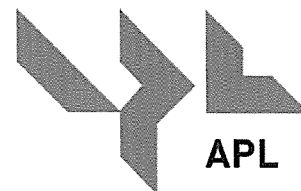


Property, Project, Resource Management, Valuation

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File Ref: 12080

10th August 2012

Policy Manager
Nelson City Council
PO Box 645
Nelson

RECEIVED

14 AUG 2012

NELSON CITY COUNCIL
Records

Dear Sir,

NOTICE OF APPEAL: NELSON CITY COUNCIL PLAN CHANGE 18

In accordance with Clause 14(5) of Schedule 1 to the Resource Management Act 1991, please find enclosed a hard copy service of a notice of appeal against a decision of Nelson City Council on Plan Change 18. The Council was served with an electronic notice of this appeal on August 10th 2012, via email to Matt Heale.

Yours faithfully

**TONY QUICKFALL
DIRECTOR**

Email: tony.quickfall@aplproperty.co.nz

In the Environment Court

between

Julian Raine

Appellant

and

Nelson City Council

Respondent

**Notice of Appeal under Clause 14(1) of Schedule 1 of the Resource
Management Act 1991**

TO: The Registrar
Environment Court
PO Box 5627
Wellington

Lodged via email kalameli.aspinall@justice.govt.nz

1. I, Julian Raine, appeal against part of a decision of Nelson City Council Plan on the following plan change:

Plan Change 18 – Nelson South

2. I made a submission on that plan change.
3. I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. I received notice of the decision on 30 June 2012.
5. The decision was made by Nelson City Council.
6. The decision that I am appealing is:

The decision to amend Appendix 6 of the Nelson Resource Management Plan (Riparian and Coastal Margin Overlay – Table 6.2, Priority Values) and to impose a 20 metre esplanade reserve on both banks of Saxton Creek from the south eastern boundary of Saxton Field recreation reserve to Champion Road

7. The reasons for the appeal are as follows:
 - a. That part of my land that Saxton Creek runs through is zoned Rural (Lot 2 DP14458, Certificate of Title NL9B/1247). The creek passes through approximately 235m of Rural Zone land, owned by me.
 - b. The rural zoning on my land remains, and has not been amended or rezoned under Plan Change 18 (which rezoned other land from Rural to Residential).
 - c. Plan Change 18 imposes a 20 metre esplanade reserve along both sides of Saxton Creek running through my land.

- d. The decision on the Saxton Esplanade reserve records the following:

Paragraph 94: *“With the proposed rezoning, in its upper reaches within PC18 the stream will be residential on both sides and then as it travelled down it would enter the Rural Higher Density Small Holdings Area one on one side and residential on the other (true left bank)”.*

Paragraph 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.*

Paragraph 102. *“Mr Petheram was emphatic that a corridor with a 15 metre total width was inadequate to produce a resource of value to the community”.*

Paragraph 121. *“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.”*

Paragraph 135. *“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 are a measured [sic] 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.”*

Paragraph 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...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.

Paragraph 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..."*

Paragraph 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 Resource Management Act."*

- e. The decision fails to acknowledge, record or have any regard to the creek passing through land which is zoned Rural, and owned by me.
- f. The decision has incorrectly recorded the full length of the stream as being residential on both sides, and this has influenced the decision.
- g. The decision relies on advice from Council staff which is wrong and which fails to account for the portion of the Creek passing through a Rural Zone.
- h. The decision confirms a requirement for 20 metres on either side of the creek for its full length:
 - despite finding that such a setback is reserved for "significant water bodies" (Saxton Creek could not be described as a significant water body); and
 - despite finding that *"The more appropriate comparative is Orphanage Creek which has a 32 metre corridor"*.
- i. The Saxton Creek esplanade provisions under Plan Change 18 make no exception for subdivision not involving any residential activity (such as a boundary adjustment) within the Rural Zone.
- j. The effect of the esplanade reserve under Plan Chang 18 is to require, under section 230(3) of the Resource Management Act, a 20 metre esplanade reserve on both sites of Saxton Creek in a Rural Zone, where any subdivision (such as a boundary adjustment which may not have any residential use) results in an allotment below 4 hectares.

