

Before the Independent Hearing Panel

In the matter of the Resource Management Act 1991 (**RMA**)

And

In the matter of Plan Change 29 to the Nelson Resource Management Plan

Legal submissions on behalf of Nelson City Council – legal framework, plan change tests and other legal issues

Date: 21 August 2024



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MAY IT PLEASE THE PANEL

INTRODUCTION

- 1 These legal submissions are made on behalf of the Nelson City Council (**Council**) in relation to Plan Change 29 (**PC29**) to the Nelson Resource Management Plan (**NRMP**). PC29 is a Council initiated plan change, using the Part, Schedule 1 process under the Resource Management Act 1991 (**RMA**).
- 2 The purpose of these legal submissions is to set out the applicable legal framework for the PC29 process, to identify and address the specific issues raised by the Panel in Direction 6 issued on 25 July 2024 regarding Private Plan Change 30 and to address the specific questions raised by the Panel in Memorandum (1) issued on 12 August 2024.

OUTLINE OF SUBMISSIONS AND COUNCIL EVIDENCE

- 3 These legal submissions address:
 - 3.1 the background to PC29;
 - 3.2 the scope of PC29;
 - 3.3 an overview of the Schedule 1 process;
 - 3.4 the legal framework applying to PC29;
 - 3.5 the role of the regional policy statement in the NRMP in respect of the NPS-UD;
 - 3.6 Council's Future Development Strategy 2022-2052 (**FDS**);
 - 3.7 the implications of Private Plan Change 30; and
 - 3.8 the implications of Private Plan Change 28.

- 4 Council has filed six section 42A reports in respect of PC29:
- 4.1 Overview and Strategic (Rachel Morgan);
 - 4.2 City Centre, Commercial and Infrastructure (Mithran Gopinath);
 - 4.3 Residential and Subdivision (Coralie Barker);
 - 4.4 Transport and Papakāinga (David Badham);
 - 4.5 Heritage and Churchill View Shaft (Jacqueline Hewson);
and
 - 4.6 Natural Hazards (Sue Robb and Janice Carter).
- 5 Council has also filed supporting technical expert evidence across issues relating to transport and three waters infrastructure, transport, noise, flooding, flood hazards, geotechnical, economic, urban design, landscape and heritage.
- 6 Expert conferencing has been completed and there are Joint Witness Statements (**JWS**) provided for Infrastructure (4), Flooding, Geotechnical and Natural Hazards, Heritage (2), Inner City and Strategic, Residential and Planning.
- 7 All section 42A authors have also provided addenda to their original reports (and some technical experts have provided rebuttal evidence), which address submitter evidence filed after the release of the original section 42A reports/evidence and any issues arising from the outcomes of the expert conferencing sessions, as recorded in the Joint Witness Statements.

BACKGROUND TO PLAN CHANGE 29

- 8 Ms Morgan sets out an overview and the background to PC29 in her Overview and Strategic Section 42A Report. In summary, PC29 is intended to:

- 8.1 give effect to the requirements of the National Policy Statement for Urban Development 2020 (**NPS-UD**), with a particular focus on Policies 1, 2, 5 and 6 of the NPS-UD;
 - 8.2 include provisions in the NRMP aimed at managing the risks associated with natural hazards;
 - 8.3 include provisions to better protect historic heritage; and
 - 8.4 amend provisions in the NRMP necessary to support the level of urban development PC29 provides for.
- 9 Council is a unitary authority, having both territorial authority and regional council functions under the RMA and the NRMP is a combined regional and district plan. However, PC29 only makes changes to the district plan provisions in the NRMP.¹
- 10 Prior to the preparation of PC29, Council had begun work on a full review of the NRMP - the Draft Whakamahere Whakatū Nelson Plan. While the full plan review was placed on hold by Council, PC29 is an interim response to the critical issue of housing supply and affordability in Nelson.²
- 11 In accordance with their obligations under the NPS-UD, Nelson City Council and Tasman District Council prepared a joint FDS, which was adopted in 2022. Part of implementing the FDS includes to "progress plan changes to enable intensification".³ This includes PC29.
- 12 PC29 was notified by Council on 12 August 2023⁴. 882 submissions and 75 further submissions were received, along with 4 further submissions on two late submissions⁵.

