



Appointing a person for RMA section 24A investigation into Christchurch City Council

Date Submitted:	11 November 2022	Tracking #: BRF-2432	
Security Level	Policy and Privacy In-Confidence	MfE Priority:	Urgent

	Action sought:	Response by:
Hon Phil TWYFORD, Associate Minister for the Environment	Respond to recommendations	14 November 2022

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments # 1	Appendix 1: Possible candidates to lead an investigation

Key contacts

Position	Name	Cell phone	1st contact
Responsible Manager	Sarah McCarthy		
Director	Lesley Baddon	021 738 357	✓

Appointing a person for RMA section 24A investigation into Christchurch City Council

Key Messages

1. Christchurch City Council (the Council) voted not to notify an intensification planning instrument (IPI) as required by section 80F of the Resource Management Act 1991 (RMA). In response, the Minister for the Environment has decided to initiate an investigation under section 24A of the RMA (BRF-2185 refers). He has delegated you the role of selecting an appropriate person to lead the investigation.
2. Officials consider that the investigation should be a process with elected representatives and staff from the Council to understand the issues associated with intensification in Christchurch and to determine where there could be a pathway forward. This process could be led by an independent person or officials.
3. We have identified four appropriate independent people to lead the investigation. Appendix 1 includes brief biographies for these people: Bill Cashmore, John Hardie, Greg Pollock and Rachel Reese. Officials consider all options put forward could work, including an officials-led process, but on balance propose that you to appoint Greg Pollock.
4. We also propose an officials-led process as an option at this stage, thereby delaying the introduction of an independent investigator, but recognise that this may not convey sufficient significance to the Council or general public.

Recommendations

We recommend that you either:

- a. **Agree** to appoint an appropriate independent person to lead an investigation under section 24A of the Resource Management Act 1991 into Christchurch City Council

Yes/No

- b. **Indicate** in Appendix 1 of this briefing a preference for a person to be appointed by the Ministry for the Environment to lead an investigation into Christchurch City Council

Or

- c. **Agree** to an officials-led investigation at this point under section 24A of the Resource Management Act 1991 into Christchurch City Council

Yes/No

Signature

Lesley Baddon Director - Urban and Infrastructure Policy	
Hon Phil TWYFORD, Associate Minister for the Environment	
[Date field]	

Purpose

5. This briefing provides advice on an appropriate person to lead the Resource Management Act 1991 (RMA) section 24A investigation into Christchurch City Council (the Council). It seeks your agreement to either appoint an independent person to conduct the investigation or to an officials-led investigation.

Context

6. On 13 September 2022, the previous Council voted not to notify an intensification planning instrument (IPI) as required by section 80F of the RMA.
7. On 20 September 2022, former Mayor, Hon Lianne Dalziel wrote to the Minister for the Environment, Hon David Parker, to advise that the Council is aware it is breaching its statutory obligations and to request that the Minister for the Environment work alongside the Council to find a bespoke solution for housing intensification in Christchurch.
8. The Minister for the Environment decided to initiate an investigation under section 24A of the RMA (BRF-2185 refers). The investigation is to consider the performance by Christchurch City Council (the Council) of its functions, powers or duties in relation to notifying an IPI.
9. Ministry for the Environment (MfE) officials have had an initial meeting with the newly elected Mayor, Phil Mauger and the Council's Chief Executive, Dawn Baxendale about the possibility of an investigation and an appropriate person to lead the investigation. Officials have started work on a terms of reference for the investigation.
10. On 7 November 2022 the Minister for the Environment delegated the selection of an appropriate investigator to you as Associate Minister for the Environment with responsibility for matters relating to urban policy.

Analysis and advice

11. Officials have previously advised that the investigation be led by someone with skills and the experience to work constructively with the Council. The investigation should be a process with the Council politicians and staff to understand the issues, including the councillors' concerns, and to understand if and where there could be a pathway forward.
12. We have previously identified the following people as appropriate for this role: Bill Cashmore, Greg Pollock and Rachel Reese (outlined as candidates in BRF-2185) and John Hardie (who was further put forward verbally by the MfE as a candidate in a meeting with the Minister for the Environment). Information on these people is in Appendix 1.
13. In the interests of working with the Council, officials discussed the potential candidates to conduct the investigation with the Council. The Council indicated a preference for John Hardie.

