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**REPORT R26202**

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**Request for a Private Plan Change: Maitahi/Bayview**

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**1. Purpose of Report**

- 1.1 To seek a resolution from the Council as to how to proceed with the private plan change (PPC) request received from CCKV Dev Co LP and Bayview Nelson Limited, given the four options available under the Resource Management Act 1991 (RMA).
- 1.2 To summarise the content of the PPC request for the Council.
- 1.3 Gina Sweetman, Planning Practice Leader at Sweetman Planning and Kerry Anderson, Partner with DLA Piper (lawyers) will be present at the meeting. Both Ms Sweetman and Ms Anderson have been engaged by the Council.

**2. Summary**

- 2.1 CCKV Dev Co LP and Bayview Nelson Limited have applied to the Council for a PPC request to change the Operative Nelson Resource Management Plan (NRMP). The PPC request was lodged on 16 April 2021. Following agreed extensions of time, the Council issued a Further Information Request on 3 August 2021. The further information which now forms part of the PPC request was received on 24 August 2021.
- 2.2 The PPC seeks to rezone approximately 287 hectares of land located within Kaka Valley, along Botanical Hill and Malvern Hill from Rural and Rural-Higher Density Small Holdings Area to:
  - 2.2.1 Residential (Higher, Standard and Lower Density Areas);
  - 2.2.2 Rural-Higher Density Small Holdings Area;
  - 2.2.3 Open Space Recreation; and
  - 2.2.4 Suburban Commercial.
- 2.3 The PPC would introduce a new Schedule X to the NRMP with an accompanying structure plan and involves a number of integrated changes to associated provisions of the NRMP.

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- 2.4 There are four options under the RMA available to the Council on how to deal with the request:
- 2.4.1 To **adopt** the PPC request as a Council plan change.
  - 2.4.2 To **accept** the PPC request to continue as a private plan change pursued by a private party (CCKV Dev Co LP and Bayview Nelson Limited).
  - 2.4.3 To **reject** the PPC request.
  - 2.4.4 To **convert** the PPC request into a resource consent
- 2.5 Of these four options, it is recommended the Council **accepts** the PPC request for the following reasons (which are addressed in more detail later in this report) and provide for the PPC to move through the statutory RMA process:
- 2.5.1 **Accepting** the PPC request does not pre-empt the final outcome of the PPC through the formal Schedule 1 RMA process and the decision of the Hearings Panel.
  - 2.5.2 **Accepting** the PPC allows the Council to maintain its regulatory position, as well as providing the Council the opportunity to submit on it, so that it can seek changes as appropriate.
  - 2.5.3 **Accepting** (as opposed to adopting) the request would allow the Council to recover its costs in processing it through the Schedule 1 RMA process.
  - 2.5.4 **Accepting** the PPC means it will follow the Schedule 1 RMA process, including public notification, submissions and further submissions and a hearing and recommended decision by commissioners. The recommendation then comes back to Council for a decision.
  - 2.5.5 **Accepting** the request would allow the Council to continue with its Nelson Plan review process, without needing to divert resources to a Council-led plan change which would occur if it was adopted.
  - 2.5.6 The applicant has requested that the request be **accepted** and not adopted.
  - 2.5.7 **Converting** the request to a resource consent would not be appropriate resource management practice as the NRMP zone provisions would not support the outcome sought by the PPC. Further, the applicant would not support that approach and indeed it provides no benefit to either the applicant or community.
  - 2.5.8 There is no reason for the request to be **adopted** by the Council as its own.

2.5.9 There are no grounds under the RMA to **reject** the request.

### 3. Recommendation

#### *That the Council*

1. ***Receives the report Request for a Private Plan Change: Maitahi/Bayview (R26202) and its attachment (A2737849); and***
2. ***Accepts the Request for the Private Plan Change for Maitahi/Bayview as Private Plan Change 28; and***
3. ***Agrees independent accredited commissioners will be appointed to consider Private Plan Change 28 and to make recommendations to Council; and***
4. ***Agrees that the decision-making options are set out in clause 25 of the First Schedule of the Resource Management Act (RMA) and that this clause 25 decision is a process decision in Council's capacity as regulator; and***
5. ***Agrees the significance of this process decision is low to medium because it is the substantive decision on the Private Plan Change that has the potential impact and that substantive decision will be subject to a public process, prescribed by the RMA. Accordingly, consultation under the Local Government Act on this clause 25 process decision under the RMA is neither necessary nor appropriate.***

### 4. Background

#### **Private Plan Change Requests**

- 4.1 The process for a private plan change (PPC) is set out in Schedule 1 of the RMA. Any person may request a change to a district plan (or regional plan) and the Council must consider how that request will be dealt with, once it is satisfied it has all the information it needs.
- 4.2 A PPC follows the same statutory process as a Council-initiated plan change, with one important additional step. Clause 25 of Schedule 1 of the RMA requires the Council at the start of the process to either:
  - 4.2.1 **Adopt** the request (or part of it) as if it were a plan change made by the Council itself.
  - 4.2.2 **Accept** the request (in whole or part) which enables it to proceed as a PPC through the normal submission and decision process.

