



HEARINGS COMMITTEE (DISTRICT PLAN)

Open Agenda

Meeting Date: Wednesday 11 September 2024

Time: 1.00pm

Venue: Ikatere Room
Level 2 Capeview Building
Marine Parade
Napier

Committee Members **Chair:** Deputy Mayor Brosnan
Members: Councillors Browne (Deputy Chair), Simpson,
Tareha, Taylor, and Mayor Wise

Officer Responsible Executive Director City Strategy (Rachael Bailey)

Administration Governance Team

Next Hearings Committee (District Plan) Meeting to be confirmed
Monday 4 November 2024

2022-2025 TERMS OF REFERENCE – HEARINGS COMMITTEE

<i>Chairperson</i>	<i>Deputy Mayor Annette Brosnan</i>
<i>Deputy Chairperson</i>	<i>Councillor Hayley Browne</i>
<i>Membership</i>	<i>Mayor and 5 Councillors</i>
<i>Quorum</i>	<i>3</i>
<i>Meeting frequency</i>	<i>As required</i>
<i>Officer Responsible</i>	<i>Executive Director City Strategy</i>

Role

To conduct fair and effective Hearings and make determinations on a range of the Council's quasi-judicial functions under legislation (and other matters as referred to the Committee), and to make decisions on the appointment of Commissioners (both elected members and Independent Commissioners) to hear and determine Applications under the Resource Management Act 1991.

Delegations

The Hearings Committee is granted responsibility and full delegated authority of the Council to make final decisions of Council in line with its mandate and in accordance with legislative requirements. The Committee may decide to refer a matter to Council accompanied by recommendations where it deems the significance of the decision or its implications warrant it.

The Hearings Committee will hear and make determination on statutory and or regulatory matters under relevant legislation unless otherwise delegated by statute or Council, including (but without limitation):

1. District Plan:
 - Hear and make determination on submissions and objections to the Napier City District Plan Review and any changes or variations proposed to that Plan.
 - The Committee may decide to refer the matter to Council accompanied by recommendations, in a situation where:
 - the District Plan will be significantly altered as a result of submissions,
 - any decision on the District Plan will have a significant impact outside the District Plan on other Council policies, particularly rating levels or fees and charges, and
 - the Council will need to consider making a variation or change to the District Plan.
2. Hear and make decisions on challenges to decisions made under delegated authority where legislation allows.
3. Hear and decide Objections under the Dog Control Act.
4. Hear and decide matters regarding drainage and works on private land under the Local Government Act 2002.
5. Hear and decide matters under the Resource Management Act, specifically:
 - Hear and determine notified resource consent applications where a hearing is required;
 - Hear and decide any objections against certain decisions under s357 of the Act;
 - Make decisions on the appointment of Commissioners (both Elected Members and Independent Commissioners) to hear and determine applications for Resource Consent in accordance with the guidance criteria in these terms of reference;
 - Make recommendations as to where commissioner costs may fall at the time of appointment, having considered s36 of the Act.

GUIDANCE CRITERIA FOR DELEGATIONS TO AND APPOINTMENT OF COMMISSIONERS

Each member of the Hearings Committee that is responsible for Resource Management Act 1991 matters shall, if that member is accredited under this Act, be deemed for the purposes of this delegation to be a Hearings Commissioner.

Guidance for appointment of Commissioners

1. The Hearing Committee may appoint one or more Hearings Commissioners, or elected members, to a hearings panel, and may delegate in accordance with section 34A of this Act the functions, powers and duties of the Council, in determining any matter, to that individual or panel.
2. The assignment shall be made having considered the relevant legislative guidance in section 34A of The Act.
3. The assignment shall be made having considered the General Criteria for Appointment of independent Hearings Commissioner(s) below.
4. The assignment shall be made having considered the recommendation by the Chairperson and the Director City Strategy or her/his nominee, in particular the skillset required to hear and decide the specific hearing issue(s).
5. The Hearings Committee shall meet to hear the appointment recommendations, decide and appoint commissioners. The committee will formalise the delegation of powers and functions under the Act in a formal decision of the committee at this time.
6. When appointing consideration should be given to any elected members experience and competency in relation to the hearing matter and may choose to pair an elected member with an independent commissioner to build skills and experience.

