



PROPOSED FAR NORTH DISTRICT PLAN PROCEDURES FOR HEARING OF SUBMISSIONS– DECEMBER 2023

Introduction

1. The purpose of this document is to outline the procedures for the hearings that are due to begin in May 2024.
2. This document covers the following matters:
 - Relevant Background
 - Membership and Role of the Hearings Panel
 - Principles of the Hearing Process and Hearing Sessions
 - Register of Interests
 - Role of the Council Staff and Expert Advisors
 - Pre-hearing Meetings
 - Expert Conferencing
 - Concurrent Expert Evidence or “Hot Tubbing”
 - Hearing Schedule
 - Notice of Hearing and Speaking Timetable
 - Evidence preparation and pre-circulation
 - Hearings Sessions and Protocols
 - COVID 19 Protocols
 - Formal Records
 - Conclusion of the Process
3. The Hearings Panel will issue other directions and minutes from time to time, both in the lead-up to the hearings, and during the course of the hearings.

Relevant Background

4. Far North District Council (**the Council**) notified the Proposed District Plan on 27 July 2022 with submissions closing on 21 October 2022. During the original submission period the Council received 580 submissions containing just over 8,600 submission points.

5. A summary of submissions was notified on Monday, 7 August 2022 and closed on Monday 4 September 2022. A total of 500 further submissions were received.
6. Hearings are expected to commence in May 2024 and at this stage are programmed to continue until August 2025. The Hearings Panel recommendation reports are programmed to be delivered to the Council by November 2025 for their resolution to adopt them and to notify all submitters of these decisions. Further details on the programme are provided throughout this document and within forthcoming directions and minutes.

Membership and Role of the Hearings Panel

7. In accordance with s34A(1) of the Resource Management Act 1991 (RMA) the Council, has appointed a Hearings Panel of Commissioners comprising five independent-members:
 - Mr Robert Scott (Hearings Panel Chairperson).
 - Mr Bill Smith (Hearings Panel Deputy Chairperson).
 - Mr Alan Watson.
 - Mr Peter Kensington.
 - Mrs Siani Walker (commissioner with tikanga Māori expertise).
8. The Hearings Panel is required to hear all submissions and further submissions and prepare recommendation reports to the Council on the submissions and further submissions. The Hearings Panel assumes the responsibility for the hearings process from May 2024.
9. The “full Hearings Panel” is the five Commissioners as a Group (with Robert Scott as Chairperson of the Hearings Panel). A “Hearing Panel” is the individual panel hearing a particular topic and could consist of a minimum of two Hearings Panel members.
10. Each hearing panel may also include up to two elected representatives (comprising elected councillors) who have achieved commissioner certification under the Ministry for the Environment Making Good Decisions Programme.
11. It is noted that any references to submissions and submitters in this document includes further submissions and further submitters.
12. A Hearing Panel (made up of at least two Commissioners) will hear submissions on individual topics (or small groups of identified topics). A number of Hearing Panels will be established for this purpose.
13. The quorum for each Hearing Panel is two Commissioners. The Chairperson of each Hearing Panel shall have a casting vote in the event of any disagreement.

Principles of the Hearings Process and Hearing Sessions

14. The objective of all Hearing Panels is to ensure that to the greatest extent practicable, and in compliance with the requirements of the RMA, the most appropriate, fair and efficient hearing process is established.
15. The Hearings Panel will establish and conduct hearing processes that:
 - **Are appropriate and fair.** The Hearing Panel will at all times act in a fair and

transparent manner.

- **Avoid unnecessary formality.** In recognition that many submitters are lay persons, each Hearing Panel will be inclusive and acknowledge the broad range of interests of submitters and facilitate a process that provides all parties the opportunity to be heard, whether presenting oral or written submissions and evidence.
- **Are efficient.** Each Hearing Panel will conduct an efficient process which minimises time and costs to all parties participating in the hearings. The Hearing Panel will provide all submitters with an adequate opportunity to be heard, while, at the same time, avoiding unnecessary repetition and presentation of irrelevant material.
- **Recognise tikanga Māori.** The Hearing Panel will receive written or spoken evidence in Māori, if and when requested to do so by a submitter who has given appropriate notice. This is to enable the Council to have an interpreter to be available.
- **Recognise New Zealand sign language.** The Hearing Panel will receive evidence in sign language, if and when requested to do so by a submitter who has given one weeks' notice. Again, this is to enable the Council to have an interpreter available at the hearing.