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- 4.2.3 **Reject** the request (in whole or part) on the grounds set out in clause 25(4)(a)-(e) of Schedule 1 of the RMA (and only on those grounds).
- 4.2.4 Decide to deal with the request (**convert**) as if it were an application for resource consent.
- 4.3 In terms of the rejection option, this is constrained by the RMA and decision by the Council to reject a private plan change is only available where one of five specific grounds in Clause 25(4) of Schedule 1 of the RMA are met:
- 4.3.1 the request or part of the request is frivolous or vexatious; or
- 4.3.2 within the last 2 years, the substance of the request or part of the request has been considered and given effect to, or rejected by, the local authority or the Environment Court; or has been given effect to by regulations made under [section 360A](#); or
- 4.3.3 the request or part of the request is not in accordance with sound resource management practice; or
- 4.3.4 the request or part of the request would make the policy statement or plan inconsistent with Part 5; or
- 4.3.5 in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.
- 4.4 If there are no grounds for rejection then the Council must decide to adopt it, accept it or convert it to a resource consent application. Officers consider there are no grounds under the RMA to **reject** the request.
- 4.5 The Council's decision under Clause 25 is made in advance of public notification of the PPC, and therefore does not have the benefit of public submissions, evidence and a full analysis from the Council officers or experts engaged by the Council. It is accordingly described by the High Court as a 'coarse filter'<sup>1</sup> of the PPC - in effect, a screening exercise. It is not the Council's full merits decision based on all relevant submissions and information. That comes later, after a full RMA process and opportunity for public involvement.
- 4.6** At this stage, the Council's decision is only whether the PPC should be able to continue being processed as a plan change and if so, whether it is treated as a Council initiated plan change (the adopt option) or whether it continues as a PPC request (the accept option).

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<sup>1</sup> *Malory Corporation Limited v Rodney District Council* [2010] NZRMA 392, at para 33

### Private Plan Change Proposal

- 4.7 The requested PPC, including a s32 evaluation report, is linked as [Appendix 1](#)<sup>2</sup>. The PPC relates to the site shown in the aerial photograph<sup>3</sup> below:



- 4.8 In brief, the PPC seeks to:

- 4.8.1 Rezone approximately 287 hectares of land located within Kaka Valley, along Botanical Hill and Malvern Hill from Rural and Rural-Higher Density Small Holdings Area to:

- Residential (Higher, Standard and Lower Density Areas);
- Rural-Higher Density Small Holdings Area;
- Open Space Recreation; and
- Suburban Commercial.

- 4.8.2 Introduce a new Schedule X to the NRMP with an accompanying Structure Plan. Particular aspects of the Schedule would include:

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<sup>2</sup> As amended in response to the Further Information Request dated 3 August 2021. Amendments were received on 24 August 2021.

<sup>3</sup> Figure 8: from the Plan Change Request

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- Comprehensive Housing Developments in the Residential Zone - Higher Density Area as a non-notified restricted discretionary activity.
- Subdivision in the Residential Zone as a non-notified restricted discretionary activity.
- Vesting of a 40m total width esplanade reserve along the Maitai River and Kaka Stream, in stages as subdivision progresses.
- Building in the Backdrop Area and Skyline Area as a controlled activity, subject to conditions.
- Buildings on specifically identified parts of the Kaka Hill backdrop and skyline area and within the Significant Natural Area being prohibited activities meaning they cannot occur.
- The requirement for a Cultural Impact Assessment with any resource consent application.
- The application of ecological and freshwater best practice principles in the subdivision and development design process.
- Amendments to Chapter 7 – Residential Zone to:
  - Refer to the Schedule in the Introduction and Issues;
  - Add to Policy RE3.9 and its methods;
  - Introduce new Objective RE6 and Policy RE6.1 (Maitahi Bayview Area), Policy RE6.2 (Cultural Values) and Policy RE6.3 (Sensitive Environmental Design);
  - Introduce new rule RE2.106D – Maitahi Bayview Structure Plan (Schedule X);
  - Add to REr109.5 (Landscape Overlays – Subdivision).
- Amendments to Chapter 9 – Suburban Commercial Zone to:
  - Refer to the Kaka Valley in the Introduction and Issues;
  - Reference the Schedule X;
  - Introduce new Rule SCr.69C – Maitahi Bayview Structure Plan (Schedule X);
  - Add to SCr71.2 to refer to the Schedule and Structure Plan.
- Amendments to Chapter 12 – Rural Zone to:

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- Reference the Schedule in the Introduction and Issues;
- Introduce new Rule RUr.77C– Maitahi Bayview Structure Plan (Schedule X);

4.8.3 The potential realignment of the lower Kaka Stream tributary is proposed but would be the subject of a separate and subsequent resource consent process.

4.8.3 Amendments to the Road Hierarchy Planning Maps to include a Proposed Sub Collector Road from the end of Bayview Road and Frenchay Drive, through the site and following the alignment of the proposed indicative road, through Ralphine Way and down the Maitai Valley Road as far as Nile Street East.

4.8.4 Amendments to the Planning Overlay Maps to apply the Services Overlay to the land.

4.9 The following table<sup>4</sup> sets out the proposed zoning, minimum lot size and area proposed:

| <b>Table 1: Land Areas and Zonings</b> |                                      |                                  |                      |
|--|--------------------------------------|----------------------------------|----------------------|
| <b>Zone Type</b>                       | <b>Planned Density</b>               | <b>Minimum Lot Size</b>          | <b>Area Proposed</b> |
| Residential                            | High                                 | 300m <sup>2</sup>                | 19.22ha              |
| Residential                            | Standard                             | 400m <sup>2</sup>                | 28.93ha              |
| Residential                            | Low Density                          | 800m <sup>2</sup>                | 60.61ha              |
| Residential                            | Low Density ( <i>Backdrop Area</i> ) | 1500m <sup>2</sup>               | 36.44ha              |
| Rural – Small Holdings Area            | High Density                         | 5000m <sup>2</sup> , 1ha average | 35.4ha               |
| Suburban Commercial                    | --                                   | No minimum                       | 00.37ha              |
| Open Space & Recreation                | --                                   | N.A.                             | 41.33ha              |
|  |                                      | <b>Subtotal</b>                  | <b>222.30</b>        |
| <b>Current zoning to remain</b>        |                                      |                                  |                      |
| Rural                                  | --                                   | 15ha                             | 63.85ha              |
| Residential                            | Standard                             | 400m <sup>2</sup>                | 00.63                |
|  |                                      | <b>TOTAL</b>                     | <b>286.78ha</b>      |

<sup>4</sup> Table 1 from the s32 Evaluation – Maitahi Bayview

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4.10 The applicant has provided the following information within the PPC request.