General Criteria for Appointment of independent Hearings Commissioner(s)

One or more independent Hearings Commissioners shall be recommended to consider any matter or to exercise the functions, powers and duties of the Council under the Resource Management Act 1991 in accordance with section 34A of this Act, when one or more of the following applies:

1. The Council is the applicant.
2. The organisation (applicant) is one in which the Council has a significant and/or pecuniary interest.
3. The project (application) is one in which the Council has a significant and/or pecuniary interest.
4. A valid request has been made under the Resource Management Act 1991 for a Commissioner to hear and determine the matter.
5. In the view of either the Council or the Chairperson or Deputy Chairperson of the Hearings Committee the subject of the hearing is highly political and elected members' objectivity in hearing or determining the matter would be compromised due to previous political and community debate.
6. In the view of either the Council or the Chairperson or Deputy Chairperson of the Hearings Committee, the highly complex and technical nature of the issues to be addressed in the hearing requires specific expertise. (Care is needed in this regard, as technical issues should always be discussed at the hearing in a manner that is understandable to the layperson.)
7. In the view of either the Council or the Chairperson or Deputy Chairperson of the Hearings Committee, the Hearings Committee has insufficient resources and/or time to hear the matter in a timely manner.

ORDER OF BUSINESS

Apologies

Nil

Conflicts of interest

Public forum

Nil

Announcements by the Chairperson including notification of minor matters not on the agenda

Note: re minor matters only - refer LGOIMA s46A(7A) and Standing Orders s9.13

A meeting may discuss an item that is not on the agenda only if it is a minor matter relating to the general business of the meeting and the Chairperson explains at the beginning of the public part of the meeting that the item will be discussed. However, the meeting may not make a resolution, decision or recommendation about the item, except to refer it to a subsequent meeting for further discussion.

Announcements by the management

Minor matters not on the agenda – discussion (if any)

Agenda items

1 Proposed District Plan Hearing Panel.....5

Decisions from hearing committees

Nil

Public excluded

Nil

AGENDA ITEMS

1. PROPOSED DISTRICT PLAN HEARING PANEL

<i>Type of Report:</i>	Operational and Procedural
<i>Legal Reference:</i>	Resource Management Act 1991
<i>Document ID:</i>	1789195
<i>Reporting Officer/s & Unit:</i>	Paulina Wilhelm, Manager City Development

1.1 Purpose of Report

This report recommends the commissioners to be appointed to hear the submissions on the Napier City Proposed District Plan (**PDP**). The report explains the roles of the commissioners and the timeframes for hearing the submissions.

The reporting officer also seeks the delegation to make minor amendments to the PDP, as required, in accordance with Clause 16 of Schedule 1 to the Resource Management Act 1991.

Officer's Recommendation

That the Hearings Commissioners resolve to:

- a) **Appoint** the independent hearings commissioners recommended in this report to the hearing panel.
- b) **Endorse** the elected members to be appointed to the hearing panel.
- c) **Note** the commissioners that have been identified to potentially hear each relevant topic of the PDP (Attachment 1).
- d) **Appoint** a Māori Commissioner to the hearing panel as per recommended in this report.
- e) **Delegate** the power under Clause 16 of Schedule 1 to the RMA to make amendments to correct minor errors in the PDP or make alterations to the PDP that are of minor effect.

1.2 Composition of the Panel

At its meeting on 18 July 2024, the Committee endorsed the recommendation that a panel of five commissioners be appointed, comprising:

- a. two elected members and one alternate, all of which are already members of the Council Hearings Committee;
- b. an independent chairperson;
- c. two independent hearing commissioners (a panel member and an alternate); and
- d. one Māori Commissioner.

It is recommended that the following persons now be appointed to the PDP hearing panel:

- a. Elected members – Deputy Mayor Annette Brosnan, Councillor Graham Taylor, and Councillor Hayley Browne (alternate).
- b. Independent chairperson - Robert Schofield.
- c. Independent commissioners - Rob Voorthuysen and Liz Lambert (alternate).
- d. Māori Commissioner - Reginal Proffit.

Officers have confirmed availability with commissioners and have received signed conflict of interest declaration form by independent commissioners. The form will be made publicly available on the NCC website in due course.

A list of potential Māori Commissioners was selected in consultation of mana whenua entities and presented to the Ngā Manukanuka o Te iwi Committee for consideration. All the members listed were endorsed by Ngā Manukanuka o Te iwi Committee so officers have put forward a preferred candidate. This commissioner will hear specific topics of the PDP as per list in Attachment 1.

The commissioners have a wide range of technical expertise, including a good understanding of tikanga, and will therefore be able to hear all topics of the PDP. As discussed in my last report (18 July), the chairperson will attend all hearings to understand the whole plan and be able to address cross-chapter issues. The chairperson will sit with two other panel members.

Attachment 1 to this report is a table which identifies each proposed hearing stream, the topics and subtopics for each stream, and which commissioners are likely to hear the submissions.

