

**Title:** Appointment of Independent Commissioners – Managed Aquifer Recharge

**Section:** Environmental & Regulatory Services

**Prepared by:** Reginald Proffit (Consents Manager)

**Meeting Date:** 28 June 2018

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Legal     Financial     Significance = low

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## Report to COUNCIL for decision

### SUMMARY

The purpose of this report is to appoint Mark Farnsworth as Independent Commissioner to hear the Managed Aquifer Recharge variation of consent application.

Council has been working with local horticulture groups and iwi regarding the Managed Aquifer Recharge Trial (MAR) and a variation of resource consent has been submitted. The variation sought being an increase in volume of water taken and the incorporation of new purpose built monitoring bores. The application is being processed by Bay of Plenty Regional Council (BOPRC) to address potential issues with actual and/or perceived conflicts of interest.

Given the application is from Council it is considered to have the potential for concern to be raised that Gisborne District Council Councillors may be biased if appointed as Hearing Commissioners. Accordingly the hearing panel to be appointed to hear the resource consent requires the appointment of independent commissioners.

The decisions or matters in this report are considered to be of **low** significance in accordance with the Council's Significance and Engagement Policy.

### RECOMMENDATIONS

**That the Council:**

1. **Notes the contents of this report.**
2. **Appoints Mark Farnsworth to hear the consent applications and delegates to him, pursuant to Section 34A(1) of the Resource Management Act 1991, all the functions, powers and duties of the Council, under the Resource Management Act 1991, necessary to hear and decide on:**
  - a) **an application for a variation of resource consent for the Managed Aquifer Recharge Trial, and**
  - b) **any other Resource Management Act matters ancillary or related to the resource consent application.**

*Authorised by:*



Nicholas Zaman  
**Director Environmental Services & Protection**

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**Keywords:** Independent Commissioners, Managed Aquifer Recharge

## BACKGROUND

1. Gisborne District Council (Council) is statutorily required under the Resource Management Act 1991, to decide on resource consent applications lodged with Council. Consent Hearing Panels consider notified consent applications through a public decision-making process. Council has the ability to appoint suitably certified Councillors, Independent Commissioners or a mix of both of these to undertake this responsibility. In undertaking a public decision-making process, it is important to ensure a fair process is provided and the potential for any actual or perceived bias, which may affect public confidence in the integrity of decision-making, is avoided.
2. Council has applied for a resource consent for the Makauri Aquifer Recharge Project. Council as the applicant and more specifically the Environmental Planning and Regulatory Committee have provided a governance role in the development and engagement associated with the MAR Project. Council in considering these matters for the original consent delegated its decision making role to a panel of Independent Commissioners.
3. A submission was received on the consent applications, therefore a hearing for these consents will be required. The purpose of this report is to recommend Independent Commissioners to hear the consent applications.

## DISCUSSION

4. Maintaining public confidence is vital for the integrity of decision-making and as such avoiding actual and perceived bias is important. To this extent it is important that the principles of natural justice and fair process are applied. As Council has an interest in the outcome of the consent hearing and Councillors have had a governance role in progressing this project, it is important to avoid the situation where Councillors are put in the position of being 'the judge and jury for its own hearing'.
5. All consents applied for will be 'bundled' and heard together.
6. Mr Farnsworth has extensive RMA and Commissioner experience that Council has used in past roles and his most recent appointment as Chair of the Freshwater Management Plan will hold him in good stead to consider this application under the regulations that apply. Mr Farnsworth has Hearing Commissioner Certification and Chair endorsement through the Ministry for the Environment Making Good Decisions.
7. CVs for Mr Farnsworth is attached.

## ASSESSMENT OF SIGNIFICANCE

Criteria	This Report	The Process Overall
The effects on all or a large part of the Gisborne district	Low	Low
The effects on individuals or specific communities	Low	Low
The level or history of public interest in the matter or issue	Low	Medium
Inconsistency with Council's current strategy and policy	Low	Low
Impacts on Council's delivery of its Financial Strategy and Long Term Plan.	Low	Low

8. The decisions or matters in this report are considered to be of **low** significance in accordance with Council's Significance and Engagement Policy.

## COMMUNITY ENGAGEMENT

9. No consultation has been undertaken as this is not a significant Council decision as detailed above.

## CONSIDERATIONS

### • Financial/Budget

10. The cost of the process is charged to the applicant as such there is no financial commitment required by Council.

### • Legal

11. The decision to appoint independent commissioners is consistent with the application of natural justice and the application of clear and transparent decision making processes without the perception of bias.

## POLICY AND PLANNING IMPLICATIONS

12. Council's strategic priorities are:

- Resilience – the ability to prepare for and bounce back from adversity;
- Prosperous Tairāwhiti – fostering economic growth and community well-being;
- Environmental Stewardship – caring for our natural resources;
- Mana Tairāwhiti – enhancing and enjoying our unique region; and
- Inclusive decision-making – involve and engage people in decision-making.

13. The decision is consistent with having inclusive decision-making where decision making processes are clear and transparent without the perception of bias.

## RISKS

14. It is important that Council maintains the integrity of public decision-making processes. Appointment of Independent Commissioners for these applications is consistent with this and removes the potential for the process and Councillor Commissioners to be challenged due to a conflict of interest.

## NEXT STEPS

Date	Action/Milestone	Comments
	Pre Hearing Meeting has been requested by the Applicant	Date still to be defined
	Hearing	Hearing date still to be confirmed

## APPENDICES

A copy of Mr Farnsworth's CV is attached.