

**IN THE MATTER OF**                    **the Resource Management Act 1991**

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**IN THE MATTER OF**                    **an application by Kāinga Ora on  
behalf of the Department of  
Corrections for a resource consent to  
use an existing property at 14 Bristol  
Street, St Albans, Christchurch to  
provide residential accommodation  
for men as part of a rehabilitative and  
reintegrative programme**

**(RMA/2020/173)**

**MINUTE OF COMMISSIONERS APPOINTED BY THE  
CHRISTCHURCH CITY COUNCIL**

**DATED 13 JULY 2021**

1. ***Our appointment***

We have been appointed to hear and determine an application by Kāinga Ora on behalf of the Department of Corrections to use an existing property at 14 Bristol Street, St Albans, Christchurch, to provide short term residential accommodation for men identified as having a risk of further serious offending in the future, as part of a rehabilitative and reintegrative programme.

2. ***Hearing arrangements***

***Timing / venue***

- 2.1 A hearing is being set down for the week of 30 August 2021, to be held at the McFaddens Centre, 64 McFaddens Road.
- 2.2 Our expectation is that the hearing will be completed in that week, but we have arranged for the venue to be available in the following week (Monday 6 and Tuesday 7 September 2021) should the hearing need to continue beyond Friday 3 September 2021.
- 2.3 As a preliminary outline, we expect the case for the applicant to take all of Monday 30 August, 2021 and the morning of Tuesday 31 August 2021. We then expect to hear from submitters on the afternoon of Tuesday 31 August 2021, and on Wednesday 1 September 2021, and if needed on Thursday 2 September 2021. The presentation from Council officers would then follow the presentations from submitters. Depending on the progress of the hearing, and of matters raised, the applicant may complete their right of reply later in the week scheduled, or at a time to be arranged in the following week, or in writing at some later date.

***Planning report***

The planning report on behalf of the Council will be circulated to all parties, including submitters, no later than Friday 6 August 2021.

- 2.4 Following the receipt of that report, submitters who expressed a desire to speak at the hearing can expect an email approach from Council administration staff seeking confirmation of their intention to appear, whether they are a part of any group presentation, how long they envisage they will need to present to the Panel, and an indication of which day (morning or afternoon) that they would like to make their presentation. We will endeavour to enable submitters to make their presentation in the time period sought, but that will depend on the progress of the hearing, and the number of submitters who seek to be heard in each time period.

#### ***Evidence***

- 2.5 Evidence on behalf of the applicant must be provided to the Council by ***Monday 16 August 2021*** and the Council will then circulate that evidence to the parties, including submitters.
- 2.6 Any submitters who choose to provide expert evidence on their behalf must provide that evidence to the Council no later than ***Monday 23 August 2021***. That evidence will also be circulated to all parties. Submitters do not need to provide their own personal statement or submission ahead of the hearing.
- 2.7 It would be helpful for any statements by submitters (over and above the submission lodged) to be in writing, with at least 5 copies available at the hearing. It is not a requirement for submitters to produce a written statement, and we will hear your submission in whatever form you feel most comfortable providing.

#### ***Site visit***

- 2.8 It is our intention to conduct a site inspection from the street before the hearing and to undertake a full site visit either during or after the hearing.
- 2.9 We propose making arrangements concerning the post hearing site visit during the hearing so that all parties are made aware

of the specific arrangements which are to be made to facilitate access to the property in question.

3. **Matters relating to the appointment of the commissioners**

**Matters relating to the appointment of Mr Hughes-Johnson QC**

- 3.1 This part of the minute records the comments of Mr Hughes-Johnson.
- 3.2 On 8 April 2020 I issued a decision in relation to the notification of the application directing that the application must be the subject of public notification.
- 3.3 I have been provided with a list of persons or bodies that have made submissions in relation to the application, it having been publicly notified following my decision on notification.
- 3.4 Following the receipt of the list of persons/bodies who had made submissions in relation to the application, I communicated with the Council by letter on 20 May 2021 on the following terms ...

*"Some of the submitters are known to me, but are not personal friends. However I have noted that Peter John Pryor of 34 Webb Street is a submitter. He has filed a submission but does not want to speak in support of that submission.*

*Mr Pryor is a member of an informal walking group with which I have an association and has been for a number of years. I have come to know Mr Pryor through my association with the walking group. That group meets on a weekly basis and when I attend, which has been relatively regularly, Mr Pryor is often present. I would term him a friend, but we do not meet on social occasions outside those that are associated with the walking group. We do not visit each others houses and he is not a close friend.*

*A question arises as to whether my association with Mr Pryor should lead to me recusing myself from my appointment as a commissioner. Whilst I believe that I would be able to bring a balanced judgment to the determination of this matter, the legal test for recusal centres around whether a fair-minded lay observer might reasonably apprehend that there is a real and not remote possibility that I might not bring an impartial mind to the resolution of a question that I am required to decide. This was authoritatively confirmed as the law in New Zealand in the decision of the Supreme Court in *Saxmere Company Limited v Woolboard Disestablishment Company Limited* [2010] 1 NZLR 35 and restated again by the same court in *Siemer v Heron (recusal)* [2012] 1 NZLR 293.*

*Finally I note that a precautionary approach to proof of bias and recusal is required.*

*In the circumstances it is my understanding that you will refer this matter to the applicant to ascertain the position of that party."*

- 3.5 Given that Mr Price's submission was in opposition, my letter was referred to the applicant for comment. The applicant responded on 21 May 2021 in the following terms .....

*"I can confirm on behalf of the Applicant that they are comfortable for the current commissioner to be retained in his appointed role. They do not consider there to be any conflict of interest."*

- 3.6 As noted in my letter, some of the submitters are known to me, but are not personal friends. As to this, I note:-

(i) that I was on the board of the Canterbury Symphony Orchestra in company with Richard Millar Ballantyne and Catherine Margaret Felicity Price, some years ago, but do not have continuing social contact with them;

(ii) I am a member of The Christchurch Club and it is possible that some of the submitters are also members of that club.

- 3.7 I do not regard my association with any of the submitters giving rise to an actual or potential conflict of interest but it is proper that the parties interested in the application should be aware of my position.

- 3.8 Consistent with the terms of my letter to the Council, this minute is issuing to ensure that all parties involved are made aware of my position and to give such parties an opportunity to comment should they regard that as appropriate.

***Matters relating to the appointment of Mr Lawn***

- 3.9 This part of the minute records the comments of Mr Lawn.

- 3.10 I will also likely know some of the participants in this hearing, including expert witnesses who regularly appear before commissioner hearing. The only person that I wish to make a statement on is one of the submitters, Mr Baden Ewart. I have worked with Mr Ewart in various recovery roles following the Christchurch earthquakes, and on a social occasions or events I have spoken with Mr Ewart. I do not regard my interactions with

Mr Ewart to be an actual or potential conflict of interest, but it is proper that the parties interested in the application should be aware of my position.

***Our direction***

3.11 We direct that if any party wishes to make submissions in relation to the issue of our involvement in the hearing of this application, that party should lodge with the Council a written memorandum setting out the submissions of that party ***by 5pm on Thursday 22 July 2021.***

**DATED** this 13th day of July 2021



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**A C HUGHES-JOHNSON QC  
COMMISSIONER**



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**K LAWN  
COMMISSIONER**