

NELSON CITY COUNCIL

Nelson Resource Management Plan

Plan Change 23
Daylight and Solar Panels

Report of Hearing and Decisions on Submissions

Hearings Commissioner
Sylvia Allan

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COMMISSIONER DECISION ON PROPOSED PLAN CHANGE 23 – NELSON RESOURCE MANAGEMENT PLAN

DAYLIGHT AND SOLAR PANELS

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 23 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 Proposed Plan Change 23 makes a number of changes to Appendix 15 of the Nelson Resource Management Plan (Daylight Admission – Residential) and results from two factors – firstly the advice of consents officers processing applications relating to daylight admission for residential development, and secondly to better facilitate the provision of solar panels in line with the Council’s policy towards the use of solar energy.
- 1.4 The Proposed Plan Change was publicly notified on 25th September 2010. Two submissions were received. The decisions requested were summarised and notified for further submissions. No further submissions were received.

2. OFFICER’S REPORT

- 2.1 A comprehensive Planning Officer’s Report (Section 42A Report) was prepared for the hearing and provided to submitters. This included a description of the Proposed Plan Change, and a discussion of the statutory background of the RMA and the relevant context of the Nelson Regional Policy Statement and the Nelson Resource Management Plan. It also refers to the National Policy Statement for Renewable Energy Generation, which was gazetted in April 2011. Although this post-dated the early statutory stages of this Proposed Plan Change, it does apply to the consideration of submissions, and to decisions.

3. HEARING

- 3.1 A hearing on Plan Change 23 was held on 15th July 2011 at the offices of the Nelson City Council. The two submitters had indicated to the Council that they did not wish to be heard. The hearing therefore provided an opportunity for any questions by the Commissioner relating to the Section 42A report.
- 3.2 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)

4. DECISIONS SUMMARY

As the person with delegated authority to hear and determine submissions on Proposed Plan Change 23 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 and the nature and content of the written submissions, 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 23 should be approved subject to no further amendments;
2. to adopt the Section 32 Report included in the Planning Officer's Report, subject to any modifications set out in section 7 of this Report;
3. 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.

Decisions Summary Table – Proposed Plan Change 23

The table below summarises the matters that were raised in submissions and the decisions sought, and the further submissions. 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
AP15.8.iii a) Exceptions to the daylight over provisions	Irving Smith Jack Architects Ltd	2	1	Solar panels should be permitted to intrude into the daylight over plane from any boundary.	Reject
AP15 Daylight provisions generally	David and Robin Hall	1	1	Daylight provisions should also relate to tree height.	Reject

Amendments to Plan Change 23

There are no amendments to Plan Change 23 as notified, resulting from these decisions.

5. DISCUSSION

- 5.1 The majority of the items in the Proposed Plan Change clarify the rules which relate to building bulk and location in terms of daylight admission to adjoining sites in Residential Zones. These rules provide optional means of achieving the intentions and requirements of

the objectives and policies, and the Council has determined that some clarifications are needed to clarify minor areas which are potentially confusing, which have emerged in administering the rules over the years since the provisions were instituted.

- 5.2 The other aspect of change included in Proposed Plan Change 23 is the exemption of solar panels from height limits (daylight plane). That change adds solar panels (for photovoltaics and/or thermal heating) to the list of items which are able to exceed the allowed height specified in the rules, subject to a specified area and to a specific provision limiting the intrusion to the northern site boundary only.
- 5.3 The decisions which follow relate to the order and numbering in the Officer’s Report, and in the Decisions Summary Table set out above. A brief discussion and reason is provided in relation to each decision.

6. DECISIONS AND REASONS FOR DECISIONS

6.1 Decision on Topic AP15.8.iii a) – Exceptions to daylight over provisions

Submitter Name	Submission Number	Statement Number	Decision Sought	Decision
Irving Smith Jack Architects Ltd	2	1	Solar panels should be permitted to intrude into the daylight over plane from any boundary.	Reject

Discussion

Submitter 2 was generally supportive of the changes, but requested that solar panels be permitted to intrude into the daylight over plane from any boundary.

The purpose of the exemption was to enable the positioning of a solar panel on a building, by allowing for some relaxation of the height limitations for such a structure. The proposed exemption provides for intrusion into the daylight plane on the northern site boundary (defined as being within 45 degrees east and west of north) while protecting the other daylight recession planes from intrusions.

