

Mā tō tātou takiwā
For our District

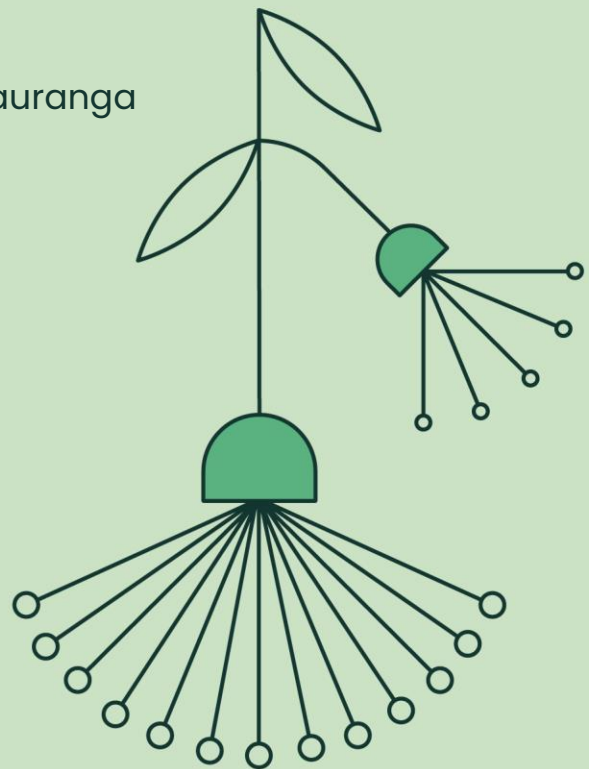
District Plan Committee

Komiti Kaupapa-ā-Rohe

DP24-1

Monday, 8 April 2024, 12.30pm

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:
Monday, 8 April 2024 at 12.30pm

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- 1 KARAKIA**
- 2 PRESENT**
- 3 IN ATTENDANCE**
- 4 APOLOGIES**
- 5 CONSIDERATION OF LATE ITEMS**
- 6 DECLARATIONS OF INTEREST**

7 REPORTS

7.1 APPOINTMENT OF INDEPENDENT HEARINGS COMMISSIONERS – PRIVATE PLAN CHANGE 95

File Number: A6076163

Author: Abi Mark, Senior Environmental Planner

Authoriser: Rachael Davie, Deputy CEO/General Manager Strategy and Community

EXECUTIVE SUMMARY

1. The purpose of this report is for Council to approve the appointment of Independent Hearings Commissioners for Private Plan Change 95 – Pencarrow Estate Pongakawa (PPC).

RECOMMENDATION

1. That the Senior Environmental Planner's report, dated 8 April 2024, titled 'Appointment of Independent Hearings Commissioners – Private Plan Change 95' 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 Council delegates the necessary functions to conduct a hearing and make decisions on Plan Change 95 – Pencarrow Estate, Pongakawa to the Independent Hearings Commissioners.
4. That Council appoints the following accredited Commissioners to consider and make decisions on Plan Change 95:
 - a. Commissioner Gavin Kemble, Enspire Consulting Limited, as the Hearings Chair
 - b. Commissioner James Whetu, Whetu Consulting Limited.

BACKGROUND

2. Private Plan Change 95 – Pencarrow Estate Pongakawa (PPC) is a change of zoning of land from Rural to Residential and Commercial with an associated structure plan on Arawa Road, Pongakawa.
3. The PPC request was accepted by Council in October 2023. The notification and submission period of the PPC followed in November last year and the further submissions period occurred in February of 2024.
4. There were 37 Submissions and 4 further submissions received.

