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NELSON CITY COUNCIL  
Customer Service

Ref: 10818

10 August 2012

Nelson City Council  
PO Box 645  
NELSON 7040

Attention: Matt Heale/Peter Rawson

Dear Matt & Peter

**RE: PLAN CHANGE 18 – NELSON SOUTH  
NELSON RESOURCE MANAGEMENT PLAN**

Please find enclosed, by way of service, a copy of R.G Griffin Childrens Trust's Notice of Appeal in respect of the above Plan Change which was lodged with the Environment Court on the 9<sup>th</sup> of August 2012.

Yours faithfully  
**STAIG & SMITH LTD**



Jackie McNae  
*Resource Management Consultant*  
Email: [jackie@staigsmith.co.nz](mailto:jackie@staigsmith.co.nz)  
Direct Dial (03) 545 6881

10818 (2012.08.10) Service Letter.doc

RECEIVED

10 AUG 2012

NELSON CITY COUNCIL  
Customer Service

IN THE ENVIRONMENT COURT

ENV-2012-WLG

IN THE MATTER OF

an Appeal under Clause 14(1) of  
the First Schedule to the  
Resource Management Act 1991

BETWEEN

**RG GRIFFIN CHILDRENS TRUST**

Appellants

AND

**NELSON CITY COUNCIL**

Respondent

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION  
ON PLAN CHANGE 18 TO NELSON RESOURCE MANAGEMENT PLAN**

*Clause 14(1) of Schedule 1, Resource Management Act 1991*

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STAIG & SMITH LTD  
Resource Management Consultants  
PO Box 913  
NELSON

PH (03) 548 4422  
FAX (03) 548 4427

Person Acting: J. McNae

To: The Registrar  
Environment Court  
WELLINGTON

- 1 **RG GRIFFIN CHILDRENS TRUST** appeal against a decision of the Nelson City Council on Plan Change 18 (Nelson South) to the Nelson Resource Management Plan.
- 2 **RG GRIFFIN CHILDRENS TRUST** made a submission on that Plan Change.
- 3 The decision is dated the 28<sup>th</sup> June 2012 and was received by the Appellant on the 2<sup>nd</sup> of July 2012.
- 4 The decisions were made by the Nelson City Council appointed Commissioners.
- 5 The part of the decision appealed against is as follows:

**The Commissioners Decision to maintain a 20m wide Esplanade Reserve on Saxton Creek as it relates to the Appellant's land.**

- 6 Reasons for the appeal are as follows:
  - (a) The Appellants support Esplanade provisions on Saxton Creek, but oppose the width of the Esplanade being 20m on both sides of the creek. The Appellants are supportive of public access along the creek, but oppose the width of the Esplanade. The Appellants consider this approach inflexible as the 20m width will apply irrespective of ground levels, hazards, buildings and location of vegetation.
  - (b) The submission lodged by the Appellants identified a preferred method for Esplanade being a corridor approach to the Esplanade width, which would give greater flexibility. The Decision of the Respondent was to

maintain the notified width of 20m on both sides of Saxton Creek, noting that it would give maximum flexibility to the Council as to what was required in respect of public access, riparian plantings and issues of flood management. The Decision did note though that the actual widths would be decided at the time of the Subdivision Consent, and at that time there would be opportunity to potentially establish variable widths if that was the appropriate approach in the context of any particular subdivision application.

- (c) The Appellants acknowledge that the Subdivision Application process gives some opportunity (albeit by altering the status of the Application) to consider on a case by case basis what may be appropriate in terms of width of the Esplanade, taking into account the effects on the environment and particular issues within an individual subdivision such as the positioning of buildings. The Appellants though consider that this lacks certainty in terms of their future planning for their family property in terms of making decisions over location of land uses on the property, ongoing plantings and level of certainty for other activities that take place on their property, including the activities of Riding for the Disabled and their facilities.
- (d) A further issue from the Appellants perspective, noting their support for public access, is that unless there is subdivision of their land, and currently there are no such plans, then public access and recognition and protection of other values, may never happen. The Appellants see this as a significant issue, particularly in view of the fact that the primary purpose of Plan Change 18 is to rezone land in this area from Rural to Residential and varying forms of Small Holdings development. It is therefore in the Appellants view, a critical time now to ensure that there is consideration of location of reserves and walkways, and ensure that there is connectivity of reserve areas and infrastructure. In view of the fact that subdivisions are currently being proposed in the locality, the Appellants view is that the design of walkways, location of reserves, and management of hazards in relation to Saxton Creek should be occurring

now at the same time as when some landowners in the locality are considering subdivision developments.

- (e) The Appellants consider the preferable way forward would be for the Respondent Council to commit to the design of the walkway, at least as it relates to the Appellant's land with a view to confirming what is actually required in terms of width for Esplanade, taking into account in the design which riparian management issues, vegetation, hazard issues, and positioning of buildings. This would enable consideration of options for securing public access which achieve the outcome of certainty for the Appellant over the design, location and extent of public access, and the implications of that in terms of existing buildings, vegetation and management of hazards.
- (f) Designing the walkway now will ensure there is integration of the planning for this walkway, in conjunction with consideration of subdivision development in the neighbourhood and how this may link into the walkway, in terms of other potential reserve areas and servicing networks ensuring appropriate linkages and connectivity.
- (g) A blanket rule of a 20m wide Esplanade on both banks of the stream, is a blunt instrument that does not take account the positioning of property boundaries in relation to the stream, it does not take into account the positioning of existing buildings, the location of hazards, vegetation and the levels of land. Bringing forward the design of the walkway now, at the time when development proposals are being considered will ensure appropriate integration in planning for walkways, reserves, hazard management and servicing provision.

7      **Relief Sought**

- (i)      The Appellants seek the deletion of the 20m Esplanade requirement as it relates to the Appellant's land, in favour of the Respondent designing the walkway requirements through the Appellant's land now, and then negotiating with the Appellant over the options of securing the necessary width of access based on a specific design.

Or as a second preference

- (ii)      That the Esplanade Reserve Rule of a width of 20m either side of the bank be deleted, at least as it relates to the Appellant's land, and replaced with a requirement for a 15m wide total corridor which would incorporate Saxton Creek within the corridor.

8      **RG GRIFFIN CHILDRENS TRUST** seek the following relief:

- (a)      The relief set out herein.
- (b)      The costs of this appeal.
- (c)      Such further or other relief that the Environment Court deems appropriate.

9      The following documents are attached to this notice:

- (a)      A copy of the Appellant's submission;
- (b)      A copy of the Respondent's decision;
- (c)      A list of names and addresses of persons to be served with a copy of this notice.

**RG GRIFFIN CHILDRENS TRUST**

By their duly authorised agent  
Staig & Smith Limited



J. MCNAE

Dated this 9<sup>th</sup> day of August 2012

Address for service of the Appellants:

At the offices of Staig & Smith Ltd, PO Box 913, Nelson

Telephone: (03) 548 4422

Fax: (03) 548 4427

Email: [jackie@staigsmith.co.nz](mailto:jackie@staigsmith.co.nz)

Contact person: Jackie McNae

## **Advice to recipients of copy of notice of appeal**

### *How to become party to proceedings*

You may be party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court. You may apply to the Environment Court under s281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission (or the decision (or part of the decision)) appealed. These documents may be obtained, on request from the appellant.

### *Advice*

If you have any questions about this notice, contact the Environment Court Unit of the Department of Courts in Auckland, Wellington or Christchurch.

## **Contact details of Environment Court for lodging documents**

Documents may be lodged with the Environment Court by lodging them with the Registrar

<b>Auckland</b>	<b>Address</b>	<b>Postal Address</b>	<b>Contact Numbers</b>
	8 <sup>th</sup> Floor District Court Building 3 Kingston Street Auckland	PO Box 7147 Wellesley Street Auckland	Ph: (09) 916 9091 Fax: (09) 916 9090
<b>Wellington</b>	District Court Building 43-49 Balance St Wellington	PO Box 5027 Lambton Quay Wellington	Ph: (04) 918 8300 Fax: (04) 918 8303
<b>Christchurch</b>	83 Armagh St (Corner Durham St) Christchurch	PO Box 2069 Christchurch	Ph: (03) 962 4170 Fax: (03) 9624171



FILE COPY

10818 'A' submission  
NS

## Submission Form Cover Sheet

Nelson City Council  
te kaunihera o whakatū

## Submission

on Plan Change 18 Nelson South  
(Number) (Name)

Office use:

Sub# \_\_\_\_\_

RAD# \_\_\_\_\_

to the Nelson Resource Management Plan  
(Insert name of Plan e.g. 'Resource Management' or 'Air Quality')

## 1.0 Submitter Details

Full Name	RG Griffin Children's Trust		
Organisation	Not Applicable		
Contact Person	Submitter Contact – Rick Griffin; Consultant Contact – Jackie McNae		
Postal address	205 Champion Road, Richmond	Business Phone	Jackie McNae 548 4422
		Home Phone	Rick Griffin 544 7700
		Mobile Phone	
Email		Fax	
Address for service (if different from above) Staig & Smith Limited		<div style="border: 1px solid black; padding: 5px;"> <p>.....</p> <p><b>Signature</b> (of submitter or person authorised to sign on behalf of submitter. Not required if submission made by electronic means). <b>Date</b></p> </div>	
PO Box 913			
NELSON 7010			
Attention: J. McNae Email: <a href="mailto:jackie@staigsmith.co.nz">jackie@staigsmith.co.nz</a>		<div style="border: 1px solid black; padding: 5px;"> <p>Number of extra pages attached to this form</p> </div>	

X  
Sign  
&  
date  
here

## 2.0 Council Hearing

Do you wish to be heard in support of your submission?

