

SOUTH WAIRARAPA DISTRICT COUNCIL

23 APRIL 2014

AGENDA ITEM C6

APPOINTMENT OF COMMISSIONER FOR SUBDIVISION CONSENT HEARING

Purpose of Report

To appoint an independent commissioner to a resource consent hearing at the request of a submitter.

Recommendations

Officers recommend that the Council:

1. *Receive the information.*
2. *Delegate to the Group Manager, Planning and Environment the ability to appoint one of the two commissioners identified in this report commissioner to undertake the hearing in response to the request by Mssrs Cooke and Marsh (submitters).*
3. *Delegate to the Group Manager, Planning and Environment the ability to appoint an independent hearings commissioner should the circumstances require it.*

1. Executive Summary

A submission to a subdivision consent (limited notified) included a request that the hearing be conducted by an independent commissioner. Under Section 100A(4) of the Resource Management Act 1991 Council is therefore required to appoint such a person.

2. Background

A non-complying 2 Lot Subdivision in the Rural (Special) Zone was notified on a limited basis on 16 January 2014. Six submissions were made to the proposal. Included in one submission (from F Cooke and D Marsh) was the request that the consent be heard by an independent commissioner. The 2009 amendments to the Resource Management Act 1991 included the following section to the Act:

Section 100A(4) - *If the local authority receives a request under subsection (2), it **must** delegate, under section 34A(1), its functions, powers, and duties required to hear and decide the application to 1 or more hearings*

commissioners who are not members of the local authority.
{emphasis added}

Council is therefore obliged to appoint a commissioner.

3. Discussion

The subdivision proposal is for undersized lots within the Rural Special Zone. The site is on the urban fringe. While all applications are assessed on their own merits, the decision on this subdivision could impact on how Council considers subdivisions at the urban/rural boundaries. The decision itself would be subject to potential appeal to the Environment Court, which Council would need to defend. Therefore, it is considered important that an experienced commissioner be appointed.

Council staff have contacted the following experienced commissioners who have indicated they could be available:

Christine Foster: Has over 25 years' experience as a practising resource management planner working in local and central government and as a consultant to a range of private sector clients. Her specialist areas include environmental impact assessment, community consultation, procedures for obtaining statutory approvals under the Resource Management Act, expert evidence and project management. Locally, she mediated between appellants and the Masterton, Carterton and South Wairarapa Councils on the subdivision rules of the Combined District Plan.

Philip Milne: A specialist Environmental / Resource Management Barrister with more than 21 years' experience in the Local Government and Environmental Law field. He has been in practice since 1989, a partner at Simpson Grierson from 1997 to 2010 and Special Counsel from July 2010.

Both of the commissioners have the required experience to ensure a robust decision is issued on behalf of Council. While both have indicated an interest and availability, they both have other ongoing hearings or projects that might clash with a hearing date, so this would need to be negotiated before appointment.

4. Financial Implications

Section 36(1)(ab) of the Resource Management Act 1991 provides for the Council to charge the submitter(s) who request a commissioner the difference between cost of a Council hearing and decision and the cost for the commissioner to hear and determine the consent. Therefore it would not cost the applicant or the Council more to use a commissioner as requested.

5. Future Considerations

Under Section 100A(3) of the Resource Management Act 1991, a request for the use of a commissioner can be made up to 5 working days after the closing date of submissions. Should a request be made on the 5th working day, it might be difficult for statutory time frames to be met to process the consent, if staff are required to find suitable commissioners and then seek

approval of an appointment from Council. In this particular instance, the applicant has requested a delay to the hearing so this is not an issue. However it is suggested that a delegation be given to the Group Manager, Planning and Environment to make a decision to appoint any future independent commissioners should the circumstances require it.

6. Conclusion

That Council confirm the suitability of the 2 commissioners to hear and decide on the non-complying subdivision consent and delegate the actual appointment to the Group Manager, Planning and Environment in order to ensure availability of a commissioner for the hearing date.

That Council consider amending the delegations to allow the Group Manager, Planning and Environment to appoint a commissioner when circumstances require this to be done.

Contact Officer: Chris Gorman, Senior Planner

Reviewed by: Murray Buchanan, Group Manager, Planning and Environment