5. Section 4.1 of the Appointment of Independent Hearings Commissioners Policy identifies circumstances in which independent hearings commissioners should be used. This section states: *“Where Council has a material conflict of interest as applicant, submitter, or land owner, or circumstances may create a perception of bias (e.g. involving a claim, or legal action).”*
6. The Applicant is Kevin and Andrea Marsh. Kevin Marsh served as a Councillor for WBOPDC prior to 2022. Mr Marsh served as a councillor with several of the current councillors. There is potential that this may create a perception of bias. A submission on the plan change has been received from a member of the Te Puke Community Board. For these reasons it is therefore considered appropriate to have Independent Hearing Commissioners engaged. Staff have confirmed Mr Gavin Kemble and Mr James Whetu’s availability.
7. The commissioners to make up the Panel have been selected based on their specific and complimentary areas of expertise. The commissioners have knowledge and experience with resource management processes and the issues that are relevant to Plan Change 95. All commissioners are Making Good Decisions certificate holders. Gavin Kemble also holds a charring endorsement which is necessary for his appointment as the panel chair.
8. Section 4.3 of the Appointment of Independent Hearings Commissioners Policy (2017) states: *“In determining the composition of any hearings panel (or appointment of an individual Independent Hearings Commissioner), consultation must be undertaken through Relevant Iwi Authorities to determine whether it is appropriate to appoint an Independent Hearings Commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū.”*
9. The appointment of commissioner James Whetu is recommended to provide an Independent Hearings Commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū.
10. Council’s register of commissioners has been used to inform selection of appropriate commissioners to the panel. Other commissioners with the relevant expertise who are appropriately accredited have been needed as there was not sufficient availability from others on the register with the specific technical expertise required.
11. Gavin Kemble is a locally based, experienced independent hearing commissioner and has sat on a number of hearings committees as their chair. He is a highly experienced planner, having undertaken a wide range of complex projects including private plan changes throughout New Zealand. His commissioner work has been in Tauranga, Waikato and Coromandel and includes experience with comprehensive developments and land use proposals. Gavin has a current Making Good Decisions certificate and holds a chair endorsement.
12. 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 is currently engaged by Council to hear resource consent RC13360L for Te Puna Industrial Limited. James has a current Making Good Decisions certificate.

13. Following appointment of the commissioners, staff will undertake the necessary preparations for the hearing.

SIGNIFICANCE AND ENGAGEMENT

14. The Local Government Act 2002 requires a formal assessment of the significance of matters and decision in this report against Council's Significance and Engagement Policy. In making this formal assessment there is no intention to assess the importance of this item to individuals, groups, or agencies within the community and it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.
15. The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.
16. In terms of the Significance and Engagement Policy this decision is considered to be of low significance, because the establishment of a hearings panel with independent commissioners has minimal community and financial impact.

ENGAGEMENT, CONSULTATION AND COMMUNICATION

17. The Resource Management Act prescribes the legislative process for considering private plan changes. The requirements under the Resource Management Act include providing sufficient written notice of information and decisions to submitters and the general public and ensuring key reports and information is publicly available on Council's website.

ISSUES AND OPTIONS ASSESSMENT

That Council establish and delegate necessary functions to a Hearings Panel and the appointed independent commissioners as per 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 Appointment of Independent Commissioners Policy, as the Private Plan Change application is made by a former Western Bay of Plenty District Council Councillor; the appointment of Independent Hearings	Council's Appointment of Independent Commissioners Policy at Section 4.1: Conflict of Interest. Where Council has a material conflict of interest as applicant, submitter or landowner, or circumstances

Commissioner(s) are sought to consider and determine the Private Plan Change.	may create a perception of bias (e.g. involving a claim, or legal action).
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STATUTORY COMPLIANCE

18. The Private Plan Change has been processed in accordance with the statutory requirements of the Resource Management Act 1991.
19. The recommendations are consistent with Council's Appointment of Independent Hearings Commissioners Policy.

FUNDING/BUDGET IMPLICATIONS

20. The need for a hearing is set out in legislation and well understood as forming a part of plan making processes. The costs associated with hearing processes are anticipated within operational budgets and project plans.

Budget Funding Information	Relevant Detail
Independent Hearings Commissioner Charges	In accordance with Section 6.1 of the Appointment of Independent Hearings Commissioners Policy: 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.