¹ See paragraph 26 of Ms Morgan's Section 42A Report – Overview and Strategic

² Part 1.3 of the section 32 report for PC29

³ FDS at 50

⁴ Paragraph 50 of Ms Morgan's Section 42A Report – Overview and Strategic

⁵ Paragraph 53 of Ms Morgan's Section 42A Report – Overview and Strategic

SCOPE OF PC29

- 13 The issue of the scope of PC29 is an important legal issue. It defines the limits of what can be altered through this plan change process, in response to submissions made.
- 14 Appendix 2 to Ms Morgan's section 42A report – Overview and Strategic sets out a legal memo on the legal tests for scope, which was provided by counsel to assist section 42A reporting officers with scope issues.
- 15 In summary, there are two parts to the scope test.
- 16 In terms of the first scope test – "whether a submission is within scope of PC29" or "whether a submission is "on" the plan change", two tests need to be satisfied:⁶
- 16.1 the submission must address the proposed plan change itself. That is, it must address the extent of the alteration to the status quo which the change entails; and
- 16.2 the Council must consider whether there is a real risk that any person who may be directly affected by the decision sought in the submission has been denied an effective opportunity to respond to what the submission seeks.
- 17 It is submitted that part of determining the scope of PC29 is looking at what it did propose to alter (as notified) and what it did not propose to alter (ie, the extent of change proposed). This can be determined by reading the plan change and accompanying information when it was notified:⁷

...the permissible scope of submissions was framed by the notified variation and accompanying

⁶ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [80]-[82].

⁷ *Paterson Pitts Limited Partnership v Dunedin City Council* [2022] NZEnvC 234, at 101 and 102.

information, particularly the [s 32](#) report which were obviously earlier in time to the Murray submission.

Persons reading the variation and accompanying information when it was notified may have elected not to participate knowing the deliberately focussed scope of the proposed changes.

18 The section 32 report for PC29 sets out the scope of the provisions affected in part 1.3 and the spatial scope of PC29 in part 1.4. Part 1.3 identifies the scope of PC29 as including:

1. Enabling the intensification of development on land currently zoned for residential and commercial uses (Residential Zone, Inner City Zone, Suburban Commercial Zone, and Industrial Zone), that is not within areas potentially affected by significant natural hazards (refer Figure 1 for overview of where the Plan Change proposes to amend the zoning). ...
2. Changes to provisions focussing on achieving a well-functioning urban environment (as defined in Policy 1 of the NPS-UD), within the GRZ, MRZ and HRZ areas;
3. Managing development in urban areas potentially susceptible to natural hazards (river and coastal flood, fault, liquefaction, and slope instability), within the Residential, Inner City, Suburban Commercial, and Industrial Zones (including in areas that will retain their NRMP zoning);
4. Amendments to heritage items located within the Plan Change area; and
5. Alignment with the national planning standards where practicable.

19 The section 32 report then goes on to specifically exclude the following from the scope of PC29:

1. Amendments to the Nelson Regional Policy Statement (RPS);
2. Inclusion of new growth areas outside of existing Residential or Commercial zones;
3. Rezoning, and enabling further intensification of development in areas potentially affected by significant natural hazards (beyond the level of development currently enabled by the operative NRMP provisions); or

