

Submission in Response to Minute 41

Minute 41 of the Independent Hearings' Panel invited any submitter on the PDP that has a contrary view to the advice Council submitted to the Panel in response to its Minute 40 to respond via a legal memorandum. This is my submission per that invitation.

1) FNDC's Obligation to Make a decision on the PDP by May 27th, 2026

Council's advice Memorandum¹ included:

"The Council is required to make decisions on submissions on the PDP by 27 May 2026 (in accordance with the timeframe specified by the Minister in the Clause 10A exemption approval)."²

I submit that Council currently has the legal right now to halt and withdraw the PDP and consequently Council is not required to make decisions on submissions on the PDP by 27 May 2026, or by any other date.

The legal right to halt and withdraw the PDP derives from the '*Resource Management (Consenting and Other System Changes) Amendment Act 2025*' ('Amending Act') and the demonstrable underlying intent of Parliament in passing the Amending Act. More specifically, clause 19 of the Amending Act dictated that sub clauses (1) & (4) of S.79 of the RMA do not apply for the period between the specified commencement date of August 21st, 2025 and December 31st, 2027. Subclause (1) of S.79 had required, *inter alia*, that FNDC review its district plan if it hadn't done so for ten years and subclause (4) of S.79 allowed FNDC to review its district plan at any other time. As the current PDP process was initiated and has been progressing in accordance with one or other of those statutory provisions which currently don't apply, it follows that the whole plan review process can now be legally halted and the PDP can be legally withdrawn by FNDC accordingly.

¹ Memorandum of Counsel for the Far North District Council in Response to Minute 40, 30 January 2026 ('Memorandum')

² *ibid* para 3.21

The suspending of subclause (4) also removes the right of FNDC to initiate any new general review of its district plan, including of the PDP, before December 31st 2027. (Although presumably S.44A and S.55(2B) & (2C) still allows FNDC to review the relevant specific provisions of the PDP to ascertain if they are or are not in conflict with the new National Environment Standards (NESs) and National Policy Statements (NPSs)).

It might be argued that the suspension of the S.79 subclauses doesn't remove FNDC's obligation under Schedule 1 clause 10 (4) (a) (as modified by the extension granted per 10A) to give a decision on PDP submissions by May 27th, 2026. However, Schedule 1 that clause 10 (4) (a) is a part of is the whole process for which the timing prerogative has been suspended by clause 19 of the Amending Act. It follows that the May 27th deadline per that Schedule 1 clause no longer applies. There is strong evidence that that was the intent of Parliament when it enacted the Amending Act as the Minister that brought the Amending Act before Parliament, The Hon Chris Bishop, wrote, subsequent to the Bill being presented to Parliament:

“Once the Bill is enacted, the FNDC will not be obliged to continue with its Plan review, even if it has been through the hearing process.

This is because, in addition to pausing plan change and review notifications, the Amendment Bill will, when passed, also pause the RMA requirement for councils to review plans every 10 years. This will give the FNDC discretion to halt and withdraw its plan review, even at a late stage, if it so chooses. No further law changes will be necessary for this.”³ [emphasis added]

If FNDC has any doubt as to whether Minister Bishop's view is the correct legal interpretation, then it can and should seek a further extension per S.10A of Schedule 1 to December 27th, 2027 or some other date beyond the expected timing of the passage of the RMA replacement Acts. It is obvious from the Minister's letter that his colleague, the Minister for the Environment, The Hon Penny Simmonds, would be only too pleased to grant such an extension or, more likely, to confirm that no such approval is required or is relevant on account of clause 19 of the Amending Act.

³ Letter from Hon Chris Bishop to Ian Palmer received September 1st 2025 (attached hereto as Attachment 1)

In so far as FNDC is relying on S.21 of the RMA (re obligations to act promptly) to argue delaying a decision on the PDP would not be lawful, it should be noted that the obligation defined in S.21 to proceed “*promptly as is reasonable in the circumstances*” only applies to “*functions, powers, or duties*” for which “*no time limits are prescribed*”. There is a time limit prescribed in relation to a decision on PDP submissions (in clause 10 (4) (a) in Schedule 1) therefore S.21 does not apply to the timing of such a decision. Presumably the obligation to act in a timely manner for functions, powers, or duties for which time limits are prescribed in the Act, is the obligation to honour those prescribed time limits, but in this case the time limit has been extended to at least 31 December 2027 by clause 19 of the Amending Act.