Register of Interests

16. A fundamental pre-requisite to a fair and transparent hearing process is an obligation on all Commissioners to bring an independent view and open mind to the role, free of any conflicts of interest that could result in bias and/or predetermination.
17. Conflicts of interest may include where a Commissioner:
 - Has previously advocated a particular position, or
 - Has appeared in the past as an expert witness or advisor to a party who may hold an interest and/or lodged a submission on a proposed District Plan provision, or
 - Holds an interest which may result in an actual or perceived conflict of interest and/or bias.
18. As part of the appointment process, the Hearings Panel members were required to declare any conflicts of interest. Following appointment, the Hearings Panel agreed to disclose any potential interests to the Chair prior to, and during, the commencement of the hearings.
19. The method for recording the above interests is a "Register of Interests" which records the ongoing involvements and/or interests held by Panel Members. Panel Members will update the register, by advising the Hearings Administration Team, throughout the hearings process where potential conflicts come to light.
20. The Hearings Panel Chairperson has delegated authority to determine the composition of a Hearing Panel. In the event of an actual conflict of interest being determined, the Chairperson may require a Commissioner to stand aside from the relevant hearing

session/s and from the deliberations and decision-making arising from the hearing session/s.

21. At the commencement of each hearing day, the Hearing Panel Chairperson will ask Commissioners to declare that no issues of 'interest' arise for them in relation to the day's proceedings. The Chairperson will also make a similar declaration. If there is any declared issue of interest in the upcoming hearing day in relation to any submission to be heard that day, the Chairperson or Commissioner may need to excuse themselves from the hearing for the period of that submission and will not take part in any deliberations or decision making about that submission.
22. All parties to each day's proceedings will be entitled to bring to the Hearing Chairperson's attention any potential 'interest' situation.
23. The Register of Interests will be maintained for the full term of the hearings process and will be publicly available on the [Council's website](#), once hearings commence.

Role of Council Staff and Expert Advisors

24. A number of Council staff (including external consultants) and expert advisors will be involved in the hearing process. These are:
 - a) Section 42A RMA report writers (made up of internal staff and, in some cases, consultants);
 - b) Where required, expert advisors (made up of internal staff and consultants);
 - c) Hearings Administrator(s); and
 - d) Council legal advisors where considered appropriate.

Section 42A Report Writers

25. Council staff and consultants and/or expert advisors (where required) are involved in the preparation of reports (known as s42A reports). These reports summarise, evaluate and make recommendations on the various submissions received on each of the hearing topics.
26. The s42A reports are expected to be concise and to avoid unnecessary repetition or detail.
27. The Hearings Administration Team will upload all s42A reports and any other Council evidence to the Council's Proposed District Plan webpage as soon as practicable after receipt (and at least 20 working days in advance of each hearing topic). Once it is available online, the Hearing Administrator will email submitters (who indicated they wished to be heard on that topic) a link to the relevant s42A report.
28. The report writers will attend the hearings and be available to answer any questions from the Hearing Panel. The s42A reports constitute part of the body of evidence to be considered by the Hearings Panel, alongside the evidence of submitters. It is noted that only the Panel members can ask questions of Council staff at the hearing.
29. The s42A reports will contain recommendations from Council staff, consultants and/or expert advisors for the consideration of the Hearings Panel. The recommendations are intended to provide guidance and are not binding on the Hearing(s) Panel. Furthermore, the s42A reports carry no greater weight than any other material to be brought forward

by, or on behalf of, any submitter.

30. After hearing evidence on each topic the author of the 42A report will have the opportunity to respond to the evidence in writing.

