

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE
NELSON CITY COUNCIL**

IN THE MATTER OF

The Resource Management Act 1991
(**RMA or the Act**)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on Plan Change 29 to the
NRMP

AND

IN THE MATTER OF

Submissions and Further Submissions on
Proposed Plan Change 29 by

BAYVIEW NELSON LIMITED

GP INVESTMENTS LIMITED

NELSON NORTH LIMITED

SUFFOLK HEIGHTS LIMITED

588 LIMITED

SUBMISSIONS



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May it please the Commissioners:

1. The submitters for whom I appear include: -

- Bayview Nelson Limited;
- GP investments Limited;
- Nelson North Limited;
- Suffolk Heights Limited; and
- 588 Limited

(together “the Group”)

are all significant land developers in the Nelson District, many of their subdivisions have been on hillslopes, and all of them have required significant geotechnical input and stabilising earthworks to remove instability risks. However, PC 29 has ignored that.

2. PC 29 as related to natural hazards proposes: -

(i) updating and adding new hazards details to the planning maps, in particular by:-

- showing fault hazard and fault awareness overlays;
- introducing slope instability Tiers 1, 2 and 3 and “runout” overlays; as well as
- new flood hazard overlays;
- a new liquefaction overlay, and

(ii) undertaking changes to volume 1, 2 and 3 of Nelson Resource Management Plan changing explanations, adding new policy directions and creating a comprehensive set of new rules across all zones.

3. PC 29 (and here I refer to that part of PC 29 that deals with land stability) in the form it now is has had a major impact not only to the Group I represent, but also to the community as a whole.

4. Unusually for Nelson City, no complete set of draft maps and rules was made available to the community for consultation purposes (although it is said it was made available to “*stakeholders and lwi partners*”, under clause 3(1) of the First

Schedule to the Act (“consultation”)) before going to print and subsequent notification. One would have thought that a set of provisions likely to have such a significant effect as they have and will, would have been the subject of considerable consultation and input at least with those in the development sector. Council steadfastly refused to make details of the proposed change available on the basis that submitters would “*get their say*” once the plan was notified.

5. With respect, that lack of process is inappropriate with a major plan change, and leads to flawed ill-conceived and untested provisions, resulting in turn with the community and those for whom I act having to spend a considerable amount of time and money to try and put things right. As expressed by Mr Lile in his Statement of Evidence: -

“... the implications of PC 29 were not at all adequately considered prior to notification, it was done far too quickly, with little thought of consequences”.

6. As things now stand, the planning maps and rules do not reflect that a considerable amount of land in this district contained within the Tiers of PC 29 have already had considerable engineering works done to it and geotechnical reports obtained for it as part of its subdivision process. None of that has been considered when developing PC 29 and its rules. For some reason (which is beyond me) either Beca, when they did their report to Council, were not aware of those works (which would be surprising), or Council did not share the information with them. I suspect that the change would have been a different beast had that work been done or shared. As a result, land has been included which should not be, and land not included which should have been included.
7. Mr Cameron Lines’ evidence contains appendices 1,2 and 3 – those appendices identify site specific analysis of the Suffolk Road property (Suffolk Heights Limited), the Bayview Nelson Limited property, and the Atawhai property (588 Limited). Those reports paint a completely different picture to that assessed by Beca. The Tiering suggested by Beca and conveyed through the planning maps is simply untenable, not reliable, too broad, and not at all fit for purpose in respect of those properties, just as it will be untenable for many other properties in the Tier 2 and Tier 3 areas.

And that is the problem when poor and generic information and inaccurate mapping is used to develop a plan map/overlay, so that all land in a particular Tier is classified the same (whether it is or is not), when a thorough assessment and mapping process was not undertaken.

For example, the rules require a resource consent for the building of buildings in the “assessed” areas. Many of the developers in this district who have carried out subdivision of residential sections on sloping land have had to apply for resource consent, including earthworks consents involving considerable engineering input. They have been required to do geotechnical reports and to carry out engineering and earthworks to address any geotechnical issues that might have been identified. The geotechnical engineers have supervised the earthworks, they have signed the subdivision off, Council has required consent notices to be registered requiring ongoing compliance with the conditions of consent, building location areas identified, and Section 224 (completion) certificates issued.

