

	Title of Policy	Appointment of Internal and Independent Hearings Hearings Commissioners Policy		
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	Author	Mark Schreurs Kathie Fletcher	Date authorised / adopted	
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Version	Date	Author(s)	Comments
1 st Commenced	14 March 2019	Mark Schreurs Kathie Fletcher	Draft Policy for discussion at 4 April 2019 Council Briefing.
1.1	25 June 2019	Mark Schreurs Kathie Fletcher	Draft Policy for discussion by Regulatory Working Group with three sets of tracked changes
1.2	23 July 2019	Mark Schreurs Kathie Fletcher	All tracked changes from the above accepted and minor changes from the Regulatory Working Group at their 23 July 2019 meeting. Circulated to the Regulatory Working Group for their comment via e-mail.
<u>1.3</u>	<u>05 December 2019</u>	Kathie Fletcher	<u>Amended version following input from Regulatory Working Group, legal advice and staff. To be discussed at 05 February 2020 Council Briefing.</u>
<u>1.4</u>	<u>16 January 2020</u>	Kathie Fletcher	<u>Addition of tikanga Māori as a criterion as a result of a legal opinion.</u>

1 Background

This policy ~~guides~~ outlines how the Kaipara District Council in appointing appropriately accredited and qualified (the Council) will appoint Independent Hearings Commissioners under the Resource Management Act 1991 (RMA) and ~~delegating~~ delegate to them, the functions, powers and duties under section 34A(1) of the RMA to hear and ~~make decisions on RMA hearings.~~ An Independent Hearings Commissioner, is a Hearings Commissioner who is not a member of the Council. In addition, this Policy guides Council in appointing appropriately accredited elected members to act as Internal Hearings Commissioners alongside Independent Hearings Commissioners to hear and make decisions on plan changes and more complex RMA hearings.

The Kaipara District Council (the 'Council') has the power under sections 34, 34A and 39 of the RMA to delegate functions to Independent Hearings Commissioners appointed by Council.

Furthermore, under sections 100A(4) and 357AB(2) of the RMA Council must delegate its functions, duties and powers to hear and decide an application or objection to one or more Independent Hearings Commissioners when requested to do so by an applicant, submitter or both. These sections require an exclusive delegation to Independent Hearings Commissioners only (i.e. not a mixed panel also containing elected members of Council under sections or make decisions on RMA hearings matters also having regard to section 3434A(1A), 34A and 39 of the RMA). 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 Hearings ~~Hearings~~ 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.

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There is the ability for suitably qualified elected members of Council to act as Internal Hearings Commissioners. Most resource consent matters will typically be heard by a single Independent Hearings Commissioner while more complex cases will likely require a panel of Commissioners with one serving as Chair.

With respect to plan change hearings, this policy recognises the value of having an elected member acting as an Internal Hearings Commissioner to sit alongside the Independent Hearings Commissioners on the hearings panel. This recognises that plan changes set direction for the future development of the district while consent hearings relate specifically to the application of existing District Plan rules and environmental effects (often localised).

42 Objective

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

53 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 ~~HearingsHearing~~ 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 ~~theRMA~~ functions of ~~HearingsHearing~~ Commissioners on Council's behalf.

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

Independent ~~HearingsHearing~~ 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 ~~HearingsHearing~~ Commissioner to conduct ~~Hearingshearings~~ and who has been authorised to either make decisions on behalf of, or recommendations to, the elected Council.

Independent ~~HearingsHearing~~ Commissioners List ~~(sometimes referred to as -'the List')~~ means a list of those persons who have been appointed and authorised by resolution of the elected Council to be Independent ~~HearingsHearing~~ Commissioners.

Internal ~~HearingsHearing~~ Commissioner means an elected member of the Council, who has been appointed by the elected Council to be a ~~HearingsHearing~~ 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 HearingsHearing Commissioners to the elected Council for appointment.

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

~~NB: References to sections or subsections of legislation~~NB: All statutory references are references to the Resource Management Act 1991 unless stated otherwise.