4.10.1 The Plan Change Request document itself.<sup>5</sup>

4.10.2 The Structure Plan.<sup>6</sup>

4.10.3 Amendments to the NRMP Planning Maps.

4.10.4 Technical assessment documents as follows:

- Iwi engagement summary;
- Historical and archaeological assessment;
- Productive values report;
- Geotechnical report;
- Ecological opportunities and constraints assessment report;
- Morphem Environmental Consultants environmental review, covering stormwater management and ecological effects management. The report also identifies and assesses waterways across the site;
- Infrastructure report, covering wastewater, water supply, dry services<sup>7</sup>, flooding and stormwater, including an addendum;
- Transportation impact report, including an addendum;
- Landscape visual assessment and urban design assessment report, including an addendum;
- Preliminary landscape design document;
- Economic cost and benefit assessment report.

4.10.5 Consultation feedback undertaken by the applicant.

4.10.6 A section 32 evaluation report.

4.10.7 A response to the further information request including updated provisions.

4.11 The PPC does not seek to amend any of the regional planning provisions in the NRMP.

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<sup>5</sup> As updated in response to the further information request

<sup>6</sup> As updated in response to the further information request

<sup>7</sup> Power, communication and data



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- 4.12 There are some areas where officers considered that the applicant has not provided all the further information sought in the Council's request, with either the stated intent by the applicant that it will be provided at a later date, or that it is a matter to be addressed at the resource consent stage, should the plan change be approved.
- 4.13 Clause 23(5) of Schedule 1 of the RMA provides that an applicant may decline in writing to provide further information and may require the Council to proceed with considering the request. The applicant's position is that they have provided sufficient information and have asked that the Council proceed to make a decision. Clause 23(6) provides that the Council may reject a request at any time if it considers it has insufficient information to enable it to consider or approve the request. For the reasons set out in para 8.4 there is sufficient information to consider the request under clause 25 of Schedule 1 of the RMA.

### **Nelson Tasman Future Development Strategy July 2019**

- 4.14 The Nelson Tasman Future Development Strategy July 2019 (the FDS) sets out how Nelson City and Tasman District Councils will provide sufficient development capacity over the next 30 years to meet the needs of their growing communities. A new FDS is currently being prepared under the National Policy Statement on Urban Development 2020 (NPSUD) and will be subject to a Special Consultative Procedure in March 2022.
- 4.15 In summary, the FDS supports intensification of current urban settlements, but acknowledges that in a high growth scenario it is unlikely to provide sufficient housing capacity or housing choices. The FDS identifies that a range of intensification and greenfield areas are necessary, while minimising the use of high quality rural land. Expansion in the Nelson Urban Area is provided for in the Kaka Valley, Saxton and Richmond South. Kaka Valley, which is the area that this PPC relates to, is phased as an expansion area that may be made available in decade 2 (2028-2038) of the lifetime of the FDS. The FDS estimates a yield of 614 households from Kaka Valley.
- 4.16 This PPC would bring forward the phasing in the FDS by making it available earlier than decade 2 (2028-2038).

### **National Policy Statement on Urban Development 2020 (NPS-UD)**

- 4.17 The NPSUD came into force on 20 August 2020.
- 4.18 The NPSUD contains eight objectives and 11 policies, supported by implementation methods, for planning for well-functioning urban environments under the RMA.
- 4.19 The key policies relevant to this PPC are:

*Policy 8: Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to*

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*development capacity and contribute to well-functioning urban environments, even if the development capacity is:*

- (a) unanticipated by RMA planning documents; or*
- (b) out-of-sequence with planned land release.*

*Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

- (a) have or enable a variety of homes that:
  - (i) meet the needs, in terms of type, price, and location, of different households; and*
  - (ii) enable Māori to express their cultural traditions and norms; and**
- (b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*
- (d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*
- (e) support reductions in greenhouse gas emissions; and*
- (f) are resilient to the likely current and future effects of climate change.*

4.20 Clause 3.8 in Subpart 2 – Responsive Planning sets out matters that the Council must have particular regard to if it receives a plan change covered by Policy 8.

4.21 Clauses 3.8(2) and (3) state:

- (2) Every local authority must have particular regard to the development capacity provided by the plan change if that development capacity:
  - (a) would contribute to a well-functioning urban environment; and*
  - (b) is well-connected along transport corridors; and*
  - (c) meets the criteria set under subclause (3); and**

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(3) *Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity.*

4.22 These policies direct that councils are responsive to PPCs that would add significantly to development capacity, where they also contribute to well-functioning urban environments, regardless of whether they are planned for or not.

4.23 In this instance, the proposal is anticipated as a 'Development Area' in the Draft Nelson Plan, meaning it requires a subsequent plan change to rezone and enable development; and is already included in the FDS. It is out-of-sequence with the planned land release and would bring this forward. It would contribute an additional 750<sup>8</sup> (approx.) household unit development capacity.

### **Housing and Business Capacity Assessment Report 2021**

4.24 The Council adopted the Nelson City Council Housing and Business Capacity Assessment Report 2021 (the HBA) on 12 August 2021. Table 1 of that report sets out projected demand for housing by household for each of the short, medium, and long term periods in comparison to the City's capacity to provide for future dwellings in Nelson to 2051.

**Table 1: Housing demand and capacity to 2051**

| <b>Period</b>            | <b>Demand (household) per period</b> | <b>Sufficient capacity (dwellings) for period</b> | <b>Difference for period</b> |
|--------------------------|--------------------------------------|---|------------------------------|
| Short-term (1-3 years)   | 521                                  | 1,876   | 1,355                        |
| Medium-term (4-10 years) | 2,554                                | 1,894   | -660                         |
| Long-term (11-30 years)  | 4,950                                | 3,391   | -1,559                       |
| <b>Total</b>             | <b>8,025</b>                         | <b>7,161</b>                                      | <b>Deficit of -864</b>       |

4.25 The executive summary of the report explains that there is sufficient housing capacity in Nelson in the short term. In the medium term, while there is a projected shortfall of 660 dwellings, this is accommodated by a

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<sup>8</sup> Number taken from the executive summary of the PPC Request

surplus of capacity in the short term. In the long term, there is a projected shortfall of 864 dwellings, taking surplus and deficits of the previous periods into account.