4. A review of engineering standards applicable to new development (the Nelson Tasman Land Development Manual 2020).

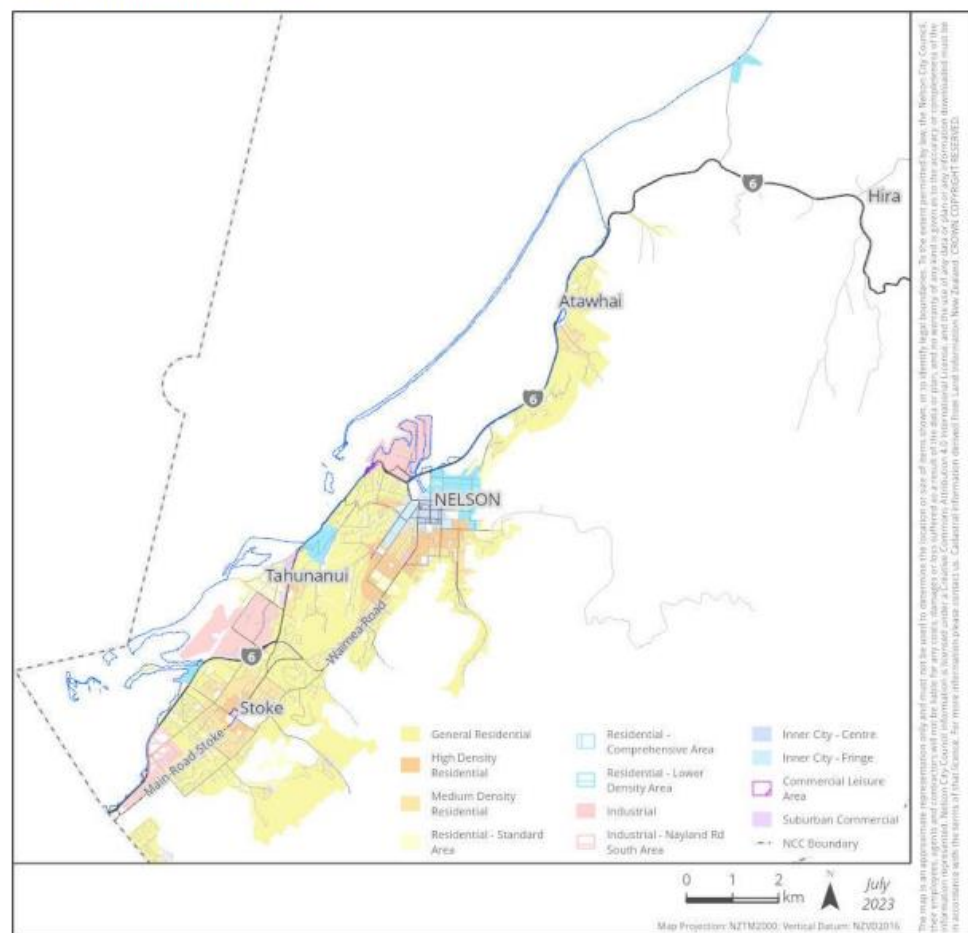
20 Part 1.4 of the section 32 report for PC29 described the spatial extent of PC29 as:

The NPS-UD relates to urban environments and defines urban environment as "any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that: is, or is intended to be, predominantly urban in character; and is, or is intended to be, part of a housing and labour market of at least 10,000 people". For the purposes of PC29, the Nelson Whakatū urban environment includes those areas zoned in the NRMP as Residential Zone, Inner City Zone, Suburban Commercial Zone, and Industrial Zone.

No changes are proposed to the provisions for the NRMP Open Space and Recreation Zone, Rural Zone, and the Coastal Marine Area.

21 It then identifies the spatial area of PC29 on Figure 1:

Figure 1 - Proposed Plan Change area



- 22 In terms of the second scope test, not only does the scope of PC29 need to be considered, but also whether there is a submission that provides scope to make the proposed change. That is, any amendment made to PC29 following notification must be fairly and reasonably within a range of options between what was originally notified, and the relief requested in submissions. That assessment should be approached in a realistic workable fashion.⁸
- 23 Additionally, consequential changes which logically arise from the grant of relief requested and submissions lodged are permissible, provided they are reasonably foreseeable.⁹
- 24 Accordingly, where a matter has not been fairly and reasonably raised in a submission, there is no scope for that amendment to be made through a decision on PC29 (even if the amendment is within scope of PC29). Both limbs of the scope test need to be met (ie, it is within scope of PC29 and within scope of submissions).

