

NELSON CITY COUNCIL

Nelson Resource Management Plan

Plan Change 24
Freshwater

Report of Hearing and Decisions on Submissions

Hearings Commissioner
Sylvia Allan



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COMMISSIONER DECISION ON PROPOSED PLAN CHANGE 24 – NELSON RESOURCE MANAGEMENT PLAN

FRESHWATER

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 24 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 24 relates to freshwater management rules in the Nelson Resource Management Plan, and is in two parts:
 - 24.1 A restructuring of the rules that apply throughout the Plan into an Appendix, and the application of some of the rules that apply only to the Rural Zone at present to all zones in the Plan.
 - 24.2 An update of the water quality classifications of rivers and streams (including specified parts of rivers and streams), based on the findings of 5 years of monitoring.
- 1.4 The Proposed Plan Change was publicly notified on 25th September 2010. A single submission (in three parts) was received. The content of the submission was summarised and notified for further submissions. No further submissions were received.
- 1.5 As the only submission relates to Plan Change 24.2, Plan Change 24.1 does not require a decision.

2. OFFICER'S REPORT

- 2.1 A 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, a discussion on the statutory background of the RMA, the likely benefits of the change identified through an analysis under Section 32 of the RMA, and the relevant context under the Nelson Regional Policy Statement and the Nelson Resource Management Plan.
- 2.2 The Report provided discussion and recommendations in relation to the various submission points included in the submission.
- 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 A hearing on Plan Change 24 was held on 15th July 2011 at the offices of Nelson City Council. As the submitter had indicated to the Council that they did not wish to be heard, the hearing 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 24 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 submission, 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 24 should be approved subject to the amendments set out in this Report and compiled in Appendix 1 of this Report;
2. to adopt the Section 32 Report included in the Planning Officer's Report, subject to any modifications set out in section 6 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 24

The table below summarises the matters that were raised in the single submission and the decision 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	Submitter Number	Statement Number	Decision Sought	Decision
Whole of the Plan Change	Tiakina te Taiao Ltd	1	1	It would be inappropriate to identify what "iwi values" are.	Reject
	Tiakina te Taiao Ltd	1	2	The priorities for improvement for some rivers should be changed.	Accept
	Tiakina te Taiao Ltd	1	3	Iwi should have some input into establishing what the cultural values are, and water quality.	Reject

Consolidated Amendments to Plan Change 24

Appendix 1 shows the text of Plan Change 24 as notified, with further changes as a result of the decisions set out in this report shown as tracked changes in colour.

5. DISCUSSION AND DECISION

The intention of Proposed Plan Change 24.2 was to alter and update material in Appendix 28.4 of the Nelson Resource Management Plan relating to the water quality of rivers and streams (and reaches of the rivers and streams) listed in the Appendix.

As a result of 5 years of monitoring (between 2002 and 2007) the Cawthron Institute recommended changes to the water quality classification of 16 of the 40 river reaches listed in the fifth column of Appendix 28.4 of the Nelson Resource Management Plan. Appendix 28.4 sets out the riparian margin management values, the associated land uses and values, the water quality classification and the priority for improvement of each of the listed items.

I understand that the listed water quality classification reflects the results of monitoring. That is, the classification represents the existing measured quality of water in the rivers or streams referred to, rather than being aspirational or a classification to work towards. It is the sixth column where any aspirational intention is stated – for example several items formerly listed with a water quality classification of “C” have, in their priority for improvement, “Third, upgrade to Class B where practicable”.

The single submitter on the Proposed Plan Change, Tiakina te Taiao Ltd, did not oppose or comment on any of these classification changes, but in submission 1.2 it suggested that the priorities for improvements for some rivers should be changed. There is merit in the submission, as the change in classification in the fifth column of the Appendix table has resulted in a number of inconsistencies with the wording in the sixth column. An example is the Whangamoa River where the former classification of “C” has been changed to “A”, but the priority for improvement, if unchanged, would continue to read “Upgrade to Class B where practicable”.

