

NELSON CITY COUNCIL

Nelson Resource Management Plan

Plan Change 25
Technical Fixes

Report of Hearing and Decisions on Submissions

Hearings Commissioner
Sylvia Allan

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APPENDIX 1 – CONSOLIDATED AMENDMENTS TO PLAN CHANGE 25

COMMISSIONER DECISION ON PROPOSED PLAN CHANGE 25 – NELSON RESOURCE MANAGEMENT PLAN

TECHNICAL FIXES

1. INTRODUCTION

- 1.1 I, Sylvia Allan, was appointed by Nelson City Council on 27th April 2011 as a Hearings Commissioner, to hear, consider and decide the submissions and further submissions on proposed Plan Change 25 to the Nelson Resource Management Plan.
- 1.2 The hearing was conducted in accordance with the requirements of the Resource Management Act 1991 (RMA), including the First Schedule to the Act. This report provides the record of the hearing and decisions in terms of Clause 10 of the First Schedule.
- 1.3 Each of the separate parts of Proposed Plan Change 25 has resulted from the identification of a problem in terms of the administration of a provision in the Nelson Resource Management Plan.
- 1.4 The Proposed Plan Change was publicly notified on 25th September 2010. Fourteen submissions were received. The decisions requested were summarised and notified for further submissions on 30th January 2011. No further submissions were received.
- 1.5 One submission was received late, being received two weeks after the closing date of 3rd December, on 17th December.
- 1.6 The range of submissions received was limited to only some parts of Proposed Plan Change 25. As a result, some parts do not require decisions. The parts of the Plan Change which do not require decisions are Plan Change 25.1 Hazardous Substances; Plan Change 25.3 – Tahunanui Slump Slope Risk Overlay; Plan Change 25.4 – Soil disturbance, earthworks and vegetation clearance; and items a), c), d), e), and f) of Plan Change 25.5 – Definitions.

2. OFFICER'S REPORT

- 2.1 A Comprehensive Planning Officer's Report (Section 42A Report) was provided to submitters. This included a description of the aspects included within the Proposed Plan Change; an outline of the statutory context of the RMA, the Nelson Regional Policy Statement and the Nelson Resource Management Plan; and an outline of the findings of the Section 32 analysis.
- 2.2 The Report provided discussion and recommendations in relation to each of the separate parts of Proposed Plan Change 25 on which submissions had been received.
- 2.3 As well as the Planning Officer's Report, a Section 32 Report – an evaluation of alternatives, benefits and costs in relation to the Proposed Plan Change – was available.

3. HEARING

- 3.1 The hearing of submissions on Plan Change 25 was held on 15th July 2011, between 9am and 11am at the offices of Nelson City Council.

3.2 The following parties appeared at the hearing:

Mr Tony Quickfall (for Marsden Park Ltd)
Mr John McLaughlin (for Marsden Park Ltd)
Mr Bradley Cadwallader (for Cadwallader Tree Consultancy and NZ Notable Trees Trust)
Mr David Braithwaite
Ms Jocelyn Smith
Mr Lance Edwards
Mr Dan McGuire

3.3 Council officers in attendance were:

Ms Debra Bradley (Planning Adviser and author of the Section 42A report)
Mr Matt Heale (Principal Adviser, Resource Management Plan)
Mr Peter Grundy (Horticultural Supervisor)
Ms Bev McShea (Administrative support)

4. DECISIONS SUMMARY

As the person with delegated authority to hear and determine submissions on Proposed Plan Change 25 to the Nelson Resource Management Plan, I have given careful consideration to the generalities and details of the Proposed Plan Change, the advice from Council officers, the nature and content of the written submissions, the evidence and/or verbal submissions of submitters who appeared at the hearing, and have determined pursuant to clauses 10 (1) and (2) and Clause 16 (2) of the First Schedule of the RMA:

1. that Proposed Plan Change 25 should be approved subject to the amendments set out in this Report and compiled in Appendix 1 to this report;
2. to adopt the Section 32 Report associated with the Proposed Plan Change, subject to any modifications set out in section 7 of this Report;
3. to accept the one late submission, and then to accept in whole or in part, or to reject the submissions as set out in the Decisions Summary Table below; and
4. that these decisions be publicly notified and advice served on submitters pursuant to clauses 10(4)(b) and 11(1) and (3) of the First Schedule to the RMA.

I have also made a recommendation to the Council relating to minor corrections to other related provisions in the Nelson Resource Management Plan which are beyond the scope of my delegated authority. This recommendation is covered in section 7 of this report.

Decisions Summary Table – Proposed Plan Change 25

The table below summarises the matters that were raised in submissions and the decisions sought. It states the decision made in respect of each submission. Further discussion and reasons are set out in the next section of this report.

