

IN THE MATTER of the Resource Management Act 1991(RMA)

AND

IN THE MATTER of an application by Nelson City Council ("**NCC**") for a plan change ("**PC29**") to the Nelson Resource Management Plan ("**NRMP**") in the NRMP ("**Application**")

JOINT STATEMENT (PLANNING) IN RELATION TO:

Overlaps between Plan Change 29 and Private Plan Change 28

21 August 2024

1 Context and background

- 1.1 Mark Lile made a submission to Plan Change 29 (**PC29**) on behalf CCKV Dev Co LP and Bayview Nelson Ltd. The submission states:

The proponents of PC28 have only been able to review the provisions making up PC29 at the same time as the general public. The Council has however advised that PC28 is in no way affected by PC29 in that the site is outside of the scope of the changes proposed by PC29. In essence, the PC28 land is 'ringfenced'. In addition, a word search on the Section 32 Evaluation Report supporting PC29 will not identify any reference to PC28 whatsoever. Given the scope of PC29, with changes affecting most zone chapters, it is difficult to conceive that no part of the PC28 nor the planning framework that surrounds it (including Schedule X) is not affected in some way. The purpose of this email is to simply register the significant interests that the submitters have in the NRMP and the provisions related to PC28. If there are direct impacts on PC28 then NCC will need to fully rectify those.

- 1.2 The evidence of Mr Lile on behalf of CCKV Dev Co LP and Bayview Nelson Ltd in PC29 raises the same issue and further states:

While PC28 and Schedule was designed to stand alone, it was also designed to fit within the operative NRMP that existed prior to PC29 being notified – including with reliance on the CHD guideline. Hence, it is important that the provisions of PC28 and PC29 are appropriately integrated. Consequential amendments may be required to PC29 to ensure they fit together with PC28. I suggest this should be a topic for pre-hearing expert conferencing by the planners.

- 1.3 The area subject to Private Plan Change 28 (**PPC28**) is currently within the Rural Zone and partially within the Rural – Higher Density Small Landholdings Area. As a private plan change it has no legal effect until it is made operative. PC29 does not apply to the PPC28 area as no changes are proposed to either the Rural

Zone or the Rural – Higher Density Small Landholdings Area. However, in the future, if PPC28 is made operative then the relevant provisions of the Residential Zone and Suburban Commercial Zones that are proposed to apply to within Schedule X will come into play, unless otherwise specified by the Schedule included in PPC28. This arises due to the way that the NRMP is structured, with a Schedule only varying the underlying zone provisions where specified. The Schedule ('X') applying to PPC28 was prepared on the basis of the operative zoning framework, with the Decision of the IHP (9 September 2022) being made prior to the proposed PC29 changes to the Residential Zone and Suburban Commercial Zone proposed in PC29 (notified 11 August 2023). PP28 is under appeal with an Interim Decision (dated 3 July 2024) requiring the planners to address further the questions and issues raised in relation to 'the provisions'. A JWS addressing the provisions was signed by Mark Lile and Jason Jones (for NCC) on 15 August 2024 and has been submitted to the Environment Court and the parties involved.

- 1.4 Council officers have undertaken an analysis of the provisions that would apply to PPC28 should it be made operative, and which are otherwise not varied by Schedule X that applies to the PPC28 land. The provisions that would apply are as follows:

Operative Provisions Affected by PC29 and which would overlap with PPC28 if it is made operative.

*The **highlighted** rules are new rules proposed by PC29.*

The rules not highlighted are operative rules proposed to be changed by PC29.