NRMP Objective RE2.3 is particularly relevant to the change and the submitter’s request. It states: “Buildings and structures should be designed and sited so that adjoining sites are not unduly shaded, and there is reasonable access to light.” Any change to the provisions in Appendix 15 that have the potential to increase shading of, or affect access to, daylight on adjoining properties are not aligned with this objective.

Any exemption to the daylight over provisions on site boundaries other than the northern boundary has the potential to shade neighbouring properties, impacting on their access to daylight and to passive solar energy, as well as having the potential for visual and amenity effects.

There could be circumstances where mounting a solar panel on the southern boundary might be desirable. However this is expected to be rare, and such situations can be addressed through the resource consent process.

The option of allowing all solar panels to be exempt from the daylight and maximum height rules was assessed (as Option 3) in the section 32 report. Option 3 was considered to have potential economic benefit for individuals installing solar panels as a permitted activity, but this benefit was considered to be outweighed by the risk of potential adverse impacts on the residential amenity of neighbours.

Any changes to the Nelson Resource Management Plan now also need to give effect to the provisions of the National Policy Statement for Electricity Generation 2011, which was gazetted in April 2011. The Preamble to the NPS recognises that electricity generation can compete with other values, including amenity. The objective of the NPS is to recognise the national significance of renewable generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities.

Policy E1 of the National Policy Statement for Electricity Generation states: “Regional policy statements and regional and district plans shall include objectives, policies and methods (including rules within plans) to provide for the development, operation, maintenance, and upgrading of new and existing renewable electricity generation activities using solar, biomass, tidal, wave and ocean current energy resources to the extent applicable to the region or district.”

Weighing up the competing policies and values of providing for renewable energy and protecting the amenity of neighbouring properties, the Officer’s recommendation was not to make any amendments to the Proposed Plan Change.

I agree with the recommendation, as the proposal in the Plan Change strikes an appropriate balance between providing for a useful form of renewable energy in locations that are likely to be most appropriate on individual sites, while also protecting amenity and adequate daylight to adjacent properties.

Reasons for Decision

The submission seeks a widening of opportunities to exceed height limits in relation to all site boundaries on individual sites for the purpose of solar panels. While this may encourage additional use of solar panels on some sites beyond that promoted by the provision currently included in Plan Change 23, extending the provision to boundaries other than the northern boundary would increase the potential for adverse effects on adjacent properties generally.

The Plan Change as currently worded provides an appropriate balance between enabling the use and development of solar (renewable) energy on residentially-zoned sites and protection of amenity and daylight access to adjoining sites.

Modifications to Plan Change 23

Nil

6.2 Decision on Topic AP15 – Daylight provisions generally

Submitter Name	Submission Number	Statement Number	Decision Sought	Decision
David and Robin Hall	1	1	Daylight provisions should also relate to tree height.	Reject

Discussion

Submitter 1 requested that the effects of shading from trees also be managed by the daylight provisions in the Nelson Resource Management Plan. This submission, about controlling the heights of trees, is outside of the scope of the Plan Change 23, which was limited to solar panel structures.

It is recognised that trees on neighbouring properties can have shading impacts, and impacts on

amenity. However Residential Zone Objective RE2.3, and the rules and other methods supporting the objective, only relate to buildings and structures. RE2.3 states: "Buildings and structures should be designed and sited so that adjoining sites are not unduly shaded, and there is reasonable access to light."

Similarly, Appendix 15 defines angles within which a complying **building** must fit in order to allow adequate daylight on adjoining sites.

Reasons for Decision

As the relief sought by Submitter is outside the scope of the Plan Change as notified, the submission cannot be allowed.

Modification to Plan Change 23

Nil

7. SECTION 32 FURTHER EVALUATION

I have reviewed the Section 32 evaluation carried out by the Council, dated 25th September 2010.

Since that evaluation was undertaken, the National Policy Statement for Renewable Electricity Generation has been Gazetted (April 2010). Under RMA Section 75(3)(a), district plan provisions must give effect to this national policy statement.

I consider that Plan Change 23 will assist Nelson City Council in giving effect to Policy EI of the national policy statement, as it makes provision for one of the types of renewable energy mentioned in the policy statement.

In terms of a Section 32 analysis, the provisions of this new national policy statement place additional weight on the benefits of the changes to the rules included in Plan Change 23 that relate to solar panels. There are no additional costs or risk associated with Plan Change 23 as a result of the national policy statement.

Signed: 

Hearings Commissioner

Date: 19 September 2011