

MEETING
– AGENDA –

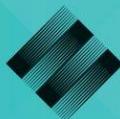
Ngā Take



DISTRICT PLAN COMMITTEE

Komiti Kaupapa-ā-Rohe

DP21-4
Thursday, 4 November 2021
Council Chambers
Barkes Corner, Tauranga
On conclusion of the Council meeting



Western Bay of Plenty
District Council

District Plan Committee

Membership

Chairperson	Deputy Mayor John Scrimgeour
Deputy Chairperson	Cr Mark Dean
Members	Cr G Dally Cr James Denyer Cr Murray Grainger Cr Monique Gray Cr Anne Henry Cr Margaret Murray-Benge
Quorum	2
Frequency	As required

Role:

- To enable effective decision making with regard to Resource Management Act 1991 matters, including district plan changes, private plan changes and resource consent matters.

Scope:

- All functions, duties and obligations as set out in the Resource Management Act 1991 relevant to plan changes, private plan changes and district plan reviews and any other matter processed under Schedule 1 of the Resource Management Act 1991, including hearing submissions and making recommendations to Council for the approval of plan changes, private plan changes and plan reviews.
- All functions, duties and obligations as set out in the Resource Management Act 1991 relevant to hearing of submissions and making decisions on notified resource consent applications.
- To make decisions on any other Resource Management Act 1991 matter referred to the Committee by the Group Manager Policy, Planning and Regulatory Services.
- To receive reports on appeals to the Environment Court on Committee or Independent Hearings Commissioner decisions made in relation to plan changes, private plan changes, and notified resource consent applications, and to provide guidance to staff authorised to negotiate and settle appeals on Council's behalf.

Power to Act:

- To hear and make decisions on plan changes, private plan changes and district plan reviews and any other matter processed under Schedule 1 of the Resource Management Act 1991 and to recommend to Council decisions on submissions and approval of plan changes and private plan changes or any other matter, as required.
- To hear and make decisions on notified resource consent applications where submissions have been received.
- The power to co-opt expert advice on an 'as required' basis.
- The power to appoint Independent Hearings Commissioners and to appoint Hearings Panels of appropriately qualified members and/or Independent Hearings Commissioners in accordance with the Appointment of Independent Hearings Commissioner Policy.
- The power to conduct joint hearings with other local authorities where necessary and expedient to do so, including the power to appoint members and/or Independent Hearings Commissioners to Joint Hearings Committees.

- To make decisions on any resource consent application where the reporting officer is recommending that the application be refused.
- To make decisions on section 357 objections to conditions under the Resource Management Act 1991 where the reporting officer is recommending that the application be declined (either in whole or in part).
- To make decisions where draft consent orders would represent a minor change in policy direction from the District Plan and to authorise settlement of those consent orders with the Environment Court by Council's solicitors acting on behalf of Council.
- The power to establish and amend hearings protocols relating to the general conduct of hearings and hearings-related matters in accordance with the applicable legislation and the principles of administrative law and natural justice.
- To make decisions on any other Resource Management Act 1991 matter referred to the Committee by the Group Manager Policy, Planning and Regulatory Services.

Chairperson's Delegations:

Should there be insufficient time for staff to consult with the Committee on any appeal to the Environment Court in relation to a decision made pursuant to the Resource Management Act 1991, the Chairperson or Deputy Chairperson (where the Chairperson is not available) may provide guidance to staff, and report back to the next scheduled meeting of the Committee.

Notice is hereby given that a District Plan Committee Meeting will be held in the Council Chambers, Barkes Corner, Tauranga on:
Thursday, 4 November 2021 at On conclusion of the Council meeting

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- 1 **PRESENT**
- 2 **STAFF ATTENDANCE**
- 3 **ATTENDANCE ON BEHALF OF COUNCIL**
- 4 **OTHERS PRESENT**
- 5 **APOLOGIES**
- 6 **DECLARATIONS OF INTEREST**

7 RECEIPT OF REPORTS AND EVIDENCE

7.1 APPOINTMENT OF INDEPENDENT HEARINGS COMMISSIONER - OMANAWA FALLS PROJECT

File Number: A4375494

Author: Chris Watt, Environmental Consents Manager

Authoriser: Rachael Davie, Group Manager Policy Planning And Regulatory Services

EXECUTIVE SUMMARY

1. This Committee is asked to approve the appointment of an Independent Hearings Commissioner to sit with an Independent Hearings Commissioner appointed by the Bay of Plenty Regional Council to consider and determine a joint land use consent application at Omanawa Falls.