But the PC 29 rules as notified require that if the land is in Tier 2 or Tier 3 then already subdivided sections have to go through another discretionary activity consent process if someone wishes to build on the section, even although all of the work to deal with those geotechnical, stability and other issues has been dealt with at subdivision consent stage. That is absolute overkill – and comes at substantial cost and time, is simply a redo of something already done and shows a complete misunderstanding of the subdivision process, and development process. That is unacceptable.

8. The misconception is shared also by EQC (who did not participate in the conferencing or provide any expert evidence) because in its submission made on the 588 Limited submission, EQC stated (inter alia): -

“slope instability overlays should continue to be updated when more accurate GIS mapping is available, however we strongly oppose its current removal and argue that the best available information must be used. This plan change is updating the slope instability overlay to reflect geotechnical assessment completed in 2021 and 2023 and so represents the most current information on the slope instability hazard in Nelson”.

- that is simply incorrect. The maps have been prepared on flawed information, not the subject of a “*geotechnical assessment completed in 2021 and 2023*” and it does not “*represent the most current information on the slope instability hazard in Nelson*” and it is certainly not the “*best available information*” on which the maps are based. Of course, the best information must be used, but it has not been.

EQC adds: -

“any inaccuracies in the current mapping overlays are an insufficient reason to justify their removal. Improve modelling of natural hazards must be sought, but the use of our current knowledge must be acknowledged and used to reduce risks”

The inaccuracies as you have seen identified in the evidence Mr Lines and Dr Hargraves are significant, the maps are inaccurate, and if they are inaccurate that is very sufficient reason to justify their removal. Furthermore, what should be used is the current knowledge and that includes the site-specific reports which have been done and are in Council’s hands and have been in Council’s hands since the development of the particular subdivision. For some reason that does not appear to have been provided to Beca, and if it was, they have ignored it.

In terms of fault hazard, the Council has also chosen to in effect ignore the MfE Guidelines despite the fact that they have been followed by many territorial authorities throughout New Zealand.

9. The evidence for the Group is comprehensive and it addresses not only the planning maps, and the rules. Also, in terms of the mapping and its robustness, and as Mr Lile says in his evidence¹: -

“given the scale of the problem with the mapping, I do not think the concerns raised will be able to be fully rectified before the hearing process commences. There have been some appropriate improvements suggested from both the s42A report and Mr Chamberose, ... however the first step must be to ensure the base information (the mapping) is accurate and appropriate for the function it is intended to serve”.

¹ at 82

Clearly presently the present mapping is not accurate. The evidence of Mr Lines provides a detailed critique of the Beca report and of the evidence of Mr Chamberose. Examples of the generality of the Beca report is overshadowed by the specific evidence detailed in the specific reports annexed to his statement. He expresses his disagreement with Mr Chamberose, and concludes that it is appropriate to amend the overlays to remove previously certified land and sets out his reasons for that at page 26 of his evidence.

He concludes: -

“The magnitude of the errors and inaccuracies in the Beca documents means that the planning maps cannot be relied on”

and

“The evidence prepared by Mr Chamberose defends the methodology adopted but does not address the inaccuracies in the geomorphic mapping that underpins the Beca reports”.

He draws attention to the apparent conflict in Mr Chamberose’s evidence, where on the one hand he suggests it is not appropriate to amend to overlays to take account of previously certified land (paragraph 5.23), but then suggests that in future the overlays could be revised to take account of land modifications (paragraph 5.23 c). That would, of course, require another Plan Change.

In short, he concludes that further work and revision of the Beca report is required before one moves forward. He also encourages field verification which one would expect should have been done in the first place.