1.3 Role of the Panel

The hearing panel is a commission of inquiry and are in a 'quasi-judicial' capacity in considering submissions on the PDP. The Resource Management Act 1991 (**RMA**) and the Commission of Inquiry Act 1908 both guide the hearings.

The chair will run the hearing and, with the panel members, make determinations.

Each panel member must disclose any conflicts of interest (or potential conflicts) that could interfere with the decision-making process. This is an ongoing obligation.

The panel must deliver a robust and efficient hearing process, avoiding unnecessary formality. In any hearing, there should be considerable emphasis on ensuring a fair process and transparency in the decision-making process. Any information that is considered must be supplied by the parties, or within the hearing and knowledge of the parties. All reports must be shown to the other parties. All hearing panel members can and should take responsibility for upholding the integrity of the hearing system.

Specifically, the role and responsibilities of the PDP hearing panel is to:

- a. Review all section 42A reports.
- b. Undertake site visits where it would be of assistance (optional).
- c. Prepare procedural minutes.
- d. Hear submissions and evidence.
- e. Require expert conferencing.
- f. Seek clarification from council officers, submitters, and their experts.

- g. Seek legal advice where assistance is required on legal matters.
- h. Refer to the Council (with recommendations) where:
 - I. the District Plan will be significantly altered because of submissions; and
 - II. the Council will need to consider making a variation.
- i. Deliberate (in public or private).
- j. Make and write determinations.

The hearing panel has the powers contained in ss 41 to 41D of the RMA. These include power to:

- a. Direct the order of business.
- b. Take evidence and submissions as read.
- c. Limit evidence and submissions to matters in dispute.
- d. Direct that evidence and submissions be presented within time limits.
- e. Strike out the whole or part of a submission.

Directions can be given before or at hearings, for example, regarding the order of business and how evidence is presented.

Section 41A of the RMA sets a threshold test for the use of the powers listed in ss 41B to 41D – the panel is required to consider “whether the scale and significance of the hearing makes the exercise of the power appropriate”.

The panel also has powers under the Commission of Inquiry Act 1908, including the ability to summons witnesses and require the production of documents.

Hearings must be conducted in accordance with natural justice which means:

- a. the hearing must be procedurally fair; and
- b. the decision made must be unbiased (i.e., the hearings panel must always remain open to persuasion and not bring a closed mind to the proceedings, be independent and not influenced by matters that have not been transparent during the hearing).

Each member needs to display appropriate behaviour including:

- a. an ability to suspend judgement;
- b. enough understanding to ask relevant questions;
- c. the persistence to explore issues until they are well understood;
- d. a desire to ensure that everyone understands what is happening;
- e. an understanding of broader policy commitments and the ‘bigger picture’; and
- f. a resistance to displaying their own knowledge or expertise (this should be drawn out from someone at the hearing).

Panel members listen to all the submissions and experts and evaluate whether to accept, accept in part or reject the decisions on submission points recommended by the reporting planner on particular topics or provisions.

When making a determination, the panel must include reasons for accepting or rejecting any submission (which may be grouped by subject matter or individually).

The determinations must be made within the reasonable scope of matters raised in submissions and as well as being based on the material they have heard from submitters

and experts and cannot create their own solution to an issue from scratch. Determinations do not need to be made on each submission or further submissions (Clause 10 of Schedule 1 to the RMA) but rather can be made by topic or by plan provision. Each submission and further submission must be noted in each relevant decision.

1.4 Clause 16 of the RMA

Clause 16(2) of the RMA provides the power for a local authority to, without using the process in Schedule 1 to the RMA:

- make amendments to a proposed plan to alter any information where such an alteration is of minor effect; or
- may correct any minor errors.

During plan-making processes, the need to make minor amendments may arise and these will be neutral changes that do not change the intent of the issue or impact the rights of submitters (e.g., changes to number, typographical errors, referencing).

1.2 Attachments

- 1 Hearing Commissioner Attendance (Doc Id 1789570) [↓](#)