- k. In effect Council would compulsorily acquire, as esplanade reserve, productive rural land being 40 metres in width and for the length that it passes through my Rural land (approximately 235 metres - an area of 9400m²), for purposes associated with residential amenity, a residential level of service and a residential zone, without compensation.
8. I seek the following relief:
Either:
- a. Amend Appendix 6 (table 6.2) of the Nelson Resource Management Plan so as to provide an exception to s230(3) of the Resource Management Act by waiving the requirement for any esplanade reserve through my land (Lot 2 DP14458) ; or
 - b. Amend Appendix 6 (table 6.2) of the Nelson resource Management Plan so as to provide an exception to s230(3) of the Resource Management Act by reducing the width of the esplanade reserve through my land (Lot 2 DP14458) to 5 metres on either side; or
 - c. Such other alternative or consequential relief as may give effect to my appeal.
9. I attach the following documents to this notice:
- Attachment 1: a copy of my submission
 - Attachment 2: a copy of the relevant decision
 - Attachment 3: any other documents necessary for an adequate understanding of the appeal: a copy of my certificate of title
 - Attachment 4: a list of names and addresses of persons to be served with a copy of this notice.

Signature of person authorised to sign on behalf of appellant



(Tony Quickfall)

Date 10 August 2012

Address for service of appellant:

Contact person: Tony Quickfall
APL Property
PO Box 1593
Nelson 7040

Telephone: 03 546 4256 / 027 46 4256
Fax/email: tony.quickfall@aplproperty.co.nz

Note to appellant

You may appeal only if—

- you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and
- in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed.

The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see form 38*).

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further 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 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service 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 and or 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 in Auckland, Wellington, or Christchurch.

Attachment 1: a copy of my submission

Plan Change 18: Nelson South Submission

Julian Raine

October 2010





This document has been prepared for the benefit of Julian Raine. No liability is accepted by ViaStrada Ltd, any of its employees or sub-consultants with respect to its use by any other person.

Quality Assurance Statement			
ViaStrada 19 Halifax St PO Box 1583 Nelson New Zealand Phone: (03) 546 4256 Fax: (03) 546 5279 www.viastrada.co.nz	Prepared by: Adele Burbidge adele@viastrada.co.nz		Date: 10/10/2010
	Reviewed by: Tony Quickfall		21.10.10
Project Number: 12080 Project Name: Raine Plan Change 18 Submission Status: Final Date: 21 October 2010			



Submission on Plan Change 18: Nelson South

To: Plan Change Submissions

Nelson City Council

PO Box 645

Nelson 7040

Submitter: Julian Raine

Address: 465 Suffolk Rd, Stoke

Phone: 547 5338

Address for all Correspondence: Tony Quickfall
Viastrada Nelson
PO Box 1593
Nelson 7040

Phone: 546 4256

The submitter does wish to be heard.

The submitter will consider presenting a joint case with others who have a similar submission.

Signed:

.....

As duly authorised agent of the submitter

Date:

Background

1. The submitter owns substantial rural land that is adjacent to, and within the area affected by plan change 18 (Lot 2 DP 14458 – refer attached plan).

Submission

Submission in support

2. The Raine family support in part plan change 18. Proposed changes to the existing Rural zoning and the application of the services overlay are supported as it encourages development, permits higher densities, will help meet future residential demand, and provides for the efficient use of the land resource.
3. However, the submitter wishes to express disappointment that an overall structure plan for the area (as proposed during consultation) has not been incorporated into the plan change. The concern is that development of this area will be undertaken in an ad-hoc manner rather than in a more integrated way.

Submission in opposition

Esplanade Reserve

4. **The proposed amendments to Appendix 6 Riparian and Coastal Margin Overlay are opposed.** The plan change proposes a 20 metre wide esplanade reserve on both sides of Saxton Creek, from the south eastern boundary of Saxton Field Recreation Reserve to Champion Road. The amendments limit the reduction in the esplanade where subdivision consent is already granted and where the creek joins specified right of ways.
5. Section 230 of the RMA requires a 20m esplanade reserve on either side of a river where any allotment of 4 hectares or less is required, unless a district rule waives or reduces the requirement. Resource consent can be sought for any reduction below 20m.
6. Section 77(1) provides for a rule in a district plan which reduces (or increases) the width of an esplanade reserve, which waives the need for an esplanade reserve altogether, or which allows for an esplanade strip in place of an esplanade reserve.
7. The primary purposes for esplanade reserve under s 229 RMA are the protection of conservation values (including mitigating natural hazards), and enabling public access and recreational use.



8. The effect of the plan change is to require, on any subdivision below 4ha, a 20 metre esplanade reserve along both sides of the creek on the submitters' property.
9. In this instance, the submitter considers a 20m width is excessive and unwarranted for the following reasons:
 - The 20 metre reserve required for the remainder of the specified length of Saxton Creek reduces development opportunities and is inconsistent with what has already been allowed. The esplanade reserve requirements will affect the potential design and layout of any future subdivision adjacent to Saxton Creek.
 - Limited conservation and public access values. Saxton Creek has water classification "E", priority "3" conservation values, and "second" priority for improvement, as indicated in the NRMP (Appendix 28). Associated land uses and values for Saxton Creek are listed as:
 - Water storage dam
 - Irrigation
 - Stock water
 - Stormwater drainage
 - Sensitivity of Waimea Inlet receiving environment

The "priority 3" category states "*these include small first order streams which may need some protection to maintain water quality*". Water classification "E" is described as "very degraded" with no water quality criteria.