Topic	Submitter Name	Submission Number	Statement Number	Decision Sought	Decision
Plan Change 25.2 -	Rex Bloomfield and Glen Rowling	1	1	Do not delete sentences from REr.43.5, ICr.42.5 and SCr.36.5.	Accept in part
	Nelson Greypower	3	1	Do not delete sentences from	Accept in

Topic	Submitter Name	Submission Number	Statement Number	Decision Sought	Decision
RER.43.5, ICr.42.5 and SCr.36.5	Association Inc			RER.43.5, ICr.42.5 and SCr.36.5.	part
	Terry Holton	4	1	Do not delete sentences from RER.43.5, ICr.42.5 and SCr.36.5.	Accept in part
	Dan McGuire	5	1	Delete the incorrect word and replace it with the correct word in RER.43.5, ICr.42.5 and SCr.36.5. Do not delete the sentences within which the word occurs.	Accept
	Christine Grove	7	1	I support any existing or change in policy wording that will help create a QUIETER environment.	Reject
	David Brathwaite	8	1	(1) Existing Clauses RER.43.3, SCr.36.3 and ICr.42.3 should be deleted and replaced, in each case with: "Activities that contravene a permitted condition are non-complying."	Reject
		8	2	(2) Existing clauses RER.43.5, SCr.36.5 and ICr.42.5 should remain, unaltered.	Accept in part
	Jaap C Buys	9	1	Do not delete sentences from RER.43.5, ICr.42.5 and SCr.36.5.	Accept in part
	Jocelyn Smith	10	1	Delete Proposed Plan Change 25.2 entirely.	Accept in part
	Lance Edwardes	11	1	Delete Proposed Plan Change 25.2 entirely.	Accept in part
	Chris Appleton	12	1	Delete Proposed Plan Change 25.2 entirely.	Accept in part
Colin Kerby	13	1	1. Do not delete sentences from RER.43.5, ICr.42.5 and SCr.36.5. 2. Council should abandon its proposal to markedly increase noise levels throughout Nelson City at Council-run events. The Council has not been able to adequately police the noise levels now, in my opinion, and ought to fine the people making excessive noise and make them pay a monetary penalty for the excess noise they create.	Accept in part	

Topic	Submitter Name	Submission Number	Statement Number	Decision Sought	Decision																		
Plan Change 25.5.b) Definition of Dripline	Cadwallader Tree Consultancy & NZ Notable Trees Trust	6	1	Replace the term 'Drip line' with 'Root Protection Zone', as explained in statement 2 of my submission.	Accept																		
	Cadwallader Tree Consultancy & NZ Notable Trees Trust	6	2	<p>Amend the Proposed Plan Change to adopt the AS 4970 2009 'Protection of Trees on Development Sites' as a guide to calculate the root protection zone, as shown in the following table.</p> <table border="1"> <thead> <tr> <th>Tree age</th> <th>Tree vigour</th> <th>Root Protection Zone radius (m)</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Young trees</td> <td>Good vigour</td> <td>9 x DBH*</td> </tr> <tr> <td>Poor vigour</td> <td>6 x DBH</td> </tr> <tr> <td rowspan="2">Mature trees</td> <td>Good vigour</td> <td>9 x DBH</td> </tr> <tr> <td>Poor vigour</td> <td>12 x DBH</td> </tr> <tr> <td rowspan="2">Over mature trees</td> <td>Good vigour</td> <td>12 x DBH</td> </tr> <tr> <td>Poor vigour</td> <td>15 x DBH</td> </tr> </tbody> </table> <p>* DBH means Diameter at Breast Height which in NZ is diameter at 1.4m high (the diameter of the stem 1.4m above ground level).</p>	Tree age	Tree vigour	Root Protection Zone radius (m)	Young trees	Good vigour	9 x DBH*	Poor vigour	6 x DBH	Mature trees	Good vigour	9 x DBH	Poor vigour	12 x DBH	Over mature trees	Good vigour	12 x DBH	Poor vigour	15 x DBH	Accept (with correction shown in Appendix 1 of this report)
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Cadwallader Tree Consultancy & NZ Notable Trees Trust	6	3	Delete the term 'Drip line' and change it to 'Root Protection Zone'. Determine the root protection zones of trees based on the diameter of stems as provided for in the AS 4970 2009 'Protection of Trees on Development Sites'.	Accept																			

Topic	Submitter Name	Submission Number	Statement Number	Decision Sought	Decision
Plan Change 25.6 – Landscape Rules in the Rural Zone	Marsden Park Ltd	2	1	Delete proposed change to RUr.56.2 (iv): the "location of tracks and access roads."	Accept
	C I Hurley and I L T Turner	14	1	We would like to see this change deleted: RUr.56.2, matter of control iv) - the location of tracks and access roads.	Accept
	Marsden Park Ltd	2	2	Delete the addition of new matter of control in RUr.80.2 (v): "the number" [of allotments].	Accept
	C I Hurley and I L T Turner	14	2	We would like to see this change deleted: RUr.80.2, matter of control v) - the number (of lots).	Accept
	Marsden Park Ltd	2	3	Make all necessary consequential amendments to give effect to the Marsden Park Ltd submissions.	Accept

Consolidated Amendments to Plan Change 25

Appendix 1 shows the text of Plan Change 25 as notified, with further changes as a result of the decisions set out in this report shown as tracked changes in colour.