Hearings Administration Team

31. The Hearings Administrators are the Council's primary 'point of contact' for submitters, Council officers and the public (including the media).
32. Submitters, s42A report writers and/or their experts wishing to bring matters to the attention of the Commissioners must direct all queries through the Hearings Administrators.
33. A Hearings Administrator will oversee the various administrative tasks needed to ensure an efficient hearing process. These tasks include:
 - a) Issuing schedules and hearing notifications;
 - b) Making meeting arrangements;
 - c) Making available Hearings Panel minutes and directions;
 - d) Circulating evidence and reports received by each Hearing Panel;
 - e) Handling submitter enquiries;
 - f) Handling public enquiries to the Hearings Panel; and
 - g) Assisting the Hearings Panel and Commissioners as required.
34. The Hearings Administrators are also responsible for managing the Council's Proposed District Plan webpage to ensure that all the necessary information to support an efficient hearings process is available.
35. The website address is: [Council's website](#).

Pre-Hearing Meetings

36. Occasionally a pre-hearing meeting between Council staff/consultants and submitters will be required. Council staff/consultants will be responsible for organising and scheduling pre-hearing meetings. These meetings will have an independent facilitator in some instances and are to occur in a timely fashion prior to the actual hearings.
37. The Hearings Panel considers that pre-hearing meetings can be useful to identify and resolve procedural issues, and to determine whether substantive issues raised in submissions can be addressed through mediation, other alternative dispute resolution processes, expert conferencing or by way of a hearing session.
38. Minutes will be taken at the pre-hearing meetings and a report will be prepared by the Chair or Facilitator for the Hearings Panel. The report will set out any understanding, clarification or resolution of a matter or an issue agreed between parties in attendance.

Expert Conferencing

39. The Chairperson of the Hearing Panel may, at any time prior to or during a hearing, request that those parties (the reporting officers and submitters) calling expert witnesses co-ordinate conferencing of their respective experts on matters relevant to their specific areas of expertise. The aim of such conferencing is to identify areas of agreement and

disagreement on the issues relevant to that particular hearing topic.

40. Expert conferencing will normally only be requested where one or more specific issues which are the subject of expert evidence require separate conferencing between expert witnesses associated with the area of expertise identified. The Council will make available a Facilitator to assist with the expert conferencing, if requested by either the Hearing Panel or one or more of the parties.
41. In the Hearings Panel's opinion, the optimum time for expert conferencing is in the two-week period following the receipt of submitter evidence (which has followed the previous receipt of the s42A report) and the commencement of a hearing. At such time, the Panel may direct conferencing on matters of clear evidential differences between the s42A report and submitter evidence. Notwithstanding this, parties are encouraged to consult and conference on any matters at any times without the need for a specific direction from the Panel.
42. Each Hearing Panel will focus on the issues of contention during the hearing and in their deliberations thereafter and so would greatly appreciate the assistance of the parties to clearly identify areas of expert agreement and disagreement in the manner described above.

Concurrent Expert Evidence (CEE) or "Hot Tubbing"¹

43. During the hearing, the Hearing Panel Chairperson may request a group of one or more expert witnesses (usually within the same discipline) to present their evidence concurrently (i.e. in a "hot tub") to allow questioning from the Hearing Panel on their areas of expertise and the factual matters and/or opinions they have expressed in prior written or oral evidence.
44. Each Hearing Panel will have the same expectations of expert witnesses (whether in expert conferencing or in a CCE session during a hearing) as set out in the Environment Court's Practice Note (2023), including in particular:
 - a) An expert witness has an overriding duty to assist the Hearing Panel impartially on matters within the expert's area of expertise; and
 - b) An expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them or any interest they may have in the outcome of the proceedings.

We note that the 42A report is considered to be expert evidence and is therefore subject to the Environment Court's Practice Note (2023).

Hearing Schedule

45. It is the Hearings Panel's intention to hold hearings on a 'topic by topic' basis. The Hearings Panel acknowledges that this approach will mean that some submitters may have to attend and participate in more than one hearing. The Hearings Panel also acknowledge that this approach may be disruptive to submitters' other work and family

¹ Concurrent Expert Evidence (CEE) or "hot-tubbing" is the practice of expert witnesses providing evidence concurrently at a hearing, so that they might engage in discussion and address questions in parallel (instead of being questioned individually by the Hearings Panel).

commitments. However, the Hearings Panel consider that the 'topic by topic' approach the most appropriate and efficient way to achieve an efficient hearing process.