2) Inefficiency of Delaying a decision on the PDP

The Memorandum also included the statement that:

*“The Council has a duty to avoid any unreasonable delay in the preparation of and determination of the PDP”*⁴ [emphasis added] (with reference to RMA S.21)

and included assertions that:

*“It would be inefficient to delay the decision on the PDP because of the new or amended national direction instruments. Putting the PDP resolution on hold would unreasonably protract the PDP process, and ... would cause an unreasonable delay.”*⁵

Leaving aside the argument that S.21 doesn’t apply to 10 (4) (a) of Schedule 1, and accepting that unreasonable delays should in general be avoided, I contend that the assessment as to whether it is or isn’t efficient and reasonable to either delay the decision on the PDP or halt and withdraw it altogether, needs to take account of the wider reform processes currently in train for the Country’s planning system. This includes the above discussed Amending Act and the associated advice of the Minister specific to the FNDC PDP, and most particularly the various implications of the two bills now before Parliament that are intended to replace the RMA.

⁴ ibid para 3.20

⁵ ibid para 6.1

On December 9th, 2025 the Government introduced to Parliament two bills⁶ to replace the RMA ('RMA Replacements') and announced its intention that the RMA Replacements will be passed into law in 2026⁷. The bills are currently in the Select Committee stage for which submissions closed on Friday February 13th. The Government has also announced that National Policy Directions under the RMA Replacement Acts will be finalised within nine months of the RMA Replacements becoming law.⁸ So, while the provisions of the RMA Replacements and the foreshadowed further National Policy Directions are yet to be set in stone and made legally enforceable, it is clear that a radically reformed planning environment is fast approaching.

The process outlined in the Memorandum by which FNDC proposes to reflect the recently promulgated new or amended NESs and NPSs by amendments to the PDP includes:

- Some amendments to the Notified PDP via the current PDP Hearings process involving recommendations from the Hearings Panel, albeit highly constrained by the 'Scope' issue,
- other amendments to the PDP by future non Schedule-1 processes, and
- further amendments to the PDP by future Schedule-1 processes.

This envisioned piecemeal process would be highly constrained by the 'scope issue' wrt the Notified PDP and the Plan Stop aspects of the Amending Act. The Memorandum provided no overall timeline for completing the above PDP amending processes. However, it is reasonable to assume that such amending processes could not all be completed before a Council vote per S.10 (4) (a) of Schedule 1 on submissions to the PDP if such a vote is taken as proposed in the Memorandum on or before May 27th, 2026. Such a vote would trigger the start of appeals to the Environment Court (EC) by submitters whose submissions were not fully reflected in the Decision Version of the PDP that would arise from the contemplated Council

⁶ The Planning Bill that lays out the framework for how land can be used and developed and The Natural Environment Bill focused on managing the use of natural resources and protecting the environment

⁷ Government release by the Hon Chris Bishop Minister for RMA Reform and the Hon Simon Watts Minister for Local Government headed "New system to make planning easier for everyone";

<https://www.beehive.govt.nz/release/new-system-make-planning-easier-everyone>

⁸ ibid

vote. So, the above proposed PDP amending processes would be ongoing at the same time as appeals to the EC were being heard (and presumably being opposed by FNDC) on the Decision Version of the PDP.

Any subsequent Council vote per 17(2) and 20(2) of Schedule 1 to approve and make operative parts of the PDP for which all submissions and appeals had been disposed of can't realistically be expected before the RMA Replacements become law later this year. The Planning Bill as currently drafted includes a provision by which S.79 of the RMA is to be repealed 1 month after the RMA Replacements receive Royal Assent.⁹ Given the envisaged plan amending and appeal processes would have been occurring under S.79 and its associated 'subservient' process steps as specified in Schedule 1, those incomplete processes would have to be terminated by such a repeal of S.79. Also the process to make operative any part of the PDP is also provided for under the same S.79 and certain Schedule 1 process steps (particularly the above referenced 17(2) and 20(2)) so there would be no legal basis to make any part of the PDP operative if it hadn't become operative prior to 1 month after Royal Assent of the RMA Replacements. This suggests a high probability of wasted work progressing the PDP that will subsequently be aborted by the passage of the RMA Replacement Acts.