5. DECISIONS AND REASONS FOR DECISIONS

The decisions which follow are grouped in relation to the parts of Plan Change 25 as notified, and follow the order and the numbering as set out in Part B of the Officer's Report and the Decisions Summary Table set out above. A brief discussion and reason is provided in relation to each decision.

5.1 Decisions on Plan Change 25.2 – Noise

Submitter Name	Submission Number	Statement Number	Decision Sought	Decision
Rex Bloomfield and Glen Rowling	1	1	Do not delete sentences from REr.43.5, ICr.42.5 and SCr.36.5.	Accept in part
Nelson Greypower Association Inc	3	1	Do not delete sentences from REr.43.5, ICr.42.5 and SCr.36.5.	Accept in part
Terry Holton	4	1	Do not delete sentences from REr.43.5, ICr.42.5 and SCr.36.5.	Accept in part
Dan McGuire	5	1	Delete the incorrect word and replace it with the correct word in REr.43.5, ICr.42.5 and SCr.36.5. Do not delete the sentences within which the word occurs.	Accept
Christine Grove	7	1	I support any existing or change in policy wording that will help create a QUIETER environment.	Reject
David Brathwaite	8	1	(1) Existing Clauses REr.43.3, SCr.36.3 and ICr.42.3 should be deleted and replaced, in each case with: "Activities that contravene a permitted condition are non-complying."	Reject
	8	2	(2) Existing clauses REr.43.5, SCr.36.5 and ICr.42.5 should remain, unaltered.	Accept in part
Jaap C Buys	9	1	Do not delete sentences from REr.43.5, ICr.42.5 and SCr.36.5.	Accept in part
Jocelyn Smith	10	1	Delete Proposed Plan Change 25.2 entirely.	Accept in part
Lance Edwardes	11	1	Delete Proposed Plan Change 25.2 entirely.	Accept in part
Chris Appleton	12	1	Delete Proposed Plan Change 25.2 entirely.	Accept in part
Colin Kerby	13	1	1. Do not delete sentences from REr.43.5, ICr.42.5 and SCr.36.5. 2. Council should abandon its proposal to markedly increase noise levels throughout Nelson City at Council-run events. The Council has not been able to adequately police the noise levels now, in my opinion, and ought to fine the people making excessive noise and make them pay a monetary penalty for the excess noise they create.	Accept in part

Discussion

This change applies to several zones and sought to correct part of the existing explanations which described as “non-complying” a rule that was actually discretionary. The change provided for complete deletion of the sentence which included this description.

The wording changes to the three zones attracted eleven submissions in opposition to the change. One of these sought to change the status of the rule itself through the submission, others sought to maintain the status quo by complete rejection of the change, and others expressed concern about the Council’s ability to protect the community from existing noise levels, which are seen by submitters as excessive.

Mr Braithwaite, Ms Smith, Mr McGuire and Mr Edwards appeared at the hearing in support of their submissions. Mr Braithwaite and Mr McGuire spoke to additional written submissions, and Mr McGuire provided considerable supporting material in terms of the points he raised.

Through these written and verbal submissions, a number of Nelson City residents expressed considerable concern about the management and control of noise in the City and rights to participate in consent processes relating to noise. However, Plan Change 25 is very limited in scope and many of the points raised are beyond the scope. It is not possible to address such concerns through decisions on Plan Change 25, which is, as described, a set of “technical fixes”. It is not possible to introduce new provisions through decisions on the submissions.

Ms Bradley, in the Officer’s Report, acknowledged that some of the submissions had identified unintended consequences of the removal of the complete sentences from the explanations, and proposed modified wording. Instead of deleting the sentences as in the Plan Change, she advised a better outcome would be to retain the sentence and simply change the word “non-complying” to “discretionary”. I agree with this remedy, for the reasons set out below, and my decision accepts this modified wording.

This remedy is in line with the relief sought in Submissions 1.1, 3.1, 4.1, 5.1, 8.2, 9.1, 10.1, 11.1, 12.1 and 13.1. With the exception of 5.1, which sought the exact wording now determined, all the other submissions have been accepted in part, as the decision provides relief that goes some way towards the remedy sought – i.e. it retains most of the words, but does introduce a change to wording to align with existing rules. Submission 5.1 is accepted in full.

Submission 7.1 seeks policy wording that would create a quieter environment. As the wording changes do not change either the policy or the rules in the Plan, that submission is rejected. Submission 8.1 is rejected, as it is beyond the scope of the Plan Change, in seeking to change a rule.

