

**BEFORE THE SOUTHLAND REGIONAL COUNCIL**

**IN THE MATTER OF**      The Resource Management Act 1991 (**Act**)

**and**

**IN THE MATTER OF**      Application by **INVERCARGILL CITY COUNCIL** for Discharge  
Permits to discharge water and contaminants into surface water  
bodies and reticulated stormwater systems – APP-20168843

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**MINUTE AND DIRECTIONS OF HEARING COMMISSIONERS RELATING TO  
HEARING PROCEDURES AND DISCLOSURE OF INTERESTS**

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- 1 The purpose of this Minute is to further address hearing procedures as outlined in our Minute of 14 July 2017, and to raise, in the interests of transparency, some relationship matters identified by Commissioner Pauling.

### **Hearing Procedures**

- 2 As addressed in our first Minute, this Application is subject to the mandatory timetabling provisions of s103B.
- 3 The Southland Regional Council (ES) has a set of "standard" hearing procedures. These are attached as Appendix A to this Minute. We consider that they are generally appropriate, subject to any amendments which may be made, particularly following receipt of pre-circulated reports and evidence.
- 4 One of the issues raised in the standard procedures relates to scheduling. While that can be addressed at the commencement of the hearing, it would be useful if any party could advise of any difficulties they may have with witnesses or others during the hearing period. Such advice should be given to Ms Maciaszek. We will consider and endeavour to accommodate any timing difficulties.

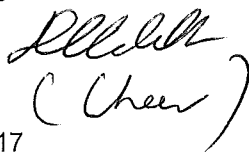
### **Panel Membership**

- 5 Commissioner Pauling has, quite properly, advised that he knows a number of the staff and representatives of the Te Ao Marama / Te Rūnanga o Waihōpai, a submitter on this application, Commissioner Pauling has worked with them in his previous role as an Environmental Advisor with Te Rūnanga o Ngāi Tahu (TRONT), and has maintained some contact, from time to time, in his present role as Strategic Advisor Māori at Boffa Miskell.
- 6 Commissioner Pauling advises that he assisted Te Ao Marama and local rūnanga during the development of their Iwi Management Plan prior to 2008, and has assisted in some cultural monitoring and mahinga kai related projects.
- 7 Commissioner Pauling also has whakapapa connections to both Awarua and Waihōpai Rūnanga. He is not however an active member. He has never lived in the Southland region. He has not attended any rūnanga meetings. He had no knowledge of, and no involvement in, the preparation of the submission by Te Ao Marama Inc / Te Rūnanga o Waihōpai.
- 8 Commissioner Pauling considers, and the other members of the Panel agree, that the matters disclosed do not disqualify him from being a member of the Panel. We consider there is no actual conflict of interest. In considering whether

there may be a perceived conflict of interest, we have asked ourselves whether there is a real possibility that, in the eyes of a fair minded and fully informed observer, Commissioner Pauling may not be seen to be impartial in his decision making.

- 9 We note Commissioner Pauling had no prior knowledge of, or involvement in, this Application or the submission; he has no material interest in the outcome; he does not reside in the area; nor is he actively involved in the local rūnanga. He knows a number of staff at Te Ao Marama Inc on a professional and personal basis but that is not sufficient to suggest it would be appropriate for Commissioner Pauling to be recused.
- 10 We also note that there are a limited number of appropriately qualified persons possessing Commissioner Pauling's expertise and experience in tikanga Māori and understanding of tangata whenua perspectives on issues which may arise. It would be very difficult to find any Commissioner with the relevant knowledge and skills in cultural issues who does not have some knowledge of, or relationship with, staff and representatives of Te Ao Marama / Te Rūnanga o Waihōpai. Commissioner Pauling's background in Māori resource and environmental management, including 15 years with TRONT, and his familiarity with various Iwi Management Plans, combined with his extensive experience in fresh water management, will be very helpful in the decision making process.
- 11 Should any party wish to object to the constitution of the Panel in relation to the matters identified by Commissioner Pauling, they should do so in writing no later than Thursday 20 July 2017. Any objection to be forwarded to the Hearings Officer, Lauren Maciaszek at the Southland Regional Council, Private Bay 90116, Invercargill 9840 or email: [lauren.maciaszek@es.govt.nz](mailto:lauren.maciaszek@es.govt.nz)

Issued by Hearing Commissioners David Caldwell – Chair, Hugh Leersnyder and Craig Pauling



(Chair)

Dated 18 July 2017

## Hearing Procedures

A Hearing Commissioner or Hearing Panel is able to set its own procedure, however, the following is Environment Southland's standard procedures for hearings. The Chair of the Panel is entitled to vary the hearing format if circumstances arise (for example if someone has another commitment). The term "Chair" in this document applies to the Commissioner when an application is being heard by a single independent Commissioner.

### Hearing Format

1. The Chair will introduce members of the Panel and Council staff at the commencement of the hearing and outline the format and protocols of the hearing.
2. Appearances will then be entered for all parties – applicants and submitters.
3. The Chair will fix appearance times (if times have already been arranged, the Chair will read the appearance times and ask for these to be confirmed). Appearance times will be approximate and will be used as a guide only. The Chair may vary the appearance the times in order to maintain a continuous hearing process.
4. The applicant and their representatives will then be called to present their case and give evidence.
5. When the applicant and their representatives have given all their evidence, the submitters will be called upon to open their case and present any evidence.
6. The reports prepared by Council officers will be formally acknowledged and their author may make a short statement of introduction to them. The Council officers may wish to address any matters raised by the applicant, their representatives and/or the submitters. The Council officers may be asked questions from the panel regarding their evidence and/or and matters raised by the applicant, their representatives and/or the submitters
7. The applicants may then deliver a closing address. The closing address may only summarise evidence and comment on issues already raised.
8. The Chair will close or adjourn the hearing. The Panel will then exclude the public during its deliberations as provided by the Local Government Information and Meetings Act 1987.
9. All parties will be notified in writing of the decision.

### **Statutory Timeframes for Pre-Circulation of Evidence**

- The Council officer's s42A report must be circulated 15 working days prior to the hearing.
- Briefs of evidence are required before the hearing:
  - ◆ the applicant must provide briefs of evidence to the Council at least 10 working days prior to the hearing.
  - ◆ the submitters must provide briefs of evidence of any **expert** evidence to the Council at least five working days prior to the hearing.
- If the above timeframes are not met the late evidence may be disregarded.
- The Council's staff's s42A report must be circulated 5 working days prior to the hearing for a non-notified application.

### **Protocols for Hearings**

- Evidence presented at the hearing should be in writing and sufficient copies shall be made available for the Commissioner/Panel and other parties present at the hearing. Only submitters who made a submission in relation to the application and who stated in their submission they wished to be heard can speak or have a representative speak for them at the hearing.
- Submitters should not raise any issues that were not covered in their initial written submission. Points may be elaborated on, but no new issues raised.
- The Panel may ask questions of the applicants and submitters to seek clarification. Council officers may be invited to suggest questions through the Chair, if necessary, to clarify issues for the Panel. In limited circumstances, the Chair may permit questions from the parties involved, solely for the purpose of clarification, to be directed at the witness through the chair. Cross-examination is not permitted.
- The Panel may seek any additional advice or information if it requires it to assist the hearing process under Sections 41(4) and 41C of the RMA.
- The hearing will be held in public unless it is deemed necessary to protect sensitive information.
- Evidence may be written or spoken in Maori. To allow an interpreter to be available, five working days notice must be provided to Environment Southland.
- At the conclusion of the hearing, the Panel has 15 working days to release its decision.