- 4.26 The summary also notes that should this PPC be approved, demand is expected to exceed supply in around 2043, instead of 2039 (based on the PPC supplying an additional 300 dwellings rather than more). Although 2039 has been identified as the pinch point where demand will start to exceed supply the demand-supply margin becomes constrained some years earlier.

### **National Policy Statement on Freshwater Management**

- 4.27 The National Policy Statement for Freshwater Management 2020 (NPS-FM) came into force on 3 September 2020. The NPSFM contains one objective and 15 policies. The objective states:

*(1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*

- (a) first, the health and well-being of water bodies and freshwater ecosystems*
- (b) second, the health needs of people (such as drinking water)*
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

- 4.28 The policies are listed below:

**Policy 1:** *Freshwater is managed in a way that gives effect to Te Mana o te Wai.*

**Policy 2:** *Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.*

**Policy 3:** *Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*

**Policy 4:** *Freshwater is managed as part of New Zealand's integrated response to climate change.*

**Policy 5:** *Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the*

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*health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.*

**Policy 6:** *There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.*

**Policy 7:** *The loss of river extent and values is avoided to the extent practicable.*

**Policy 8:** *The significant values of outstanding water bodies are protected.*

**Policy 9:** *The habitats of indigenous freshwater species are protected.*

**Policy 10:** *The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.*

**Policy 11:** *Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.*

**Policy 12:** *The national target (as set out in Appendix 3) for water quality improvement is achieved.*

**Policy 13:** *The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.*

**Policy 14:** *Information (including monitoring data) about the state of water bodies and freshwater ecosystems, and the challenges to their health and well-being, is regularly reported on and published.*

**Policy 15:** *Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.*

- 4.29 The Council is required to give effect to the NPSFM by way of preparing a freshwater planning instrument and publicly notifying no later than 31 December 2024. Part 3 of the NPSFM sets out how local authorities must implement it. The applicant has addressed the NPSFM in the PPC request, while noting that the PPC request is to change the District Plan component of the NRMP. The NPSFM will still need to be considered through the regional consenting process.

### **National Environmental Standards**

- 4.30 There are two National Environmental Standards that are relevant to the PPC request:
- 4.30.1 National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS); and
  - 4.30.2 National Environmental Standards for Freshwater (NES-FW).
- 4.31 The NES-CS will require the applicant to obtain resource consent for any disturbance to contaminated land and does not impact on the PPC request itself.
- 4.32 The NES-FW specifically applies to Council's functions under s30 of the RMA and as such are not as relevant to this PPC request to the District Plan components of the NRMP. The review of the application has confirmed that the applicant has taken the NES-FW into consideration in preparing the request.

### **Nelson Resource Management Plan and Regional Policy Statement**

- 4.33 The Nelson Regional Policy Statement 1997 (RPS) and Nelson Resource Management Plan 2012 (NRMP) are primary RMA planning documents.
- 4.34 Chapter 6, Development and Hazards, of the RPS sets out the relevant objective and policies relating to urban expansion. Objective DH1.2.1 sits at a high level:
- To avoid, remedy, or mitigate any adverse effects of urban expansion on the sustainable management of natural and physical resources including rural land uses.*
- 4.35 Policies DH1.3.1 to DH1.3.4, which are set out in full in Appendix 2, provide more direction and guidance on how to achieve the objective. In summary, these require:
- 4.35.1 the identification of features and values of significance and ensure that these are appropriately protected;
  - 4.35.2 that community expectations are had regard to when determining the extent and location of urban expansion;
  - 4.35.3 that when expansion is determined to have greater net benefit than intensification, that the most appropriate form of urban expansions is provided for, taking into account a list of 17 different matters; and
  - 4.35.4 that any proposals have adequate and appropriate provision for infrastructure.

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- 4.36 As such, the RPS anticipates plan changes to rezone land for urban development.
- 4.37 In terms of the NRMP, the part of the site located closest to the Maitai River is zoned Rural Small Holdings, with the balance of the site zoned Rural. The Rural Small Holdings Zone provides for a minimum lot size of 5,000m<sup>2</sup> and an average lot size of 1ha. The Rural Zone provides for a 15ha minimum lot size. Overall, it is estimated that approximately 50 lots could be created on the site under the existing zoning.

### **5. Section 32 evaluation**

- 5.1 Clause 25(1A) requires that the local authority must have particular regard to the evaluation report prepared for the PPC in accordance with clause 22(1) when determining whether to adopt, accept, reject or convert the request.
- 5.2 The applicant has provided a section 32 evaluation report with the request, as Attachment D. Officers consider that the evaluation report addresses the relevant tests under section 32 of the RMA in terms of the appropriateness of the objective(s) to achieve the purpose of the Act and whether the proposed provisions are the most appropriate means to achieve the objective(s). The applicant has undertaken an analysis of the different options available to pursuing a PPC request in order to achieve the stated issues of house prices and reduced affordability, caused by sustained and recent population growth and forecast population growth.<sup>9</sup>
- 5.3 Having reviewed the section 32 evaluation report, officers consider that it demonstrates at a coarse level, that the PPC request is an appropriate RMA response and can achieve the purpose of the RMA. A more substantive evaluation of the section 32 report would occur through the formal RMA process, should the PPC be accepted or adopted.

### **6. Discussion**

#### **Commissioners**

- 6.1 Recommendation 3 proposes that independent accredited commissioners are appointed to consider the PPC and to make recommendations to the Council. This is a complex RMA matter and a highly technical PPC requiring sound understanding of legislation and Government policies. There is a high level of public interest in this matter which will attract scrutiny on the RMA process. For these reasons it is considered appropriate that independent accredited commissioners are appointed.