Yes ☒ No ☐ ➡ (If 'No', go to section 3.0)

If you answered 'Yes' to being heard, would you be prepared to consider presenting a joint case with others who have made a similar submission?

Yes ☒ No ☐

## 3.0 Council address for service

Please return your submission by 5pm on the closing date (see Plan Change document) to:

Plan Change submissions  
Nelson City Council  
P.O. Box 645  
Nelson 7040(Hand Delivery or Courier to: Ground Floor, Civic House, 110 Trafalgar St, Nelson 7010. Email to: [enquiry@ncc.govt.nz](mailto:enquiry@ncc.govt.nz)  
(Place "Plan Change ..... [No.] submission" in the subject line). Fax to: 03 546 0239.

SEE PLAN CHANGE DOCUMENT FOR SUBMISSIONS CLOSING DATE



## IMPORTANT: READ BEFORE FILLING IN THIS SUBMISSION FORM

### 4.0 What can be submitted on

The Plan Change uses the following different types of text to indicate to the reader what is included in the plan change and what is proposed to be changed. 'Normal text' in the Plan Change applies to current operative provisions that remain unchanged. To aid understanding, the full text of provisions to be changed has often been included in the Plan Change. **The reader should however be aware that the Plan Change relates only to the underlined and strikethrough text, and that operative text is unable to be submitted upon.**

- 'Underline' applies to proposed new provisions.
- '~~Strikethrough~~' **applies** to operative provisions proposed to be deleted or amended as described.
- '*Italics*' **applies** to instructions for amendments.
- 05/01, 07/01 or PC13 (if present) applies to text amended through other Plan Changes.

### 5.0 How to make a submission on the proposed Plan Change

Please use the submission form provided (or a similar format if typing or writing one). This form is available on Council's website [www.nelsoncitycouncil.co.nz](http://www.nelsoncitycouncil.co.nz). Additional forms are also available from the Customer Services Centre (Nelson City Council, Civic House, 110 Trafalgar St, Nelson) or from Nelson's public libraries.

#### *Filling in the Submission Form*

Each submission must have **one** Cover Sheet but may have **several** Content Sheets. The heading on every sheet shows whether it is a **Cover Sheet** or **Content sheet**.

#### **USE A NEW CONTENT SHEET FOR EACH NEW PART OF YOUR SUBMISSION**

It would help the Council to understand your submission if you use a new Content Sheet for each new part of your submission. This will ensure each of your submission points are uniquely identified by the corresponding reference number in the Plan Change, and the submission, reasons and decision sought for each of those points are described together.

**This is an example of how to correctly reference each submission point, in Council's submission form:**

Plan Change Section Number	Plan Change Page Number	Unique Identifier (where given)	Topic Name
14.4	15	DO10.1.ii	Land Transport System Objective Reasons

Each referenced submission point will then have its own Content Sheet stating:

- the Submission;
- the Reasons; and
- the Decision being sought.

*A submission is simply your written views on the proposed Plan Change. Anyone can make a submission, you do not have to be an expert, nor do you need to be a ratepayer or resident of Nelson City to make a submission; you just need to have a relevant point of view.*

*If you are unsure about any aspect of making a submission please phone the Council on (03) 546 0200 and ask to speak to a Policy Planner.*



# Submission Form Content Sheet

## 1) My submission relates to

Plan Change 18 Nelson South  
(Number) (Name)

Please enter the specific provision that your submission relates to in the boxes below (see Part 5.0 of the Cover Sheet for examples)

Plan Change Section Number	Plan Change Page Number	Unique Identifier (where given)	Topic Name
2.1.3	6		Esplanade requirement
2.2			Zoning

2) ☐ I support the above Plan Change section OR ☒ I support in part the above Plan Change section OR ☐ I oppose the above Plan Change section

## 3) My submission is

State in summary the nature of your submission

(i)	The Submitter supports Esplanade provisions on Saxton Creek, but considers that the width of the Esplanade being 20m on either side of the Creek is inconsistent with the approach for other waterways in similar situations.
(ii)	Proposed Plan Change 18 rezones the Submitter's land from Rural to Partially Residential, with the rear part of the site being zoned Rural Higher Density Small Holdings Area. The Submitter supports the proposed zonings.
(ii)	Roading Provisions.

## 4) Reasons

Describe the reasons for your views

(ii)	The Submitters support the concept of an Esplanade Reserve for conservation, access and recreation purposes, but queries the necessity for 20m on either side. Reviewing the Esplanade provisions on a range of similar waterways through the city, a common approach is a corridor approach which sets a maximum corridor width in relation to the stream. This approach is a more flexible approach and enables flexibility in the design of subdivision and design of recreational assets such as walkways and the like, by taking into account contour and sensible layout issues in relation to subdivision. This approach is supported by the Submitters in preference to the inflexible approach, and somewhat excessive width, of having 20m from the bank on either side of the stream. The Submitters are of the view that a corridor of a minimum width of 15m is sufficient to provide for the purposes that it is being set aside for and is sufficient for walkway access in particular. It may be appropriate in certain areas for particular design reasons and proposed activities to have areas where the corridor is wider and areas where the corridor is narrower, and this can be a matter of negotiation between the Council and the two landowners affected. It is noted that beyond the Submitter's land and the Smith's land that the proposed Esplanade under the Plan Change is going to narrow to only 5m Esplanade Reserve, and therefore what is put forward in this Submission still provides a generous width.
(ii)	The Submitters fully support the partial rezoning of their land Residential. This is appropriate in terms of land contour and the proposed zoning on adjoining land. Providing for the residential development opportunity on both sides of the waterway will enable a range of innovative design approaches to be undertaken fitting around the walkway proposals. Beyond the proposed Residential zone boundary through the Submitter's land, it is proposed the land area be in the High Density Small Holdings Area which is also supported. This will allow for a level of development, but recognise that as the land moves closer to the rural area of the Rural zone that the Small Holdings forms a transition of zoning that effectively provides an appropriate buffer between full urban development and full rural development and rural activities.
(iii)	It is noted that Plan Change 18 follows on from Council's forward planning in the form of the Nelson Urban Growth Strategy and the Structure Plan Report and Draft Plan Change that was issued to the public for comment. As part of the Draft Plan Change the Submitter's land was proposed to remain Rural, and a Submission of Opposition was lodged pointing out that that was inappropriate in terms of the pattern of zoning and also in terms of aspirations for a walkway to be achieved along the stream where the stream is predominantly within the Submitter's land. Council accepted those Submissions on the Draft Plan Change and included the Submitter's land in the rezoning to Residential with the rear part of the site being in the High Density Small Holdings Area. However it is expected that if Plan Change 18 is confirmed that there will be a level of reference by the Council in administering the Zone to the Structure Plan and the Indicative Servicing Provisions. In relation to roading it should be noted that the Structure Plan did not actually provide an Indicative Roading Layout that included the subject land, because at that time the Draft Provisions were not considering the inclusion of the subject land into Residential zoning. While there is nothing in the Plan Change which precludes a road intersection to service the subject land with Champion Rd, it is important that this issue is flagged as it is clearly the expectation now that the Submitter's land will need road access from Champion Rd, as there are no proposed roading connections from other properties to the Submitter's land. Further, in the case of the Submitter's land, given the positioning of Saxton Creek, there is little opportunity for connectivity of roading connections with land adjoining, because if that were to happen there would need to be a road crossing the stream, which would need to be bridged. This would seem to be an inappropriate option as it would have potential adverse environmental impacts on the waterway, and the proposed approach to riparian planting and pedestrian access. This issue needs to be acknowledged so that the issue does not prejudice the Submitter's right to appropriate development and an appropriate design of subdivision relying on Champion Rd for access.

