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NGĀ MĀNUKANUKA O TE IWI (MĀORI COMMITTEE)

Open Agenda Supplementary Items

Meeting Date: Friday 26 July 2024

Time: 11.00am

Venue: Small Exhibition Hall
War Memorial Centre
Marine Parade
Napier

Livestreamed via Council's Facebook page

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AGENDA ITEMS

1. PROPOSED DISTRICT PLAN TE AO MĀORI COMMISSIONER

<i>Type of Report:</i>	Operational and Procedural
<i>Legal Reference:</i>	Resource Management Act 1991
<i>Document ID:</i>	1778885
<i>Reporting Officer/s & Unit:</i>	Paulina Wilhelm, Manager City Development

1.1 Purpose of Report

This report outlines the process for selecting a commissioner with an appropriate level of te ao Māori experience and tikanga expertise who will hear some topics on the Proposed District Plan.

Officer's Recommendation

The Ngā Mānukanuka o te Iwi (Māori Committee):

- a. Note the content of this report.
- a. Endorse Option 1 as the preferred process to appoint the hearing panel members for the Proposed District Plan (PDP).

1.2 Composition of the Panel

Given the number of submissions received on the PDP, it is recommended a panel of five commissioners be appointed, comprising:

- 2 elected members and 1 alternate who are already members of the Napier City Council Hearings Committee
- 1 independent hearing commissioner
- An external independent chair from outside of Hawkes' Bay.
- 1 commissioner with the appropriate level of te ao Māori expertise (Māori commissioner)

The appointment of a Māori commissioner is recommended to hear sections of the PDP where the depth and knowledge of tikanga is warranted.

The Hearing Committee will select the hearing panel members but has recommended that the Māori commissioner is endorsed by the Ngā Mānukanuka o te Iwi Committee before being appointed by the Hearing Committee.

The other members of the PDP hearing panel, the chair and the independent commissioner, will also have good understanding of tikanga Māori.

Officers are currently engaging with mana whenua entities on the selection of the hearing panel and Māori commissioner. A list of Māori commissioners has been requested from Mana Ahuriri Trust, Mangaharuru Tangitū Trust, Ngāti Pārau and Te Taiwhenua. Officers will meet with the candidates, check availability, experience, expertise and costs and then

present a selection to the Ngā Mānukanuka o te Iwi Committee for endorsement and then to the Hearing Committee for selection.

There is a wide range of skills a commissioner requires. These are listed in Attachment 1.

1.3 Background Summary

There are generally no legal statutory requirements as to how many commissioners are required for a process such as this. Principles contained in case law and common practice provide guidance as follows:

- The number of commissioners should match the scale of the decision that needs to be made, its complexity, and the experience and expertise of the commissioners. Any policies and guidelines drafted to guide councils in using commissioners should reflect this principle.
- Single-issue decisions of low complexity will generally require only one commissioner.
- Complex decisions, for example applications dealing with technical arguments on many different issues, may require two or more commissioners. One commissioner will often be employed to take into account the overall considerations of the application and guide the conduct of proceedings; the other(s) may consider the more detailed technical evidence according to their knowledge and experience. There should be sufficient expertise in the panel to ensure full understanding of the relevant evidence and information presented.
- The District Plan review attracts large numbers of submissions which warrant the use of more than one commissioner: the issues covered by submitters may be varied and require a range and depth of technical knowledge which no single commissioner can be expected to have.
- Some councils use an odd number of commissioners in hearings to avoid 'stalemate' situations. With an even number of commissioners, councils may want to identify which commissioner's view will prevail or have a casting vote (usually the chairperson or principal commissioner) in the appointment/delegation of powers to commissioners. For most hearings, no more than three commissioners should be needed.

Based on the guidance provided above, officers foresee the majority of the hearings will require at least 3 hearing commissioners in the panel, but some of the less complex hearings streams may require a lesser number.

1.4 Issues

The costs associated with the hearing process for the PDP can become an issue if not carefully considered and planned.

To effectively manage the budget and minimise the cost to ratepayers, it is recommended that no more than 3 commissioners attend most hearings, but there could be some instances where a lesser number may be required. This can be determined at a later stage once the complexity of the submissions is well understood. Once officers have finished assessing the complexity of all the submissions, they can suggest the number of commissioners needed for each of the hearings.

Holding some hearings online could also help with managing the budget. All the pre-selected commissioners will be asked if available to hold hearings remotely to reduce accommodation and travel costs.

1.5 Significance and Engagement

Engagement and discussion with mana whenua entities and the Ngā Mānukanuka o te Iwi Committee was deemed necessary for the selection of the Māori commissioner with an in-depth knowledge of tikanga who will hear some topics of the PDP. This complies with the requirements of the RMA.