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<sup>9</sup> See section 2.1 of the section 32 evaluation report.

### Private Plan Change Request

- 6.2 Section 73 of the RMA provides that any person may request a change to a district plan and the plan may be changed in the manner set out in the First Schedule of the RMA. The first step in the process is that the Council must consider the request and how it will be dealt with. This is the clause 25 decision.
- 6.3 Clause 25 of Schedule 1 of the RMA requires the Council to do one of four things with this PPC:
- 6.3.1 **Adopt** it in whole or in part as if it were a plan change by Council itself, and notify it as a Council initiated plan change; or
  - 6.3.2 **Accept** it in whole or in part, which allows it to proceed as a PPC through the normal submission and decision process (it is notified as a PPC); or
  - 6.3.3 Decide to deal with it as a resource consent (**convert** to a resource consent); or
  - 6.3.4 **Reject** it in whole or in part on the grounds set out in clause 25(4)(a)-(e) of Schedule 1 of the RMA (and only on those grounds).
- 6.4 If the Council decides to **adopt** the plan change, it is treated as if it is a plan change made by the Council itself. The plan change must be publicly notified within four months of adoption and follow the process set out in Part 1 of the First Schedule of the RMA. All costs associated with the plan change would be borne by Council and not CCKV Dev Co LP and Bayview Nelson Limited, unless agreed otherwise. For the reasons set out in paragraphs 9.5 and 9.6, officers recommend the PPC should not be adopted.
- 6.5 If the Council decides to **accept** the plan change (as opposed to adopt) then Council agrees that the plan change can proceed to notification. As the clause 25 decision is made prior to public notification of the PPC there are no submissions, evidence or full analysis from the Council officers or experts engaged by Council. It is accordingly described by the High Court as a 'coarse filter'<sup>10</sup> of the PPC - in effect, a screening exercise. It is not the Council's full merits decision based on all relevant submissions and information. This consideration occurs at the Commissioner Hearing on the plan change.
- 6.6 If **accepted** under clause 25, the process then follows the PPC decision-making procedures set out in Part 2 of the First Schedule of the RMA. The request must be publicly notified within four months of Council agreeing to accept the request. The plan change remains a PPC. Under

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<sup>10</sup> *Malory Corporation Limited v Rodney District Council* [2010] NZRMA 392, at para 33



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this option, all costs associated with the plan change are borne by the person who made the request, in this case CCKV Dev Co LP and Bayview Nelson Limited. For the reasons set out in paragraphs 9.5 to 9.9, officers recommend the PPC should be accepted.

- 6.7 Irrespective of whether a decision to accept or adopt is made (i.e. what path the request takes) the proposed plan change will be considered fully by the Council as to whether it is necessary and appropriate ((in this case delegated to Hearing Commissioners) and (if appealed) the Environment Court. The fact that the request was adopted or accepted under clause 25 is irrelevant to the substantive assessment.
- 6.8 The third option the Council has under clause 25 is to **convert the PPC request into a resource consent application**. This means that the application goes through the usual resource consent procedures of notification, submissions, hearing, decision, and appeal. This option would not change the current zoning of the site and the proposal would have to be considered under the existing provisions of the NRMP. For the reasons set out in paragraph 9.4, officers recommend that there are no reasons to support converting the request to a resource consent.
- 6.9 The final option under clause 25 is for Council to **reject** the plan change request. The only grounds for rejection are listed in Clause 25(4) of the First Schedule of the RMA. They are limited to:
- 6.9.1 The request is in whole or in part, frivolous or vexatious; or
  - 6.9.2 The substance of the request or part of the request has been considered and given effect to or rejected by the local authority or Environment Court within the last two years or has been given effect to by Regulations; or
  - 6.9.3 The request or part of the request is not in accordance with sound resource management practice; or
  - 6.9.4 The request or part of the request would make the policy statement or plan inconsistent with Part 5 of the RMA; or
  - 6.9.5 The plan has been operative for less than two years.
- 6.10 These narrow grounds for rejecting a plan change reflect that this stage of the process is simply to determine whether a request should proceed to full consideration, through the process of notification, submissions and determination of the merits, but it is *not* determinative of the outcome (i.e., whether the plan change is ultimately approved or not). Officers recommend that there are no legally defensible grounds for rejecting the PPC and this is discussed further at paragraphs 9.1 to 9.3.
- 6.11 If the Council decides to reject the PPC request the applicant can appeal that decision to the Environment Court or challenge Council's decision on procedural grounds by way of High Court judicial review.

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- 6.12 Accepting the PPC will allow the community the opportunity to submit on the request through a formal RMA process. The Council would also retain the right to lodge submissions or further submissions to ensure there is sufficient scope to support amendments to the PPC.
- 6.13 Finally, the applicant has formally sought that the PPC request be accepted, and not adopted, by Council. They have also provided their views that there are no valid grounds for it to be rejected in whole or in part and it is not a proposal that could be processed as an application for resource consent, as it has not been designed to the standard required for that to occur.

### **Views of those affected / consultation**

- 6.14 If the recommendation to accept the request for notification is agreed by Council, the content of the PPC will be subject to statutory consultative provisions of the RMA where the opportunity for public involvement is mandatory. There is a requirement to publicly notify the PPC and serve notice on all directly affected parties, who will then have the opportunity to lodge submissions, further submissions and be heard at a hearing.
- 6.15 The PPC request identifies that the applicant has consulted with the Council in preparing the PPC. Section 2.4, Consultation, of the PPC sets out who the applicant has consulted with, and it includes Te Tau Ihu o te Waka a Māui iwi<sup>11</sup>, Department of Conservation, Waka Kotahi - New Zealand Transport Agency, Heritage Pouhere Taonga New Zealand, Residents of Ralphine Way, Community Housing Organisations, Community Action Nelson, Network Tasman Ltd, Friends of the Maitai and Commerce Nelson.
- 6.16 Prior to receiving the PPC, the Council received a petition from Save the Maitai Inc. Received in November 2020, the petition outlined opposition to the Development Area contained in the Draft Nelson Plan and anticipated development in Kaka Valley. The petition contained 9,636 signatures at the time it was presented.