46. The hearings will be held up to four days per week (Monday to Thursday). Each hearing will be followed by the s42A writer's written response to matters raised at the hearing (likely to be received within two weeks of the hearing adjournment). There will be a further period of two weeks between the next hearing topic(s); during which the Panel will undertake deliberations on the preceding topic(s).
47. The hearings will commence in May 2024 and are currently programmed through to August 2025 to complete. The Hearings Panel will not be issuing interim or staged decisions on each topic but may release interim guidance on any particular topic if it has implications for the hearing of other topics.
48. The indicative hearing programme for all topics is available on the Council's website [Council's website](#).
49. The programme is subject to change as the hearings proceed, with appropriate notice.
50. Where the separation into topic areas means that a submitter or expert witness may be required to repeat essentially the same lay and/or expert evidence in more than one hearing topic/session, the Hearings Panel is prepared to have this presented at the first relevant hearing, and then have the material tabled at the remaining relevant hearings. The submitter or submitter's representatives and any expert witness(s) will need to attend the subsequent hearings to be available for questions from the Hearing Panel for those later hearings unless excused from attending by the Chairperson of the particular Hearing Panel.
51. It is expected that each submitter would appear in person to deliver their evidence. Parties may request leave from the Hearing Panel Chairperson for submitters and/or expert witnesses to attend the hearing to provide submissions and /or evidence using the "TEAMS" platform. Such requests must be made when providing a response on hearing timetable to the Hearings Administrator, at least 10 working days prior to the start of a hearing topic along with an outline of the reasons for the request. Exemptions to the 10 working days can be requested due to illness, such as Covid 19.
52. The consideration of, and a decision on, any such a request will be guided by the following principles:
 - a) The Hearings Panel understands it is the Council's preference to hold hearings "in person" whenever possible and this will be the general requirement for all parties, unless leave is given by the Hearings Chairperson to attend via the "TEAMS" platform;
 - b) Where a submitter or expert witness is appearing for the first time on any hearing topic, then unless there is a valid and reasonable reason for not attending, that person shall be required to attend the hearing in person;
 - c) Where a submitter or expert witness has their main interests scheduled at a later hearing, but does have other interests in earlier hearings then consideration shall be given to requiring attendance at the main hearing of interest, with TEAMS or Zoom attendance at the earlier hearings; and

- d) Attendance at hearings by a submitter or expert witness who wishes to use the TEAMS platform shall be requested and approved using the process described above in paragraph 51.

Notice of Hearing and Speaking Timetable

53. The Hearings Administrator will formally notify submitters for each hearing of the hearing date and evidence pre-circulation dates by email or written notice in accordance with the hearing schedule (six weeks in advance of the scheduled hearing date).
54. In the notification email, the Hearings Administrator will seek confirmation from submitters of the time requested for the verbal presentation of evidence (whether expert or lay) at the hearing.
55. The Hearings Administrator will place an indicative hearing timetable on the Council's Proposed District Plan webpage prior to each topic hearing. The administrator will advise all confirmed speakers when the timetable is available.

Evidence preparation and pre-circulation

Evidence Format

56. The Commissioners expect that written evidence will be in the form of a compiled single PDF or MS word document, with numbered paragraphs and be page numbered for ease of reference.

Expert Evidence from Council (s42A Report)

57. Reporting Officers must deliver their s42A report to the Hearings Administrator in sufficient time for the Administrator to make the Council's s42A Reports available on the Council's Proposed District Plan webpage in accordance with the hearing schedule (expected to be four (4) weeks or 20 working days in advance of the scheduled hearing date). The notice of hearing for each topic will nominate the precise date for the receipt of the s42A report. The administrator will advise all parties (via email) to that hearing when the information is available. This will ensure that all relevant parties wishing to prepare evidence can do so having considered the matters addressed in the s42A Reports. For a limited number of topics (e.g. rezoning requests) where it would lead to a more efficient hearing process, the Hearing Panel Chair may call for Submitter Evidence in advance of the Reporting Officers Section 42A Report, followed by rebuttal submitter evidence. In these situations, the evidence-exchange process for individual topics will be confirmed via a minute issued by the Hearing Panel Chair well in advance of the scheduled hearing.