THE LEGAL FRAMEWORK

- 25 The legal framework for a district plan is set out in sections 72-77 of the RMA. The purpose of a district plan is to "assist territorial authorities to carry out their functions in order to achieve the purpose of this Act".¹⁰
- 26 The plan change test has been comprehensively summarised in *Colonial Vineyard v Marlborough District Council*, *Cabra Rural Developments Ltd v Auckland Council* and more recently in *Edens v Thames Coromandel District Council*.¹¹ Since the

⁸ *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [115].

⁹ *Westfield (New Zealand) Ltd v Hamilton City Council* (2004) 10 ELRNZ 254 (HC), at [73] - [77].

¹⁰ RMA, section 72.

¹¹ *Colonial Vineyard v Marlborough District Council* [2014] NZEnvC 55 at [17], updating the summary from *Long Bay-Okura Great Park Society v North Shore City Council*, EnvC Auckland, 16/7/2008 A78/08 at [34]. *Cabra Rural Developments Ltd v Auckland Council* [2018] NZEnvC 90 at [279], *Edens v Thames Coromandel District Council* [2020] NZEnvC 013, at [11].

Colonial Vineyard case, there have been various amendments to the RMA. An updated summary of the statutory tests that the Panel will need to consider is attached as **Appendix A** to these legal submissions (focusing on the district plan requirements). It is submitted that the following are the most relevant in the PC29 context.

27 That PC29 must:

27.1 give effect to any national policy statement, national planning standard and the Nelson's Regional Policy Statement;¹²

27.2 state the objectives for the district, the policies to implement those objectives, and any rules to implement those policies;¹³

27.3 be prepared in accordance with:¹⁴

27.3.1 Council's territorial functions under section 31 of the RMA and Part 2 of the RMA;

27.4 have an evaluation report prepared under section 32 and the Panel must have particular regard to that report, and have regard to:¹⁵

27.4.1 any relevant management plans and strategies prepared under other Acts; and

27.4.2 any relevant entry on the New Zealand Heritage List/Rārangī Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014; and

¹² RMA, section 75(3).

¹³ RMA, section 75(1).

¹⁴ RMA, section 74(1).

¹⁵ RMA, section 74(2)(b) and section 74(2)(c)-(e).

- 27.4.3 any emissions reduction plan or national adaptation plan made under the Climate Change Response Act 2002; and
- 27.5 when making a rule, have regard to the actual or potential effect on the environment of the activities, including in particular, any adverse effect;¹⁶ and
- 27.6 when making an objective, examine the extent to which it is the most appropriate way to achieve the purpose of the RMA;¹⁷ and
- 27.7 when making policies and methods, ensure the policies implement the objectives¹⁸ and the policies and methods are the most appropriate way to achieve the objectives.¹⁹
- 28 In addition, a further analysis prepared in accordance with section 32AA of the RMA is required where changes are proposed to the provisions of PC29 following the completion of the original section 32 report.²⁰ It is to be undertaken at a level of detail that corresponds to the significance of the changes. The section 42A authors have completed section 32AA assessments in relation to all changes they have recommended (in their original reports and addenda).

THE ROLE OF THE REGIONAL POLICY STATEMENT

- 29 The Panel has sought submissions from Council on whether PC29 gives effect to the RPS.²¹ In particular, the Panel has posed the following questions:

¹⁶ RMA, section 76(3).

¹⁷ RMA, section 32(1)(a).

¹⁸ RMA, section 75(1)(b).

¹⁹ RMA, section 32(1)(b).

²⁰ RMA, section 32AA(1).

²¹ Memorandum (1) from the Hearing Panel, 12 August 2024, at [5].