Reasons for the Decisions

The decision to retain the wording in the three explanatory clauses provides clarity that noise affects the amenity of an area. In that respect, the explanation for the rules aligns generally with relevant policy for the zones, and with the assessment criteria for resource consent applications in the Nelson Resource Management Plan. Noise is usually considered to be part of amenity values, which is an RMA Section 7(c) matter.

Modification to Proposed Plan Change 25

Retain the following sentence in REr.43.5, with the correction of the activity status, to read as follows:

“As noise has a major influence on the amenity of an area, any proposal for noise in excess of the permitted standard will be assessed as a discretionary activity.”

Retain the following sentences in ICr.42.5 and SCr.36.5, with the correction of the activity status, to read as follows:

“Noise has a major influence on the amenity of an area. For this reason any proposal for noise in excess of the permitted standard will be assessed as a discretionary activity where it affects a Residential Zone.”

5.2 Decisions on Plan Change 25.5 b) – Meaning of Dripline

Submitter Name	Submission Number	Statement Number	Decision Sought	Decision																		
Cadwallader Tree Consultancy & NZ Notable Trees Trust	6	1	Replace the term 'Drip line' with 'Root Protection Zone', as explained in statement 2 of my submission.	Accept																		
Cadwallader Tree Consultancy & NZ Notable Trees Trust	6	2	<p>Amend the Proposed Plan Change to adopt the AS 4970 2009 'Protection of Trees on Development Sites' as a guide to calculate the root protection zone, as shown in the following table.</p> <table border="1"> <thead> <tr> <th>Tree age</th> <th>Tree vigour</th> <th>Root Protection Zone radius (m)</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Young trees</td> <td>Good vigour</td> <td>9 x DBH*</td> </tr> <tr> <td>Poor vigour</td> <td>6 x DBH</td> </tr> <tr> <td rowspan="2">Mature trees</td> <td>Good vigour</td> <td>9 x DBH</td> </tr> <tr> <td>Poor vigour</td> <td>12 x DBH</td> </tr> <tr> <td rowspan="2">Over mature trees</td> <td>Good vigour</td> <td>12 x DBH</td> </tr> <tr> <td>Poor vigour</td> <td>15 x DBH</td> </tr> </tbody> </table> <p>* DBH means Diameter at Breast Height which in NZ is diameter at 1.4m high (the diameter of the stem 1.4m above ground level).</p>	Tree age	Tree vigour	Root Protection Zone radius (m)	Young trees	Good vigour	9 x DBH*	Poor vigour	6 x DBH	Mature trees	Good vigour	9 x DBH	Poor vigour	12 x DBH	Over mature trees	Good vigour	12 x DBH	Poor vigour	15 x DBH	Accept (with correction shown in Appendix 1 of this report)
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Over mature trees	Good vigour	12 x DBH																				
	Poor vigour	15 x DBH																				
Cadwallader Tree Consultancy & NZ Notable Trees Trust	6	3	Delete the term 'Drip line' and change it to 'Root Protection Zone'. Determine the root protection zones of trees based on the diameter of stems as provided for in the AS 4970 2009 'Protection of Trees on Development Sites'.	Accept																		

Discussion

This part of Plan Change 25 adds a new definition of “dripline” (around trees). The term is used in several rules relating to trees listed in Appendix 2 of the Nelson Resource Management Plan, and has hitherto been undefined. The definition seeks to clarify the application of the rules by imposing a specified protected circumference around the tree based on the widest part of the canopy.

An extensive submission in three parts (submissions 6.1, 6.2 and 6.3) was made on this definition by Mr Bradley Cadwallader on behalf of his consultancy firm and the NZ Notable Trees Trust. Mr Cadwallader appeared at the hearing and spoke in support of his written submission. Because of his expertise and experience, Mr Cadwallader’s submission and verbal evidence is taken as expert evidence. Mr Cadwallader pointed out that the definition of dripline, as worded, may not achieve the Council’s intention as the combination of terms “circumference” and “diameter” as used would result in a very small protected area.

The main thrust of the submission was in support of certainty of application and practicability of the rules. To achieve this, the submission sought an amendment to the Proposed Plan Change so that the term “dripline” would be replaced with the term “root protection zone”, along with a comprehensive description of what is meant by the replacement term. This is because of a number of issues with the use of the concept of “dripline” which in some circumstances would result in a smaller area than needed being subject to the rules, and in others a larger area than needed being affected by the rules. In the first circumstance, a listed tree may not be adequately protected; in the latter, the rules would apply to a larger area and potentially affect development in that area with no benefit to the listed tree.

