

The Chairman
Regulatory Services Committee

17 October 2024
1.30 pm

Supplementary Report

Pursuant to Section 46A(7) of the Local Government Official Information and Meetings Act 1987, it is recommended that the following items be dealt with under Notification of Urgent Business :

⇒ Item 1 – Appointment of Hearing Commissioner – Fiordland Charters Ltd – APP-20242146

The reason that this item was not included on the agenda papers is because the requester for the need for this appointment was not known at the time the agenda closed.

The reason that this item cannot be delayed is that there is not another meeting of the Regulatory Services Committee programmed until next year; the statutory timeframes for processing applications provides a limited amount of time within which these decisions need to be taken, and the Council's Policy requirements regarding the appointment of hearing commissioners set out the requirements around such appointments.



D Rule
Acting General Manager, Regulatory Services

Appointment of Hearing Commissioner Fiordland Charters Ltd APP-20242146

Objective ID: A1173029

Report by: Lacey Bragg, Consents Manager

Approved by: Don Rule, Acting General Manager – Regulatory Services



Purpose

To seek and appoint an independent hearing commissioner as a decision maker to hear and decide on the resource consent application (APP-20242146) applied for by Fiordland Charters Ltd.

Summary

The consents team is seeking Regulatory Committee approval to appoint any of the respective parties outlined below for the consent decision-making processes of Fiordland Charters Ltd application (APP-20242146), as per the recently adopted Hearing Commissioner Appointment Policy.

It is recommended that these matters be considered by an independent decision-maker, rather than by staff or by a council committee, in order to ensure objectivity in the decision-making process.

Further background to the application and the commissioner proposed to be appointed are outlined in the background and notification sections of this report below.

Recommendation

It is recommended that the Regulatory Committee resolve to:

- 1 receive the report "Appointment of independent commissioner for APP-20242146"
- 2 appoint Bianca Sullivan (Chair) to hear and decide the application by Fiordland Charters Ltd – APP-20242146
- 3 delegate the appointee pursuant to s34A(1) of the Resource Management Act 1991, all the functions, powers and duties required to deal with any preliminary matters; and hear and decide the application.

Background

The applicant, Fiordland Charters Ltd applied to Environment Southland, on 9 April 2024, for Coastal Permits for the following:

1. retrospectively legalise a mooring installed at Broughton Arm, Breaksea Sound, and preferential occupation of that mooring;
2. preferential occupation of three existing moorings within recognised anchorages at Beach Harbour, Breaksea Sound; Outer Luncheon Cove, Dusky Sound; and Supper Cove, Dusky Sound.

A duration of 15 years is sought.

The applicant requested that the application be limited notified which it was, on 20 August 2024. Submissions closed on 24 September 2024. Four submissions were received, one neutral and three opposing the activity.

Notification

The s95 notification report details a full description of the application, consultation undertaken, legal and planning matters, as well as the recommendations, and decisions for notification.

Fiordland Charters Ltd APP-20242146 had requested limited notification of its application, and four submissions were received: one neutral and three opposing in part, and three submitters wish to be heard. Submissions note support for the mooring at Broughton Arm, Breaksea Sound.

Concerns regarding the application for preferential occupation of existing moorings within recognised anchorages were raised in submissions. These concerns include:

- the proposed duration of the consent;
- the upcoming regional coastal plan review;
- distinction between 'preferential' versus 'exclusive' occupation;
- the risk other to other vessel operators from granting preferential or exclusive occupation rights to a party;
- carrying capacity of recognised anchorages;
- impact on public access; and
- the applicant's proposal to "preferentially" rather than exclusively occupy the moorings.

The applicant has requested a sole and independent decision-maker to hear and determine the application. A hearing date is yet to be formally scheduled.

Proposed Hearing Commissioner Appointments:

It is proposed to appoint a *sole* experienced independent hearing commissioner to hear and decide the application.

Council's Hearing Policy outlines the criteria for selection of hearing commissioners:

- scale, complexity and nature of the hearing;
- suitable experience;
- ability to understand and evaluate the key issues associated with the application;
- availability for hearing and decision making;
- no conflict of interest;
- Ministry for the Environment (MfE) Making Good Decisions Accreditation.

Having considered this policy and the importance of objectivity in decision-making, Environment Southland has sought commissioners who have the ability to consider and evaluate the key issues, and any relevant effects, as well as ensure robust decisions. It is therefore recommended that the following person be appointed:

Bianca Sullivan (chairperson)

Bianca is an accredited hearing commissioner, with chair endorsement and experience in environmental planning, policy, and consents – either as chairman or panel member. She is also fully conversant with the relevant planning framework. She has no conflict with parties and is available to hear the application.

Implications/risks

Legal implications

Section 100 of the Resource Management Act 1991 (RMA) provides an obligation to hold a hearing when a person who has made a submission in relation to an application or the applicant has requested to be heard. S34A of the RMA allows council to delegate functions to hearing commissioners appointed by the Southland Regional Council.

The Regulatory Committee appoints hearing commissioners in relation to consent authority matters under the RMA, in accordance with the recently adopted Hearing Commissioner Appointment Policy.

Financial implications

Processing of resource consent applications, including the decision-making process, are at cost to the applicant and the RMA provides for financial penalties to apply should the application not be processed within the required timeframe.

Next steps

When appointed, and the necessary arrangements made to schedule the application for decision/hearing, the appointed Commissioner would then hear/determine the applications.

Views of affected parties

There are no matters in this report which require consideration under this heading.

Fit with strategic framework

OUTCOME	CONTRIBUTES	DETRACTS	NOT APPLICABLE
Managed access to quality natural resources	x		
Diverse opportunities to make a living			x
Communities empowered and resilient			x
Communities expressing their diversity			x

Attachments

None