☐ Retained   OR   ☐ Deleted entirely   OR   ☐ Deleted and replaced as follows   OR   ☐ Amended as follows

Where amendments are sought, provide details below of what changes you would like to see

- |       |  |
|-------|--|
| (i)   | <i>In respect of the Esplanade provisions set out under 2.1.3 in Table 6.2 that the Esplanade requirements should be amended to state a 15m corridor including the stream.</i> |
| (ii)  | <i>The Submitter seeks the retention of the proposed Residential zoning and proposed High Density Small Holdings Area over their property.</i>                                 |
| (iii) | <i>Confirmation that road access for the subject property can be taken from Champion Road to service the Submitter's land.</i>   |

**Submitter name** RG Griffin Children's Trust

**Signature**

**Date** 1 November 2010

.....  
(signed as authorised agent)

Please use additional content sheets if you have submissions to make on other aspects of the Plan Change, and attach these to the cover sheet.

**If you are submitting on more than one Plan Change, please ensure you use a separate Cover Sheet for the submissions on each Plan Change, with the Plan Change number and name clearly identified.**

**SEE PLAN CHANGE DOCUMENT FOR SUBMISSIONS CLOSING DATE**

## Modifications to Proposed Plan Change 18

78. None.

'B'  
Respondent  
Decision.

### Decision on Topic 2– Esplanade Reserve width

#### DECISIONS REQUESTED BY SUBMITTERS

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
Tiakina te Taiao Limited	1	2	Retain proposed amendment to Appendix 6 (Table 6.2) - clause 2.1.3 of Plan Change.	Further submitter 16 - PS Fry, CD Strong, NA McFadden and PJ McFadden – oppose  Further submitter 17 - DJ, LA and SJ Sutton – oppose  Further submitter 18 - P& A Hamilton – oppose  Further submitter 19 - Michael and Maria Luisa Lowe – oppose
Tiakina te Taiao Limited	1	3	Retain option 2 and 3, table 4 of Section 32 report	No further submissions
Tiakina te Taiao Limited	1	4	Retain option 2 and 3, table 4 of Section 32 report	No further submissions
Michael and Maria-Luisa Lowe	4	1	The deletion of the requirement that a 5 metre esplanade reserve width be taken to Saxton Creek "on the right of way side". A reserve could be required on the "non right of way" side of Saxton Creek which is generally in farm land which would then provide an uninterrupted link from Hill Street through to Champion Road and thereby preserve the physical access to (and ability to develop) 3A- 3D	No further submissions

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
			Hill Street.	
Michael and Maria-Luisa Lowe	4	4	Amend the Section 32 analysis in regards to the implications of the 5 metre esplanade reserve width provision.	No further submissions
CD Strong, PS Fry, NA McFadden and PJ McFadden	5	1	The deletion of the requirement that a 5 metre esplanade reserve width be taken to Saxton Creek "on the right of way side". A reserve could be required on the "non right of way" side of Saxton Creek which is generally in farm land which would then provide an uninterrupted link from Hill Street through to Champion Road and thereby preserve the physical access to (and ability to develop) 3A-3D Hill Street.	No further submissions
CD Strong, PS Fry, NA McFadden and PJ McFadden	5	4	Amend the Section 32 analysis in regards to the implications of the 5 metre esplanade reserve width provision.	No further submissions
DJ Sutton, LA Sutton, SJ Sutton	6	1	<p>The deletion of the words:</p> <p>"Where adjoining land already has subdivision approval for a different esplanade reserve width prior to this rule being notified (28 August 2010)"</p> <p>And substitution of the words:</p> <p>"In the case of the property formerly</p>	No further submissions

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
			legally described as Lot 3 DP5665, Lot 2 DP361671 and Lot 1 DP15531 which has a subdivision approval (RM 065150) then as set out in that resource consent and its supporting plans".	
DJ Sutton, LA Sutton, SJ Sutton	6	2	Consequential amendment of the relevant Planning Maps 32 and 35 to the extent that they indicate an esplanade reserve along both river banks.	No further submissions
RG Griffin Children's Trust	7	1	In respect of the esplanade provisions set out under 2.1.3 in Table 6.2 that the Esplanade requirements should be amended to state a 15m corridor including the stream.	Further submitter 2 - Michael and Maria Luisa Lowe – oppose  Further submitter 3 - PS Fry, CD Strong, NA McFadden and PJ McFadden – oppose
KN & DG Smith	8	1	In respect of the esplanade provisions set out under 2.1.3 in Table 6.2 that the esplanade requirements should be amended to state a 15m corridor including the stream.	Further submitter 26 - Michael and Maria Luisa Lowe – oppose  Further submitter 27 - PS Fry, CD Strong, NA McFadden and PJ McFadden – oppose
Peter and Andrea Hamilton	10	2	Amend Plan Change to provide for a 5 metre esplanade reserve	Further submitter 4 - Michael and Maria Luisa Lowe – support  Further submitter 6 - PS Fry, CD Strong, NA McFadden and PJ McFadden – support  Further submitter 28 – RG Griffin Children's Trust –

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
				support in part  Further submitter 29 – KN and DG Smith – support
Tasman District Council	11	10	Retain proposed amendments to Appendix 6 which enable the taking of an esplanade reserve along both river banks of Saxton Creek.	Further submitter 28 – RG Griffin Children's Trust – oppose in part  Further submitter 29 – KN and DG Smith – oppose in part
Department of Conservation	12	3	Retain the proposed amendments to Appendix 6 Riparian and Coastal Margin Overlay (Table 6.2 Priority Values).	Further submitter 12 - Michael and Maria Luisa Lowe – oppose  Further submitter 13 - PS Fry, CD Strong, NA McFadden and PJ McFadden – oppose  Further submitter 14 - P & A Hamilton – oppose  Further submitter 28 – RG Griffin Children's Trust – oppose in part  Further submitter 29 – KN and DG Smith – oppose in part
Julian Raine	14	1	The submitter seeks, as <b>first preference</b> , to delete any requirement for esplanade reserve from Lot 2 DP14458, and to amend Appendix 6 as follows to add a new bullet point:  <i>Saxton creek esplanade requirements:</i>  <i>20m of both river banks except:</i>	Further submitter 5 - PS Fry, CD Strong, NA McFadden and PJ McFadden – support and oppose in part  Further submitter 7 - P & A Hamilton – support and oppose in part  Further submitter 8 - Michael and Maria Luisa Lowe – support and oppose in part



Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
			<ul style="list-style-type: none"> <li><u>Where Saxton Creek adjoins Lot 2 DP14458. In this case no esplanade reserve is required.</u></li> <li>Where adjoining land already has ...</li> </ul>	
			<p>As <b>second preference</b>, the submitter seeks to delete the 20m esplanade requirement and replace with a 5m reserve as follows:</p> <p>20m on both river banks except:</p> <ul style="list-style-type: none"> <li>Where adjoining land already has subdivision approval for a different esplanade reserve width prior to this rule being notified (28 August 2010),</li> <li>Where Saxton creek adjoins the right of ways to 3A, 3B, 3C and 3D Hills Street (Lot 4, Lot 3, Lot 2 and Pt Lot 1 DP 8212) respectively. In this case a 5m esplanade reserve width will apply to the river bank on the right of way side.</li> <li><u>Where Saxton Creek adjoins</u></li> </ul>	

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
			<u>Lot 2 DP14458.</u> <u>In this case a</u> <u>5m esplanade</u> <u>reserve will</u> <u>apply.</u>	