- 29.1 Is the RPS "in accordance with" the NPS-UD as required by section 61(1)(da) of the RMA?
- 29.2 Does the RPS "give effect" to the NPS – UD as required by section 62(3) of the RMA?
- 29.3 Does the RPS need to be in accordance with/give effect to the NPS- UD vis-à-vis PC29 (as a district plan change) given the hierarchy of the statutory planning documents in the RMA?
- 30 The RMA requires that PC29 "give[s] effect to" both the NPS-UD and the regional policy statement and that PC29 must be prepared and changed "in accordance with" both of those documents. The RMA does not require the Panel to determine whether or not the regional policy statement has given effect to the NPS-UD or whether it was prepared in accordance with it. The RMA also does not require a Regional Council to make changes to its regional policy statement, before any territorial authority can make changes to its district plan. The fact Nelson City Council is a unitary authority does not change that.
- 31 What the RMA does require is that PC29 gives effect to the operative regional policy statement (whether or not it has given effect to the NPS-UD) **and** the NPS-UD. If the answer is that PC29 gives effect to both documents, no issue arises. That is Council's position.²²
- 32 *Royal Forest and Bird Protection Society of NZ Inc v Bay of Plenty Regional Council*²³ confirms that both documents need consideration. That is, the Panel needs to "look up the line", even when the document that is lowest in the planning hierarchy appears to give effect to the higher order documents. The High Court stated that:²⁴

²² Paras 65 and 68 of the section 42A report – Overview and Strategic.

²³ [2017] NZHC 3080 at [76].

²⁴ [2017] NZHC 3080, at [84].

There is nothing in the majority's observation in *King Salmon* which suggests that a decision-maker can confine his, her or its attention to unchallenged parts of the planning document in issue or to the planning document immediately above the document under consideration, and ignore or gloss over higher order planning documents.

33 In other words, the Panel *does* need to consider the regional policy statement and then look "up the line" to each of the higher order planning documents to make sure it is giving effect to all of them. If the Panel considers there are tensions between provisions within higher order documents, then it can turn to higher order documents to resolve that tension.

34 The Supreme Court in *King Salmon* and the High Court in *Royal Forest and Bird Protection Soc of New Zealand v Bay of Plenty Regional Council*²⁵ address this issue. *Royal Forest and Bird* held that where there is tension between planning documents (eg, a regional policy statement and NPS), or within them (eg, provisions within the regional policy statement alone), there is an obligation under *King Salmon* to articulate and analyse those tensions, and to make a thorough attempt to reconcile them. If the tension still cannot be resolved, the NPS can be used to resolve that tension.²⁶

It seems to me that if there is a tension perceived in a lower order document, the approach taken by the majority in *King Salmon* should be applied to try and resolve that tension. If the tension cannot be resolved, then recourse should be made to the higher order planning documents to see if the tension is more apparent than real. I agree with counsel for Transpower that, where regional plan objectives could lead to more than one policy framework, it is incumbent on decision-makers to check whether their preferred policy framework gives effect to the higher order planning documents.

35 In terms of what "give effect to" means, the Supreme Court has stated that to give effect to a policy, simply means to implement

²⁵ [2014] NZSC 38 and [2017] NZHC 3080.

²⁶ *Royal Forest and Bird*, at [76].

it.²⁷ In other words, the RMA requires that direction in an NPS and the regional policy statement must be *implemented*.

FUTURE DEVELOPMENT STRATEGY

36 The Panel has sought submissions from Council on the Future Development Strategy 2022-2052 (**FDS**).²⁸ In particular, the Panel has posed the following question:

36.1 What weight should be placed on the FDS in relation to the outcomes sought by PC29?

37 The NPS-UD requires tier 2 local authorities (which includes the Council) to prepare a FDS.²⁹ Under clause 3.17 of the NPS-UD the Council must "have regard to the relevant FDS when preparing or changing RMA planning documents".³⁰ "RMA planning documents" includes PC29.

38 The meaning of "have regard to" has been judicially considered and its meaning is well defined:³¹

...By way of starting point, the High Court refers to *New Zealand Co-operative Dairy Co Ltd v Commerce Commission* where Wylie J said:

"We do not think there is any magic in the words 'have regard to'. They mean no more than they say. The tribunal may not ignore the statement. It must be given genuine attention and thought, and such weight as the tribunal considers appropriate. But having done that the tribunal is entitled to conclude it is not of sufficient significance either alone or together with other matters to outweigh other contrary considerations which it must take into account in accordance with its statutory function."