RECOMMENDATION

1. That the Environmental Consent Manager's report dated 4 November 2021, titled "Appointment of Independent Hearings Commissioner – Omanawa Falls Project" be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That the District Plan Committee appoints the following Independent Hearings Commissioner to consider and determine (jointly with a Bay of Plenty Regional Council appointed Independent Hearings Commissioner), the land use consent RC13050L, being the Omanawa Falls Project located at 1031 Omanawa Road, Omanawa:
4. Commissioner Russell De Luca.

BACKGROUND

2. Tauranga City Council and Ngāti Hangarau have applied to the Bay of Plenty Regional Council and Western Bay of Plenty District Council to create physically and culturally safe access to Omanawa Falls, and to provide for a comprehensive 'Omanawa Falls Experience' tourist and recreation facility. The project is to be staged, with the immediate priority being the provision of physically and culturally safe access, including the provision of on-site parking, toilet facilities and managed access.
3. Council has in place a protocol with the Bay of Plenty Regional Council for the purpose of determining resource consent applications or designations in the manner of a Joint Hearing as provided for under S.102(2) of the Resource Management Act 1991.
4. Staff requests that the Committee consider the appointment of an Independent Hearings Commissioner for the determination of these matters in a joint hearing with the Bay of Plenty Regional Council.
5. The Joint Hearing Protocol provides for the following options in determining the composition of the Western Bay of Plenty District Council's contribution to the hearing panel:
 - 1.2 *For a joint hearing involving the Region and District the Committee will comprise two Regional and two District Councillors from each District represented. Each Council has the right to appoint Commissioners to replace one or both of their Councillors.*
 - 1.3 *An independent Commissioner, agreed upon by all Councils, may be appointed as Chairperson of the Committee.*

6. In discussion with the District Plan Committee Chairperson, Deputy Mayor John Scrimgeour, he has advised a preference that the Western Bay of Plenty District Council be represented by a single Independent Hearings Commissioner, (with no District Councillors), to sit alongside the Bay of Plenty Regional Council's representative. The Chairperson is aware of the interest in the matter by Council's own Elected Representatives.
7. Council has received advice from the Bay of Plenty Regional Council that they are recommending to their respective Committee the appointment of a single Independent Planning Commissioner from their Commissioner List to sit with the Western Bay of Plenty District Council appointed Commissioner. Again, they are recommending that no Elected Members sit on the panel. At this time, we do not have an indication of when they will appoint the Commissioner, or who it may be.
8. In considering the available Independent Planning Commissioner list provided by the Regional Council, there is limited commonality between their list and that of the Western Bay of Plenty District Council. Staff understand that the Bay of Plenty Regional Council is looking to appoint a Commissioner off their list familiar with 'Regional Council' and cultural matters. It is proposed that the Western Bay of Plenty District Council similarly appoint a Commissioner off their list more familiar with the land use matters at hand.
9. We have identified Independent Hearings Commissioner Russell De Luca to represent the Western Bay of Plenty District Council.
10. Following appointment of the commissioner, staff will undertake the necessary preparations along with Bay of Plenty Regional Council as lead.

APPLICATION DETAILS

Applicant: Tauranga City Council and Ngāti Hangarau
Location: 1031 Omanawa Road, Omanawa
Application: Tauranga City Council, Ngāti Hangarau and Tourism Bay of Plenty are working in partnership to provide physically and culturally safe access to Omanawa Falls. The three partners have formed a Governance Group to oversee the delivery of the project. The Governance Group has identified five key benefits that the project will achieve:

- Strengthened partnership and collaborative approaches between Ngāti Hangarau, Tourism Bay of Plenty and Tauranga City Council;
- Increased understanding of the cultural significance of the area;
- Strengthened relationships with wider stakeholders, including the neighbouring property owners, visitors and locals;
- Safe and culturally appropriate access to Omanawa Falls; and
- Improved experience for locals and visitors at Omanawa Falls.