1.6 Implications

Financial

The cost associated with the PDP hearings will be covered by operational budgets. Officers are planning to run an efficient hearing process to minimise costs.

Social & Policy

NA

Risk

Two risks have been identified in running the hearings for the PDP. These are:

- 1) The level of skills and expertise of the hearing commissioners
- 2) Any potential bias the hearing panel members may have.

These two risks are mitigated by appointing very experienced independent commissioners and appointing an external chair.

1.7 Options

The options available to Council are as follows:

- a. **Option 1:** Engage with mana whenua entities to get a range of potential candidates, compare rates and expertise and then let the Hearing Panel select and appoint after endorsement from Ngā Mānukanuka o te Iwi Committee or,
- b. **Option 2:** Run an Expression of Interest (EOI) process to identify the preferred commissioners.
- c. **Option 3:** Do not appoint a specific Māori commissioner but select independent hearing commissioner with good understanding of tikanga.

Options 1 and 2 are robust processes, but the EOI is a lengthier process and resource intensive.

Option 3 is not recommended; a Māori commissioner will have the knowledge and expertise to hear the Sites of Significance to Māori and Significant Natural Areas Variations to the PDP.

Option 1 is recommended.

The RMA requires consultation with mana whenua entities on the composition of the hearing panel. For the PDP Variations (SoSM and Significant Natural Areas) officers suggest appointing a specific Māori commissioner.

1.8 Development of Preferred Option

Option 1 is recommended to appoint a Māori commissioner to hear some topics of the Proposed District Plan.

1.4 Attachments

- 1 Appendix 1 - Skillset required by a Commissioner [↓](#)

Appendix 1: Skills a Commissioner Requires

All commissioners should have a set of core competencies and skills that enable them to understand the application or issue before them, conduct hearings in an appropriate manner, and make sound decisions.

Core competencies include:

- correctly identifying the nature of issues arising during a hearing in terms of the RMA and relevant planning documents
- recognising common decision-making biases and applying cognitive strategies to minimise their impact
- demonstrating impartiality and integrity
- systematically and appropriately testing and questioning the evidence and decisions of others
- demonstrating commitment to appropriately and fairly assessing and weighing evidence
- making balanced contributions during deliberation and obtaining and clarifying relevant views from other panel members to increase the total knowledge available
- using appropriate decision-making tools
- formulating a reasoned decision independently of others.

Commissioners should have the following expertise:

- a good knowledge of the RMA, and the decision-making and hearings procedures contained within it
- knowledge of functions and processes under the Local Government Act and the Local Government Official Information and Meetings Act 1987
- the ability to listen effectively, distilling the key arguments and facts from the information presented
- an awareness and understanding of the principles of natural justice and a sense of fair play
- the ability to maintain objective neutrality (not jump to conclusions or predetermine an outcome)
- a general understanding of the principles of the Treaty of Waitangi, their relevance in legislation, and whether and how they may be applicable to the decision(s) to be made.

Other skills or qualities may be required to meet the circumstances where general knowledge and skills alone will not suffice. These other qualities or skills could include:

- recognised specialist qualifications, expertise and/or experience in a particular field (such as resource management law, planning, surveying, engineering, ecology, architecture, urban design or science)
- understanding of Māori language, tikanga, history and cultural values (such as in cases where Māori heritage, tāonga, or ancestral relationships could be affected). On occasion an appreciation of potential conflicting or competing interests between local hapū or iwi may also be required.
- an understanding of other cultures, in cases where issues in relation to those cultures have been raised.

A commissioner who chairs a hearing, or sits alone, can be expected to have the following additional competencies:

- jointly considering and applying RMA, relevant legislation and planning documents to a wide variety of complex contexts
- demonstrating awareness of the powers of a panel and chair and being able to apply these powers flexibly, ethically, fairly and appropriately
- chairing hearings confidently, dealing appropriately with complex and unexpected issues, plus effectively leading and managing other panel members
- effectively leading and managing processes leading up to the hearing
- effectively leading and managing the post-hearing processes
- demonstrating a commitment to managing and developing the performance of panel members and continuous self-improvement.

Chairs with this set of competencies can be expected to:

- conduct the hearing in a way that enables all parties who wish to be heard a fair hearing without time wastage or undue coverage of irrelevant or inappropriate issues and evidence
- manage conflict and unacceptable behaviours associated with unreasonable challenges
- communicate succinctly and accurately (orally and in written form), explaining the reasoning for any decisions made, including decisions regarding the relevance (or otherwise) of evidence being presented
- fully understand the processes involved in drafting decisions and be able to write decisions without assistance.

Some councils make staff available to assist commissioners in the interpretation of their plans. Where an adviser drawn from council staff is not available – or not wanted – it is important that the commissioner is familiar with both the content and structure of those planning documents and can interpret them accurately.