Similar observations are made by the Court of Appeal in *New Zealand Fishing Industry Association Inc v Minister of Agriculture and Fisheries* and by the

²⁷ *King Salmon*, at [77].

²⁸ Memorandum (1) from the Hearing Panel, 12 August 2024, at [7]-[9].

²⁹ NPS-UD, cl 3.12(1).

³⁰ NPS-UD, cl 3.17(1)(a).

³¹ *Taggart Earthmoving Ltd v Heritage New Zealand Pouhere Taonga* [2016] NZEnvC 123 at [51] - [52].

High Court in *Foodstuffs (South Island) Ltd v Christchurch City Council*. Provided that the court gives genuine attention and thought to the matters in question it is free to allocate weight as it sees fit but does not necessarily have to accept them.

- 39 Accordingly, "have regard to" means that the Panel needs to give genuine attention and thought to the FDS, but it is at the Panel's discretion what weight it can allocate to it. It is submitted that this means material consideration is required, not just cursory consideration. The Supreme Court in *Royal Forest and Bird Protection Society Inc v NZTA* [2024] NZSC 26 has very recently stated:³²

However, he erred in his application of the duties to have regard/particular regard to relevant objectives and policies. Again, those duties do not invest consent authorities with a broad discretion to "give genuine attention and thought" to directive policies, only to then refuse to apply them. That would contradict what we have already described as the consistently strong "avoid" language employed from top to bottom in the RMA hierarchy of objectives and policies. It would also be to waste the significant resources invested by public and private stakeholders in the processes by which those objectives and policies are settled.

- 40 Further, whilst recorded in the minority Judgment of Glazebrook J, the following statement was made:³³

A relevant plan provision is "not properly had regard to (the statutory obligation) if it is simply considered for the purpose of putting it on one side".

- 41 It is submitted that it is for the Panel to decide what weight should be given to the FDS. The Council's position on how PC29 reflects the key components of the FDS is set out by Ms Morgan in her section 42A report,³⁴ along with her view that the FDS should be given a reasonable degree of weight, given it is recent Council policy, has been through the special consultative procedure under

³² At [169].

³³ At [224], cross referring to the Court of Appeal decision in *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, at [73].

³⁴ See paragraphs 38-44 of Ms Morgan's Section 42A Report – Overview and Strategic.

the Local Government Act 2002 and PC29 is intended to directly implement it.

PRIVATE PLAN CHANGE 30

- 42 In Direction 6, dated 25 July 2024, the Panel directed that any interested party, including the Council, provide legal submissions on the issues of any overlap between PC29 and Private Plan Change 30 (**PPC30**), by 21 August 2024.
- 43 The PPC30 Panel then requested it be provided with a copy of any legal submissions relating to this issue that are filed in the PC29 process. Nelson Airport Limited (**NAL**) was given the opportunity by the PPC30 Panel to file an update to its closing submissions in PPC30 to address these issues.
- 44 Counsel for the Council and NAL have been in discussions on whether an agreed legal position can be put to the Panel, but those discussions have not been concluded at the time of filing these submissions. NAL has sought an extension of time for filing submissions on this issue for this reason, which the Panel accepted.
- 45 Accordingly, at this point, counsel has not included legal submissions on the overlap issue in these submissions but will do so as soon as discussions with NAL have concluded (NAL's request to the Panel sought an extension of filing legal submissions on this issue to 27 August 2024).

PRIVATE PLAN CHANGE 28

- 46 In Direction 6, dated 25 July 2024, the Panel directed the experts to work through Private Plan Change 28 (**PPC28**) and advise of any overlaps. A Joint Statement of the relevant Council planners and the planner for the PPC28 plan change applicant have provided a joint statement to the Panel, dated 21 August 2024, in relation to this issue.