 - Alternative public access is available to Saxton Creek from Saxton's Field.
 - Based on the NRMP water classifications, a 20m esplanade reserve is excessive and not justified for water quality purposes. Nor is a 20m reserve justified for any of the RMA purposes (public access, conservation values, or hazard mitigation).
10. In addition, the section 32 report identifies water quality improvements which will arise from a 20m esplanade reserve. These benefits are overstated. Water quality improvements will arise primarily from changes in land use (from rural to residential) and from the freshwater rules which require stock fencing, rather than from any esplanade reserve. Further, an esplanade reserve of 20m in width is not necessary for any water quality benefits. A reserve of lesser width (5m) could have equal benefits if planted and fenced.
11. The submitter's preference is a total waiver of the requirement for esplanade reserve along that part of Saxton Creek on the submitter's property (Lot 2 DP 14458).

12. In the event of a total waiver not being agreed to, the submitter would support, as an alternative, a reduction of the 20m esplanade reserve requirement to 5m along the submitter's property. This is consistent with what has already been consented and better reflects the associated values of Saxton Creek.

Structure Plan

13. The submitter is concerned that in the absence of a structure plan, development of the rezoned areas will be undertaken in an ad-hoc manner resulting in poor urban development and lack of integration. Although a structure plan was prepared as part of the planning process, Plan Change 18 does not propose any underlying structure plan for the rezoned area. The result will be development which is not integrated.
14. The plan change should be amended to include a structure plan, along the lines of that prepared during the consultation process, with a requirement for any development to conform with the structure plan.

Relief Sought

15. The submitter seeks, **as first preference**, to delete any requirement for esplanade reserve from Lot 2 DP14458, and to amend Appendix 6 as follows to add a new bullet point:

Saxton creek esplanade requirements:

20m of both river banks except:

- Where Saxton Creek adjoins Lot 2 DP14458. In this case no esplanade reserve is required.
- *where adjoining land already has...*

16. As **second preference**, the submitter seeks to delete the 20m esplanade requirement and replace with a 5m reserve as follows:

20m on both river banks except:

- *Where adjoining land already has subdivision approval for a different esplanade reserve width prior to this rule being notified (28 August 2010),*
- *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 the right way of side.*



- Where Saxton Creek adjoins Lot 2 DP14458. In this case a 5m esplanade reserve will apply.

17. The submitter seeks to amend Plan Change 18 to incorporate a structure plan (similar to or along the lines of the structure plan titled "Figure 3" in the section 32 analysis), and to require any development in the area covered by the plan change to conform with the structure plan.

Attachment 2: a copy of the relevant decision

NELSON CITY COUNCIL

Nelson Resource Management Plan

Proposed Plan Change 18

Nelson South

Decisions of Commissioners Addressing Submissions on the Plan Change

Commissioners

Camilla Owen (chair)

Aldo Miccio

Ali Boswijk

Kate Fulton

Mike Ward

Decisions notified

30 June 2012

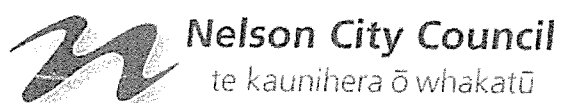


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COMMISSIONERS' DECISION ON PROPOSED PLAN CHANGE 18 NELSON SOUTH
– NELSON RESOURCE MANAGEMENT PLAN

INTRODUCTION

1. Under section 34A Resource Management Act 1991 we were appointed by the Nelson City Council on 17 May 2011 as Hearings Commissioners, to hear, consider and decide the submissions and further submissions on proposed Plan Change 18 to the Nelson Resource Management Plan.
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.
3. The purpose of the proposed Plan Change rezoning and controls is to provide for future growth through establishing a larger residential zone with a 'feathering' of this zone into the adjoining rural zone. Accordingly, the existing Rural Zone will be replaced with a Rural – Higher Density Small Holdings Area, which will cover a portion of 187 Champion Road and 3A, 3B, 3C and 3D Hill Street. The current Rural zone covering 3A-3D Hill Street is already developed as a lifestyle block subdivision. The remainder of the existing Rural zone will be replaced with Residential zoning.
4. The Proposed Plan Change was publicly notified on 28 August 2010. Submissions closed on 1 November 2010, and 14 submissions were received. The decisions requested were summarised and notified for further submissions on 11 December 2010. 29 further submissions were received, all from submitters who made the original submissions. Submissions in support, conditional support and in opposition were received.
5. The submissions and further submissions focussed on the detail of the Proposed Plan Change, with several items receiving attention. The issues were summarised as follows:
 - Topic 1: Clause 2.1.2 of Plan Change (NRMP Appendix 6 - Table 6.1 Riparian Values)
 - Topic 2: Esplanade Reserve width
 - Clause 2.1.3 of Plan Change (NRMP Appendix 6 - Table 6.2 Priority Values)
 - Planning maps
 - Section 32 of RMA
 - Topic 3: Amendments to and extent of Services Overlay
 - Topic 4: Extent of Residential Zone
 - Topic 5: Extent of Rural Higher Density Small Holdings Zone
 - Topic 6: Other amendments to planning maps
 - Topic 7: New Zealand Fire Service Commission Submission

