

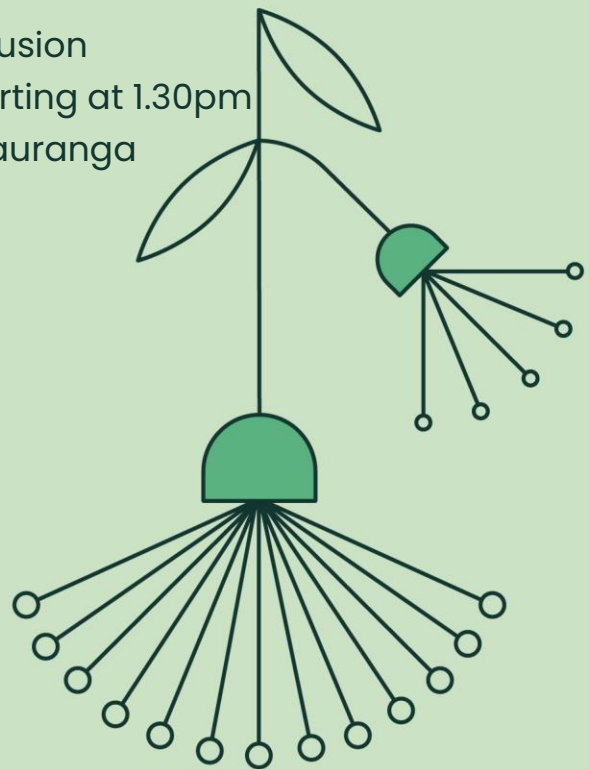
Mā tō tātou takiwā
For our District

District Plan Committee

Komiti Kaupapa-ā-Rohe

DP23-2

Thursday, 23 November 2023, On the conclusion
of the Community Committee meeting starting at 1.30pm
Council Chambers, 1484 Cameron Road, Tauranga



District Plan Committee

Membership:

Chairperson	Deputy Mayor John Scrimgeour
Deputy Chairperson	Cr Murray Grainger
Members	Cr G Dally Mayor James Denyer Cr Anne Henry Cr Margaret Murray-Benge
Quorum	Three (3)
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 General Manager Regulatory Services or General Manager Strategy and Community.
- 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, or any other relevant legislative requirement.
- 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 General Manager Regulatory Services or General Manager Strategy and Community.

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, 1484 Cameron Road, Tauranga on: Thursday, 23 November 2023 on the conclusion of the Community Committee meeting starting at 1.30pm

Order Of Business

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- 1 PRESENT**
- 2 IN ATTENDANCE**
- 3 APOLOGIES**
- 4 DECLARATIONS OF INTEREST**

5 REPORTS

5.1 APPOINTMENT OF INDEPENDENT COMMISSIONERS FOR RESOURCE CONSENT HEARINGS

File Number: A5804517

Author: Natasha Ryburn, Environmental Consents Manager

Authoriser: Alison Curtis, General Manager Regulatory Services

EXECUTIVE SUMMARY

1. The purpose of this report is for Council to establish an Independent Hearings Panel for RC13360L and approve the appointment of Independent Commissioners for RC13982L, and RC13936V01.

RECOMMENDATION

1. That the Environmental Consents Manager's report dated 16 November titled 'Appointment of Independent Commissioners for resource consent hearings' be received.
2. That the report relates to an issue considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That Council delegates the necessary functions to consider and determine Resource Consent applications RC13360L, RC13982L, and RC13936V01.
4. That Council appoints the following accredited Commissioners for Resource Consent applications RC13360L, RC13982L, and RC13936V01:
 - a. Rob Van Voorthuysen, James Whetu, and Fraser Campbell to hear and determine the notified resource consent RC13360L for Te Puna Industrial Limited.
 - b. Alan Withy to determine RC13982L for Jeffrey Family Trust.
 - c. Alan Withy to hear and determine RC13936V01 for Te Puke Land Company Limited.

