Position title: 
Independent Hearing Commissioner

Division: 
Governance

Department: 
Democracy Services

Reports to: 
Regulatory Committee through the Principal Advisor Hearings

Location: 
Region wide

Accountabilities of position

Purpose of position:
To act as a chairperson or as a member of a hearings panel to consider and decide (or recommend) matters in accordance with the Resource Management Act (1991), Local Government Act (2002), Housing Accords and Special Housing Areas Act 2013, Reserves Act 1977 or any other relevant statutes, on behalf of Auckland Council. Matters to be considered may include;

- resource consent applications
- plan changes
- notices of requirement
- bylaws and dispensations
- reserve management plans
- policies where the Special Consultative Procedure is used
- other hearings as determined by the Regulatory Committee.

Commissioners may also be appointed as duty commissioners, acting under delegated authority to consider and make decisions on resource consent applications (including notification determinations), notices of requirement and outline plan of works, section 125 applications, section 127 applications, and section 37 and other matters that do not require a hearing.

Commissioners are employed as contractors to the council and should be prepared for flexible working hours noting that this is not a full-time role.
Key responsibilities

Preparation and decision

Key responsibilities
- Review material thoroughly before hearing and prepare questions for parties as required
- Take notes throughout the hearing to refer back to when writing the decision

Chairperson:
- Prepare directions and/or minutes on procedural matters as required
- Allocate tasks among panel members, including drafting parts of the decision where appropriate
- Engage with panel members to arrange and attend site visits

Panel member:
- Contribute to decision writing and review as instructed by the chairperson

Expected outcomes
- Hearings proceed smoothly and in a timely manner
- Decisions are completed within statutory timeframes
- Decisions (or recommendations) are well reasoned and legally and technically correct
- Decision-writing skills of panel members improve over time, enabling progression to a chairing role

Hearings

Key responsibilities
- Exercise the council’s powers and functions in accordance with relevant legislation and within the terms of the delegations manual and hearings policy
- Adhere to accepted best practice for hearings
- Correctly identify the nature of issues arising during a hearing in terms of the Resource Management Act, relevant planning documents and other legislation
- Recognise common decision-making biases, including unconscious bias, and apply strategies to minimise their impact
- Demonstrate impartiality and integrity as well as an awareness and understanding of the principles of natural justice and a sense of fair play
- Listen effectively, distilling the key arguments and facts from the information presented and apply appropriate weight to evidence
- Consider and apply tikanga Māori to hearings where relevant and appropriate
- Embrace diversity and use cultural competency to ensure that all members of Auckland’s diverse communities are able to participate effectively in hearings

Expected outcomes
- Reaches a clear, impartial, logical decision in written form
- Provides a degree of neutrality as well as competency and experience in relevant planning aspects
- Applies skills and experience as well as an objective view where delegated functions concern or involve the local authority as a party
- Gains excellent knowledge of application and issues by being familiar with all material provided prior to hearing and making a site visit where appropriate
- Writes or formulates decisions within statutory timeframes for resource consent hearings and as requested by the Hearings Team for other work
• Maintains confidentiality on all deliberations and decisions subsequent to the completion of the work
• Discloses any potential conflict of interest, either actual or perceived, to the Hearings Team prior to the acceptance of work
• All parties feel that they have had a fair hearing

Legislative requirements

Key responsibilities
• Maintain a comprehensive understanding of all relevant legislation and plans necessary to provide a quality service to the council and its customers
• Keep up to date with relevant case law and decisions made by other Auckland Council hearing panels
• Ensure that Making Good Decisions accreditation remains current
• Demonstrate an understanding of the principles of the Treaty of Waitangi, their relevance in legislation, and their application to the decision(s) in question

Expected outcomes
• Applies new legislation and case law to decisions where appropriate
• Commissioners remain eligible to sit on hearings throughout the duration of their contract
• Decisions stand up to appeal and judicial review

Key relationships
Internal:
• All independent commissioners
• Chairperson, Regulatory Committee
• Principal Advisor Hearings
• Hearings Team
• Resolutions Team Manager
Type of person suitable for this position

Qualifications

- Ministry for the Environment Making Good Decisions accreditation (mandatory)
- Tertiary qualification or proven experience in one or more of the following disciplines:
  - planning
  - resource management law
  - engineering (transport and infrastructure)
  - landscape architecture
  - ecology, biodiversity and environmental management
  - freshwater management
  - the Treaty of Waitangi and kaupapa Māori
  - coastal management
  - heritage and conservation management
  - urban design
  - air quality
  - rural planning and land management.