10. In terms of Fault Hazards

Dr Sally Hargraves concludes: -

(i) as to fault overlays: -

“the Beca fault overlays have been prepared taking into account these low-RIC faults resulting in an overly-conservative regulatory system. The Fault Overlays should be removed from the Plan, become informative only and all requirements for offsets from these

faults for BIC 1 and 2a buildings should be removed; along with all specific investigation requirements”.

- (ii) she also suggests that the rules be changed, to allow for buildings in subdivisions to be permitted so long as they meet the requirements of the MfE Guidelines (in terms of Recurrence Interval of BIC) and where early site-specific assessment has been completed in accordance with the MBIE Earthquake Geotechnical Engineering Series, such a report should be acceptable to and accepted by Council.
- (iii) For the reasons set out in her evidence, she disagrees with the methodology used for the Slope Instability Susceptibility Overlays and Fault Deformation Overlays.

11. Section 32

The Group have challenged the Section 32 analysis. Section 32 requires an analysis of costs and effects of any plan change. An evaluation report required under the Act must (i.e. it is mandatory): -

“contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal”. (Section 32(1)(b)(ii)).

The Section 32 Report has simply has not done any of those things, indeed there is nothing in the Section 32 Report which adequately justifies the approach the Council has taken.

Furthermore: -

- (i) to complete a proper Section 32 analysis the author of it must do what the Act requires in terms of evaluation but more importantly, the author needs to know that the information upon which the proposal is being based is soundly based.
- (ii) It is not a question of the Section 32 analysis here being wrong, rather the required analysis has simply not been done at all, the analysis is accordingly incomplete. Whoever did the Section 32 analysis should have taken advice, should have understood the subdivision process and

the work that is required to be done before titles can be generated anyway, they should have understood how the subdivision market works and how the markets would react to “scary” hazard information shown on LIM records, and should have understood what the approach of insurance companies and banks would be when the dead hand of “*instability*” is laid over a property. As the statements of the individual developers will show, the impact on them and available property has taken a hit because people wishing a section are then told that they have to do a separate resource consent before they can build on top of what has already been done, and that kills the transaction. The same applies when people wish to buy but cannot obtain insurance.

These considerable effects – environmental, economic and social from the PC 29 provisions seem either to have been not considered at all, or if considered dismissed by the authors of both the Section 32 assessment, and Section 42A Reports.

- (iii) The advent of PC 29 (and I here refer to land instability maps) has met with insurance companies who will not take on new cover on properties in the “*instability*” areas, some people cannot get their insurance renewed, some have got insurance but with new endorsements (effectively what is not covered under the policy) and others have had excesses raised, as is reported, to \$10,000.00 and even to \$35,000.00. The Council may not accept that – but it is a fact.
- (iv) The impact of PC 29 is that those costs and effects should have been given regard as part of the Section 32 assessment. On page 32 of the Section 32 analysis there is a table entitled “Costs” with a subtitle “*Environmental, economic and social*” – but there is no assessment of any economic or social effects at all. Section 32 is clear in its terms and commences with the words:-
- (v) Section 32 goes further and it requires an assessment under Section 32(1)(b)(ii) which must (again mandatory) “*identify the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions and ...*”.

The evaluation report has not done that either.

12. THE PLANNING/GEOTECHNICAL JOINT WITNESS STATEMENT (“PGJWS”)

The PGJWS indicates somewhat of a movement on Council’s part, and it seems to herald a single combined (area 2 and 3) area distinct from the geotechnically “*engineered areas*”, with a suggestion that the area be renamed rather than the somewhat judgmental (and wrong) “*slope instability susceptibility area*”. I do not know whether Mr Chamberose has signed off the PGJWS (he had not done so on the copy I received) and how that change of position by Council will translate into the Plan rules.

13. ADDENDUM TO THE SECTION 42A REPORT

The situation is helped in some ways by the contents of the Addendum 1A to the Section 42A report (Geotechnical) authored by Ms Carter.