BACKGROUND

RC13360L Te Puna Industrial Limited

2. RC13360L has been publicly notified as requested by the applicant. This is a joint hearing process with Bay of Plenty Regional Council as both District and Regional consents have been sought. Bay of Plenty Regional Council will be the lead agency for this hearing process.

3. There is a high level of public interest and due to the nature of the proposal, staff from both Councils consider it appropriate to establish a hearing panel consisting of three independent commissioners to hear and decide the applications.
4. Rob van Voorthusen and James Whetu heard and decided the Tinex Group Ltd resource consent (RC13924L, 245 Te Puna Station Road, Te Puna Business Park). It is proposed for consistency that they are also appointed to the hearing panel for TPIL. It is also proposed that Independent Commissioner, Fraser Campbell be appointed as the 3rd hearing panel member.
5. Council's register of commissioners was used to inform the selection of appropriate commissioners. Other commissioners with the relevant expertise who are appropriately accredited have been needed as there was insufficient availability from others with the specific technical expertise required.
6. Rob Van Voorthuysen is a highly experienced Hearing panel chair and planning expert. Rob primarily acts as an Independent Hearings Commissioner nationwide, having served on over 390 hearings and acted as chairperson for more than 290 of them. He first completed the MfE's Making Good Decisions training in 2005 and renewed his Chair's endorsement in 2022.
7. James Whetu has expertise in planning and policy development, Māori participation and perspective in Resource Management matters, and Te Ao Māori. He is of Raukawa, Waikato and Ngāti Tūwharetoa descent. James has been an independent commissioner for Auckland Council, Hamilton City Council and Palmerston North City Council. James has a current Making Good Decisions certificate.
8. Fraser Campbell is the current Director of Campbell Consulting Limited, an engineering consultancy company, and he is an accredited Resource Management and Development Contributions Commissioner. His areas of expertise are environmental engineering, resource and asset management, development contributions, project management, valuation and economic analysis, stormwater and river management, and water allocation. Fraser has a current Making Good Decisions certificate.
9. Rob Van Voorthuysen, James Whetu and Fraser Campbell have all confirmed that they are available to consider and determine the application as Independent Hearings Commissioners.
10. The hearing is tentatively scheduled for February / March 2024.
11. Details of the application are included below:

Applicant:	Te Puna Industrial Limited
Location:	297 Te Puna Station Road, Te Puna
Application:	RC13360L – For the establishment of industrial yards and activities, with associated earthworks, landscaping, drainage and intersection improvements, giving effect to the Industrial

Zoning and Te Puna Business Park Structure Plan within the WBOP District Plan.

Application Process: The application is being processed on a publicly notified basis.

Reporting Planner: Heather Perring, Senior Consultant Planner on behalf of Western Bay of Plenty District Council

RC13982L JEFFREY FAMILY TRUST

12. Council is presently processing a subdivision resource consent for Jeffrey Family Trust to create a protection lot at 456 Youngson Road, Whakamarama, and one additional lot at 270 Whakamarama Road, Whakamarama.
13. It is considered appropriate for an Independent Commissioner to decide this application for two key reasons, being:
 - (a) The protection lot is being created at a different site from the site where the additional lot is being created such that it is a non-complying activity under the District Plan.
 - (b) There is a community benefit aspect, in other words Council is benefiting from this application through the creation of a protection lot.
14. The application is being processed on a non-notified basis by an internal Consents Planner.
15. Alan Withy has confirmed his availability to determine this matter, subject to Council approval.

RC13936V01 TE PUKE LAND COMPANY LIMITED

16. On 3 October 2023, Council granted land use consent (RC13936L) to Te Puke Land Company for an 8-unit residential development at 41 Cameron Road, Te Puke.
17. On 20 October 2023, North 12 Limited (referred to hereon as North 12 Ltd), being the landowner, lodged a s357 objection to conditions 2 and 3 of RC13936L relating to financial contributions (FINCOs).
18. North 12 Ltd objection details that the conditions either be deleted or 'then in respect of Condition 2, for the FINCOs to be revised to an amount that is both fair and reasonable.'
19. As part of the objection, the applicant requested the matter be heard and decided by an Independent Commissioner.
20. Alan Withy has confirmed his availability to hear and decide this matter, subject to Council approval. A hearing date has been set for 30 November 2023.

