on feedback from elected members and present it to a Council Meeting for adoption.

Attachments/Ngā tapiritanga

	Title
A	Report to the 05 February 2020 Council Briefing regarding the Hearing Commissioners Policy
B	Draft Hearing Commissioners Policy – Tracked changes version.
C	Best Practice Guidance from Quality Planning retrieved from https://qualityplanning.org.nz/node/680 and https://qualityplanning.org.nz/node/681