## **7. Local Government Act decision making principles**

- 7.1 The Council is required to apply the decision-making principles in Part 6 of the LGA02 to every decision made by it, unless they are inconsistent with specific requirements in the relevant Act under which it is making a decision (in this case, the RMA).
- 7.2 Section 79(2)(c) of the LGA02 requires that when Council is making a judgement about how to achieve compliance with sections 77 and 78 of the LGA02, it must have regard to the nature and circumstances in which a decision is taken. Section 79(3) provides that:

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<sup>11</sup> Ngāti Koata, Ngāti Rārua, Te Ātiawa, Ngāti Kuia, Ngāti Tama, Ngāti Apa ki te Rā Tō, Ngāti Toa Rangatira and Rangitane

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- 3.** The nature and circumstances of a decision referred to in subsection 2(c) include the extent to which the requirements for such decision-making are prescribed in or under any other enactment (for example, the Resource Management Act 1991).

7.3 This clause 25 decision is a process decision only in Council's capacity as regulator and the decision-making options are set out in clause 25 itself. The significance of this process decision is low to medium because it is the substantive decision on the PPC that has the potential impact and that substantive decision will be subject to a public process, prescribed by the RMA. On that basis, officers recommend that consultation under the LGA on this process decision under the RMA is neither necessary nor appropriate.

**8. Options**

8.1 The available options for deciding how this PPC request is processed, and their respective advantages and disadvantages, are summarised below:

| <b>Option 1: Adopt the PPC</b>  |   |
|---------------------------------|---|
| Advantages                      | <ul style="list-style-type: none"> <li>• Council controls what is notified and its scope and the process.</li> <li>• Aligned with Council's FDS, which identifies this site by broad location as a potential growth area subject to plan change and/or zoning change processes.</li> <li>• Council would be giving effect to the NPSUD.</li> <li>• Council would manage the process for engaging with iwi, agencies and the community.</li> </ul> |
| Risks and Disadvantages         | <ul style="list-style-type: none"> <li>• Council has to take the position that it supports the plan change at a policy level as it adopts it as "if it were its own".</li> <li>• Council bears the cost and potential legal challenges.</li> <li>• The decision could be challenged through the Courts and Council would be vulnerable if it rejected the PPC on unreasonable grounds that do not accord with the criteria in the RMA.</li> </ul> |
| <b>Option 2: Accept the PPC</b> |   |
| Advantages                      | <ul style="list-style-type: none"> <li>• The applicant bears the cost of the complete plan change process (including costs for hearings, experts and costs associated with the resolution of any appeals).</li> </ul>   |

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|                         |  |
|-------------------------|--|
|                         | <ul style="list-style-type: none"> <li>• Council would be supporting the implementation of its FDS, which identifies this site by broad location as a potential growth area subject to plan change and/or zoning change processes.</li> <li>• Council would be giving effect to the NPSUD.</li> <li>• Council would manage the process for engaging with iwi, agencies and the community.</li> </ul> |
| Risks and Disadvantages | <ul style="list-style-type: none"> <li>• The decision could be challenged through the Courts and Council would be vulnerable if it rejected the PPC on unreasonable grounds that are not in accordance with the criteria in the RMA.</li> </ul>  |

**Option 3: Reject the PPC**

|                         |  |
|-------------------------|--|
| Advantages              | <ul style="list-style-type: none"> <li>• Limited impact on Council resources and capacity to process the PPC.</li> </ul>   |
| Risks and Disadvantages | <ul style="list-style-type: none"> <li>• The decision could be challenged through the Courts and Council would be vulnerable if it rejected the PPC on unreasonable grounds that are not in the accordance with the criteria in the RMA.</li> <li>• The Council could be seen as not implementing or supporting its own FDS Strategy.</li> <li>• May affect long term housing supply/capacity and out of alignment with NPSUD requirements.</li> </ul> |

**Option 4: Convert the PPC to a resource consent**

|                         |   |
|-------------------------|---|
| Advantages              | <ul style="list-style-type: none"> <li>• This removes the need for a PPC and could achieve a faster decision for the applicant (if there are no appeals).</li> <li>• Capacity may be delivered to the market faster.</li> </ul>   |
| Risks and Disadvantages | <ul style="list-style-type: none"> <li>• This may not be the most appropriate vehicle to achieve the outcome sought by the applicant, as the application may not sit comfortably with the current Plan provisions.</li> <li>• This is not the option sought by the applicant, and they may choose to appeal.</li> <li>• The decision could be challenged through the Courts.</li> </ul> |

## 9. Recommendation

9.1 In respect of the five grounds on which a request can be rejected, as set out in paragraphs 6.8 to 6.10, neither (2) or (5) apply (relating to the substance of the request being previously considered within the last 2 years or the NRMP being operative less than 2 years). In terms of the other three grounds:

- 9.1.1 The request is frivolous or vexatious. In this case, the request is not frivolous. The applicant provided supporting technical information and the PPC has a resource management purpose. The request is not vexatious. The applicant is not acting in bad faith by lodging a PPC request.
- 9.1.2 The request is not in accordance with sound resource management practice. The 'coarse grain' assessment of the request (as required at this stage of the PPC process) does not indicate that the PPC is not in accordance with sound resource management practice. Whether the PPC request's objectives are the most appropriate way of achieving the promotion of sustainable management will be tested through the submission and hearing processes. The RMA's purpose is set out at section 5 and the principles are set out in sections 6 to 8. In respect of these Part 2 matters, the PPC proposes to rezone private property to enable its development for additional housing to provide for the social, economic and environmental wellbeing of the community. The initial review of the PPC has at a coarse level identified that any adverse effects will be able to be avoided, remedied or mitigated, either through the PPC itself or subsequent resource consents. At a coarse level, the PPC demonstrates that it generally responds to the principles in sections 6 to 8, which will be able to be evaluated through a subsequent process. Having reviewed the applicant's expert reports, undertaken a coarse scale merits assessment of the PPC request, and taken the purpose and principles of RMA into account, officers consider the PPC request is in accordance with sound resource management practice for the purposes of consideration under Clause 25(4)(c), Schedule 1.
- 9.1.3 The request would not make the Plan inconsistent with Part 5 of the RMA. Part 5 of the RMA sets out the role and purpose of planning documents created under the RMA, including that they must assist a local authority to give effect to the sustainable management purpose of the RMA. District plan provisions must give effect to the regional policy statement and higher order RMA documents and not be inconsistent with any regional plan. The relevant sections in Part 5 are determined by the nature of the PPC: The PPC only proposes to amend district plan provisions.
- 9.1.4 The objective of the PPC is to rezone the properties to enable residential housing and to take advantage of the location of the