The submission describes, and Mr Cadwallader further explained, a method for determining an appropriate “root protection zone” which is incorporated in Australian Standard AS 4970 2009 “Protection of Trees on Development Sites”. Mr Cadwallader explained that this standard is based on latest research and is currently regarded as best practice. The Australian Standard is based on the British Standard and is consistent with the American Standard. There is no relevant New Zealand Standard. The root protection zone is based on a simple formula taking into account tree age, tree vigour and the diameter of the tree trunk at breast height (1.4 metres above actual ground level). Mr Cadwallader advised that young vigorous trees are able to better adapt to development in their vicinity than mature and older trees which require larger protection zones. Trees with good vigour similarly require lesser protection than less vigorous trees. Basing the root protection zone on trunk diameter at a specified height reduces uncertainty of application. The rules apply only to listed trees and information on both maturity and vigour are assessed as part of the listing process, and the Council can advise on these aspects.

Ms Bradley in her report supported the approach and wording proposed in the submission. Mr Grundy also advised at the hearing that he was in support of the alternative proposed in the submission, and that it would be workable. At the hearing Mr Cadwallader noted and sought to correct a typographic error in the submission. This was a reversal in the areas protected in relation to young trees where 9 x DBH should read as 6 x DBH, and 6 x DBH should read as 9 x DBH.

Reflecting on the nature of the submissions and their intent, it is appropriate in terms of the objective and policies that apply to listed (heritage and landscape) trees to be able to apply a readily interpretable definition to the rule, and one that is in accordance with best international practice. There is merit in replacing the present lack of definition, and also the notified definition (which is clearly not what was intended by the Proposed Plan Change), with the submitter’s suggestion. I note that there was only the one submitter to this part of the notified Plan Change, and that the replacement proposal was included in full in the summary of submissions, and drew no further submissions.

Thus all parts of the submission are accepted. I note that the application of the new definition will require minor corrective amendments to the operative rules in the Nelson Resource Management

Plan, and later in this report recommend to the Council that these changes be made in accordance with clause 20A of the First Schedule of the RMA.

Modifications to Proposed Plan Change 25.5.b)

Delete the 'Dripline' definition from the Meaning of Words Section of Proposed Plan Change 25.5, and replace it with a definition for 'Root Protection Zone' as follows:

"Root Protection Zone means the minimum area required to ensure a tree's health and stability is safeguarded, as calculated using the following table:

<u>Tree age</u>	<u>Tree vigour</u>	<u>Root Protection Zone radius (m)</u>
<u>Young trees</u> <u>(where the age of tree is less than 20% of life expectancy)</u>	<u>Good vigour</u>	<u>6 x DBH*</u>
	<u>Poor vigour</u>	<u>9 x DBH</u>
<u>Mature trees</u> <u>(where the age of tree is between 20% and 80% of life expectancy)</u>	<u>Good vigour</u>	<u>9 x DBH</u>
	<u>Poor vigour</u>	<u>12 x DBH</u>
<u>Over mature trees</u> <u>(where the age of tree is greater than 80% of life expectancy)</u>	<u>Good vigour</u>	<u>12 x DBH</u>
	<u>Poor vigour</u>	<u>15 x DBH</u>

*DBH means Diameter at Breast Height which in NZ is diameter at 1.4m high (the diameter of the stem 1.4m above ground level)."

5.3 Decisions on Plan Change 25.6 – Landscape Rules in the Rural Zone

<u>Submitter Name</u>	<u>Submission Number</u>	<u>Statement Number</u>	<u>Decision Sought</u>	<u>Decision</u>
Marsden Park Ltd	2	1	Delete proposed change to RUr.56.2 (iv): the "location of tracks and access roads."	Accept
C I Hurley and I L T Turner	14	1	We would like to see this change deleted: RUr.56.2, matter of control iv) - the location of tracks and access roads.	Accept
Marsden Park Ltd	2	2	Delete the addition of new matter of control in RUr.80.2 (v): "the number" [of allotments].	Accept
C I Hurley and I L T Turner	14	2	We would like to see this change deleted: RUr.80.2, matter of control v) - the number (of lots).	Accept
Marsden Park Ltd	2	3	Make all necessary consequential amendments to give effect to the Marsden Park Ltd submissions.	Accept

Discussion

This part of Plan Change 25 drew submission from two parties, categorised into five submissions – submissions 2.1, 2.2, 2.3, 14.1 and 14.2.

Submissions 14.1 and 14.2 were received very late. As they do not raise any additional issues and no party was prejudiced, due to their being included in the list of submissions that was summarised and notified for further submissions, these submissions can be received.

This part of Plan Change 25 was introduced to improve the links between the controlled activity rules relating to structures, earthworks and subdivision within the Landscape Overlay, and Appendix 7, the Guide for Subdivision and Structures that applies in the Landscape Overlay. As part of this change, definitions were also to be added to Chapter 2 to clarify that “construction” and “erection” include the relocation of a building or structure.

Submissions 2.1 and 14.1 sought the removal of control over “the location of tracks and access roads” in RUr.56.2. Submissions 2.2 and 14.2 sought removal of one matter of control, being the number of lots in relation to controlled activity subdivision in RUr.80.2.