- Topic 8: Road links / connections
- Topic 9: Financial Contribution provisions
- Topic 10: Structure Plan
- Topic 11: Potential rates increase

6. Submitters presented evidence during the course of the hearing and we thank all parties for their contribution to the Plan Change process, not only during the hearing but also during the extensive consultation and plan development stages which have covered a number of years.

PROCEDURAL MATTERS

7. The Plan Change was heard on 31 October 2011 and 1 November 2011 at the Nelson City Council offices. Two site visits were carried out by the Hearing Committee, the first on 26 October 2011 and the second on the morning of 1 November 2011.
8. In this decision we have made recommendations relating to the zoning of land, and acknowledge that these district-wide plan provisions that apply to that zoning are concurrently subject to review under Plan Change 14 (Residential Subdivision, Land Development Manual and Comprehensive Housing). The decisions on both Plan Changes (as well as on Plan Change 17, Enner Glynn) are to be released together. In light of Plan Change 14 we have reread our decision to ensure the plan changes are integrated and there are no matters we need to address again as a result of that Plan Change.

OFFICER'S REPORT

9. A comprehensive Planning Officer's Report (Section 42A Report) produced by Nelson City Council Policy Planner Mr Rawson was prepared for the hearing and provided to submitters and further submitters. Mr Rawson's Section 42A report provides a description of the Proposed Plan Change, discusses the statutory background of the RMA and the relevant context of the Regional Policy Statement and the Nelson Resource Management Plan.
10. The Report also provided officer's responses and recommendations in relation to the various general submission points included in the submissions and further submission, and in relation to the submissions on specific items in the Proposed Plan Change.
11. In response to specific submission points, incorporated within the Section 42A report was expert opinion from Nelson City Council staff provided by:
- Mr Andrew James – Principal Adviser Transport and Roading;
 - Mr Andrew Petheram - Principal Adviser Reserves and Community Facilities;
 - Mr Phil Ruffell - Principal Adviser Utilities; and
 - Dr Paul Fisher - Monitoring Officer (with expertise in ecology).
12. 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 prepared.

13. Mr Rawson has assessed the proposal against the relevant statutory provisions and concludes that it satisfies these requirements.

HEARING

14. The following parties appeared at the hearing:

- Mr Mike Weir (planner) and Mr Rowan Oliver (transport planner) for the New Zealand Transport Agency;
- Mr Nigel McFadden on behalf of M and M Lowe; CD Strong, PS Fry and NA and P McFadden (the McFadden Family Trust); and P and A Hamilton and C Hardiman; with expert evidence from Mr Mark Lile (planner);
- Mrs Jackie McNae (planner) on behalf of the RG Griffin Children's Trust; and K and D Smith;
- Mr Jock Sutherland (in person);
- Mr Tony Quickfall (resource management consultant) on behalf of Mr Julian Raine; and
- Ms Mary Honey on behalf of the Tasman District Council, with evidence from Mr Gary Clark - Transportation Manager for Tasman District Council and Mr Steve Markham - Policy Manager for Tasman District Council.

15. In addition, although the New Zealand Fire Service Commission did not attend the hearing it provided a letter dated 26 October 2011 which was tabled at the hearing, expressing its position having seen the Section 42A Report.

16. Council officers in attendance were:

- Mr Peter Rawson - Planning Advisor and author of the Section 42A report;
- Mr Andrew James - Principal Adviser Transport and Roading;
- Mr Andrew Petheram - Principal Adviser Reserves and Community Facilities;
- Mr Phil Ruffell - Principal Adviser Utilities;
- Dr Paul Fisher - Monitoring Officer;
- Mr Shane Overend – Senior Engineering Officer – Development;
- Mr Matt Heale - Principal Adviser, Resource Management Planning; and
- Ms Lisa Gibellini – Planning Adviser and Administrative Support for the hearing.