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site. The proposed zoning at a coarse level appears to give effect to both the RPS and NPSUD in this regard.

- 9.2 In respect to Clause 23 and the provision of further information, there are some areas where officers consider that the applicant has not provided all the further information sought in the Council's request (with the applicant stating that it will be provided at a later date). However, these elements can be addressed at a later stage, if the request progresses. Officers consider there is sufficient information to enable a clause 25 decision to be made. Some of the elements, such as the description of landscape effects on the proposed Residential Zone Lower Density Area above Walter's Bluff, the likely level of visual effects on private views and managing areas identified as having high geotechnical risk, would assist in assessing the extent of effects associated with the request. However, it is considered that these are not of a substantive nature that would warrant the request being rejected, and an effects assessment is part of the substantive decision on the PPC and any resource consents that follow. Officers consider these are matters that can either be addressed before public notification, should it be accepted, or through the formal Schedule 1 process.
- 9.3 For these reasons, officers recommend that there are no grounds under the RMA to **reject** the PPC.
- 9.4 Officers consider that **converting** the request to a resource consent is not appropriate resource management practice as the NRMP zone provisions would not support the outcome sought by the PPC and the proposal is not in a form that would enable it to proceed through a resource consent process. Further, the applicant would not support that approach and indeed it provides no benefit to either the applicant or community.
- 9.5 In respect of whether the Council should consider **adoption** or **accepting** the PPC:
- 9.5.1 Officer's consider that the proposal is generally aligned with the NRMP's approach to sustainable management, in that it follows the same approach to other new development areas that have been included in the NRMP and it would be subject to the NRMP provisions.
- 9.5.2 It generally aligns with the ambitions of the FDS and higher order documents.
- 9.5.3 The applicant's technical documents show that the PPC area would be able to be serviced by infrastructure.
- 9.5.4 There is a high level of public interest in the PPC request.
- 9.5.5 The request itself is not complex.
- 9.5.6 The applicant would not necessarily benefit from Council co-ordinating the PPC process.

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- 9.5.7 The applicant has requested that the PPC be accepted and not adopted.
- 9.5.8 Council meets all the costs of processing the plan change if the request is adopted. If accepted, the applicant bears those costs.
- 9.6 Officer's do not consider it necessary or appropriate for the Council to **adopt** the PPC request as its own. Adopting the PPC would mean that the Council would attract all costs associated with its resourcing and associated costs and Council would need to be satisfied that it supports the plan change at a policy level. Adoption would also place the Planning Policy Team under additional pressure given the current Nelson Plan review process. **Accepting** the PPC request allows the applicant the ability to have the request tested and considered against the RMA requirements, it also allows the community, iwi and relevant stakeholders to participate in that process and for Council to on-charge its costs to the applicant.
- 9.7 As outlined earlier, **accepting** the PPC request does not pre-empt the final outcome of the PPC through the formal Schedule 1 RMA process and the decision of the Hearings Panel.
- 9.8 **Accepting** a PPC also allows the Council to maintain its regulatory position, as well as providing the Council the opportunity to submit on it, so that it can seek changes as appropriate. If it chooses to do so, the purpose of the Council submitting on the PPC would ensure jurisdiction (scope) for seeking any necessary changes to be made at the substantive hearing.
- 9.9 Overall, it is recommended that the PPC be **accepted** for processing under clause 25 of Schedule 1 of the RMA.

### 10. Conclusion

- 10.1 CCKV Dev Co LP and Bayview Nelson Limited has applied to the Council for a PPC request to the NRMP and seek that it be accepted by the Council for processing under clause 25 of Schedule 1 of the RMA.
- 10.2 Of the four options available to the Council under Clause 25 of Schedule 1 of the RMA, it is recommended that there are no grounds for rejecting the request or converting it to a resource consent and that PPC request be **accepted** for processing rather than adopted as a Council initiated plan change.

### 11. Next Steps

- 11.1 If the Council accepts the PPC request, Officers will prepare it for public notification and publicly notify it within four months of the date of acceptance.

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**Author:** Clare Barton, Group Manager Environmental Management

**Attachments**

Attachment 1: A2737849 - Appendix 2 - PPC28 - Relevant RPS objective, policies and methods - 31Aug21 [↓](#)



## **Important considerations for decision making**

### **1. Fit with Purpose of Local Government**

The Council has duties and obligations under the Resource Management Act 1991 to make decisions on private plan change applications. The decision recommended in this report fits with the purpose of the Local Government Act as it will enable the community to be consulted on this plan change, which will allow the Council to make decisions on behalf of the community to promote its social, environmental, economic and cultural well-being.

### **2. Consistency with Community Outcomes and Council Policy**

The relevant community outcome is:

*Our urban and rural environments are people-friendly, well planned and sustainably managed. Nelson is a well-planned district with a carefully managed urban intensification and a clear urban/rural boundary. ...We work with our partners to support the development of a range of affordable, healthy and energy-efficient housing in our residential areas. Good urban design and thoughtful planning create safe, accessible public spaces for people of all ages, abilities and interests.*

Enabling the matter to proceed through the RMA process will meet this outcome.