64 Policy Statement

6.14.1 Appointment to Independent HearingsHearing Commissioners List

Council will maintain a list of Independent HearingsHearing Commissioners who collectively have the range of skills needed for future Hearingshearings. There is no set number of Independent Hearing Commissioners that can be included on the ~~Independent Hearings Commissioner~~ List. However, it is recommended that between 10-15 Independent HearingsHearing 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 HearingsHearing Commissioners to be on ~~Council's Independent Hearings Commissioners~~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).

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 ~~Hearings Panel or individually 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.

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

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

e) 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.

f) Report writing skills 20% ranking

- Proven ability to write good reports including effective analysis, demonstration of process of thought and clear written decisions.

g) Relevant skills 30% ranking

- Ability and experience to undertake work successfully and efficiently when chairing a ~~HearingsHearing~~ 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.

h) 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.
- i) 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 Council's the List. This resolution appointing Independent Hearing Commissioners List 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.

6.24.2 Independent Hearings Internal Hearing Commissioners List

Council's Independent Hearings Commissioners List shall contain the following information:

- ~~Name of Approved Commissioner~~
- ~~Date of Approval~~
- ~~Accreditation date and expiry~~
- ~~If the Commissioner is a Ministry for the Environment accredited RMA Chair~~
- ~~Key skills and competencies~~
- ~~Contact details: e-mail, telephone and address~~
- ~~Location/region of residence/office.~~

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.

6.34.3 Appointment of Independent Hearings Commissioners to a Hearings Panel

When ~~Council Officers are selecting~~ appointing Independent ~~Hearings~~ Hearing Commissioners to be appointed to a Hearings Panel, hear an application, appeal etc., Staff will follow these steps:

Review the following process shall be followed:

- a) ~~The Independent Hearings Commissioners List shall be reviewed and shortlist~~ those Independent ~~Hearings~~ Hearing Commissioners who have the relevant subject knowledge, necessary skills and experience to hear the consent application or plan change ~~shall be shortlisted.~~
- b) Arrange the Independent ~~Hearings~~ Hearing Commissioners on the short list ~~shall be arranged~~ in alphabetical order and further prioritised ~~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 must travel from further afield will incur higher costs.

- c) ~~The Contact the~~ Independent ~~HearingsHearing~~ Commissioners on the short list ~~shall be contacted one after the other in order (as per above), to offer them the position-confirm their availability.~~ In the event that the first on the short list refuses, ~~the position shall be offered~~ testaff will check the availability of the next person on the short list and so forth in alphabetical order until an Independent ~~HearingsHearing~~ Commissioner ~~can be is~~ found to ~~fill the position-be available.~~
- d) If selection is required for another ~~Independent Hearings Panelhearing 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 ~~HearingsHearing~~ Commissioners who are not on Council's ~~listList~~ to a ~~Hearings Panelhearing panel~~ on a case by case basis. This will typically only be done for ~~resource consent~~ hearings where the ~~skills-necessary~~ subject knowledge to hear a case cannot be sourced from the ~~Independent Hearings Commissioners List-List.~~ In such cases, the appointment and delegation must be approved by Council resolution.
- f) The Independent ~~HearingsHearing~~ Commissioners appointed to any given ~~Hearings Panelhearing 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.

6.44.4 Appointment of Internal ~~Hearing Commissioners to a~~ Hearings CommissionersPanel

Suitably qualified elected members of the Council may be appointed ~~by Council Officers to~~ serve as Internal ~~HearingsHearing~~ 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 not the elected member for the ward in which the development/matter the hearing relates to is located.
- e)d) Are able to take on the workload involved (e.g. the need to read through and analyse all submissions).
- e)e) 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, ~~an~~ elected ~~member~~~~members~~ will be appointed ~~by Council Officers~~ to serve as an Internal ~~Hearings Commissioner~~ ~~Hearings Commissioners~~ on ~~every~~~~private~~ plan change hearing ~~panel~~~~panels~~ of two or more ~~members~~. ~~The panel members. No more than one Internal Hearing Commissioner will be appointed per~~ panel Chair and any other member(s) of the panel shall be Independent Hearings Commissioners. ~~The Chair shall have the casting vote should the situation arise.~~