## Discussion

79. Saxton Creek rises in the foothills of the Richmond Ranges. Confusingly, it has two tributaries, one beginning in the Nelson District and one beginning in the Tasman District, both of which are called Saxton Creek. The one which passes through land subject to PC18 is Saxton Creek rising in the Tasman District. It is sometimes referred to as the western branch of Saxton Creek. This portion of the Saxton Creek catchment covers 6 square kilometres.
80. From our second site visit we observed that Saxton Creek is a gentle, small stream whose banks vary from very gentle slopes through to quite incised and deep (possibly man made) cuttings. Bank vegetation varies from weed species through to pasture and native plantings interspersed with exotics such as poplars. The stream is generally well shaded and flows for most of the year, although in dry years can disappear for several months. The stream has notable changes in grade where small falls occur and some erosion at certain points is visible along the banks. We were advised that the Creek has an average bed width of 3 metres.
81. The purposes of an esplanade reserve are specified in section 229 RMA as being one or more of the following:
- (a) *To contribute to the protection of conservation values by, in particular,-*
    - (i) *Maintaining or enhancing the natural functioning of the adjacent ... river ...; or*
    - (ii) *Maintaining or enhancing water quality; or*
    - (iii) *Maintaining or enhancing aquatic habitats; or*
    - (iv) *Protecting the natural values associated with the esplanade reserve ...; or*
    - (v) *Mitigating natural hazards; or*
  - (b) *To enable public access to or along any ... river...; or*
  - (c) *To enable public recreational use of the esplanade reserve ... and adjacent ... river ..., where the use is compatible with conservation values.*
82. The upper reaches of Saxton Creek within the Tasman district have a 10 metre esplanade reserve on both sides of the Creek as a result of TDC's PC20. No party challenged that notified requirement.
83. Table 6.1 in Appendix 6 of the Nelson Resource Management Plan lists the Riparian Values for Saxton Creek from the coast inland, including the first tributary to Champion Road, which is the relevant tributary for PC18, as:

River	Reach	Values
Saxton Creek	Coast inland including first tributary to Champion Road and main stream above first tributary to next confluence.	<p>Conservation (aquatic habitat) priority 3</p> <p>Access coast to Champion Road</p> <p>Hazard mitigation flood capacity</p> <p><u>Recreation</u><sup>PC18</sup></p>

84. Conservation values in Table 6.1 of Appendix 6 are assigned to three categories dependent on the size and nature of the river concerned. Priority three conservation values *"include small first order streams which may need some protection to maintain water quality; the degree of protection is largely dependent on slope. There is little benefit in protecting stream margins on high slope angles where suitable land use controls are more appropriate."* The Appendix goes on to note where appropriate conditions may be placed on resource consents to avoid, remedy or mitigate adverse effects on the values identified, and lists matters that conditions could cover, such as timing of earthworks.
85. Dr Fisher of the Nelson City Council advised us that although Saxton Creek has the lowest water quality standard possible, class E, the water quality testing for Saxton Creek was undertaken below the confluence of the two tributaries, approximately opposite to Saxton Field. We therefore do not know the water quality of this particular tributary. Dr Fisher also provided us with the definition of class E freshwater classification in the Nelson region:

**"VERY DEGRADED – Severely Degraded Ecosystems."**

*Severely degraded ecosystems with few or no ecological values. Urban examples would include streams with historical industrial discharges and cumulative sediment contamination, all which have been highly modified or channelized to the extent that natural habitat is no longer retained. Rural streams might be subject to high intensity and frequent contamination from agriculture or land use activities, such as discharge of untreated effluent and uncontained large scale sedimentation.*

**Uses and Values:**

*Instream values are severely depleted and water is generally unsuitable for any use. Few values (eg Tangata Whenua Values).*

86. Dr Fisher also advised us that the surveys which have established the presence of five native fish in the creek were undertaken at 500 metre intervals and included this arm of the creek. On our site visit we observed a fish in the section of the stream opposite the right of way to 3A – 3D Hill Street.
87. The riparian areas with priority values in the Nelson district are specified in table 6.2 of Appendix 6 to the Nelson Resource Management Plan. Not all water bodies come within the table, and Saxton Creek is not listed in this table in the operative Plan. The table lists the river, the reach or reaches of the river and the values associated with that river (e.g. conservation, access, hazard mitigation). Helpfully, the table also establishes the esplanade requirements for the water bodies listed.

88. Those having a 20 metre esplanade reserve or esplanade strip are:

- Roding River (both river banks);
- Poorman Valley Stream (one reach) both river banks;
- Jenkins Creek (one reach): a 20 metre reserve on both river banks through the Residential Zone, followed by a 5 metre strip on both river banks through both the Rural Small Holdings area and the Rural zone;
- Maitai River (two reaches): the first reach is a 20 metre reserve on both banks in both the Small Holdings area and the Rural zone; the second reach is a 20 metre strip on both river banks;
- Todds Valley Stream (two reaches): the first reach is a reserve corridor 20 metres wide including the stream bed; the second is a 20 metre reserve on both river banks through the Coastal Environment overlay, but a 20 metre esplanade strip on both river banks through the Conservation zone/Rural zone;
- Delaware Inlet: a 20 metre reserve;
- Wakapuaka Main Stream (two reaches): a 20 metre reserve on the true left bank and a 5 metre reserve on the true right bank, and the same in the second reach (both passing through a Rural Small Holdings area);
- Whangamoa Inlet: a 20 metre reserve around the inlet margins but in relation to streams a 20 metre strip on both river banks; and
- Omokau Bay Stream: a 20 metre strip on both river banks.

89. Having examined the esplanade requirements in table 6.2 it is evident that there is a wide variety of approaches within the Plan. Approaches also include:

- one or both river banks;
- a “Reserve Corridor” which can be a total width and may include more on one side of a water body than another;
- reserves averaging a certain width with a minimum width (e.g. Maitai River true left bank between Paruparu Road and Trafalgar Street, which averages 7.5 metres with a minimum width of 5 metres);
- a reserve width in addition to a stream bed width, with the stream bed width “designed to a Q50 level (50 year return flood event) ... the measurement to be taken from the point allowing for a 400 millimetre freeboard for a waterway” (e.g. Todds Valley Stream in certain reaches); or
- “Suitable access to be negotiated with the landowners concerned” (e.g. Oldham Creek, Werneth Place to forest remnant).

90. This is compounded by variations on particular streams as a result of particular resource consent decisions. The resource consent for the Sutton subdivision downstream of Saxton Creek where it travels through the land subject to Plan Change 18 has a variable width esplanade reserve, which at its narrowest is 4 metres extending out to approximately 24 metres, and excluding the area of the stormwater detention pond where it widens out even further.

91. The Plan notes in Appendix 6.1.iii that:
- "Esplanade reserves or strips not specified in Table 6.2 of appendix 6 will only be required as a condition of a resource consent or plan change where they are the only practical means of avoiding, remedying or mitigating the adverse effects of an activity to which the consent relates."*
92. Examples of situations where this could occur are given, including a resource consent creating lots adjoining a margin of significant value for conservation, access or hazard mitigation purposes. Mr Rawson emphasised that an esplanade reserve requirement of 20 metres in the Plan was only guidance and that this could be varied by being lowered or deleted during a resource consent process. If no value is provided in the Plan, there is nevertheless the ability to take an esplanade reserve or esplanade strip.
93. However, as Mr Rawson pointed out, Residential Rule REr.107.2(c) requires compliance with the esplanade reserve width in Appendix 6 as part of the subdivision consent. If this is not complied with the subdivision becomes a discretionary activity, thereby potentially requiring affected party consent.
94. Both Mr and Mrs Smith and Mr McFadden confirmed from their personal observations, having lived alongside the stream for (in both cases) over 20 years, that the stream has never topped its banks. Currently, surrounding uses of the land are generally pasture related. However, above PC18 land, where the stream crosses into the Tasman District, there is some residential development, which is mostly relatively new. With the proposed rezoning, in its upper reaches within PC18 the stream would be residential on both sides, and then as it travelled down it would enter the Rural Higher Density Small Holdings Area zone on one side and Residential on the other (true left bank). Therefore the amount of stormwater inflow into the stream could potentially rise significantly, given the increase in hard stand as a result of development.
95. In terms of the hazard mitigation flood capacity value of Saxton Creek, Dr Fisher advised us that:
- By 2090 there is an expected 16% increase in high rainfall events.
  - Sea level is anticipated to rise 0.2-0.4 metres by 2050, and the Ministry for the Environment guidance is to plan for a sea level rise of 0.5-1 metre by 2100.
  - There is therefore anticipated to be an increased frequency and extent of floods over the next 50 years.
  - The 15 metre flood path identified for water bodies in the Nelson District results from a desktop study and is for information only purposes, indicating a potential issue.
  - There is no flood path shown for Saxton Creek on the plan maps, although it is indicated as a flooding hazard.
96. Dr Fisher's view was that freshwater management could improve the water quality of Saxton Creek, and that would include control of vegetation on the banks. He considered that all urban streams in Nelson are degraded and that opportunities for enhancing water quality should be taken up wherever possible. He saw an esplanade reserve along the banks of Saxton Creek as providing a great potential to enhance biodiversity, although he noted that low banks of Saxton Creek in places are not good to retain flood waters.