Experience, skills and competencies

- Proven expert in field
- A minimum of five years' experience as an independent commissioner preferred
- Questioning skills essential
- Able to make clear and appropriate decisions in written form
- Ability to use tact and diplomacy where needed
- Strong computer skills and use of technology (ability to adapt to a paperless approach)
- Excellent customer service skills
- Able to maintain neutrality and keep an open mind when assessing applications
- Absence of conflict or bias (actual and perceived)
- Cultural competency - commitment to diversity and ability to work effectively with all of Auckland’s diverse communities

Disclaimer

The above statements are intended to describe the general nature and level of work being performed by incumbents in the assigned job. They are not construed as an exhaustive list of all responsibilities, duties, or skills required of the incumbent.
1. **What are independent commissioners?**

Independent commissioners are expert decision makers who consider and determine (or recommend) matters under various statutes including the Resource Management Act (1991), Local Government Act (2002), Housing Accords and Special Housing Areas Act 2013, Reserves Act 1977 and others, on behalf of Auckland Council. Matters to be heard will include:

- planning applications such as plan changes
- resource consent applications
- special housing area applications
- other hearings as determined by the Regulatory Committee.

Generally decisions are heard by a panel of commissioners made up of a chair and members. Some chairs will also sit alone as a duty commissioner to make decisions ‘on the papers’.

Independent commissioners are appointed as a ‘pool’ of commissioners. At the time of selecting each hearing panel, one commissioner will be appointed as the chair for that hearing.

2. **What is the chair’s role?**

Chairs will preside over the hearing, controlling proceedings and ensuring that all parties are given equal opportunity to have their say. To be considered for a chair, you will need to demonstrate your skills in the following areas:

- listening
- negotiation
- dealing with difficult people and situations
- understanding of the legislation and case law
- decision writing.

The Making Good Decisions Chairing endorsement is preferred but not essential.

3. **How many independent commissioners will be contracted?**

Auckland Council will be recruiting approximately 52 independent commissioners across a range of specialist areas.

4. **What qualifications do I need to be an independent commissioner?**

Independent commissioners are required to hold the Ministry for the Environment Making Good Decisions accreditation or show they have enrolled to attend a training course for this qualification at the time of submitting an application.
Independent commissioners must have qualifications and/or experience in one or more of the following areas:

- planning
- resource management law
- engineering (transport and infrastructure)
- landscape architecture
- ecology, biodiversity and environmental management
- freshwater management
- the Treaty of Waitangi and kaupapa Maori
- community
- coastal management
- heritage and conservation management
- urban design
- air quality
- rural planning and land management
- waste management.

5. What are the eligibility requirements?

Independent commissioners are appointed based on individual qualifications, competencies and skill sets.

Each applicant must be a New Zealand citizen or a New Zealand permanent resident and preference will be given to applicants that reside within the Auckland region.

6. What is the recruitment process?

Auckland Council will advertise for applications from Monday, 6 March 2017.

Applications must be received by Sunday, 26 March 2017 at 10.30pm and must be submitted via council’s website.

A selection panel will interview shortlisted applicants during April/May 2017. The Regulatory Committee will appoint the pool of independent commissioners at their May or June meeting, with the commissioners’ contracts starting on 1 July 2017.

7. What is the term of the contract?

The independent commissioner contract will be for a period of three years, from 1 July 2017 till 30 June 2020.

8. How much time is an independent commissioner expected to commit to?

Work will be on an ‘as required’ basis and hearing panels are selected depending on the skills and expertise required for each hearing. Auckland Council holds approximately 100 resource management hearings per year. Commissioners may be appointed for any number of hearings from 0-15 per year, noting that planners, resource management lawyers and urban designers are generally appointed to more hearings than other specialists.

Commissioners are expected to be available if required, but are provided approximately four weeks’ notice of their appointment prior to a hearing and have the opportunity to decline if they have prearranged commitments or a conflict of interest.
Auckland Council also hosts a quarterly forum for independent commissioners and accredited elected members, which commissioners are expected to attend.

9. Do independent commissioners get paid?

Yes, independent commissioners are paid at a set remuneration rate. The current rate is $170 per hour for the chair and $150 per hour for panel members. This rate is under review and will be confirmed before the contracts are offered.

Independent commissioner invoices are subject to 33% withholding tax and invoices are GST exempt under Section 6(3)(c)(iii) of the Goods and Services Tax Act 1985.

10. Why does the council website application form refer to ‘employee’ and asks for a salary range when this role is for a contractor with a set remuneration rate?

To manage the expected volume of applications, we are requiring applications for the independent commissioner role to be submitted through council’s careers web page and therefore refers to successful candidates as being employees. Salary range responses will not be taken into consideration as part of this recruitment process.

To clarify, independent commissioners will be contractors to council.

11. Would I report to a council manager?

Independent commissioners are contractors of the council, not employees, and are accountable to the Regulatory Committee through the Principal Advisor Hearings, Democracy Services.

12. What if I have a conflict of interest?

As independent commissioners are champions in their own professions, they will find they have a conflict of interest from time to time and these can be discussed with the Hearings team as they arise.

All commissioners are required to submit a declaration of interest form prior to each hearing.

Further questions

Please contact Elizabeth McKenzie, Principal Advisor Hearings, at elizabeth.mckenzie@aucklandcouncil.govt.nz or 09 890 8118 if you would like to know more about the role.