

# GUIDELINES FOR COMMISSIONERS

## 1. Introduction

The following information has been prepared to assist you in your role as Commissioner appointed by the Wellington Regional Council to hear and make decisions on resource consent applications.

## 2. Authority to Appoint Commissioners

Section 34(3) of the Resource Management Act 1991 provides as follows:

*A local authority may delegate to any hearings commissioner or commissioners appointed by the local authority for this purpose, who may or may not be a member of the local authority, any of its functions, powers, or duties under this Act, other than –*

- (a) The approval of a policy statement or plan or any change to a policy statement or plan:*
- (b) The power of delegation.*

The Regional Council has delegated the authority to select Commissioners to the Chairperson of the Environment Committee, and the Divisional Manager, Environment.

You are appointed to fulfil a quasi-judicial role. As a Commissioner, you may be appointed to hear a consent application on your own or you may be part of a Hearing Committee, or a Joint Hearing Committee. If you are a member of a Joint Hearing, it means you will be part of a committee which includes Councillors or Commissioners from the relevant territorial authority. In carrying out your role you may be working by yourself, with other Commissioners, with Wellington Regional Councillors or territorial authority Councillors.

## 3. When the Regional Council is Likely to Use Commissioners

The Regional Council is likely to use commissioners in the following instances:

- When an operational arm of the Regional Council is an applicant for a resource consent.
- When a particular interest of the Regional Council may be prejudicial to the council hearing the application. For example, the application may affect the Regional Council's interest as a property owner. With regard to property interests, it is necessary to separate the asset management role from that of the regulation role of the resource management agency. An operational function of

the Council could be affected by the decision on an application or the Regional Council could be a submitter.

- The Regional Council wishes to use a decision-making ability which draws on particular skills and experience. For example, a Commissioner may be used when Treaty of Waitangi issues are involved.

In addition to the above, section 24(2) of the Local Government Amendment Act 1992 provides that where the Regional Council makes an application for a resource consent in exercise of its bulk water supply function for the taking or abstraction of water then the function of hearing and determining the application shall be delegated to a Hearing Commissioner or Commissioners.

#### **4. Commissioners' Skills**

The Commissioner must have the following skills:

- Sufficiently informed to be able to make judgements in accord with the provisions of the Resource Management Act 1991.
- Capable of hearing evidence with an open and impartial mind, i.e., not biased towards one view or position and not seen to be biased or incapable of impartial judgement.
- Not attached to any organisation that may be a party to the hearings.
- Not influenced or likely to be seen as influenced by any organisation or persons on the merits of the case prior to the hearing.
- Of some standing, able to judge and weigh evidence and make sound and well reasoned decisions. If the person possesses expertise in a particular area relevant to the application then this can also be helpful to the Hearings Committee in assessing technical and cultural issues.
- Capable of discussing an application with other members of a hearings Committee, listening to points of view and articulating points of view with other members of a Hearings Committee with a view to reaching a decision.
- Familiar with the relevant sections of the Regional Policy Statement and relevant Regional Council plans.

#### **5. Commissioners' Responsibilities**

To fulfil their responsibilities, Commissioners should undertake the following:

- Prior to the hearing taking place, there should be an understanding of all aspects of the resource consent applied for. This includes being familiar with the

consent being applied for (including all background information and assessments), and with the site (in many instances this will require site visits), and an understanding of the actual and potential effects of allowing the activity(ies) subject of the application.

- Prior to the hearing taking place, an understanding of all submissions lodged will be required. In particular, the reason for lodging submissions and the relief sought should be understood.
- Prior to the hearing, be familiar with the report from the pre-hearing meeting.
- Have an understanding of the Officer's Report on the application. This will include consideration of the relevant sections of the Resource Management Act 1991, reasons why certain conditions have been proposed and the likely effect on the application, of imposing the suggested conditions.
- Be able to conduct the hearing according to the appropriate procedures. In this regard section 39 of the Resource Management Act 1991, "Hearings to be public and without unnecessary formality". Section 39 provides that in determining the appropriate procedure for the hearing the following shall be observed:
  - (a) *Avoid unnecessary formality.*
  - (b) *Recognise tikanga Maori where appropriate and receive evidence written or spoken in Maori and the Maori Language Act 1987 shall apply accordingly.*
  - (c) *Not permit any person other than the chairperson or other member of the hearing body to question any party or witness; and*
  - (d) *Not permit cross examination*
- At the conclusion of the hearing, be able to discuss the application(s) with other Commissioners and be able to make a decision with or without conditions. Section 113 of the Resource Management Act 1991, "Decisions on applications to be in writing etc", provides that every decision on a resource consent application is required to be in writing and include reasons for the decision. (Attached is a copy of the Regional Council's Hearing Protocol).

## 6. Regional Council Support Services

Council staff will provide copies of appropriate information and will make the necessary administrative arrangements. You may request advice, information and assistance at any time, including during the hearing.

Legal and technical advisers can be used as required.

After the hearing, staff can also provide assistance, but cannot influence the decision you must make on the basis of the hearing.

Staff will normally draft the decision on your instructions. The decision must be signed by at least the Chairperson before it is released.

## 7. **Time Spent on Applications**

Under section 36(3) of the Resource Management Act 1991, “Administrative Charges”, a local authority – in this case the Wellington Regional Council – may recover *actual and reasonable* costs. Under this provision for all resource consent applications, the Commissioner’s(s) time will be recovered against the applicant. In order to keep costs to an applicant to a reasonable level, the time spent on an application should be relative to the scale and significance and complexity of the application. In identifying the parts of an application on which time has been spent, Commissioner’s(s) should use the attached form. The attached form should be attached to the Commissioner’s(s) account for payment to the Regional Council.