The question arises as to whether the submission is “on the Plan Change”. I note that the original public notice of Plan Change 24 stated (in standard format) “the reader should be aware that current operative provisions that are not proposed to be changed are unable to be submitted upon”. In the circumstances, where a change has been notified that is clearly inconsistent with other relevant provisions which have appeared in the notified documentation, it is entirely appropriate for a submission to make that point. This creates the opportunity for the Council to make changes that are allied to the intention of the change, and protects the integrity of a plan’s provisions. Such a situation has arisen in this case.

Thus submission 1.2 has been accepted. Minor changes have been made in the sixth column of Appendix 28.4 to align the provisions with the modified classifications.

Submissions 1.1 and 1.3 raise issues which are considerably broader than the scope of the Proposed Plan Change. As noted in the Officer’s Report, these submission points raise issues relating to the importance of water quality to Iwi and the need for collaboration between the Council and Iwi. The report sets out several examples of such collaboration. It is appropriate that the issues raised are progressed, but this should be, at least initially, undertaken in a more suitable framework than the relatively narrow scope of the present Plan Change 24.

Reasons for Decisions

Submissions 1.1 and 1.3 have been rejected as their scope is beyond that of the Proposed Plan Change.

Submission 1.2 has been accepted and a number of additional small changes have been made in the sixth column, Priority for improvement, in Appendix 28.4 to align this column with the amended classification in the fifth column. The reason for acceptance is to minimise opportunities for uncertainties or confusion in interpreting the Plan, to protect the integrity of the Plan, and to update the appropriate management framework. In making these changes, it is noted that a further review of priorities may still be needed.

Modifications to Proposed Plan Change

The modifications as a result of this decision are set out in Appendix 1.

6. SECTION 32 FURTHER EVALUATION

I have reviewed the section 32 evaluation carried out by the Council, dated 25th September 2010. I confirm that I agree with the analysis as undertaken, and no changes to it are required.

I note, however, that the modifications made to Plan Change 24 as a result of the decision will assist in the efficiency and effectiveness of Appendix 28.4, by providing an improved level of consistency compared to the situation without these changes.

Signed:



Hearings Commissioner

Date:

19 September 2011

APPENDIX 1 – CONSOLIDATED AMENDMENTS TO PLAN CHANGE 24

PLAN CHANGE 24

Amendments made following Decisions on Submissions

Freshwater rules FWr.26 to FWr.29 to apply in all zones (rather than the Rural Zone only)

Add a new Appendix 28.9 Freshwater Rules for All Zones, which includes these rules:

- i) FWr.26 stock fences
- ii) FWr.27 stock access and crossings
- iii) FWr.28 discharge of stock effluent onto or into land
- iv) FWr.29 establishment of, and discharges to, effluent disposal fields

Delete the following rules from the Rural Zone chapter:

- i) FWr.26 stock fences
- ii) FWr.27 stock access and crossings
- iii) FWr.28 discharge of stock effluent onto or into land
- iv) FWr.29 establishment of, and discharges to, effluent disposal fields

Amend FWr.29 (establishment of, and discharges to, effluent disposal fields) as follows:

FWr.29.3

Discretionary

In the Rural Zone:

- a) Discharges to new on-site effluent disposal fields for single residential units on lot sizes smaller than 15 ha are a discretionary activity.
- b) New on-site wastewater discharges associated with commercial or industrial activities are a discretionary activity.

The application may be considered without the need to:

- i) be notified, or
- ii) gain written approval of affected parties, or
- iii) serve notice of applications on any person.

Any establishment or extension of, or discharge to, effluent disposal fields that does not meet the conditions for permitted activities is a discretionary activity.

In all zones except the Rural Zone:

Discharges to new on-site effluent disposal fields for residential, commercial or industrial activities of less than 10 lots are a discretionary activity.