97. The proposed Plan Change has two different recommendations regarding the width of esplanade reserve:
- 20 metres along both banks; except
  - where there are existing rights of way for 3A-3D Hill Street, where a 5 metre esplanade reserve requirement was notified, and where properties have already been subdivided to provide for a different esplanade reserve width.
98. Turning firstly to that portion with a 20 metre reserve on both banks, having read submissions, staff were prepared to compromise regarding the width of the esplanade reserve, reducing it to 15 metres on both river banks. By a 15 metre corridor we understand this to mean 15 metres either side of the bed of the river, which is approximately 3 metres wide, ie: a total of 33 metres.
99. Dr Fisher advised that:
- “... an esplanade reserve/corridor (of 15 m) will be an asset to the Saxton Field Complex and provide a greater potential to enhance biodiversity and amenity values at Saxton Creek, in common with a softer-engineering approach to stormwater management (Land Development Manual). It will also address some of the urban catchment water quality issues that are detrimental to the Waimea Inlet.”*
100. Mr Petheram described this arm of Saxton Creek as “*hugely significant*” because of its linkages to the coast and Saxton Field. He considered that the esplanade reserve was a really significant piece of environmental compensation, providing access and recreation values. He compared it to the width of the corridor at Orphanage Stream which is 32 metres, including the stream. He described the 20 metre width on one side as an “*ideal*” and set out the need for a cycle/walkway on one side, and walking track on the other. He advised that if you only create one walking track on one side people create their own track on the other. This harms the riparian vegetation so the best way to manage this is to proactively establish a walkway on both sides. As land is residential on both sides people will want access on both sides.
101. Mr Petheram had no problem with a corridor approach but considered a corridor of 15 metres total to be inadequate. With regard to the width, if reduced, he considered that an absolute minimum is 5 metres. This is calculated on the width of a combined walkway/cycleway of 3 metres plus 1 metre on either side for sight lines to minimise conflicts. Although Mr Quickfall on behalf Mr Raine had stated the standard for a joint walkway/cycleway was 2.5 metres, in fact due to conflicts between pedestrians and cyclists the Council in 2010 increased its standard to a minimum width to 3 metres.
102. Overall, Mr Petheram considered that a vegetation buffer of 4 metres alongside the bed of the stream, followed by a 5 metre width for the walkway/cycleway and then a further 4 metre planting was adequate. This would give an esplanade reserve of 13 metres on one side of the stream, and thus a total of 29 metres as a corridor. This compares to the as notified version in the upper reaches of Saxton Creek of 43 metres (20 metre corridor either side plus 3 metre bed). Mr Petheram was emphatic that a corridor with a 15 metre total width was inadequate to produce a resource of value to the community.
103. We also received oral evidence from Mr Lile (on behalf of the proposed Rural Higher Density Small Holdings Zone owners at 3B and 3C Hill Street) that a walkway linkage from the Tasman District down to the top of Saxton Creek at Champion Road was proposed in the forthcoming Saint Leger subdivision with which he was involved. There is also therefore a linkage component, particularly for walking (although not for a cycleway as this walkway would be too steep for cyclists at its top end). Again, this emphasises the recreation aspect of any proposed esplanade reserve.

104. Mrs McNae provided a plan which indicated a significant portion of the Smith property would be lost to development should a 20 metre esplanade reserve be provided as notified. The Smith property has recently been subdivided into two lots. As a result of that subdivision RM115157, conditions 3, 4 and 5 address the esplanade reserve requirements. They read as follows:

3. *Within one year of the Esplanade Reserve Rules under Plan Change 18 reaching a point where they are beyond legal challenge or within 5 years of issue of a 224 certificate for this subdivision, whichever is the sooner, an Esplanade Reserve 20 metres in width **or to the site boundary where a 20 metre width is not available**, shall be set aside from each bank of Saxton Creek **where it passes through the north eastern corner of proposed lot 2.***
4. *The Esplanade Reserve may be reduced in width, if as a result of the Council deliberations on Plan Change 18 or any subsequent appeal, a decision is made to reduce the width of Esplanade Reserve requirements in respect of Saxton Creek.*
5. *A **consent notice** shall be registered on the title of proposed lot 2 [the balance lot] advising that Conditions 3 and 4 shall be complied with on a continuing basis.*

**Advice Note:** *Plan Change 18 has notified a proposed requirement of a 20 metre width either side of each bank, and in the event that the Council decides to reduce that width, then whatever that reduced width is, will be accepted by the Council as fulfilling the Esplanade Reserve Condition requirements in relation to this consent.*

(emphasis added)

105. The staff also provided us with a copy of the consent notice referred to in condition 5 and it records that the following condition shall apply to Lot 2:

2. *Esplanade reserve*

*Within one year of the Esplanade Reserve Rules under Plan Change 18 reaching the point where they are beyond legal challenge or within five years of the date of issue of a Section 224 Certificate under the Resource Management Act 1991 for DP 447598, whichever is the sooner, an Esplanade Reserve 20 metres in width or to the site boundary where a twenty metre width is not available, shall be set aside from each bank of Saxton Creek where it passes through the north eastern corner of proposed lot 2.*

*The Esplanade Reserve may be reduced in width if, as a result of Council deliberations on Plan Change 18 or any subsequent appeal, a decision is made to reduce the width of the Esplanade Reserve requirements in respect of Saxton Creek.*

106. Therefore at present the only portion of lot 2 of the Smith property which is to be dedicated to esplanade reserve is that portion in the north eastern corner of lot 2 where Saxton Creek crosses from the Griffin property onto the Smith property. At all other points upstream of that the Creek is within the Griffin property.
107. The submission was made that an esplanade reserve on the Smith side of the Creek could not be required as a matter of law, apart from where the Creek crosses into the Smith property in the north eastern corner, because under section 230(4) of the RMA the wording used is "where the river flows through or adjoins an allotment" and here

the Creek does not adjoin an allotment on the Smith land as the bank is within (at times, barely) the Griffin land, not the Smith land.

108. An esplanade reserve, up to 20 metres in width, can be required *“along the bank of any river”* (section 230(3)). There is no reference in the Act to the reserve width being limited by ownership. Although portions of the Smith property would, if the fencing is on the boundary, be apparently touching the bank of the Creek, it would appear that the Council has made the determination in the **first** resource consent process that only where the creek crosses into the Smith property is the esplanade reserve requirement triggered. We do not take this to mean that there is no esplanade reserve required for Lot 2, merely that the Council and the Applicant both recognised at the time of the subdivision that this was a matter best determined when Lot 2 is subdivided under its new residential zoning.
109. Can an esplanade reserve be imposed on the Smith property along the majority of its length because Saxton Creek on the Griffin land “adjoins” any allotment on the Smith land, or does the land not “adjoin” the allotment?
110. We note the following dictionary definitions of ‘adjoin’:
- 110.1 Collins English Dictionary defines ‘adjoin’ as ‘be next to’;
- 110.2 Cambridge Dictionary (online) defines ‘adjoin’ as ‘to be very near, next to, or touching’;
- 110.3 Oxford Dictionary (online) defines ‘adjoin’ as ‘be next to and joined with (a building, room, or piece of land)’;
- 110.4 Dictionary.com defines ‘adjoin’ as ‘to be close to or in contact with; abut on’ or ‘to attach or append’.
111. *Riddiford v Attorney General* (HC Wellington, 23 June 2008, Ronald Young J), in the context of the Local Government Act 1974, discussed the meaning of ‘adjoin’ as follows:
- [41] Section 290 [Local Government Act 1974] provides that where a strip of land which is situated beside a creek which runs to the sea (subs (1)) and which land adjoins a lot which is 4 hectares or more, and the owner intends to retain the larger property for five years or more and continue farming it, then compensation is payable.*
- [42] The key word is “adjoin” and its meaning. Here, Lot 2 is a rectangular shaped piece of land. Its two larger boundaries are with the river and Lot 1, the subdivided River Cottage section. However, Lot 2's two shorter boundaries are in common with the larger farm block, which easily exceeds 4 hectares. As relevant here, “adjoin” means “in contact with or contiguous to” (Shorter Oxford Dictionary). There is no doubt, therefore, that the remaining farm block and the two shorter boundaries of Lot 2 adjoin. There is nothing in the statutory regime which suggests that all of the boundaries of Lot 2 need adjoin the larger farm before compensation is payable. If that is what was intended, it could easily have been said. (emphasis added)*
112. Finally, we note the decision of the High Court in *Tram Holdings Limited v The Attorney-General* unrep HC Auckland, 28/4/99, Paterson J, CP245/96. This decision was in the context of the creation of marginal strips under the Conservation Act 1987. Over time, the location of the foreshore had moved, and the Crown’s opinion on whether a marginal strip should be taken had altered. The question for the Court was whether the marginal strip should:



- 112.1 Not be created as the land no longer adjoined the foreshore (the foreshore was now separated by 2.7 metres from the boundary of the land); or
- 112.2 Be created because the marginal strip of 20 metres ran from the foreshore inland, and thus some 17.5 metres came within the land, and the 2.7 metres on another owner's land was also part of the marginal strip; or
- 112.3 Be created because the marginal strip of 20 metres ran from the foreshore inland, and thus some 17.5 metres came within the land, but the 2.7 metres on another owner's land was not part of the marginal strip because a marginal strip could not be created over the land of an owner who was not subdividing – although if subdivided in future the marginal strip 'gap' of 2.7 metres could then be 'filled in' and become part of the marginal strip.
113. *Tram Holdings*, although decided under another Act, is analogous to the facts of the present situation, and the reasons for creating marginal strips are very similar to the reasons for creating esplanade reserves. Thus although the wording discussed under section 24(1) Conservation Act 1987 is "*extending along and abutting the landward margin*", rather than 'adjoining', the judge's reasoning is likely to apply to esplanade reserves created under the Resource Management Act 1991. The Court also referred to the definition of 'abut' in the Concise Oxford Dictionary as including 'adjoin', which in turn is defined as 'next to and joined with'. The Court preferred the plain and ordinary meaning of the word – thus to require a strip the land had to be in physical contact with the foreshore. The Court therefore decided a marginal strip could not be created, even though on the facts of the case it felt taking this approach defeated the purpose of the Act.
114. Thus both *Riddiford* and *Tram Holdings* indicate that an esplanade reserve cannot be imposed on the Smith property along the majority of its length because Saxton Creek on the Griffin land does not "adjoin" any allotment on the Smith land.
115. The situation then changes where the Griffin land adjoins the right of way providing access to lots 3A – 3D Hill Street. At that point as notified only a 5 metre esplanade reserve was proposed, and this reserve would travel over the existing rights of way. Therefore it is almost inevitable that when the design of any walkway/cycleway comes to be considered a bridging of Saxton Creek will be required at some point. However as it is not the committee's job to design the esplanade reserve we need not consider this further apart from ensuring that any esplanade reserve is a logical fit to the land form and intended use.
116. Retaining cycle/pedestrian access on the true right bank would put cyclist and pedestrians in conflict with those on the rights of way. However, this presumes that the rights of way become a road when one or more of lots 3A – 3D are subdivided, and this is by no means certain. What is certain is that no more than 5 metres can be set aside for the esplanade reserve on this side because only 5 metres was notified in Plan Change 18. On Mr Petheram's evidence this would be inadequate for a cycleway/walkway as this would abut hard up against the stream bank with no room for plantings. If the banks are steep at this location (and in places they are, as we observed on our site visit) this would effectively remove riparian vegetation along this section of the stream, which for conservation and riparian value purposes would be undesirable.
117. Mr Lile's evidence on behalf of the owners of 3B and 3C Hill Street and on behalf of Mr and Mrs Hamilton on the other side of the Creek in opposition to the required width and location of the 5 metre esplanade reserve was that:
- 117.1 The rights of way to 3A – 3D Hill Street have a total width of 6 metres, split between 4 x 1.5m wide strips;

- 117.2 Saxton Creek closely follows the right of way corridor, effectively forming the western (Richmond) side of the right of way;
- 117.3 The requirement to provide a 5m esplanade reserve on the right of way side (Nelson side) of the river bank ( ie: the western side of the right of way) will mean that 5m of the existing 6m right of way is required as esplanade reserve;
- 117.4 Therefore, unless the right of way is significantly widened or relocated to accommodate the esplanade reserve, a secure right of way would need to be available over the esplanade reserve to serve the existing and any newly created allotments; and
- 117.5 He therefore questioned the purpose of an esplanade reserve if at least 5m is a formed carriageway.
118. In addition Mr McFadden raised the issue of the consent of the Minister of Conservation being required under section 48 of the Reserves Act 1977 for access over an esplanade reserve, with public notification being required and the test being that the rights of the public are not likely to be permanently affected by the establishment and lawful exercise of the right of way.
119. Given the opposing submissions, the primary issue to be addressed is whether the notified widths or an amended width (and if so, which one) of the Esplanade Reserve will better serve the purposes of the RMA, including those enunciated through the relevant objectives and policies of the Nelson Resource Management Plan.

### **Reasons for Decision**

120. We summarise below the requests in respect of the width of the esplanade reserve:
- Retain the notified widths (Tiakina Te Taio; Department of Conservation; Tasman District Council);
  - Delete the 5 metre reserve on the ROW side of the Creek (the Lowes; McFadden Family Trust);
  - Impose a reserve on the non-ROW side of the Creek ie: on the Hamiltons' land (the Lowes and the McFadden Family Trust);
  - 5 metre esplanade reserve in total (the Hamiltons);
  - 15 metre corridor including the stream (RG Griffin Children's Trust; the Smiths);
  - Alteration of the wording regarding the width required when a width has already been specified by way of a resource consent, and consequential amendment of the planning maps as they indicate a reserve along both banks (the Suttons);
  - In respect of the Raine land (Lot 2 DP14458) delete any requirement for an esplanade reserve, or at most impose a 5 metre width, but otherwise the submitter does not seek to alter the notified value of 20 metres on both river banks;
  - For that portion of Saxton Creek in PC18 notified as having a 20 metre reserve on both banks, staff would accept a 15 metre corridor, meaning 15 metres either side of the bed of the river, which is approximately 3 metres

wide, ie: a total of 33 metres. As land is residential on both sides people will want access on both sides;

- The 20 metre width on one side is an “ideal” as it provides sufficient space for a cycle/walkway on one side, and walking track on the other. Whilst a corridor of 15 metres total would be inadequate, an absolute minimum is 5 metres on one side of the stream (standard Council width for a combined walkway/cycleway of 3 metres plus 1 metre on either side for sight lines), but this would not allow for plantings;
- A vegetation buffer of 4 metres alongside the bed of the Creek, followed by a 5 metre width for the walkway/cycleway and then a further 4 metre planting, would give an esplanade reserve of 13 metres on one side of the stream, and thus a total of 29 metres as a corridor.

121. In terms of the Plan and how it treats esplanade reserves we note that:

- Comparative esplanade reserves in the Plan show a wide variety of options and approaches. The only degree of guidance possible is a finding that in general 20 metre strips on both sides of a water body are reserved for significant water bodies in the district;
- Connectivity to esplanade reserves downstream of land in PC18 are to a variable width esplanade reserve on the Sutton subdivision of between approximately 4 and 24 metres (excluding the water detention pond);
- Connectivity to esplanade reserves upstream of land in PC18 are to a 10 metre esplanade reserve on both sides of the Creek in the Tasman District, and to a walkway linkage from the Tasman District down to the top of Saxton Creek at Champion Road via the St Leger subdivision; and
- (in terms of the Act) an esplanade reserve on the Smith side of the Creek could not be required as a matter of law, apart from where the Creek crosses into the Smith property in the north eastern corner, because the Creek does not adjoin an allotment on the Smith land as the bank is within the Griffin land, not the Smith land.

122. We summarise below the reasons for *not* altering the width of the Esplanade Reserve:

- To contribute to the protection of conservation values by maintaining or enhancing the natural functioning of the adjacent Creek;
- Maintaining or enhancing water quality, as although the water quality of this particular tributary is unknown the quality of the remainder of Saxton Creek is very degraded, and it is a contributing water body to the very valued Waimea Inlet. Additional pressures on water quality are expected to arise in this tributary due to anticipated changes in land use patterns resulting at least in part from the rezoning under this Plan Change. Freshwater management, including control of vegetation on the banks, could improve the water quality of Saxton Creek;
- Maintaining or enhancing aquatic habitats, as the Plan in Appendix 6 lists ‘Conservation (aquatic habitat)’ as one of the Riparian Values for Saxton Creek, although it is Priority 3;
- Protecting the natural values associated with the esplanade reserve. An esplanade reserve along the banks of Saxton Creek provides great potential to enhance biodiversity;

- Mitigating natural hazards (hazard mitigation flood capacity value) is a value listed for Saxton Creek in Appendix 6 of the Plan. Benefits include slowing stormwater runoff, which will partially offset the effects arising from the combination of an expected increase in frequency and extent of floods over the next 50 years and the change to residential land use causing higher runoff. However there is no flood path illustrated for Saxton Creek on the Plan maps, although it is indicated as a flooding hazard in the Appendix;
- To enable public access to or along Saxton Creek, as the Plan in Appendix 6 lists 'Access coast to Champion Road' as one of the Riparian Values for Saxton Creek. This arm of Saxton Creek is "*hugely significant*" because of its linkages to the coast and Saxton Field, providing access and recreation values;
- To enable public recreational use of the esplanade reserve and adjacent Creek, where the use is compatible with conservation values. The connectivity of the esplanade reserve with the proposed walkway track from the St Leger subdivision and on through to Saxton Field is a significant benefit, providing enhanced recreational walkway and (to a slightly more limited extent) cycleway options;