Ms Carter has moved her position in that (inter alia): -

- (i) she recommends deletion of REr73c and reliance placed on the subdivision rules;
- (ii) she recommends changes to Rules REr73 respecting building in the Fault Deformation Overlays on an allotment that obtained a resource consent addressing site certification and a geotechnical report (not more than 7 years old at the time of the application). So far so good – but why the restriction to 7 years? (as that ought to be explained);
- (iii) However, despite agreement in the JWS to combine Slope Instability Susceptibility Areas, she proposes the name remains the same (at paragraph 22) – and with that will continue all of the problems for landowners named earlier.
- (iv) She recommends (at paragraph 23) deletion of Rules REr75o, REr75p, REr75q and REr75r relating to structures and new residential activities and additions and alternations and to rely on subdivision and building consent processes (in effect accepting the submission of my clients). That’s fine, but the name of the combined area needs to change – why not “Land Management Area”?

(v) Through Mr Chamberose she recommends that a new maximum cut height of 1.2 metres and cut volume control of 3m³, but in respect of fill a maximum volume of 3m³ is replaced with a height of fill control of 0.6 metres and a maximum volume of 10m³ - that will simply generate unnecessary resource consent applications for earthworks. The previous dimensions are more appropriate.

(vi) At paragraph 30 Ms Carter records Mr Chamberose's view (set out in his rebuttal) that: -

"it is not appropriate to amend the overlay in some places and not others with site specific information"

and

"... Mr Chamberose considers it would not be practical to undertake the detailed work required to include an overlay for the geographical extent of the Nelson Hills at a site-specific level".

We disagree – it is not only practical (Council already has information where engineered stability has been created), but also it is appropriate (because these overlays affect peoples lives at multiple levels).

(vii) Ms Carter notes that (at paragraph 35): -

"35. Finally, I have agreed (JWS) that the activity status of subdivision in the combined slope instability area and the debris run-out area can be amended from discretionary activity to restricted discretionary activity (specifically excluding Slope Instability Area 1 – Tāhunanui Slump, from this). I have made this change in the Revised Chapters in the consolidated addendum version of the provisions available on the PC29 Hearings webpage, but consider more work needs to be done to put appropriate words around this in relation to the relationship with general subdivision matters and also devise appropriate matters of restricted discretion. I propose to provide this at the hearing for

consideration, but would also welcome suggestions from the submitters who requested this amendment.”

This is not helpful for the purposes of the hearing. The officers should have suggested wording before now so that it could be considered – and we cannot comment on what we have not seen.

Ms Carter’s recommendations are partially agreed with but certainly not in terms of those of the combined area 2 + 3, the earthworks rule REr75H, and subdivision activity status.

- (viii) As to the rebuttal statement of Mr Chamberose - he agrees to amend the position of the fault through the Bayview subdivision area, as he represents in Figure 1 of his rebuttal. However, he acknowledges (at paragraph 4.1) : -

“The susceptibility overlays do not consider risk and do not explicitly consider previously engineered/certified modified land”.

The Group’s point is that if to be an honest document the Plan provisions should consider risk – both in terms of engineered land and risk. Without that the plan is simply a misinformed document leading to public confusion and perhaps fear.

At 4.8 he talks of the dimension of cut and fill amendments – he says those rules are “*appropriate from a geotechnical perspective*” – the Group’s experts disagree. At 6.2 he agrees (having received accurate information from Mr Lines and Dr Hargraves) and says: -

“That some areas would be excluded from the overlay as result of modification of slopes that have altered the contours of the land”.

We agree. The maps should be accurate, particularly as the information to make them so is already in the hands of Council, and has been for some time.

Mr Chamberose says (at 6.3) (referring to the examples proffered in Mr Lines evidence): -

“6.3 This exercise can be completed, but the following needs consideration:

(a) If this was completed for these specific submitters, there would be differences in datasets used between these specific submitter’s areas and the remaining areas in the overlays.

(b) If the 2022 dataset was used to update the entire overlays, the boundaries of the overlays might shift (due to limitations, accuracy of the new datasets and re-drawing of boundary extents), resulting in some properties being included that previously were not, and others that are now excluded as a result of the new dataset limitations or where modification has occurred.

(c) In my opinion, it is a function of when is most appropriate time to complete an update to the overlays using the latest datasets and consideration of the time required to complete this and provide updated outputs”.