Update of the water quality classifications in Appendix 28.4

Amend Ap28.4 as follows:

AP28.4 Classification of Nelson water bodies

River	Reach	Riparian margin management values (from Appendix 6)	Associated land uses and values	Water quality classification (2002) (2007) ¹	Priority for improvement
Poorman Valley Stream	Seaview Road to Christian Academy	Access Conservation Hazard mitigation	<ul style="list-style-type: none"> • Residential Zone • stormwater drainage • Iwi values • native fisheries • high amenity and recreation values • sensitivity of Waimea Inlet receiving environment 	D/E	First
Brook Stream	Maitai confluence to 328 Brook Street		Lower (measured at Manuka St ford) <ul style="list-style-type: none"> • stormwater drainage • recreation and aesthetics • Iwi values • native fisheries 	D/E D	First
	328 Brook St to above Brook Motor Camp	Hazard mitigation Conservation Access	<ul style="list-style-type: none"> • native fishery • old reservoir • Iwi values • high recreation and amenity values 	B-A	Second Maintain C quality and upgrade to B where practicable.
Maitai River	The Haven to Jickells Bridge	Conservation Access Hazard mitigation	Lower (Riverside to seaward boundary) <ul style="list-style-type: none"> • stormwater drainage • swimming (health issue) • trout, whitebait and eel fishing • dog swimming • kayaking • whitebait spawning • Iwi values • high amenity and recreational value • walkway 	C-D	First

¹ The revised classifications and the reasons for them are shown in Cawthon Report No. 1349 (September 2007).

	Jickells Bridge to Conservation Zone boundary	Conservation Access Hazard mitigation	Mid-Upper (from Almond Tree ford to Motor camp) • swimming • trout and eel fishing • dog-swimming • native fisheries • trout fisheries • walkway • Iwi values	B_C	Third Maintain Upgrade to B where practicable
Groom Creek			• native fisheries • Iwi values • affects Maitai River quality for swimming (health issue)	C_B	Second
Wakapuaka River	Hira township to Ross Road turnoff	Conservation Access	• domestic abstraction • swimming • trout spawning and rearing • native fisheries • Iwi values	B_A	Second Maintain
	Ross Road turnoff to last Whangamoa layby	Conservation Access	• domestic abstraction • swimming • trout spawning and rearing • native fisheries • Iwi values	B_A	Third Maintain
Lud River	SH6 to Small Holdings Area boundary	Conservation Access Hazard mitigation	Lower • domestic abstraction • swimming • trout spawning and rearing • native fisheries • Iwi values	D_C	First
			Upper • domestic abstraction • swimming • trout spawning and rearing • native fisheries • Iwi values	D_C	First
Pritchard's Stream			• native fishery • Iwi values	B_A	Third Maintain
Whangamoa River	Whangamoa Main Stem inlet to Graham Stream confluence	Conservation Access	Lower • native fisheries • trout fishing • drinking water • vehicles crossings • Iwi values • sensitive coastal receiving environment	C_A	Third Maintain Upgrade to Class B where practicable

	Whangamoa Main Stem above Graham Stream		Upper • native fisheries • trout spawning • drinking water • vehicle crossings • Iwi values	<u>B-A</u>	Third Maintain
Graham Stream	-	-	• native fisheries (unknown values) • trout spawning and fishing • drinking water • vehicle crossings • Iwi values • sensitive coastal receiving environment	<u>B-A</u>	Third Maintain
Collins River	-	-	• native fisheries • trout spawning and fishing • Iwi values	<u>C-B</u>	Third <u>Maintain</u> <u>Upgrade to</u> <u>Class-B</u> <u>where</u> <u>practicable</u>
Dencker Creek			• native fisheries • drinking water • vehicle crossings • Iwi values	<u>C-A</u>	Third <u>Maintain</u> <u>Upgrade to</u> <u>Class-B</u> <u>where</u> <u>practicable</u>