Hearing commissioners hearing each hearing stream

Hearing Stream/Date	Topic	Subtopic	Attendance
Hearing Stream 1 Part 1 – Introduction and General Provisions 4- 6 November	Introduction	Mihi Purpose Description of the District	Robert Schofield Chair Rob Voorthuysen Annette Brosnan Graham Taylor Māori Commissioner (tbc)
	How the plan works	Statutory context General approach Cross boundary matters Relationships between spatial layers	Robert Schofield Chair Rob Voorthuysen Annette Brosnan Graham Taylor Māori Commissioner (tbc)
	Interpretation	Definitions Abbreviations	Robert Schofield Chair Rob Voorthuysen Annette Brosnan Graham Taylor Māori Commissioner (tbc)
	National direction instruments	National Policy Statements and New Zealand Coastal Policy Statement National Environmental Standards Regulations	Robert Schofield Chair Rob Voorthuysen Annette Brosnan Graham Taylor Māori Commissioner (tbc)
	Tangata Whenua – Mana Whenua	TW- Tangata whenua –Mana whenua	Robert Schofield Chair Rob Voorthuysen Annette Brosnan Graham Taylor Māori Commissioner (tbc)
Hearing Stream 2 Part 2-District Wide Matters 4 to 6 November	Strategic Direction		Robert Schofield Chair Rob Voorthuysen Annette Brosnan Graham Taylor

			Māori Commissioner (tbc)
	Hazards and Risks	Hazardous substances	Robert Schofield Chair Rob Voorthuysen Graham Taylor
	Historical and Cultural Values	Harbour Reserve Historic Heritage Overlay Coronation Street Historic Heritage Overlay Marewa Post War- Historic Heritage Overlay Marewa State Housing Historic Heritage Overlay Napier South Historic Heritage Overlay Tram Shelter Historic Heritage Overlay Te Awa Bungalow Historic Heritage Overlay Iron Pot Heritage Overlay Napier City Heritage Precinct West Quay Waterfront Precinct	Robert Schofield Chair Rob Voorthuysen Annette Brosnan
Hearing Stream 2 Part 2 District Wide Matters 25-27 November	Historical and Cultural Values	Notable Trees	Robert Schofield Liz Lambert Annette Brosnan
	Natural Environment Values General District Wide Matters	Natural Features and Landscape Public Access Activities on the Surface of water	Robert Schofield Liz Lambert Annette Brosnan
Hearing Stream 2 District Wide Matters 2-3 December	Subdivision	Subdivision	Robert Schofield Liz Lambert Annette Brosnan
	General District Wide Matters	Coastal Environment Earthworks Light	Robert Schofield Liz Lambert Annette Brosnan

		Signs Temporary Activities	
	Open Space and Recreation zones	Natural Open Space Zone Open Space Zone Sports and Recreation Zone	Robert Schofield Liz Lambert Annette Brosnan
Hearing Stream 3 3-4 March	Energy Infrastructure and Transport Special Purpose Zones	Network Utilities Renewable Energy Stormwater Transport Te Whanganui-a-Orotu Ecology and Stormwater Treatment Zone Airport Zone Boat Harbour Zone Marine Industrial Zone Maori Purpose zone Port Zone Stadium Zone Tertiary Education Zone Wastewater Treatment Specific Control Area	Robert Schofield Rob Voorthuysen Graham Taylor
Hearing Stream 4 12-14 May	General District Wide Matters	Noise	Robert Schofield Rob Voorthuysen Graham Taylor
	Financial Contributions		Robert Schofield Chair Rob Voorthuysen Graham Taylor
	Commercial Zones	Neighborhood Centre Zone Local Centre Zone Large Format Retail Zone Mixed Used Zone Town Centre Zone City Centre Zone Foreshore Commercial Precinct	Robert Schofield Rob Voorthuysen Graham Taylor

	Residential Zones and Precincts	General Residential Large Lot Residential Medium Density Residential High Density Residential Harbour Reserve Amenity Precinct Mission Residential Precinct Napier Hill/Mataruahou Amenity Precinct	Robert Schofield Rob Voorthuysen Annette Brosnan
Hearing Stream 5 June tbc	Mapping, Rezoning and Miscellaneous Rural Zones	Rezoning requests Miscellaneous Rural Lifestyle Zone Rural Production Zone Settlement Zone Rural Specific Control Area Jervoistown Precinct Mission Landscape and Visitor Precinct Mission Productive Rural Precinct Mission Rural Residential Precinct	Robert Schofield Rob Voorthuysen Annette Brosnan
	Industrial Zones	Light Industrial Zone General Industrial Zone	Robert Schofield Rob Voorthuysen Graham Taylor
	Development Areas	Te Awa Development Area Wharerangi Road Development Area Mission Development Area Designations	Robert Schofield Rob Voorthuysen Graham Taylor
Hearing Stream 6 14-15 July	Sites of Significant to Maori Ecosystems and Indigenous Biodiversity		Robert Schofield Annette Brosnan Māori Commissioner

	Natural Hazards Wrap up hearing		
Hearing Stream 7 Tbc September?	Natural Hazards Wrap up hearing		Robert Schofield Rob Voorthuysen Hayley Browne Māori Commissioner

Note: The hearing dates scheduled are only tentative.