

3. COUNCIL HEARINGS PANEL

General Manager responsible:	General Manager Regulation & Democracy Services, DDI 941-8462
Officer responsible:	Resource Consents & Building Policy Manager
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PURPOSE OF REPORT

1. The purpose of this report is to refresh Councillors about the Council Hearings Panel Workshop on 29 November 2010. The workshop was held as a result of the following 3 June 2010 Regulatory and Planning Committee resolution:

“The Regulatory and Planning Committee requested that a councillor workshop to be held as soon as possible regarding the Council’s Hearings Panel.”

EXECUTIVE SUMMARY

2. At the workshop a PowerPoint presentation by Peter Mitchell covered a range of matters relevant to the resolution. It included the following:

What is the Council Hearings Panel?

The Council Hearings Panel is a committee of the Council and has been appointed after each election for many years. All 54 elected members are appointed members of the Hearings Panel. The delegations register requires that a minimum of three and a maximum of four members are required to be on a Hearings Panel and that two of these may be Community Board members. The general role of the Hearings Panel is to carry out quasi judicial hearings on behalf of the Council.

A typical Resource Management Act (RMA) Panel operates with three elected members or two elected members and a Commissioner. The Resource Management Act requires the majority of panel members to be accredited to consider a notified application, a private plan change, or a notice of requirement and the RMA also provides for an accreditation process. The Act also requires that for a panel, the chair must be accredited. Other than for RMA hearings no formal accreditation is required for other types of hearings.

Typical hearings held by the Panel include:

- Decisions on resource consent hearings.
- Recommendations to Council on plan changes.
- To determine notification issues.
- Fencing of swimming pools.
- Barking dogs and dangerous dogs issues.
- Decisions under the Sale of Liquor Act.

What doe Quasi Judicial Mean?

Quasi judicial decisions are decisions which effect people’s legal rights and there is a legal requirement to hold a hearing when making such decisions. The rules of natural justice apply when making quasi judicial decisions and there may be a right of appeal. An important consideration is that quasi judicial decisions are not political decisions and must be based on the weight of evidence before the panel. Panels making quasi judicial decisions may have powers resembling those of a court. For example, witnesses can be summoned and evidence can be required to be given on oath.

Remuneration

RMA Hearings Panel members have fees payable. The hearing chair gets \$100 per hearing panel hour and Hearings Panel members get \$80 per hearing panel hour. On this matter it is worth noting that the Mayor is not eligible for any fee. It is also worth noting that for all other hearings there are no fees payable.

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How are Panel Members Appointed?

The Council has resolved that the Planning Administration Manager or Resource Consents Manager appoint members to Hearings Panel considering all RMA matters. The Council's Secretary appoints members to panels considering non-RMA matters. The panel members are appointed based on the following criteria:

- No conflict of interest.
- Avoid hearings in own Ward (except Banks Peninsula).
- Availability.
- Accredited (if required).
- Experience versus in-experience.
- Complexity of the application.
- Swimming pools - must be Councillors

It is important to note that only Councillors can be appointed to Plan Change Hearings.

3. The presentation finished by putting forward a number of issues for consideration which had arisen during discussion at the 3 June Regulatory and Planning Committee meeting. These issues included:
 - Consistency of decision-making.
 - Accountability for decision-making.
 - Delegation powers.
 - Membership of Hearings Panels.
 - Availability of elected members to be on Hearings Panels.
 - No governance oversight of panel decisions by the Council.
 - Need for criteria re who attends RMA training.
4. There was discussion about some of the matters dealt with in the presentation particularly around the way hearings panel members are appointed.
5. At its meeting on 16 December 2010 the Council passed the following resolution:

"That the Mayor and Chief Executive appoint any hearings panels required to meet before 28 February 2011 on the following matters:

 - (i) Resource Management Act 1991.
 - (ii) Exemptions under the Fencing of Swimming Pools Act 1987.
 - (iii) Objections under the Dog Control Act 1996.
 - (iv) Sale of Liquor Act 1989"
6. This December 2010 delegation to the Mayor and chief Executive was subsequently extended by the Council and is the process to appoint Hearings Panel members today.

STAFF RECOMMENDATION

For consideration by the Committee.