At the hearing Mr Quickfall spoke to a statement of written evidence on behalf of Marsden Park Ltd, which is currently developing a 600-lot subdivision, part of which is within the Landscape Overlay. He took the opportunity to comment in more detail on the basis for the Plan’s current Landscape Overlays, including referring to a recommendation from Commissioners who heard submissions on Change 13 relating to the Marsden Village proposal, that a review of all landscape provisions in the Nelson Resource Management Plan should be undertaken. He suggested that the Section 32 analysis undertaken for the current Plan Change was thus deficient, as it has not assessed the option of deferring any changes and undertaking a comprehensive district-wide review.

It is apparent that the submissions from submitter 2 did not seek deferral of the Section 32 analysis as a matter of concern. The relief sought was limited to two specific matters, with the addition of a “consequential amendment” provision to give effect to the other submissions made by the submitter.

Ms Bradley, in the Officer’s Report, agreed with the point made in Submissions 2.1 and 14.1 – that the three matters of control over earthworks already within the rule were sufficient to manage relevant aspects of earthworks, without specific additional control over the location of tracks and access roads. At the hearing she also advised that, on further thought and having heard Mr Quickfall’s evidence, she wished to amend her recommendation on Submissions 2.2 and 14.2 to be in acceptance of the submissions – the reason being that the expanded provision for a landscape assessment to accompany an application would adequately cover the number (or intensity) of lots within an area. In reaching the decision to accept the four submissions, I accept the points raised by Mr Quickfall and Ms Bradley.

Mr Quickfall raised one matter in terms of the “consequential amendment” submission. He requested that the reference to the “requirements” of Appendix 7 in RUr.80.2(b) be replaced with the word “guidelines”. Reviewing the contents of Appendix 7, there are both requirements as to the content of landscape assessments, and guidelines as to the intentions and outcomes of subdivision and development in the landscape. RUr.80.4, the assessment criteria refer to the “extent of compliance with guidelines...”. I agree with Mr Quickfall’s suggestion that the wording of RUr.80.2 should more correctly refer to the guidelines than to the requirements for content of a landscape assessment (which would be an RMA Section 92 information requirement). This is a minor matter, and in the nature of a correction.

Reason for the Decisions

The changes made in the decisions to the wording of proposed Plan Change 25.6 as a result of the submissions are justified on the basis that they seek to incorporate matters of control which are

adequately addressed in other provisions, including through the enhanced reference to the landscape assessment in Appendix 7. There are no submissions relating to other aspects of Plan Change 25.6.

Modification to Proposed Plan Change 25.6

Do not add item iv) the location of tracks and access roads to RUr.56.2.

Amend the additional words in RUr.80.2 by replacing the word “requirement” with the word “guidelines”.

Do not add the word “number” to RUr.80.2 iv).

6. SECTION 32 FURTHER EVALUATION

I have reviewed the Section 32 analysis carried out by the Council dated 25th September 2010. While some changes have been made to some parts of the Plan Change as notified, this does not alter the analysis undertaken, and no changes to it are required.

The matter raised by Mr Quickfall in relation to Plan Change 25.6 (see Section 5.3 of this report) was not included in the submission, and therefore under RMA Section 32A(1) cannot be considered as a challenge to the Section 32 Report. However, under RMA Section 32A(2), I comment that Mr Quickfall’s suggestion that an assessment of the option of a complete review of the Plan’s landscape provisions had not been carried out, and that the Section 32 analysis for the present Plan Change was somehow invalidated as a result, is not supportable given the very limited nature of Plan Change 25 and its timing. Plan Change 25.6 was part of a composite of minor changes arising from the administration and the process, cost, efficiency and effectiveness of the changes have thus all been tested against the status quo. A complete revision of the landscape provisions would involve a much larger and more prolonged process. I note that the year of the decision on Plan Change 13, which was referred to by Mr Quickfall, was not given in his evidence, and being a decision in April 2011, post-dates all but the hearing of submissions and decisions on Plan Change 25. This is a further reason why no change is needed to the Section 32 analysis.

7. ADDITIONAL RECOMMENDATION UNDER RMA FIRST SCHEDULE, CLAUSE 20A

The decisions have accepted a submission which changes the terminology describing the area to which rules apply in relation to a listed tree. The accepted change refers to this area as the “root protection zone” rather than the “dripline”. The word “dripline” is however referred to throughout the Plan, including in rules under REr.95, ICr.68, SCr.65, INr.67, OSr.70 and RUr.70. Because of the decisions, minor corrections need to be made to these rules to reflect the changed terminology, as provided for under Clause 20A of the First Schedule, RMA.

A decision to undertake the necessary minor corrections proposed is beyond the scope of my delegated authority.

In the interests of consistency, it is my recommendation to the Council that such minor changes should be made.

