

**Proposed
Nelson Air Quality Plan**

**Variations
07/02, 07/03, 07/04, 07/05 & 07/06**

Section 32 Evaluation Report

NELSON CITY COUNCIL

May 2007

PART 1 – BACKGROUND

1. *What is Section 32?*

Section 32 of the Resource Management Act 1991 imposes a duty on Councils to follow a defined process when preparing, or making changes to, a resource management plan. This process involves the consideration of various options and the appropriateness of any provisions intended for inclusion in the plan – how effective and how efficient they may or may not be.

2. *The Components of a Section 32 Analysis*

Before a change to a resource management plan is notified by a territorial local or regional authority, the authority must carry out an evaluation of the proposed change under Section 32 of the Act.

The evaluation under Section 32 must examine:

- a) the extent to which each objective is the most appropriate way to achieve the purpose of the Act, and
- b) whether the policies, rules or other methods to be used are the most appropriate for achieving the objectives, having regard to:
 - their effectiveness, and
 - their efficiency.

The above evaluation must take account of:

- the benefits and costs of policies, rules, or other methods, and
- uncertainty – the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or methods.

The evaluation must be summarised in a report (referred to here as a Section 32 report) and that report has to be available for public inspection when the plan change is publicly notified.

3. *Development of the Variations*

The proposed Nelson Air Quality Plan was notified in August 2003, and the decisions on submissions were released on 24 September 2005. During the course of using and administering the Plan a number of areas where the plan could be improved have been identified.

Two of the variations aim to reduce regulatory compliance costs for residential users of the plan. The other three variations clarify the intent of the proposed plan.

PART 2 – EVALUATION

4. Summary of Proposed Variations

The following changes have been put forward in response to issues that have arisen in the four years since the Nelson Air Quality Plan was prepared. All the proposed amendments are considered minor, and do not break fresh ground, but rather amend existing provisions in the Plan in order to make those provisions more workable. In effect, the adverse implications in terms of costs, effectiveness and efficiency are greater if the Plan is left unchanged than by changing those provisions.

The Variations are all prefaced '07', with individual variations numbered from 2 to 6.

Variation 07/02

Variation 07/02 consists of minor changes to the wording of the definition of 'lawfully approved'. This is to simplify the process by which a burner or open fire that has not been lawfully installed may be authenticated, thereby clearing the way for it to be replaced with a 'clean air' approved burner.

Variation 07/03

Variation 07/03 is minor change to the definition of 'urban area' so as to remove the different treatment for land added to the urban area by privately-initiated plan changes, compared to land added by a council plan change.

Variation 07/04

Variation 07/04 relates to application of agrichemicals, and involves the addition of a definition of 'small scale application' and minor wording changes to the agrichemical rules.

Variation 07/05

Variation 07/05 adds wording to rule AQR.25 to clarify that where burners face mandatory phase-out dates in rule AQR.24, if a replacement burner is to be installed, it needs to be done ahead of that phase-out date (as is the case for open fires).

Variation 07/06

Variation 07/06 adds words to the definition of 'operable' and to rule AQR.21 to clarify that inoperable open fireplaces cannot be re-commissioned.

5. Relationships between the Variations and the proposed Air Quality Plan Objectives

Section 32 of the Act requires an evaluation to “examine the extent to which each objective is the most appropriate way to achieve the purpose of (the) Act.”

No new objectives have been proposed in the current variations, and none of the amendments proposes to amend any existing objective.

No further assessment is therefore considered necessary.

6. Likely costs and benefits

Variation	Analysis	
	Likely costs	Likely benefits
07/02	low (cost of variation process)	<p>Much simpler process for homeowners who need to authenticate a burner or fire that has not been ‘lawfully installed’. Allows them to replace it with a ‘clean air approved’ burner as a permitted activity.</p> <p>Proposed authentication process will save each homeowner \$150-\$220, and time, through avoiding recourse to resource consent process to authenticate fire.</p> <p>This supports the existing objectives and policies aimed at reducing PM₁₀ levels, by facilitating the process of replacing older, more polluting fires.</p>
07/03	low (cost of variation process)	<p>Removes ambiguity from plan. Ensures land rezoned as urban by private plan changes is subject to the same ‘urban area’ controls on fires and burners as land rezoned by council. This supports the existing objectives and policies aimed at reducing PM₁₀ levels.</p>
07/04	minimal	<p>Removes unintended consequences of changes to rules from decisions on submissions, that treated domestic household spraying the same as much larger agricultural or commercial operations.</p> <p>Variation reduces compliance costs for the use of small amounts of agrichemicals in the normal domestic situation.</p> <p>Ensures that domestic application continues to have to follow directions on product labels, avoid drift to neighbours, and follow restrictions relating to public land. Therefore no change in environmental effects expected.</p> <p>But domestic users no longer have to have undergone ‘Growsafe’ or similar training and to be ‘certified operators’, or to prepare spray plan before doing the work, as large-scale or professional users are required to do.</p>

07/05	minimal	<p>Clarifies when 'existing use rights' of older burners disappear. Allows homeowners wishing to install a 'clean air' burner to be certain about when this can be done, including the last date.</p> <p>Avoids time consuming and potentially costly arguments about plan interpretation and burner installation.</p> <p>The proposed change helps better implement the existing objectives and policies aimed at reducing PM₁₀ levels.</p>
07/06	minimal	<p>Clarifies potential ambiguity in the Plan as to whether in some circumstances the rules could allow an inoperable open fire to be re-commissioned i.e. a growth in the number of fires.</p> <p>Amendment supports the policy in the plan requiring no increase in fire numbers, and a reduction in the worst polluted airsheds.</p> <p>The proposed change helps better implement the existing objectives and policies aimed at reducing PM₁₀ levels, whereas leaving the potential ambiguity would work against the aim of the Plan.</p> <p>Avoids time consuming and potentially costly arguments about plan interpretation.</p>

7. Assessing efficiency and effectiveness

Having discussed the relevant objectives of the plan changes, and estimating the costs and benefits of the changes, the next step is to bring these factors together in an assessment of the effectiveness and the efficiency of the changes. N.B. This is also reflected in the explanation for each individual variation.

Analysis		
Variation	Efficiency (i.e. overall benefits less costs) and administrative efficiency. (Very high, high, moderate, low)	Effectiveness (will it achieve the relevant objectives) (Very high, high, moderate, low)
07/02	Very high	Very High
07/03	High	High
07/04	Very high	High
07/05	Very high	Very High
07/06	High	Very High

8. Risks

Where there is any uncertainty, or insufficient information, section 32 requires the Council to consider the risks of acting or not acting.

Variations 07/05 and 07/06 both involve potential ambiguity in the way the provisions in the plan are constructed. This creates the potential for uncertainty. Acting to amend the plan as proposed in the Variations aims to remove this uncertainty.

9. Appropriateness and alternatives

Section 32 requires the Council to consider if the proposed variations are the most appropriate way to achieve the relevant objectives?

The principal motivation behind these variations to the proposed Nelson Air Quality Plan is to improve administrative efficiency, provide increased certainty, and improve the effectiveness by which the rules implement the stated objectives of the Plan.

To ensure the objective (and the supporting policies) of the Plan are properly implemented, the wording of a number of provisions in the Plan needs improving. . The only means available to amend the existing proposed plan provisions is by initiating Variations. The alternatives are to do Variations to amend the areas identified for improvement, or to not do the Variations. The 'do nothing' option however would not help achieve the objectives. Variations therefore are seen as the most appropriate way of ensuring that the existing objectives are achieved.