	Residential Zone (Chapter 7, NRMP)	Suburban Commercial Zone (Chapter 9, NRMP)
Building over or alongside drains and water mains	REr.36A	SCr.28
Parking	REr.38	SCr.31
Cycle parking	REr.38A	SCr.31A
Access	REr.40	SCr.32
Flood Overlay	REr.82	--
Flood areas - subdivision	REr.111	--
Residential activity	--	SCr.20A
New buildings and alterations and additions to buildings	--	SCr.21
Maximum building height	--	SCr.22

Residential Unit - Outlook space	--	SCr.30A
Residential unit – minimum size	--	SCr.30B
Residential activity – acoustic insulation	--	SCr.30C
Papakāinga development	-	SCr.20B
Landscaping	-	SCr.25 (rule proposed to be deleted)
Daylight admission	-	SCr.27
Outdoor living court	-	SCr.30

1.5 The provisions listed in the table above are the subject of submissions and the final form of those changes, and extent to which they modify the approach to PPC28, are matters still to be considered and determined by the PC29 Hearing Panel.

1.6 As noted in paragraph 1.3 above, the planning experts for PPC28 have assessed the above overlaps and made the following observations in their signed JWS:

- 7.4 *The planning experts observe that there are incidental urban form and development issues addressed in the notified version of PC29 that will apply to the PPC28 land on the current scope of the plan change. These items are tabulated in Attachment B of this JWS and the Court will see that these are relatively discrete issues. Of particular note, that part of the land in the PPC28 Structure Plan which is zoned Suburban Commercial would potentially benefit from an increased building height limit proposed by PC29 (8m to 12m). That said, the 8m operative height ties with a permitted activity status for buildings, whereas PC29 as notified requires resource consent for all new buildings in the Suburban Commercial Zone as a restricted discretionary activity.*
- 7.5 *The planning experts also observe that PC29 proposes changes to the subdivision rule relating to the operative Flood Overlay, which partially applies to the PPC28 land, but does not change the spatial extent of that operative overlay within the PPC28 land. The changes as currently formulated in PC29 will alter the activity status of subdivision in the Flood Overlay (in the Residential Zone) from Discretionary to Restricted Discretionary, and this amended rule would apply to subdivision in addition to subdivision rule X.3.*
- 7.6 *The planning experts agree that these areas of potential change via PC29 to the planning framework are the subject of submission and the final form of those changes, and extent to which they modify the approach to PPC28, are matters still to be addressed and determined by the PC29 Hearing Panel.*

7.7 *The planning experts consider that scope of potential changes to PPC28 that may be applied by the making operative of PC29 is not material to the core issues before the Court as addressed in the Decision. The experts also agree that scale and significance of potential changes is relatively low and that the changes will not materially affect the important environmental outcomes for the site.*

2 Recommendation of Parties

- 2.1 All planning experts agree that there are two options for addressing the issues identified above:
- 2.1.1 **Option 1:** Do nothing for PC29 and leave it to the Environment Court process for PPC28 to carry through any relevant operative NRMP provisions to the Schedule applying to the site. The planning experts consider that this will fully ringfence PPC28 from PC29. Because of the way that PPC28 introduces its own Schedule X, which is not affected at all by PC29, PC29 would not override the provisions contained in PPC28 specifically applying to this site.
- 2.1.2 **Option 2:** Grant the relief sought by the proponents of PPC28 in its submission on PC29, thereby amending PC29 to fully ‘ringfence’ the land applying within PC28. This could involve proactively applying the relevant operative NRMP provisions to the PPC28 area, whether via a new Schedule or exclusions to the relevant rules listed above. This would need to account for the fact that the Residential Zone and Suburban Commercial Zone do not yet apply to the site. While unusual, this could be achieved with appropriate drafting.
- 2.2 The planning experts consider that the above options are consistent with those options that have been put to the Environment Court by Mr Lile and Mr Jones as part of PPC28.

Confirmed online: 20 August 2024

EXPERT’S NAME & EXPERTISE	PARTY	CONFIRMATION OF AGREEMENT TO THIS JOINT STATEMENT (VIA EMAIL)
Mithran Gopinath (Planner)	Nelson City Council	Yes
Rachel Morgan (Planner)	Nelson City Council	Yes
Coralie Barker (Planner)	Nelson City Council	Yes
Mark Lile (Planner)	CCKV Dev Co LP and Bayview Nelson Ltd	Yes