Consistent with Council meeting relevant Government legislation including the RMA and LGA.

### **3. Risk**

The decision to accept, adopt, reject or convert the Private Plan Change request involves a risk of potential judicial review of the decision by any interested party and appeal by the PPC applicant. Other risks associated with the environment, culture and heritage, and health & safety will be assessed in the substantive decision in the Plan Change, if accepted or adopted.

### **4. Financial impact**

If the PPC is accepted, then the costs associated with processing the Plan Change are borne by the applicant. No additional funding is sought as a consequence of this decision.

### **5. Degree of significance and level of engagement**

This decision is of low- medium significance according to Council's Significance and Engagement Policy because:

- it does not involve the sale of a strategic asset;
- does not impact on levels of service or the way services are delivered
- does not impact on council's debt or the level or rates it charges
- the impact on the community from this decision is minimal. It is the substantive decision on the Plan Change that will consider the effects of the development on the environment, including communities
- the decision furthers Council's Future Development Strategy identification of this location as potential area for growth.
- While the substantive issues in the Plan Change are expected to generate wide public interest, the decision to accept or adopt enables the community to make submissions under Schedule 1 of the RMA.

The decision to accept, adopt, reject or convert can be considered irreversible, except by way of judicial review.

Schedule 1 of the RMA requires the substantive content of the Plan Change to be consulted on, including receiving and hearing submissions from the public.

The significance of this process decision is low to medium because it is the substantive decision on the PPC that has the potential impact and that substantive decision will be subject to a public process, prescribed by the RMA. On that basis, officers recommend that consultation under the LGA on this process decision under the RMA is neither necessary nor appropriate.

## **6. Climate Impact**

The decision to accept, adopt, reject or convert the Private Plan Change request does not have a specific climate impact.

The substantive content of the plan change includes considerations of climate change impacts and will be considered as part of the RMA Schedule 1 process.

## **7. Inclusion of Māori in the decision making process**

No engagement with Māori has been undertaken in preparing this report.

The application sets out pre-engagement with iwi on the content of the Plan Change.

## **8. Delegations**

5.2.2 On the recommendation of the Chief Executive, and with the agreement of the Chair of the relevant committee, subcommittee or

subordinate decision-making body and Mayor, matters within the area of responsibility of a particular committee, subcommittee or subordinate decision-making body may be considered directly by Council instead.

The Chair of the Environment and Climate Committee will report to the following meeting of the committee regarding the reason for doing so, and the outcome of the matter at the Council meeting.

*Environment and Climate Committee*

*Areas of Responsibility:*

- *The Regional Policy Statement, District and Regional Plans, including the Nelson Plan*

*Delegations:*

- *Developing, monitoring and reviewing strategies, policies and plans, with final versions to be recommended to Council for approval*

## **Appendix 2: Relevant RPS objective, policies and methods**

### **Objective**

DH1.2.1 To avoid, remedy, or mitigate any adverse effects of urban expansion on the sustainable management of natural and physical resources including rural land uses.

### **Policies**

DH1.3.1 To identify areas having features or values of significance and to ensure that these features or values are appropriately protected. Areas identified will include those which:

- i) have significant flora and fauna values;
- ii) are subject to significant natural hazards;
- iii) are recognised as being significant in terms of culture or heritage;
- iv) have high natural amenity value;
- v) have significant open space values such as greenbelt(s);
- vi) make significant contribution to the natural character of the coastal environment, wetlands, rivers and their margins; and/or
- vii) are outstanding natural features and landscapes.

DH1.3.2 To have regard to community expectations when determining the extent and location of urban expansion.

DH1.3.3 Where urban expansion is considered to have greater net benefit than intensification, to provide for the most appropriate form of urban expansion for Nelson. In determining what is most appropriate, to assess the costs and benefits of various options according to the following criteria:

- i) energy efficiency in terms of location and structures;
- ii) infrastructure costs including opportunity costs of existing infrastructure;
- iii) natural or physical barriers to expansion;
- iv) existence of incompatible rural activities such as quarries or smelly activities;
- v) susceptibility to natural hazards;
- vi) existence of sensitive uses such as land transport links, airports or ports;

- vii) utilisation of the land resource for primary production purposes;
- viii) proximity to existing facilities;
- ix) impacts on natural and conservation values associated with riparian and coastal margins, rivers and the coast;
- x) effects on internationally, nationally, or regionally significant natural features and landscapes;
- xi) effects on internationally, nationally, or regionally significant native vegetation and significant habitats of indigenous fauna;
- xii) effects on ancestral land, water sites, waahi tapu and other taonga of significance to tangata whenua;
- xiii) effects on heritage values of sites, buildings, places, and areas of regional, national, or international significance;
- xiv) effects on amenity values of international, national, or regional significance;
- xv) effects on recreation resources of international, national, or regional significance;
- xvi) effects on urban form and on the demarcation between urban and rural areas; and
- xvii) effects on availability of land resources for future generations.

DH1.3.4 To ensure that any proposals for urban subdivision and/or development include adequate and appropriate provision of services including waste disposal, stormwater, water supply, electricity and other network services.

### **Methods**

DH1.4.1 As part of the District Plan Review process, Council will seek public input in order to ascertain community expectations with respect to urban expansion.

DH1.4.2 Council will undertake an assessment of future demand for and implications of urban expansion and, where community expectations and environmental effects can be met, will make appropriate provision for further expansion in its District Plan and Regional Coastal Plan,

DH1.4.3 Council will develop rules in its District Plan to ensure adequate water supply and waste disposal is provided for all subdivisions and/or developments.

DH1.4.4 Council will continue to work with Tasman District Council to achieve an integrated approach to urban expansion through both the Nelson and Tasman District Plans.

DH1.4.5 Council will review existing information and where necessary initiate resource surveys in order to classify areas according to their conservation significance, amenity values, or susceptibility to natural hazards.