HEARING COMMITTEE'S DECISION

17. The Committee's decisions on submissions are set out in the following way:

- Overview of the key issues and our recommendations;
- Overall recommendation;

- Recommendations on submission points grouped by topic and referenced to each submitter;
- A further evaluation of alternatives, benefits and costs as per section 32(2)(a) RMA; and
- Appendix 1: Consolidated Amendments to Plan Change 18 (Plan Text and Maps).

Summary of the Key Issues and our Decisions

18. For consistency we make our decisions grouped as per the topic headings used in the s42A report and set out in paragraph 10 of this decision. It should be noted that this section of the decision does not cover every submission or all reasons in detail. It is designed to give an *overview* of the extent of the issues and the general intent of the recommendations.

Topic 1: Clause 2.1.2 of Plan Change (NRMP Appendix 6 - Table 6.1 Riparian Values)

19. The proposal as notified is to add the value "*recreation*" to Saxton Creek in table 6.1. The purpose of identifying riparian values in that table is "*to provide information on relevant riparian values of particular margins, to be taken into account at the time any resource consent or plan change is considered.*" (refer Appendix 6.1.i).
20. The addition of "*recreation*" as a value of Saxton Creek will reflect the role that future esplanade reserves taken as part of subdivision adjoining the creek will be used for, which is likely to include recreational walkway/cycleway connections, as well as passive recreational opportunities such as viewing and seating areas.
21. The Department of Conservation sought further amendments to the existing values of Saxton Creek, but the Committee considers that it does not have jurisdiction to make these alterations.

Topic 2: Esplanade Reserve width

22. Whilst Tiakina Te Taio sought the retention of the proposed amendment to Table 6.2 of Appendix 6, further submissions from adjacent landowners opposed this provision. No submitter sought the alteration of the 5 metre esplanade reserve on the 3A-3D Hill Street side of Saxton Creek, so the committee had either to retain it at 5 metres or delete the provision. We concluded it should be retained, as it gave the correct signal that esplanade reserves on both banks of Saxton Creek are important and the opportunity should not be lost to establish a reserve at the time of subdivision.
23. The committee agreed with the Sutton submission that where adjoining land already has subdivision approval for a different width esplanade reserve prior to the rule being notified then the width specified in the consent should be the width specified in the Plan, for reasons of consistency.
24. Two other submitters sought that the esplanade reserve width should be a *corridor* of 15 metres, including the stream, whilst the Hamiltons sought a 5 metre width over their property, and Mr Raine sought that no esplanade reserve be applied. In contrast, the Tasman District Council supported the ability to take an esplanade reserve along both banks, as did the Department of Conservation. Having considered the range of relief sought in submissions, the statutory purposes of an esplanade reserve, how Saxton Creek is treated downstream of the land within PC18 and upstream where it crosses into the jurisdiction of the Tasman District Council, as well as the practical requirements of connectivity of walking and/or cycling tracks and the ability to undertake riparian plantings, the committee has concluded the retention of a

20 metre esplanade reserve along both banks of Saxton Creek, where this is possible, is the best outcome, as it provides the greatest opportunity for the construction of usable walkway and cycleway linkages and also allows riparian planting to be undertaken. The committee specifically notes that the actual widths will be decided at the time of subdivision consent, but the opportunity to establish effective esplanade reserves should not be unduly limited by the Plan provision.

Topic 3: Amendments to and extent of Services Overlay

25. Two submitters requested that the Services Overlay be deleted, whilst the Tasman District Council sought its retention. We were advised by the Reporting Officer (with advice from Nelson City Council's Senior Engineering Officer – Development) that the Services Overlay was applied over the Rural Higher Density Smallholdings Area zone to ensure that when it is subdivided servicing considerations, including the adequate provision of water, the control of effluent discharge from onsite wastewater treatment systems, and roading connectivity can all be considered at the time of applying for a resource consent.
26. We do not consider the Overlay is required for all these items, but consider that the importance of roading connectivity does justify the application of the Services Overlay to this zone.
27. Mr Winter's concern regarding service connections to 44 Hill Street is answered by the fact that existing connections could be provided to 44 Hill Street from existing services on the boundary. The committee was of the view that the most efficient method of providing infrastructure services to 44 Hill Street is through the subdivision process. Whilst subdivisions on surrounding land could affect 44 Hill Street, again this is a matter which is appropriately addressed at the subdivision consent stage for those blocks of land.
28. We recommend that the proposed Services Overlay remains as notified.

Topic 4: Extent of Residential Zone

29. All submissions on this topic sought the retention of the proposed residential zoning as shown in PC18.
30. The residential zoning as proposed is consistent with both the existing and potential future character of the area, and complements the Nelson Urban Growth Strategy and the policy direction of the Regional Policy Statement and the Nelson Resource Management Plan.