Signed: 
Hearings Commissioner

Date: 19 September 2011

APPENDIX 1 – CONSOLIDATED AMENDMENTS TO PLAN CHANGE 25

PLAN CHANGE 25

Amendments to Plan Change 25 as notified, following Decisions on Submissions

Note that no changes have been made to Plan Changes 25.1, 25.3, 25.4, and 25.5.a), c), d), e) and f).

Plan Change 25.1 – Hazardous substances

Amend the wording in AP21.4.16.ii as follows:

Ap21.4.16.ii The Industrial Zone at the Port, Tahunanui, Nayland Road South and the Airport have an effects ratio of 0.75. This permits storage of 22,500 litres of diesel, 7,500 litres of petrol, or 750 litres of an environmentally highly toxic substance. The Vanguard St and ~~Nayland Rd South Industrial areas~~ area receive ~~has~~ a rating of ~~0.25 and 0.5 respectively~~ 0.2. The Vanguard St area is in the vicinity of Residential and Inner City Zones, and it is desirable to minimise hazardous substances use in this area as much as possible. ~~The Nayland South Industrial area comprises mainly food processing industries, which generally are not compatible with industry manufacturing or using large quantities of hazardous substances. However, food processing industries have hazardous substances requirements for transportation and refrigeration."~~

Amend wording in AP21.3.2.ii and AP21.3.2.iii as follows:

AP21.3.2.ii Storage of LPG in cylinders, provided it can be demonstrated that ~~"AS/NZS 1596:1997 Storage and Handling of LP Gas"~~ AS/NZS 1596:2008 The storage and handling of LP Gas" is adhered to.

AP21.3.2.iii Storage of up to 6 tonnes (single vessel storage) of LPG in a receptacle of a liquid capacity greater than 250l, provided it can be demonstrated that ~~AS/NZS 1596 Storage and Handling of LP Gas"~~ "AS/NZS 1596:2008 The storage and handling of LP Gas " is adhered to.

Plan Change 25.2 – Noise

Reinstate explanatory words but replace term "non-complying" with the term discretionary in REr.43.5 as follows:

As noise has a major influence on the amenity of an area, any proposal for noise in excess of the permitted standard will be assessed as a discretionary non-complying activity.

Reinstate explanatory words but replace term "non-complying" with the term discretionary in ICr.42.5 and SCr.36.5 as follows:

Noise has a major influence on the amenity of an area. For this reason any proposal for noise in excess of the permitted standard will be assessed as a discretionary non-complying activity where it affects a Residential Zone.

Plan Change 25.3 – Tahunanui Slump Slope Risk Overlay

Amend REr.76.1 as follows:

Within the Tahunanui Slump Core Risk Overlay, and the Tahunanui Slump Fringe Slope Risk Overlay:

- a) any structure must not change the loading ~~add a load to the site of greater by more~~ than 1000 kg (including any structure with a storage capacity in excess of 1000 litres of liquid, such as a swimming pool).

Plan Change 25.4 - Soil disturbance, earthworks and vegetation clearance

Soil disturbance rules

Amend REr.60.1d), OSr.48.1d) and RUr.26.1d) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance:

- i) stabilised so that no earth moves off-site or presents a danger to life or property; and
- ii) vegetated, paved, metalled or built over, and revegetated or otherwise protected from soil erosion as soon as practicable, and not later than 12 months from the date of the earthworks.

Amend REr.60.2c), OSr.48.2c), RUr.26.2c) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance, or the time specified in the sedimentation and erosion control plan for the site:

- i) stabilised so that no earth moves off-site or presents a danger to life or property; and
- ii) vegetated, paved, metalled or built over, and ~~revegetated or otherwise protected from soil erosion as soon as practicable, and not later than 12 months from the date of the earthworks.~~

Earthworks rules

Amend REr.61.1f), ICr.55.1f), SCr.48.1f), INr.54.1f), OSr.49.1f) and RUr.27.1f) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance:

- ii) stabilised so that no earth moves off-site or presents a danger to life or property; and
- iii) vegetated, paved, metalled or built over, and revegetated or otherwise protected from soil erosion as soon as practicable and not later than 12 months from the date of the earthworks.

Amend REr.61.2e), ICr.55.2e), SCr.48.2e), INr.54.2e), OSr.49.2e), and RUr.27.2e) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance, or the time specified in the sedimentation and erosion control plan for the site:

- iii) stabilised so that no earth moves off-site or presents a danger to life or property; and
- iv) vegetated, paved, metalled or built over, and revegetated or otherwise protected from soil erosion as soon as practicable, and not later than 12 months from the date of the earthworks.

Vegetation clearance rules

Amend REr.59.1d), OSr.47.1d), RUr.25.1d) and COr.25.1e) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance:

- iv) stabilised so that no earth moves off-site or presents a danger to life or property; and
- v) vegetated, paved, metalled or built over, and revegetated or otherwise protected from soil erosion as soon as practicable and not later than 12 months from the date of the earthworks.