Mr Chamberose says at paragraph 6.6 and 6.7: -

“6.6 In my opinion, the overlays should not specifically exclude these engineered slopes unless they are excluded due to the criteria of the methodology tree when using updated datasets. This is because they are likely to still exhibit some characteristics that indicate susceptibility.

6.7 From a technical perspective, I appreciate that engineered modification of land where slope instability has been appropriately considered/designed/constructed will generally have a positive effect on reducing risk of instability at a site”.

With respect, his explanation of that at paragraph 6.8 makes little sense – land is engineered, or it is not – if it is then it should be excluded – surely it is as simple as that.

14. THE SUPPLEMENTARY STATEMENTS – MR LINES, DR HARGRAVES, AND MR LILE

The Commissioners will have read the primary evidence and the supplementary statements of Mr Lines, Dr Hargraves, and Mr Lile.

In those statements Mr Lines and Dr Hargraves maintain their position in terms of land instability matters despite the “*movement*”, if one could call it that, on the part of Ms Carter and Mr Chamberose.

Dr Hargraves says that whilst liquefaction and fault overlays are fit for purpose: -

- (a) the slope instability overlays are not fit for purpose;
- (b) the rules associated with fault hazard are not fit for purpose, and are excessively conservative, and “... *do not follow the MfE Guidance and are out of step with how the other Territorial Authorities in New Zealand are operating*”; and
- (c) “*The rules associated with slope instability hazard are not fit for purpose and require considerable change to reflect the issue with the maps*”.

The changes recommended simply mask the flaws.

Mr Lines says (inter alia): -

- (a) “*the development of the overlays does not follow the MfE Guidelines*”;
- (b) “*they are inconsistent with recurrence intervals for other seismic hazards in the NCC boundaries ...*”;
- (c) “*They confuse ULS and SLS design cases when considering the purpose of the overlays*”;
- (d) Despite “*some progress made on slope instability susceptibility overlays and the rules ... the existing basis for the slope instability susceptibility overlays (Beca 2021) is inherently flawed*”;

- (e) *“...the basic geomorphic mapping requires significant review and revision and the susceptibility methodology itself requires additional refinement to make it fit for purpose”; and*
- (f) *“The bulk earthworks approach simply introduces an unnecessary level of regulation” ... and “other unintended consequences”.*

Mr Lile says: -

- (a) *“In summary, in response to the recommendations contained in the s42A addendum report, I consider the geotechnical provisions of PC29 are not appropriate. The concerns I raised in my evidence of 7 July 2024 largely remain”.*
- (b) *“My assessment on the PC 29 provisions as to fault and instability hazards has not changed since submissions were originally filed, for the reasons set out in paragraph 4 of this Statement”.*

Putting all of that together, Plan Change 29, as far as matter geotechnical are concerned: -

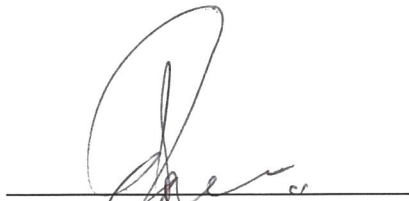
- is poorly based and informed,
- has been assessed poorly,
- has been based on either no, or flawed information that has resulted in flawed and poorly thought out provisions,
- has ignored MfE Guidelines and tried to create some different beast without reason,
- have not considered risk, and
- just as it has started off badly, it will end up badly;

and why would you proceed with a plan change the geotechnical provisions of which are not fit for purpose?

15. CONCLUSION

The amended recommendations when taken overall will not satisfy the Group's submissions.

The change PC 29 as it relates to hazard-geotechnical matters should be rejected,
and the mapping and analysis and plan provision development be properly done.

A handwritten signature in black ink, appearing to read 'NA McFadden', is written over a horizontal line.

NA McFadden
Counsel to Bayview Nelson Limited, GP investments Limited, Nelson North Limited Suffolk
Heights Limited and 588 Limited

Date: 11 September 2024