STATUTORY CONTEXT

21. Section 108 of the RMA outlines the Council's discretion to impose conditions on an application for resource consent as follows:
- (2) *A resource consent may include any 1 or more of the following conditions:*
 - (a) *subject to subsection (10), a condition requiring that a financial contribution be made:*
 - (10) *A consent authority must not include a condition in a resource consent requiring a financial contribution unless—*
 - (a) *the condition is imposed in accordance with the purposes specified in the plan or proposed plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and*
 - (b) *the level of contribution is determined in the manner described in the plan or proposed plan.*
22. Section 357A of the RMA provides for objections in respect of resource consents as follows:
- (1) *There is a right of objection to a consent authority, -*
 - ...
 - (g) *in respect of the consent authority's decision on an application or review described in subsections (2) to (5), for an applicant or consent holder, if the application or review was not notified.*
 - (2) *Subsection (1)(f) and (g) apply to an application made under section 88 for a resource consent. However, they do not apply if the consent authority refuses to grant the resource consent under sections 104B and 104C. They do apply if an officer of the consent authority exercising delegated authority under section 34A refuses to grant the resource consent under sections 104B and 104C.*
23. Section 357D of the RMA sets out the range of actions Council may take when considering an objection to decisions made by the council:
- (1) *The person or body to which an objection is made under sections 357 to 357B may—*
 - (a) *dismiss the objection; or*
 - (b) *uphold the objection in whole or in part; or*

- (c) *in the case of an objection under section 357B(a), as it relates to an additional charge under section 36(5), remit the whole or any part of the additional charge over which the objection was made.*

SIGNIFICANCE AND ENGAGEMENT

24. 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. 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.
25. The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.
26. The decision to approve the appointment of Independent Commissioners for all three applications described above is considered of low significance because the hearing and decision-making steps for these applications are prescribed by the Resource Management Act 1991, and the Act allows local authorities to delegate their powers and functions.

ENGAGEMENT, CONSULTATION AND COMMUNICATION

27. The Resource Management Act prescribes the legislative process for publicly notifying resource consent applications. The Act requires notices are served to individuals and groups either electronically (default) or in hardcopy, and that a public notice is published. The Act requires the individual / group and public notices must contain sufficient information for parties to understand the nature of the application and whether it will affect them or not.
28. The public notification of the Te Puna Industrial Limited application was carried out by the Bay of Plenty Regional Council in accordance with the requirements of the Resource Management described above.

ISSUES AND OPTIONS ASSESSMENT

That Council appoint Independent Hearings Commissioners, as per the above resolution.	
Reasons why no options are available Section 79 (2) (c) and (3) Local Government Act 2002	Legislative or other reference
In accordance with the Policy, as the application has been publicly notified and given the likely high level of public interest and nature of the proposal, the	Council's 'Appointment of Independent Commissioners' Policy at Section 4.1.

<p>appointment of an Independent Hearings Commissioners is sought to consider and determine the resource consent application.</p>	
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STATUTORY COMPLIANCE

29. The ability for Territorial Authorities to delegate its powers and functions to other persons is prescribed under section 34A (1) of the Resource Management Act 1991. Accordingly, recommendations 3 & 4 relating to the appointment of independent commissioners to consider and determine RC13360L (Te Puna Industrial Limited), RC13982L (Jeffrey Family Trust), and RC13936V01 (Te Puke Land Company Limited) is considered statutorily compliant.

FUNDING/BUDGET IMPLICATIONS

Budget Funding Information	Relevant Detail
<p>Independent Hearings Commissioner Charges</p>	<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>