Topic 5: Extent of Rural Higher Density Small Holdings Area Zone

31. All submissions and further submissions supported the proposed zoning.
32. The rezoning of 3A-3D Hill Street north and the upper portion of 187 Champion Road to a Rural Higher Density Small Holdings zone is appropriate, and complements the Nelson Resource Management Plan, the Nelson Urban Growth Strategy and the Regional Policy Statement. As currently developed, particularly 3A-3D Hill Street, their character is consistent with such a zoning.
33. The zone would also act as a buffer between the Residential zoned land on the other side of Saxton Creek and the Rural zoned land north eastwards.

Topic 6: Other amendments to planning maps

34. The Department of Conservation sought the retention of existing Heritage and Landscape trees, Riparian and Land Management overlays on the land covered by

Plan Change 18. These overlays are not altered by the Plan Change. The Committee considers it is appropriate that these overlays remain in place.

Topic 7: New Zealand Fire Service Commission Submission

35. The New Zealand Fire Service sought provision for compliance with New Zealand standards for fire fighting water supply and installation of water sprinkler and sought that the Council "*provide assurance*" that future reticulated water supply services in the area subject to PC18 are able to meet SNZ 4509:2008, and that any development undertaken in the area that is not connected to the reticulated water supply will still comply with that standard.
36. As new subdivision consents involving both reticulated and non-reticulated supplies are evaluated against the Nelson City Council Land Development Manual which specifically references SNZPAS4509, the subdivision stage is the best time to ensure compliance with the standard and that in terms of the Plan Change it is unnecessary to provide any further assurance of compliance.

Topic 8: Road links/connections

37. This topic is road locations which are 'indicative', they are not exact. It is the connection which is important, not exactly where the road is placed. This allows flexibility in both location and design of the road when it is eventually constructed, which may be some years away. Notwithstanding the advantage of showing likely connections, the committee considers they should only be shown where there is a real degree of certainty, firstly, that they will be required in this general location and, secondly, that enough is known about the potential link to justify its inclusion in the Plan.
38. An indicative road between John Sutton Place and Hill Street North should be shown on the planning map as the location of and need for this link have a high degree of certainty.
39. The following requests for relief were outside our jurisdiction and therefore could not be granted:
- Link from Hill Street North through to Suffolk Road/Saxton Road corner.
 - Link from 3A – 3D Hill Street over Smith land to Champion Road.
40. For all but the link from John Sutton Place to Hill Street North we have insufficient information to determine the appropriate location of the suggested routes, their viability or cost. Therefore, showing them as indicative roads through the Plan Change 18 process would be premature.
41. For the links to Champion Road from 187 Champion Road (RG Griffin Children's Trust) and from 167 Champion Road (Smith land) we consider that Plan Change 18 does not prevent such links being established in future.
42. The '*movement link ... to the proposed Saxton Creek greenway*' sought in the TDC submission over land adjacent to the Hamilton land and owned by BW Kearns, is not necessary as access into the esplanade reserve from adjacent subdivisions will be determined at the time of subdivision.

Topic 9: Financial Contribution provisions

43. Both submitters sought a *financial contribution* regime that would allow the Nelson City Council to have the option of imposing conditions on resource consents allowing, respectively, the payment of financial contributions towards the cost of any upgrades

to State Highway 6, and to offset the adverse affects of development attributable to the Plan Change on the transport network of the Tasman District Council. Thus both submissions focussed on the payment of financial (not development) contributions to third parties (i.e. not the developer paying a financial contribution to the Nelson City Council). However, the submissions were overtaken by events and essentially this matter has been resolved.

44. However, between the lodging of these submissions and the hearing the joint undertaking by the Tasman District Council, the Nelson City Council and the New Zealand Transport Agency of a Project Feasibility Report on the 'Three Roundabouts – Saxton Field Transportation Study' has meant that events have overtaken the submissions. The outcome of this study is the Officer's recommendations (on behalf of all three bodies) unanimously recommending development contributions under the Local Government Act, rather than financial contributions under the RMA.
45. Following the completion of the Project Feasibility Report, the next step is a Scheme Assessment Report to investigate the project in further detail. From that Scheme Assessment Report a discussion on development contributions and the relative contributions of the Nelson City Council as compared to the Tasman District Council, and a share (if any) being provided to the New Zealand Transport Agency, can then occur. It is premature to undertake any sort of discussion without that further information.
46. The committee recognises that the development contribution process sits outside this Plan Change process but takes the opportunity to recommend to the Nelson City Council that it approve the next stage of investigation (i.e. the Scheme Assessment Report) to investigate the project in further detail.