- 47 PPC28 was accepted by Council on 21 October 2021. It proposed to rezone an area of the Maitai Valley to enable residential development. It proceeded through the usual submissions and hearing process and was subsequently appealed to the Environment Court.
- 48 On 3 July 2024 the Environment Court issued an interim decision directing parties to address drafting issues. Further witness conferencing was directed to address those matters. That joint witness statement was filed with the Environment Court on 15 August 2024. The Court has set out a process allowing the parties to file memoranda with comments on the joint witness statement and then the Court will issue further directions (ie, whether further hearing time is needed and closing submissions) before a final decision is issued. The timing of that final decision is not clear at this stage.
- 49 It is submitted that PC29 was not intended to address the area subject to PPC28 and therefore, there is no scope through PC29 to amend provisions that apply to the PPC28 land. PC29 was limited in scope when it was notified³⁵ as reflected in:
- 49.1 The section 32 report for PC29 stated that "the scope of the plan change does not include the following"...
"inclusion of new growth areas outside of existing Residential or Commercial Zones". As the PPC28 area is a mix of Rural and Rural Higher Density Small Holdings under the NRMP, it was not an existing Residential or Commercial Zone.
- 49.2 The section 32 report for PC29 also states that "no changes are proposed to the provisions of the NRMP Open Space and Recreation Zone, Rural Zone and the coastal marine area". As noted above, as the PPC28 area is a mix of Rural and Rural Higher Density Small

³⁵ Page 9 of the section 32 report.

Holdings under the NRMP, it is captured by this exclusion – ie, no changes are proposed by PC29.

49.3 The section 32 report for PC29,³⁶ Figure 1 which shows the "plan change area" and the PPC28 area is not included in that Map – reproduced at paragraph 21 above (it is in the white area, approximately to the east and north of "NELSON" and north of the grey line going east on that plan).

50 Accordingly, it is submitted that the scope of PC29 did not include the PPC28 land area when it was notified. However, if PPC28 is made operative in the version that was put before the Environment Court, the area will be rezoned to Residential, Open Space and Suburban Commercial and hence, there is potential for confusion over whether any changes PC29 makes to those provisions will apply to the PPC28 site. The details of what plan provisions are affected are set out in the Joint Statement relating to the relationship between PPC28 and PC29, dated 21 August 2024.

51 As the intention (and scope) of PC29 was not to apply PC29 provisions to the PPC28 area, it is submitted that the PC29 Panel should be clear about that in its decision, so it is recorded that this is the case. The Joint Statement relating to the relationship between PPC28 and PC29, dated 21 August 2024 suggests two options for PC29.

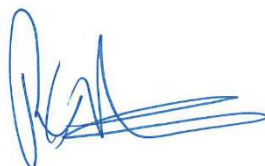
52 As a separate matter, the Environment Court in PPC28 will determine what, if anything, needs to be done so the PPC28 provisions are clear (eg, does it need to bring over the existing operative plan provisions to the Schedule of provisions in PPC28 that applies to that site or not).

³⁶ Page 11 of the section 32 report.

CONCLUSION

- 53 Counsel for the Council will appear at the commencement of the hearing on PC29 to speak to these submissions and is available to address any specific legal issues that arise throughout the hearing.

Date: 21 August 2024

A handwritten signature in blue ink, appearing to be 'Kerry M Anderson' or 'M T N Campbell', with a stylized, elongated flourish extending to the right.