11. To address the serious public safety issues and provide physically and culturally safe access to Omanawa Falls a package of works is proposed in a manner that recognises and provides for the significant cultural, historic heritage and ecological values of the site. In addition, an extended tourist and recreation experience is also proposed that is centred around the unique history, cultural significance, and picturesque landscape of the Omanawa Falls.
12. The concept and design of the project has been guided by the Ngāti Hangarau-led Omanawa Principles, which will also guide the construction and operational phases of the project. The Omanawa Principles are based on the following themes:
 - Mana Rangātiratanga / Ahikāroa – Authority
 - Whakapapa: Names and Naming
 - Taiao: The Natural Environment
 - Mauri Tū, Mauri Ora: Environmental Health
 - Tohu Whenua / Moana: The Wider Cultural Landscape
 - Mahi Toi: Creative Expression
 - Ahi Kā: The Living Presence.

13. In summary, it is intended that the project will provide:
- A walking track down to the edge of the waterfall pool. The track will be safe but challenging, with a large number of stairs and a few ladders. The more challenging parts of the track are classified as 'Easy Tramping Track' in terms of the Department of Conservation (DOC) walking track categories.
 - Managed access, which may include an online booking system which kaitiaki and/or rangers will manage as a way to control visitor numbers, if required.
 - Car parking for 77 vehicles.
 - Public toilets next to the car park.
 - Design elements referencing the cultural significance of the site (e.g. pou, palisade fencing, waharoa and ātea).
 - Site signage, including one sign up to a height of 3.0m, interpretive signage panels and information regarding the site, and directional signs located within the car park and vehicle access areas.
 - Three viewing platforms (subject to funding); one at the historic cutting looking out over the falls (near the end of the 4WD track), another part way along the walking track at the high point, and a third adjacent to the pool at the bottom of the waterfall.
 - Ngāti Hangarau, with support from Tourism Bay of Plenty, are exploring longer term options for managing access which include commercial cultural tourism related activities.
 - Repurpose an existing building as a Visitor Centre with provision for on-site accommodation of kaitiaki/staff, or replace this with a purpose-built building with a similar footprint and location.

APPLICATION PROCESS:

14. The land use consent application was jointly publicly notified on 13 August 2021 with submissions closing 17 September 2021. A total of 12 submissions were received:
- 6 in support (2 conditional)
 - 4 opposed
 - 2 neutral.
15. The matter is to be scheduled for a hearing with the Bay of Plenty Regional Council. It is anticipated that a hearing will be held early in the New Year (2022).

REPORTING PLANNER:

16. Bevan Hudson, Senior Consents Planner, Western Bay of Plenty District Council.

SIGNIFICANCE AND ENGAGEMENT

17. The Local Government Act 2002 requires a formal assessment of the significance of matters and decisions in this report against Council's Significance and Engagement Policy.
18. Council has undertaken a statutory public participation process. In making this formal assessment there is no further intention to assess the importance of this item to individuals, groups, or agencies within the community beyond the statutory process under the Resource Management Act 1991.
19. The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.

ENGAGEMENT, CONSULTATION AND COMMUNICATION

20. There is no requirement for an engagement or communication plan as the Resource Management Act prescribes the process for considering a resource consent application. Council has already provided opportunity through the public submission and process and will now progress to a joint hearing with the Bay of Plenty Regional Council.

ISSUES AND OPTIONS ASSESSMENT

That the District Plan Committee appoint Independent Hearings Commissioner(s) as per the above resolution.	
Reasons why no options are available	Legislative or other reference
<p>In accordance with the Policy, as the applications are applied for to the Bay of Plenty Regional Council and Western Bay of Plenty District Council, and for efficiency, should be heard together, joint hearing protocol takes effect. It is logical that all matters be considered at the same time.</p> <p>The matter is a prominent one in the Community, receiving submissions in opposition, and the hearing by Independent Hearings Commissioners can remove a perception of bias.</p>	<p>Council's "Appointment of Independent Commissioners" Policy at Section 4.1:</p>

FUNDING/BUDGET IMPLICATIONS

Budget Funding Information	Relevant Detail
Independent Hearings Commissioner Charges	<p>In accordance with Section 6.1 of the Independent Hearings Commissioners Policy:</p> <p><i>"The costs of an Independent Hearings Commissioner, as negotiated at the time of appointment, will be funded by the applicant in accordance with Council's schedule of Fees and Charges".</i></p>

8 MINUTE NOTES

9 RESOLUTION TO EXCLUDE THE PUBLIC

RECOMMENDATION

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
9.1 - Appeal Resolution - G&T Family Trust - ENV-2020-AKL-000165	s6(a) - the making available of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial s7(2)(j) - the withholding of the information is necessary to prevent the disclosure or use of official information for improper gain or improper advantage	s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7