Topic 10: Structure Plan

47. It is unnecessary to incorporate a structure plan in Plan Change 18 for a variety of reasons, including the fact that the Residential and Rural Higher Density Small Holdings zones in the Plan Change reflect the existing character of the area, and previously approved subdivisions have already confirmed much of the roading pattern within the relevant areas of the Plan Change.
48. These zone changes largely reflect the zoning outlined in the concept plan, and much of the area covered by the structure plan has already been developed, such that it is unnecessary to control development through the imposition of a more detailed structure plan. The remaining concepts that would be shown by a structure plan can in effect already be achieved through the mix of zoning, overlays and existing operative objectives, policies and rules.
49. The relief is outside the scope of the notified Plan Change so that in any event the committee has no jurisdiction to alter the Plan in this regard.

Topic 11: Potential rates increase

50. Submitters sought that if their land is rezoned there should be a rating differential applied to the land until physical work for a subdivision is undertaken by the land owner. This is to offset the likely increase in rates resulting from an increase in land value due to rezoning, because Nelson City Council rates on land value.
51. The correct forum for addressing the rates impact is when Council's ratings policy is struck, which is part of the Annual Plan process. It is outside the jurisdiction of this committee to address it as part of Plan Change 18.

Section 32 Report

52. A very small number of amendments were sought by submitters to the s32 report and our decisions on these are addressed in detail from paragraph 237 of this decision. Additionally section 32(2)(a) of the RMA requires that the local authority must make a further evaluation under section 32 before making a decision on the Plan Change.

Recommendations on submission points

53. For the ease of all those concerned we have decided to follow the structure of the section 42A report in preparing this Hearing Committee decision.
54. Each of the submission points and the decision sought is outlined in turn and are grouped by topic as per the original officer's report. The submissions and further submissions are identified. This is followed by the Hearing Committee's decision on each submission point; along with the reasoning for the recommendation. The changes to the Plan (if any) are then indicated.
55. A full copy of the Plan Change (text and maps), as amended through this recommendation, is included in **Appendix 1**. This uses tracked changes to highlight the recommended amendments.
56. A further evaluation of alternatives, benefits and costs as per section 32(2)(a) RMA is included at the end of this decision.

Overall Decision

57. Having considered the requirements of the RMA and the issues raised through submissions, the Hearing Committee considers that the Plan Change (with the amendments contained within this decision) better meets the purpose of the RMA than the present zoning. It will allow the Council to manage future development of the natural and physical resources within the Plan Change area concerned in a way and at a rate that meets the needs of present and future generations.
58. The Committee has decided that Plan Change 18 – Nelson South to the Nelson Resource Management Plan, as amended by the Committee in this report, be adopted and that this decision be publicly notified.
59. This decision will then, in accordance with the First Schedule, Clause 10 of the RMA, be publicly notified and served on the submitters in accordance with the First Schedule, Clause 11. If no appeals are received within 30 working days of the decision being notified the Plan Change will become operative in full.

FORMAT OF HEARING COMMITTEE DECISIONS ON AMENDMENTS TO THE PLAN

60. As stated in paragraph 54 above, this decision contains the submission points, further submissions, Hearing Committee discussion and decisions, on a topic by topic basis. Where the decision results in changes to Plan text it is shown as changes to the operative Plan text in Appendix 1 in the following manner:
- 'Normal' text applies to operative provisions which are to remain unchanged;
 - 'Underline' black text applies to proposed new provisions notified as part of the Plan Change which are unchanged as part of the decision.
 - '~~Strikethrough and underlined~~' text applies to notified text proposed to be deleted.

- 'Underline' red text applies to text inserted as a result of decisions on submissions
- '*Italic*' text applies to instructions (therefore are non statutory).

61. In order to allow comparison between the notified text and the Hearing Committee's decisions Appendix 1 of this decision contains a 'tracked changes' version of the notified Plan text.

DECISIONS SUMMARY

62. As the persons with delegated authority to hear and determine submissions on Proposed Plan Change 18 to the Nelson Resource Management Plan, we have given careful consideration to the generalities and details of the Proposed Plan Change, the advice from Council officers, the nature and content of the written submissions and further submissions, the evidence and/or verbal submissions of submitters who appeared at the hearing, and have determined pursuant to clauses 10(1) and (2) and Clause 16(2) of the First Schedule of the RMA:

- that Proposed Plan Change 18 be approved subject to the amendments set out in this Report and compiled in Appendix 2;
- to adopt the Section 32 Report included in the Planning Officer's Report, without modification;
- to accept in whole or in part, or to reject the submissions; and
- 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.

Consolidated Amendments to Plan Change 18

63. Appendix 1 shows the text of Plan Change 18 as notified, with further changes as a result of the decisions set out in this report shown as tracked changes in colour.

Background

64. Proposed Plan Change 18 resulted from an ongoing consultative procedure by Nelson City Council over several years. Nelson City Council completed the Nelson Urban Growth Strategy 2006 (NUGS) which considered areas of Nelson which could be suitable for accommodating future residential growth. The Stoke Foothills, which includes Nelson South, were identified as being suitable for some increased level of development as the area is adjacent to residential land, and itself has approximately 60% already developed in a residential character. Finally, it is close to existing infrastructure and communities.