If the final legislated form of the RMA Replacements did provide for the completion of the above referenced planning processes post the enactment of the new laws, those 'legacy' processes would then be progressing at the same time as FNDC will be receiving and processing Resource Consent and Private Plan Change applications where the matters that can and cannot be taken account of will have been radically changed by provisions of the Replacement Acts and where regard will need to be had to the foreshadowed National Policy Directions associated with those new Acts once they are also promulgated. In addition, from 1 month after the RMA Replacements receiving Royal Assent local authorities will be required to begin preparing planning instruments pursuant to the Replacement Acts including a new first Land Use Plan.

⁹ Per Planning Bill S.294 and Schedule 11 'Amendments to other legislation', Part 1 'Amendments to RMA commencing 1 month after Royal assent' (bottom of p422)

FNDC progressing all of the above overlapping complex legacy and new district plan processes in parallel does not portend an efficient workable approach.

Given the current exceptional circumstances of actual and foreshadowed change and uncertainty in the planning space, it is not credible to suppose the EC would rule that to delay decisions on FNDC's PDP until the planning environment becomes more settled would amount to an unreasonable delay. Arguably, pressing on in the face of such uncertainty and complexity is more unreasonable than suspending until the uncertainty abates.

I contend that the most efficient and reasonable approach is that FNDC now halt and withdraw the PDP even though it is at a relatively late stage of the Schedule 1 process. Certainly, that was the advice of the Minister who arguably is best placed to judge and who warned that not doing so risks "*costly plan implementation that may need to be revisited under the new system*".¹⁰



Ian D. Palmer

February 13th, 2026

¹⁰ September 1st 2025 Letter from Hon Chis Bishop ibid

Attachment 1,

September 1st, 2025 Letter from Hon Chris Bishop

Hon Chris Bishop

Minister of Housing
Minister for Infrastructure
Minister Responsible for RMA Reform
Minister of Transport
Leader of the House
Associate Minister of Finance
Associate Minister for Sport and Recreation



CB-COR1726/CORM-4230

Ian Palmer
By email: ipal9718@bigpond.net.au

Dear Ian,

Thank you for your emails of 16 July 2025 to the Parliamentary Under-Secretary for RMA Reform, Simon Court MP, about heritage areas and the Far North District Council (FNDC). I am replying to you as the issues you raise fall within my portfolio responsibilities as Minister Responsible for RMA Reform.

Thank you for your suggested additions to the proposed Plan Stop amendment to the Resource Management (Consenting and Other System Changes) Amendment Bill. I follow your reasoning but have not added your suggestions to the amendment paper, as it has recently passed its third reading.

As you are aware, the amendment will stop councils from carrying out some plan-making work in advance of the new resource management system that will replace the Resource Management Act 1991 (RMA). Councils will be prevented from notifying any new plan and policy statement changes or reviews and will be required to withdraw any that have already been notified if their hearings have not yet begun.

As you note, this will not stop changes and reviews that have already entered or completed the hearing process from proceeding, potentially leading to costly plan implementation that may need to be revisited under the new system. However, such an outcome is avoidable. Once the Bill is enacted, the FNDC will not be obliged to continue with its Plan review, even if it has been through the hearing process.

This is because, in addition to pausing plan change and review notifications, the Amendment Bill will, when passed, also pause the RMA requirement for councils to review plans every 10 years. This will give the FNDC discretion to halt and withdraw its plan review, even at a late stage, if it so chooses. No further law changes will be necessary for this.

For more details, my Plan Stop press release, and the associated fact sheet, can be found on the Beehive website at: <https://www.beehive.govt.nz/release/government-stop-council-plan-changes>, and my speech to the LGNZ conference is available at: <https://www.beehive.govt.nz/speech/speech-2025-lgnz-conference>.

Thank you once again for your correspondence on this important matter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Chris Bishop'.

Hon Chris Bishop
Minister Responsible for RMA Reform

Cc: Simon Court, Parliamentary Under-Secretary to the Minister Responsible for RMA Reform