14. The Minister for the Environment identified John Hardie as a close associate. He has therefore delegated the selection of an appropriate investigator to you to avoid any perception of conflict of interest.
15. The Council indicated a second preference Greg Pollock after officials advised the Council that Mr Hardie is a close associate of the Minister for the Environment.
16. Officials have had initial conversations with Mr Hardie and Mr Pollock regarding the scope of the investigation. We consider Mr Pollock's proposed approach likely to be most effective and best value for money.
17. We understand Bill Cashmore has very limited availability in November.
18. Discussions between MfE officials and the Council have been positive to date. Officials therefore consider that an alternative option could be to delay providing an independent investigator and use an officials-led process at this point. There is no legal obligation for investigation to be independent from the Ministry for the Environment.
19. Initiating an officials-led investigation would not prevent an independent person being appointed should the investigation require it. However, there could be a perception that an officials-led process would not be a sufficient signal to the Christchurch City Council, or the general public that the Government expects compliance with the legislation.
20. If you wish to progress an officials-led investigation, we recommend it be conducted by a senior MfE official, such as a director or deputy secretary.

Other considerations

Legal issues

21. A judicial review risk exists when any statutory decision-making power is exercised. We consider that the risk of a successful judicial review is low should officials' preferred candidate be appointed. The risk of judicial review is heightened should a person be appointed where there is a perceived conflict of interest. No specific legal issues arise in relation to the appointment of either an independent investigator or an MfE official.

Financial, regulatory and legislative implications

22. There are no financial, regulatory or legislative implications of this work. Regardless of whether an independent person or an official leads the investigation, it can be undertaken within the current implementation budget.

Next steps

23. Following your indication of a preferred person we will work with them to identify any actual or perceived conflicts of interest. In any instances where the conflict cannot be

managed, we will come back to you to identify another suitable person. We will act quickly to enable an appointment to avoid further delays to intensification in Christchurch.

24. If you decide on an officials-led investigation, we will select an appropriate official to lead the investigation and advise you on them.
25. Following the appointment of an independent person or the selection of an official, we will liaise with your office and the office of the Minister for the Environment to prepare a letter to the Council on:
 - the Minister for the Environment's decision to initiate an investigation
 - your decision about who will lead the investigation
 - the confirmed terms of reference for the investigation.
26. Once the Council has received the letter, officials will engage with the Council to prepare a project plan and start the investigation.

Appendix 1: Possible candidates to lead an investigation

Candidates	Summary of relevant skills and experience (information from publicly available sources)	Minister's preference/ comments
Bill Cashmore	<p>Bill is a Farmer and former Deputy Mayor of Auckland. Represented the southern rural Franklin ward on Auckland Council from 2013 to 2022.</p> <p>In his capacity as Deputy Mayor, has worked with Central Government to deliver better housing and urban development outcomes for Auckland through the Auckland Housing and Urban Growth programme.</p> <p>He was on the resource management reform Local Government Steering Group.</p> <p>He has a reputation for being positive and constructive, gained from his leadership of Auckland Council's response to the NPS-UD and MDRS in particular in South Auckland.</p> <p>Bill is based in Auckland.</p>	
John Hardie	<p>John Hardie lives in Christchurch, where he has been a practising barrister and mediator for over 20 years. Much of his practice has been in the fields of environmental and civil law.</p> <p>John is a member of the Arbitrators' and Mediators' Institute of New Zealand (AMINZ), and a Fellow of the Australasian mediation organisation, the Resolution Institute. John has been undertaking mediation work dealing with weathertight home issues since the inception of the Weathertight Homes Tribunal and mediation service in 2002.</p> <p>In 2013 John was appointed as a member of the Canterbury Earthquake Recovery Authority Compensation Panel. He has also been appointed to lead panels determining resource consents under the COVID-19 Recovery (Fast-track Consenting) Act 2020 and is on the Resource Management Reform Efficiency Working Group.</p> <p>John is a legal adviser to the Greater Christchurch Claims Resolution Service (GCCRS), set up by the Government to deal with outstanding earthquake related claims.</p> <p>John is based in Christchurch.</p>	
Greg Pollock	<p>Greg Pollock has been the Managing Director of Transdev New Zealand, which operates train and bus services for Auckland Transport and the General Manager of Metlink which operates public transport services for Greater Wellington Regional Council.</p>	

	<p>Previously Chief Executive of Fairway Resolution Ltd – a Crown owned conflict management company that offers mediation, arbitration and conflict coaching services.</p> <p>He has resource management experience as a previously practicing planner and a professional mediator. He runs his own business Pollock Consulting Limited and is based in Wellington.</p> <p>Greg Pollock has previously advised Environment Canterbury on public transport matters.</p> <p>Greg is based in Wellington.</p>	
Rachel Reese	<p>Mayor of Nelson City from 2013 to 2022 and served on the Nelson City Council for five terms. She is an accredited Resource Management Commissioner and has been LGNZ's representative on the Making Good Decisions Advisory Panel and the Environment Legal Assistance Panel.</p> <p>She is a member of Resource Management Law Association and is a qualified mediator and arbitrator.</p> <p>She was on the Three Waters Steering Group and the resource management reform Local Government Steering Group.</p> <p>She holds a Bachelor of Commerce and Administration and Graduate Diploma in Business Studies.</p> <p>Rachel is based in Nelson.</p>	