An elected member may only be appointed to serve as an Internal Hearings Commissioner on RMA consent hearing panels when the panel consist of two or more members. In such cases, ~~the~~~~The~~ panel Chair and any other member(s) of the panel shall be Independent ~~Hearings~~~~Hearing~~ Commissioners. Where the hearing panel ~~consist~~~~consists~~ of ~~only two~~~~an even number of~~ members, the Chair shall have a casting vote.

Internal Hearing Commissioners will not be appointed to hearing panels other than those for private plan changes.

Selection of an Internal Hearing Commissioner to serve on a given ~~Hearing Panel~~~~hearing panel~~ shall follow the same process as for Independent Hearing Commissioners under clause 4.3 ~~so as to allow for equal opportunities.~~

6.5 Internal Hearings Commissioners List

~~The~~ Appointment of an Internal Hearing Commissioner to a hearing panel shall be by Council will maintain a list of current elected members who are accredited ~~resolution, with that resolution~~ to serve as Internal Hearings Commissioners. The Council will review this list every three years, following the triennial local body elections, or as required to assess if there is a need to increase the number of elected members in the existing pool. Training will be offered to elected members who are interested in becoming Hearings 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 Hearings Commissioner.~~

Council's Internal Hearings Commissioners List shall contain the following information:

- ~~Name of Approved Commissioner~~
- ~~Date of Approval~~
- ~~Accreditation date and expiry~~
- ~~Key skills and competencies~~

Contact details: e-mail, telephone and address include the necessary delegations under the RMA.

6.4.5 Disputes over Appointments

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

6.7 Delegation of powers to Independent Hearings Commissioners

Council may, from time to time, delegate Independent Hearings Commissioners the power to hear and decide a range of matters including, but not limited to, the following:

- a) Applications for resource consents.
- b) Notification of decisions for the RMA for resource consents (s.95).
- c) Decision reports under the RMA for resource consent (s.104)
- d) Applications to change conditions of a resource consent (s.127).
- e) Objections (s. 357).
- f) Applications to extend the consent period of a resource consent (s. 125).
- g) Notices of requirement to designate land or alter a designation.
- h) Notices of requirement for a heritage order or to alter a heritage order.
- i) Private and Kaipara District Council-initiated Plan Change applications.
- j) The power of waiver and extension of time limits (s. 37).
- k) Matters pertaining to the control of hearings (s. 41A, s. 41B, s. 41C and s. 41D).

In such cases, these delegations are made under section 34A of the RMA and include that Independent Hearings Commissioners be responsible for writing decisions.

Delegations to Independent and Internal Hearing Panel Commissioners for Plan Changes will include the delegation to hear and make decisions on submissions, with final approval to make the Plan Change operative made by Council.

6.84.6 Independent Hearings Commissioner Remuneration to be Standardised

Independent ~~Hearings~~Hearing Commissioners' remuneration shall be standardised ~~at the rates specified in Councils Schedule of Fees and Charges. These and~~ will be reviewed not less than every three years.

All Independent ~~Hearings~~Hearing Commissioners must agree to these standard rates as part of their contract when being appointed to ~~Council's Independent Hearings Commissioners~~the List. Disbursements such as travel and accommodation expenses shall be negotiated individually.

In such cases that an Independent ~~Hearings~~Hearing Commissioner/s with special skills is required and is not available through the ~~Independent Hearings Commissioners on Council's List~~List, Council shall engage and remunerate such a Commissioner at a rate agreed between Council and that Commissioner. In the event that the agreed rate is higher than the standard rates ~~stated in Council's Schedule of Fees and Charges~~, 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 ~~Hearings~~Hearing Commissioners is set by the current Local Government Members ~~(Local Authorities)~~ Determination.