123. We summarise below the reasons *for* altering the width of the Esplanade Reserve:

- To the knowledge of the submitters the Creek has not topped its banks in the last 20 years, although the committee is aware that in the heavy rainfall event of December 2011 the creek did top its banks (which were post hearing but prior to this decision being released). It is shown on the Plan as a flooding hazard (but no flood path is indicated), and it is a poor candidate for retaining flood waters as the low banks of Saxton Creek in places are not good for flood retention;
- No more than 5 metres can be set aside for the esplanade reserve along the ROW as part of this plan change process because only 5 metres was notified in Plan Change 18, and this would be inadequate for a cycleway/walkway as it would abut hard up against the stream bank with no room for plantings;
- The rights of way to 3A – 3D Hill Street have a total width of 6 metres, out of which 5m is required as esplanade reserve;
- Secure rights of way would need to be available over the esplanade reserve to serve the existing and any newly created allotments, but this may not be feasible given the test in section 48 Reserves Act 1977; and
- What is the purpose of the esplanade reserve if at least 5m is a formed carriageway?

124. The further submissions comment on and/or rebut many of these points.

125. Planning for esplanade reserves is long term. Whilst it may take many years before a joined corridor is created, subdivision is the key opportunity to obtain such land, so ahead of subdivision the Plan should clearly indicate what the Council's expectations are. At the time of subdivision the actual esplanade reserve width is calculated and this will either stay the same as in the Plan or decrease. By the time subdivision occurs there may be even more need to have a full width esplanade reserve, so the Plan should be cautious in 'writing down' the required width for esplanade reserves.

126. Any esplanade reserve starts with a 10 metre reserve on both banks, within the Tasman district, and then cannot be imposed on the true left bank of the Creek where it passes through the Smith land, until the north-eastern corner is reached. Hence any

walkway/cycleway must be located within the esplanade reserve on the Griffin land, on the true right bank, but must then cross the Creek to connect with the north-eastern corner of the Smith land and then on to the Hamilton land. If it were to stay on the true right bank the walkway/cycleway would then connect with the 5m esplanade reserve over the ROW, and this width would not provide a walkway/cycleway, adequate sight lines and bank plantings.

127. We start our consideration of the appropriate width by considering the statutory reasons for establishing an esplanade reserve, as set out in section 229.
128. **Protection of conservation values:** this is covered in detail under the discussion of the next 4 items. Because the major conservation values are instream ones, there is no anticipated conflict between establishing an esplanade reserve which is to be utilised for walking and cycling, and the conservation values of Saxton Creek.
129. **Maintenance and enhancement of the natural functioning of the adjacent Saxton Creek:** the maintenance of Saxton Creek's ability to deal with flood flows is the most important item under this heading. The use of a riparian 'buffer zone' ie: the esplanade reserve, a type of soft engineering approach to storm water management, will assist in controlling stormwater flows to some degree, and may assist in preventing the entry of pollutants into the stream from adjacent more intensive residential use in the future.
130. **Maintenance and enhancement of water quality:** Having visited this tributary of Saxton Creek we do not consider the Class E water quality standard is likely to apply to this reach of the Creek, although we acknowledge Dr Fisher's comment that the water quality of this portion of the stream is possibly low due to E. coli bacteria from wildfowl (mostly ducks and pukekos) which are common in the area. However the control, and where possible improvement, of water quality should be a priority for this Creek, which leads directly into the much valued Waimea estuary. Freshwater management through the planting of esplanade reserves would assist in this goal.
131. **Maintenance and enhancement of aquatic habitat:** the Priority 3 aquatic habitat value in Table 6.1 of Appendix 6 is for a water body which may need some protection to maintain water quality. The Plan notes that the degree of protection is largely dependent on slope, and the land adjacent to Saxton Creek, being largely flat to low grade slopes, is particularly suitable for works to achieve this objective. The presence of native fish in this portion of the Creek is a further indicator that the Creek has aquatic habitat values.
132. **Protection of natural values associated with the esplanade reserve:** Although Saxton Creek is not listed in Table 6.2 of Appendix 6, riparian areas with priority values; we do not assume it therefore has no riparian values. We note that the Department of Conservation (and also Tiakina Te Taiao and the Tasman District Council) wishes the 20 metre width to be retained for esplanade reserves. An esplanade reserve would also provide the opportunity to enhance biodiversity along its length, and connect to other corridors.
133. **Mitigation of natural hazards:** Overall there is some potential for the hazard mitigation through the establishment of esplanade reserves, and this potential is important due to the combination of anticipated increases in heavy rainfall events (and thus flooding) due to climate change and increased runoff due to changes in land use to a more built up environment. Esplanade reserves with appropriate areas for planting maximise the option of a soft engineering approach to stormwater management, whilst contributing to other values as well (such as biodiversity and amenity).
134. **Enable public access:** Riparian values for Saxton Creek to the coast inland listed in Table 6.1 of Appendix 6 include access from the coast to Champion Road, and the role of esplanade reserves in achieving this connection is fundamental.

135. **Enable the public recreational use of the esplanade reserve, where to do so is compatible with conservation values:** This purpose is of primary importance for Saxton Creek, which provides a linkage which we have described above as *"hugely significant"*. PC18 proposes that recreation be added as a value for Saxton Creek. Any esplanade reserves along Saxton Creek are an asset to Saxton Field. The enabling of walkway/cycleway linkages from the Tasman District to the coast, and thus to other recreational facilities and linkages already established, warrants recognition of this value.
136. Having found that esplanade reserves are justified for Saxton Creek where it passes through PC18 land, the committee then has various options as to what banks (either or both); whether a corridor approach or a measured from bank approach; and what distances are appropriate. We consider that there is no consistency of approach within the Plan that can assist us, probably due to smaller values and different approaches having been historically developed, so we are free to decide as we consider appropriate for the present circumstances. We acknowledge the importance of the width of the reserve, as non-compliance with this aspect can change the status of the subdivision activity.
137. No parts of Saxton Creek are identified in Table 6.2 of Appendix 6 as riparian areas having priority values. The operative Plan states that if riparian values are not specified in Table 6.2 an esplanade reserve will only be required in a Plan Change where they are the only practicable means of avoiding, remedying or mitigating adverse effects of an activity. We consider that esplanade reserves will provide an appropriate method of addressing potential adverse effects of residential development such as stormwater discharge and loss of amenity, and that they provide a margin where conservation values, recreational access and hazard mitigation can all be provided for along this stretch of Saxton Creek.
138. We do not see the sections we are considering as akin to the values of the water bodies listed in Table 6.2 which have 20 metre esplanade reserves on **both** banks. The more appropriate comparative is Orphanage Creek, which has a 32 metre corridor. We consider that having reserves on both sides will mean that access can be created on both sides (with the exception of the Smith property, discussed below), even where one is only a walkway, and accepting that a walkway may not be able to be created on the 3A-3D Hill Street ROW portion of Saxton Creek. This will address the fact that residential uses will be (or in some cases already are) established on both sides of the Creek and people will want access from either side of the Creek. Whilst a corridor approach may be appropriate in some cases, here the limitations on both the Smith land and over the ROW mean that specified distances from both the true left and true right banks is more appropriate.
139. We now turn to consider the appropriate widths, starting upstream at the Griffin Children's Trust/Smith properties.
140. Because an esplanade reserve cannot be required on the Smith land where it does not adjoin the bank of the Creek, the committee is left with two options with regard to that portion of Saxton Creek which passes through the Smith/Griffin lands:
- 140.1 to impose any esplanade reserves along Saxton Creek entirely on the Griffin land (on both banks), up to the point the Creek crosses in to the Smith land in the southern corner, but none on the Smith land until the north-eastern corner of the Smith land; or
- 140.2 to impose an esplanade reserve of up to 20 metres, knowing that an esplanade reserve cannot be required on the Smith land where it does not adjoin the Creek but that it might be acquired through negotiation.
141. The latter approach preserves the 20 metre width at the north-eastern corner of the Smith land and signals Council's desire to obtain (as opposed to require) this land for

an esplanade reserve. However the rule is being applied to the Smith land and thus could be seen to alter the status of the activity. Furthermore, there seems little point in imposing a requirement for a 20 metre width when it is known this cannot be achieved. The committee therefore concludes it's only real option is the former: a reserve on both banks within the Griffin property, or up to the property boundary where the specified distance is not achievable.