Submitter Evidence

58. The Commissioners understand that many submitters may wish simply to speak to their original submission/further submission at the hearing. However, the Hearings Panel also anticipates that many submitters may wish to have written evidence in support of their submission(s) prepared by suitably qualified expert(s) and potentially have legal submissions presented on their behalf.
59. Regardless of whether providing expert or lay evidence, submitters must not extend beyond the scope of their original submissions in terms of the alterations to the Proposed

District Plan that they seek in their written, tabled or verbal evidence.

Expert Evidence² Prepared for Submitters

60. It is each Hearing Panel's intention to pre-read all expert evidence in advance of the hearings. To enable the pre-reading to be undertaken in a timely fashion, submitter's written expert evidence is to be provided to the Hearings Administrator, two weeks (10 working days) following the issuing of the Council's s42A Report on a particular hearing topic. The notice of hearing for each topic will nominate the precise date for the receipt of expert evidence.
61. Submitters must provide all expert evidence in electronic format in the form prescribed in paragraph 56 above unless they have made an alternative arrangement with the Hearings Administrator.
62. The Hearings Administrator will post all submitter expert evidence on the Council's website as soon as practicable following receipt of that evidence.
63. Each expert witness can only present one brief of evidence per hearing topic. Where that expert witness is appearing in respect of multiple submitters per each hearing stream, that evidence may be subdivided into appropriate sections to enable the submitters' cases to be presented adequately.
64. Submitters should take a lead from the s42A Report in terms of content of that evidence. Accordingly, the Commissioner's would prefer submitter's evidence to highlight areas of agreement and disagreement with the s42A Report. The evidence should clearly outline any changes in Plan wording proposed (along with the rationale for these changes) together with an assessment pursuant to S32AA of the RMA.

Lay Evidence from Submitters

65. When a submitter speaks to their submission only (i.e. is not giving expert evidence), this is considered lay evidence. Submitters can present written lay evidence on the day of the hearing and read it aloud. It is not required to be pre-circulated. However, it would be of benefit to the Hearing Panel and other parties if any lay evidence is pre-circulated and able to be read before the hearing. Submitters need to bring ten (10) copies of any written material to the hearing and supply an electronic copy to the Hearings Administrator within two (2) working days of completing their presentation.
66. Any submitter wishing to speak to their submission using a power-point presentation is required to provide the power-point in an electronic format to the Hearings Administrator at least three (3) working days prior to their scheduled hearing time. This is to ensure compatibility with the electronic system at the hearing venue. Where a file is too big to email, submitters should provide the material to the Hearings Administrator as per the direction of the Council (contact the Hearing Administrator as required). Data sticks will not be accepted.

Tabled Evidence (Other than Expert Evidence)

67. Where a submitter or their representative is unable to attend the hearing for a particular topic, and are not supplying expert evidence, they may choose to table written lay evidence in support of their submission. Submitters must provide any tabled evidence to

² Expert Evidence as identified in the Environment Court of New Zealand Practice Note 2023

the Hearings Administrator at least 5 working days prior to the hearing on the topic commencing.

Additional Evidence

68. Once the hearing for a topic is completed, the Hearing Panel will not accept additional material on that topic, other than in exceptional circumstances which will require the approval of the Hearing Panel Chair.
69. The purpose of making evidence available is to enable all parties to be aware of, and understand, the issues to be addressed at the hearing. This will contribute to a more efficient hearings process.

Legal Submissions

70. Where a submitter has engaged legal counsel, that counsel may present legal submissions at a hearing. A submitter (or their counsel) must provide written legal submissions to the Hearing Administrator by 12 noon on the working day prior to the submitter's allocated speaking time. In addition, submitters must provide ten copies of all legal submissions on the hearing day.
71. Legal submissions must provide an electronic link to all case-law referred to. Commissioners do not require hard copies of case-law – unless explicitly asked for on a case-by-case basis.