.....
Kerry M Anderson / M T N Campbell
Counsel for Nelson City Council

APPENDIX A – STATUTORY TESTS FOR A CHANGE TO A DISTRICT PLAN

A. General requirements – district plan

1. A district plan (change) should be designed **in accordance with**³⁷ the territorial authority's functions³⁸ and Part 2.³⁹
2. The district plan (change) must also be prepared **in accordance with** the obligation (if any) to prepare an evaluation report under section 32,⁴⁰ and **in accordance with** any national policy statements, New Zealand Coastal Policy Statement, national planning standard,⁴¹ any regulations⁴² and a direction given under section 25A(2) (not applicable under PC29).⁴³
3. When preparing its district plan (change), the territorial authority shall **have particular regard** to an evaluation report prepared in accordance with section 32.⁴⁴
4. When preparing its district plan (change) the territorial authority must also:
 - **have regard to** any proposed regional policy statement or proposed regional plan,⁴⁵ relevant management plans and strategies under other Acts⁴⁶ and to any relevant entry on the New Zealand Heritage List/Rāangi Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014,⁴⁷ to various fisheries regulations,⁴⁸ and to relevant project area or project objectives established under the Urban Development Act 2020,⁴⁹ the extent that their content has a bearing on resource management issues of the region,⁵⁰ and the the extent to which the district plan needs to consistent with plans and proposed plans of adjacent territorial authorities⁵¹ and any emissions reduction plan or national adaptation plan made under the Climate Change Response Act 2002.⁵²

³⁷ RMA, section 74(1)(a).

³⁸ As described in section 31 of the RMA.

³⁹ RMA, section 74(1)(b).

⁴⁰ RMA, section 74(1)(d).

⁴¹ RMA, section 74(1)(ea).

⁴² RMA, section 74(1)(f).

⁴³ RMA, section 74(1)(c).

⁴⁴ RMA, section 74(1)(d).

⁴⁵ RMA, section 74(2)(a).

⁴⁶ RMA, section 74(2)(b)(i).

⁴⁷ RMA, section 74(2)(b)(ia).

⁴⁸ RMA, section 74(2)(b)(iii).

⁴⁹ RMA, section 74(2)(b)(iv).

⁵⁰ RMA, section 74(2)(b).

⁵¹ RMA, section 74(2)(c).

⁵² RMA, section 74(2)(d) and (e).

- **take into account** any relevant planning document recognised by an iwi authority, to the extent that its content has a bearing on resource management issues of the region.⁵³
 - **not have regard** to trade competition or the effects of trade competition.⁵⁴
5. A district plan must **give effect to** any national policy statement, the New Zealand Coastal Policy Statement, or national planning standard and any regional policy statement.⁵⁵
 6. The formal requirement that a district plan (change) must also state objectives for the district, the policies to implement the objectives and the rules (if any) to implement the policies.⁵⁶ A district plan (change) must not be inconsistent with any water conservation order or a regional plan.⁵⁷

B. Objectives [the section 32 test for objectives]

8. **Examine** the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the Act.⁵⁸

C. Policies and methods [the section 32 test for policies and methods]

9. The policies are to implement the objectives;⁵⁹
10. Whether the provisions (the policies and methods) are the most appropriate way to achieve the purpose of the plan change and the objectives of the NRMP by:⁶⁰
 - (a) identifying other reasonably practicable options for achieving the objectives;⁶¹ and
 - (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:⁶²
 - i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:

⁵³ RMA, section 74(2A).

⁵⁴ RMA, section 74(3).

⁵⁵ RMA, section 75(3).

⁵⁶ RMA, section 75(1).

⁵⁷ RMA, section 75(4).

⁵⁸ RMA, sections 74(1) and 32(1)(a).

⁵⁹ RMA, section 75(1)(b).

⁶⁰ See summary of tests under section 32 of the RMA for "provisions" in *Middle Hill Limited v Auckland Council* Decision [2022] NZEnvC 162 at [30].

⁶¹ RMA, section 32(1)(b)(i).

⁶² RMA, section 32(1)(b)(ii).

- economic growth that are anticipated to be provided or reduced;⁶³ and
 - employment that are anticipated to be provided or reduced;⁶⁴
- ii. if practicable, quantifying the benefits and costs;⁶⁵ and
 - iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.⁶⁶

⁶³ RMA, section 32(2)(a)(i).

⁶⁴ RMA, section 32(2)(a)(ii).

⁶⁵ RMA, section 32(2)(b).

⁶⁶ RMA, section 32(2)(c).