Amend REr.59.2c), OSr.47.2c) and RUr.25.2c) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance, or the time specified in the sedimentation and erosion control plan for the site:

- v) stabilised so that no earth moves off-site or presents a danger to life or property; and
- vi) vegetated, paved, metalled or built over, and

~~–revegetated or otherwise protected from soil erosion as soon as practicable, and not later than 12 months from the date of the earthworks.~~

Plan Change 25.5 - Definitions

In Chapter 2 (Meaning of Words) amend the road boundary definition as follows:

Road boundary means any boundary of a site abutting a legal road, including a common vehicle access serving ~~five or more~~ than four actual or potential residential units.

In Chapter 2 (Meaning of Words) replace the proposed definition for dripline with the definition of root protection zone as follows:

~~**Dripline** means a circumference based on the diameter from the centre of the tree to the widest point of the canopy.~~

“Root Protection Zone means the minimum area required to ensure a tree’s health and stability is safeguarded, as calculated using the following table:

<u>Tree age</u>	<u>Tree vigour</u>	<u>Root Protection Zone radius (m)</u>
<u>Young trees</u> <u>(where the age of tree is less than 20% of life expectancy)</u>	<u>Good vigour</u>	<u>6 x DBH*</u>
	<u>Poor vigour</u>	<u>9 x DBH</u>
<u>Mature trees</u> <u>(where the age of tree is between 20% and 80% of life expectancy)</u>	<u>Good vigour</u>	<u>9 x DBH</u>
	<u>Poor vigour</u>	<u>12 x DBH</u>
<u>Over mature trees</u> <u>(where the age of tree is greater than 80% of life expectancy)</u>	<u>Good vigour</u>	<u>12 x DBH</u>
	<u>Poor vigour</u>	<u>15 x DBH</u>

*DBH means Diameter at Breast Height which in NZ is diameter at 1.4m high (the diameter of the stem 1.4m above ground level).”

In Chapter 2 (Meaning of Words) amend the defensible space definition as follows:

Defensible space in relation to fire safety, means an area maintained as a fire break or planted in low-flammability species to protect a structure from fire in surrounding vegetation or to protect vegetation from a fire in a structure. The area shall be at least the following dimensions:

- a) on flat land and slopes up to 10° – 25m from the structure, or
- b) on slopes greater than 10° – 10m up hill, 15m each side, 30m down hill, from the structure, or

- c) an area less than those described in a) or b) above if approved in writing by the Principal Rural Fire Officer."

In Chapter 2 (Meaning of Words) amend the net area definition as follows:

Net area means the total area of a ~~the site or allotment (or in the case of more than one residential unit on a single allotment, the area of the allotment allocated exclusively to a particular residential unit)~~, excluding any part that is:

- a) subject to any designation (see appendix 24—designations), or
- b) a right of way serving other sites, or
- c) in relation to rear sites, excludes the area of any access strip in relation to rear sites, part of any access to the site that is less than 6m in width.

In Chapter 2 (Meaning of Words) add a definition for predominant slope:

Predominant slope means the slope which is most common over the area. Slope can be calculated as a ratio of "rise over run" in which run is the horizontal distance and rise is the vertical distance. For the purpose of the soil disturbance rule in this Plan, the calculation of predominant slope should be applied to the slope area where the soil disturbance and any erosion control is to occur.

In Chapter 2 (Meaning of Words) amend the revegetation definition as follows:

Revegetation means the establishment of trees, plants or grasses to achieve a ~~minimum of 60%~~ coverage of soil surfaces.

Plan Change 25.6 – Landscape Rules in the Rural Zone

Remove amendment to RUr.56.2 (Landscape Overlay – Earthworks) as follows (i.e. replace "requirements" with "guidelines"):

~~Control is reserved over:
iv) the location of tracks and access roads.~~

Amend parts of RUr.80.2 (Subdivision within the Landscape Overlay) as follows:

Subdivision of land within the Landscape Overlay and detailed in Appendix 9 (landscape components and views) is a controlled activity if:

- a) it meets the standards in Rule RUr.78 (subdivision -general), excluding Table 14.5.1 of Appendix 14 (design standards), and
- b) it is accompanied by a landscape assessment by an appropriately qualified person which takes into account the

requirements guidelines in Appendix 7 (guide for subdivision and structures in the landscape overlay) and identifies any areas on which building should not occur because the landscape effects of a building cannot be mitigated in that area.

Control reserved over:

- iv) the alignment and location of roads, the width of carriageways and planting of berms, and the alignment of road accesses with the land contours, and
- v) the number size, shape and orientation of allotments, and
- ix) changes to landform or landscape features, and
- x) views from roads and public reserves

In Chapter 2 (Meaning of Words) add definitions for construction and erection as follows:

Construction in the case of a building or structure, includes the relocation of a building or structure.

Erection in the case of a building or structure, includes the relocation of a building or structure.