142. In terms of the width, because of the limitation on the Smith side the full 20 metres is needed on the Griffin land. Whilst this may not be required when the walkway is designed (and noting Mr Griffin's point that on the ground design in close consultation with the Council may require more than 20 metres at some points and less at others if a straight route is to be avoided), the 20 metres gives the maximum opportunity to design a route within that distance, should a more variable route not be possible. An esplanade reserve on the opposite bank, as far as it can be created given the proximity of the bank to the boundary, is also desirable, so that at least to some extent plantings can occur. The suggested wording is therefore: *"esplanade reserve of 20 metres on both sides of the stream or up to the site boundary where a 20 metre width is not achievable"*.
143. For the avoidance of doubt, the committee records its view that condition 4 of the Smith Lot 1 resource consent therefore still requires a 20 metre strip at the north eastern corner.
144. The next section of the Creek is the Hamilton/ROW land. Any combined walkway/cycleway will have to be located on the Hamilton side of the Creek as there is insufficient room on the ROW side. A reserve on the Hamilton side was sought by submitters from 3B-3C Hill Street, and to that extent their submission is supported. A combined walkway/cycleway on this side would also logically link to the existing esplanade reserve on the north-eastern corner of the Smith land, and recognises that at some point on this corner the route would have to cross the Creek to the Smith/Hamilton side.
145. Again, due to the limitations on the actual reserve width possible on one side of the Creek, the maximum 20 metres should be provided in the Plan on the other (Hamilton) side. The Committee's hands are tied in that there is no submission seeking the 5 metre width be increased, so there is little room for flexibility in reducing the width on the other side if we are to achieve the outcomes that the Plan anticipates. However, we recognise that there is the opportunity to address the exact width at the time of subdivision consent (see paragraph 125 above).
146. It follows from the above discussion that we find no reason to delete the esplanade reserve outright, as sought by Mr Raine, or to only impose a 5 metre reserve width (his alternative submission and that of the Hamiltons).
147. With regard to the removal of the esplanade reserve over the ROW to 3A-3D Hill Street, whilst we acknowledge the difficulties that might arise due to an esplanade reserve over a driveway, we do not consider that it is beyond doubt that any eventual subdivision design would mean the driveway would remain in its present location. It is not possible to know where the access to any future subdivision should be located. The actual esplanade reserve is best determined at the time of subdivision. Mr McFadden's point regarding the need for Reserves Act approval is an argument that may never arise, and it would be premature to remove the esplanade reserve on the basis that such approval would be required. We therefore consider that the 5 metre reserve width notified in PC18 should be confirmed. We again note, in similarity to the Smith property, that there might one day be an opportunity for Council to acquire (as opposed to require) land along this frontage in excess of the 5 metre strip for the purposes of establishing a wider esplanade reserve, and note the desirability of doing so if at all possible. Even with only a 5 metre strip, if there is no driveway there a walkway and plantings could be established, so the options should not be foreclosed

at this early stage. Removing the 5 metre reserve would, we consider, remove any opportunity for right bank connectivity to be achieved.

148. Continuing down from these properties, until the land intersects with Hill Street, we consider the 20 metre reserve on the true left bank should continue. Connectivity across Hill Street is with the Sutton subdivision esplanade reserve, which is also on the true left bank, but which varies in width.

149. The Committee considers that the deletion of the words:

*"Where adjoining land already has subdivision approval for a different esplanade reserve width prior to this rule being notified (28 August 2010)"*

and substitution with:

*"In the case of the property formerly legally described as Lot 3 DP5665, Lot 2 DP361671 and Lot 1 DP15531 which has a subdivision approval (RM 065150) then as set out in that resource consent and its supporting plans"*

as sought by the Suttons adds clarity to the meaning of the words. It therefore supports the alteration.

150. The decision to retain the esplanade reserves on both banks wherever possible, and to the maximum amount notified, will achieve outcomes which are in accordance with the reasons for imposing esplanade reserves, and are also in accordance with the relevant objectives and policies of the Nelson Resource Management Plan, and which also relate directly to section 5 of the RMA.

### **Decision**

- Tiakina te Taiao Limited – Submission points # 1.2, 1.3 & 1.4: Accept in part
- Michael and Maria-Luisa Lowe – Submission point # 4.1 & 4.4: Reject
- CD Strong, PS Fry, NA McFadden and PJ McFadden– Submission point # 5.1 & 5.4: Reject
- DJ Sutton, LA Sutton, SJ Sutton – Submission point # 6.1: Accept & 6.2: Reject
- RG Griffin Children's Trust – Submission point # 7.1: Reject
- KN & DG Smith – Submission point # 8.1: Reject
- Peter and Andrea Hamilton – Submission point # 10.2: Reject
- Tasman District Council – Submission point # 11.10: Accept
- Department of Conservation – Submission point # 12.3: Accept
- Julian Raine – Submission point # 14.1: Reject
- Michael and Maria Luisa Lowe - Further submitter 2, 4, 12 & 26: Reject
- Further submitter 14 – P & A Hamilton: Reject
- PS Fry, CD Strong, NA McFadden and PJ McFadden - Further submitter 3, 6, 13 & 27: Reject



- RG Griffin Children's Trust - Further submitter 28: Reject
- KN and DG Smith - Further submitter 29: Reject

#### Modification to Proposed Plan Change 18

<i>River</i>	<i>Reach</i>	<i>Values</i>	<i>Esplanade requirements</i>
<u>Saxton Creek</u>	<u>From south eastern boundary of Saxton Field Recreation Reserve to Champion Road.</u>	<u>Conservation</u> <u>Access</u> <u>Hazard mitigation</u> <u>Recreation</u>	<u>20m on both river banks, except:</u> <ul style="list-style-type: none"> <li>• <u>where adjoining land already has subdivision approval for a different esplanade reserve width prior to this rule being notified (28 August 2010)</u></li> <li>• <u>in the case of the property formerly legally described as Lot 3 DP5665, Lot 2 DP361671 and Lot 1 DP15531 which has a subdivision approval (RM 065150) then as set out in that resource consent and its supporting plans, and</u></li> <li>• <u>where Saxton Creek adjoins the right of ways to 3A, 3B, 3C and 3D Hill Street (Lot 4, Lot 3, Lot 2 and Pt Lot 1 DP 8212) respectively. In this case a 5m esplanade reserve width will apply to the river bank on the right of way side.</u><sup>PC18</sup></li> </ul>

#### Decisions on Topic 3 - Amendments to and extent of Services Overlay

##### DECISIONS REQUESTED BY SUBMITTERS

<b>Submitter Name</b>	<b>Submission Number</b>	<b>Statement Number</b>	<b>Decision Requested</b>	<b>Further Submissions</b>
Paul S Winter	3	1	That Plan Change 18 embody specific Service Overlay requirements of all undeveloped land down stream or affecting any and all of 44 Hill Street, and that council staff carry out the necessary investigation prior to	

**NAMES AND ADDRESSES OF PERSONS TO BE SERVED**  
**WITH A COPY OF APPEAL NOTICE**

Name	Address
Nelson City Council	C/- Matt Heale/Peter Rawson Nelson City Council PO Box 645 NELSON 7040
Tiakina Te Taiao Limited	C/- Hugh Briggs PO Box 13 NELSON 7040
Michael & Maria-Luisa Lowe	C/- McFadden McMeeken Phillips Solicitors PO Box 656 NELSON 7040
CD Strong, PS Fry, NA McFadden & PJ McFadden	C/- McFadden McMeeken Phillips Solicitors PO Box 656 NELSON 7040
DJ Sutton, LA Sutton & SJ Sutton	C/- McFadden McMeeken Phillips Solicitors PO Box 656 NELSON 7040
KN & DG Smith	C/- J McNae Staig & Smith Limited PO Box 913 NELSON 7040
Wakatu Incorporated (Successor in title to part of Smith landholding)	C/- J Hilson Planscapes 317 Hardy Street NELSON 7010
Peter & Andrea Hamilton	C/- McFadden McMeeken Phillips Solicitors PO Box 656 NELSON 7040
Tasman District Council	C/- Steve Markham Manager Policy Tasman District Council Private Bag 4 RICHMOND 7031
Department of Conservation	C/- Jo Gould Community Relations Manager Nelson/Marlborough Conservancy Department of Conservation Private Bag 5 NELSON 7040
Julian Raine	C/- Tony Quickfall Via Strada PO Box 1583 NELSON 7040