Interim measure: It is acknowledged that there will be no inclusion of Independent Hearings Commissioner remuneration rates in the Council's Schedule of Fees and Charges at the time of this policy coming into effect. Independent Hearings Commissioner remuneration rates shall therefore remain unaffected (status quo) until a new schedule of fees and charges are adopted in line with the Annual Plan cycle.

Independent Hearings Commissioner

6.94.7 Independent Hearing Commissioners on non RMA HearingsHearing 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 ~~Council~~ 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 HearingsHearing Commissioners depending on the nature of the matter being discussed.

This Policy directs that ~~the majority of members on a non RMA hearing panel shall be either, elected members or members of a Council Committee. In addition,~~ one or more Independent HearingsHearing 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 HearingsHearing Commissioners, and as such no special qualifications are required. No special qualifications are required for non-elected members appointed to a non-RMA hearing panel.

6.404.8 Appendix 1: Standardised ~~Hearings~~Hearing Commissioner Curriculum Vitae

Hearings Hearing Commissioner Contact Details																												
Name:																												
Company																												
Contact Phone:	Mobile:	Work:																										
Contact E-mail:																												
Relevant Qualifications																												
Address:	Postal:	Physical:																										
	Post Code:	Post Code:																										
Identify the last five Hearings you have been involved in.	Hearing Title	Date	Organisation	Outcome																								
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<p>Please tick your relevant areas of expertise:</p> <table border="0"> <tbody> <tr> <td><input type="checkbox"/> Chair</td> <td><input type="checkbox"/> Subdivision Consents</td> <td><input type="checkbox"/> Extraction/mining/basic raw materials</td> </tr> <tr> <td><input type="checkbox"/> Panel Member</td> <td><input type="checkbox"/> Heritage Issues</td> <td><input type="checkbox"/> Forestry.</td> </tr> <tr> <td><input type="checkbox"/> Mediation</td> <td><input type="checkbox"/> Landscape Issues</td> <td><input type="checkbox"/> Transport/Traffic</td> </tr> <tr> <td><input type="checkbox"/> Legal Issues</td> <td><input type="checkbox"/> Urban design</td> <td><input type="checkbox"/> Hazardous Substances</td> </tr> <tr> <td><input type="checkbox"/> Tikanga Māori</td> <td><input type="checkbox"/> Kiwi protection</td> <td><input type="checkbox"/> Financial Contributions</td> </tr> <tr> <td><input type="checkbox"/> Treaty of Waitangi Settlement obligations</td> <td><input type="checkbox"/> Natural features/geology</td> <td><input type="checkbox"/> Land Use Consents</td> </tr> <tr> <td><input type="checkbox"/> Planning Policy – Plan Changes</td> <td><input type="checkbox"/> Ecology Issues</td> <td><input type="checkbox"/> Other, please specify:</td> </tr> <tr> <td></td> <td><input type="checkbox"/> Noise/Acoustic</td> <td></td> </tr> </tbody> </table>					<input type="checkbox"/> Chair	<input type="checkbox"/> Subdivision Consents	<input type="checkbox"/> Extraction/mining/basic raw materials	<input type="checkbox"/> Panel Member	<input type="checkbox"/> Heritage Issues	<input type="checkbox"/> Forestry.	<input type="checkbox"/> Mediation	<input type="checkbox"/> Landscape Issues	<input type="checkbox"/> Transport/Traffic	<input type="checkbox"/> Legal Issues	<input type="checkbox"/> Urban design	<input type="checkbox"/> Hazardous Substances	<input type="checkbox"/> Tikanga Māori	<input type="checkbox"/> Kiwi protection	<input type="checkbox"/> Financial Contributions	<input type="checkbox"/> Treaty of Waitangi Settlement obligations	<input type="checkbox"/> Natural features/geology	<input type="checkbox"/> Land Use Consents	<input type="checkbox"/> Planning Policy – Plan Changes	<input type="checkbox"/> Ecology Issues	<input type="checkbox"/> Other, please specify:		<input type="checkbox"/> Noise/Acoustic	
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