Hearing Sessions and Protocols

72. The Hearings Panel's intention is to manage a hearings process that is appropriate, fair, efficient and without unnecessary formality.
73. To this end, it is envisaged that each hearing will consist of:
 - a) Opening karakia;
 - b) Hearing Panel Chairperson's introduction and call for conflicts of interest;
 - c) A brief overview of the s42A Report by report writer dealing solely with mechanical aspects of the particular hearing topic and questions of clarification from the Hearing Panel;
 - d) Presentation of (expert and lay) evidence by submitters;
 - e) Hearing Panel questions following each submitter's presentation;
 - f) s42A report writers and expert witnesses called by the Council on substantive matters (i.e. verbal "Right of Reply", and Hearing Panel questions);
 - g) A closing karakia at the appropriate adjournment of hearing days; and
 - h) Written Right of Reply by s42A Report writer in relation to any changes to recommendations in light of submissions and evidence presented by submitters. The reply is to be in writing and lodged with the Administrator within ten (10) working days of the adjournment of the hearing. The Hearing Panel Chair may grant an extension to the s42A Report writer to allow additional time if required (for example, 15 working days in exceptional circumstances). The Hearings Administrator will load the written reply on the [Council's website](#).

Speaking Time Restrictions / Expectations

74. Each Hearing Panel will take all expert evidence as read. This is due to pre-circulation requirements and an undertaking from Commissioners that they will have read all pre-circulated evidence before each hearing commences.
75. Each Hearing Panel will provide all expert witnesses an opportunity to speak to a written summary of their evidence, covering the main points. Expert witnesses must provide ten (10) copies of any written summary at the time they present to a Hearing Panel.
76. Based on this approach, the Hearings Panel anticipate that the majority of expert witnesses will, as a general rule, speak for no more than 15 minutes. Some submitters may wish to submit supplementary evidence in response to other pre-circulated evidence. Any submitter wishing to do this will need to seek leave from the Chair so that it can be incorporated into the hearing schedule.
77. Notwithstanding the approach outlined above, the Hearings Panel wishes to make it clear they will provide all submitters with the time they require (within reason) to adequately present their evidence and submissions. The main purpose behind pre-circulation of evidence is to minimise the time required for everyone to present at the hearing itself, but, at the same time, to ensure that everyone is able to fully participate in the hearing process. That said, each Hearing Panel will not allow unnecessary repetition.

Health and Safety Covid 19 and other infectious illness Protocols

78. The safety and wellbeing of our customers, team members and communities in the Far North is a priority. We will ensure the necessary precautions to prevent the spread of COVID-19 other infectious illnesses will be put in place as required. While there are currently no Government issued COVID-19 mandates, we encourage all participants to take all reasonable precautions to not infect or spread COVID-19 or other infectious illnesses. In this regard, the Hearing Panel encourages the use of use of TEAMS to deliver evidence when people are unwell or alternatively where appropriate use face covering masks, social distancing and undertake Rapid Antigen Testing.

Formal Records

79. All material including verbal evidence in response to questions presented to the Commissioners becomes hearing evidence.
80. An audio recording will be made of each hearing session. Each Hearing Panel may direct the Hearings Administrator to suspend digital recording for the presentation of sensitive information (under s42 of the Resource Management Act 1991).

Conclusion of the Process

81. At the conclusion of all topic hearings, the Hearings Panel will deliberate on all of the evidence presented and make recommendations for all topics to the Council.
82. The Council will then consider the recommendations, make final determinations (decisions) and direct the timing for the release of the decisions.
83. If you have any questions regarding the matters included in this minute, please contact Tammy Wooster: Manager - Integrated Planning: Tammy.Wooster@fndc.govt.nz or 0800 920 029.

A handwritten signature in black ink, consisting of a large, stylized loop at the top, followed by the letters 'R.B.' and a horizontal line extending to the right, and another large loop at the bottom.

Robert Scott

Hearings Panel Chairperson

16 December 2023