65. The Proposed Plan Change relates to land on the boundary between Nelson City and Tasman District and is bounded by Champion Road, Hill Street North and Saxton Field. The Plan Change seeks to rezone land from Rural to Residential and from Rural to Rural – Higher Density Small Holdings Area, and to apply a Services Overlay to the proposed newly zoned land. It also seeks to alter the Riparian Overlay provisions of Appendix 6 of the Nelson Resource Management Plan in relation to Saxton Creek to provide an esplanade reserve of varied width on both sides of the western arm of Saxton Creek, the exact width of which will finally be established at the time of subdivision consent.

66. The changes to the Nelson Resource Management Plan that are proposed are:

PC amendment	Provision	Change
2.1.1	Chapter 12 Rural zone, RUr.2.11b	New explanatory paragraph.
2.1.2	Appendix 6, Table 6.1	Add "Recreation" to the values listed for Saxton Creek.
2.1.3	Appendix 6, Table 6.2	Add "Saxton Creek" to the table of priority values and identify, respectively, 20m and 5m Esplanade Reserve requirements.
2.1.4	Planning Maps 32 and 35	Proposed Residential Zone; Proposed Rural Higher Density Small Holdings Area; add Services Overlay over both new zones.

67. It was recognised by Council and the landowners concerned that the current operative zoning pattern does not provide for the level of development envisaged through the Nelson Urban Growth Strategy (NUGS), and thus no submitters opposed the proposed rezoning of the land.
68. Plan Change 18 makes no alterations or amendments to the issues, objectives, policies, rules or other methods relating to either the Rural Higher Density Smallholdings Are zone or to the Residential zone.

Submissions and Format of Decisions

69. The submissions and further submissions received related to a small number of specific issues.
70. The decisions which follow are grouped accordingly, and follow the order and the numbering as set out in the Officer's Report, and in the Decisions Summary Table set out above. A brief discussion and reason is provided in relation to each decision.

DECISIONS AND REASONS FOR DECISIONS

Decisions on Topic 1 – Clause 2.1.2 of Plan Change (NRMP Appendix 6 - Table 6.1 Riparian Values)

DECISIONS REQUESTED BY SUBMITTERS

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
Tiakina te Taiao Limited	1	1	Retain proposed amendment to Appendix 6	Further submitter 16 - PS Fry, CD Strong, NA McFadden and PJ

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
			(Table 6.1) - clause 2.1.2 of Plan Change.	McFadden – support in part Further submitter 17 - DJ, LA and SJ Sutton – support in part Further submitter 18 - P& A Hamilton – support in part Further submitter 19 - Michael and Maria Luisa Lowe – support in part
Department of Conservation	12	2	1. Retain the addition of the word “recreation” to Appendix 6 Riparian and Coastal Margin Overlay (Table 6.1 Riparian Values).	Further submitter 12 - Michael and Maria Luisa Lowe –oppose in part Further submitter 13 - PS Fry, CD Strong, NA McFadden and PJ McFadden – oppose in part Further submitter 14 - P& A Hamilton – oppose in part
			2. Amend the text to Appendix 6 Riparian and Coastal Margin Overlay (table 6.1 Riparian Values) as follows: a. Before the word “Access” add the word “ <u>Public</u> ”;	
			b. Before the word “Aquatic” add the words “ <u>natural</u> ”	

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
			<p><u>functioning, water quality"</u></p> <p>c. Delete the words "flood capacity" after the word "Hazard".</p>	

Discussion

71. The proposal as notified is to add the value "*recreation*" to Saxton Creek in table 6.1. The purpose of identifying riparian values in that table is "*To provide information on relevant riparian values of particular margins, to be taken into account at the time any resource consent or plan change is considered.*" (refer Appendix 6.1.i).
72. The addition of '*Recreation*' was supported by submitters 1 and 12, Tiakina Te Taio Limited and the Department of Conservation, and supported in part by further submitters 12, 13 and 14.
73. Mr Rawson's view was that the addition of "*Recreation*" as a value of Saxton Creek will reflect the role that future esplanade reserves taken as part of subdivision adjoining the creek will be used for. Mr Petheram's evidence made it abundantly clear that the role of such esplanade reserves is likely to include recreational walkway/cycleway connections, as well as passive recreation opportunities such as viewing and seating areas.
74. In addition to this amendment, the Department of Conservation sought further amendments to the existing values of Saxton Creek. The Committee considers that it does not have jurisdiction to make these alterations. The current values of the Plan were not part of Plan Change 18 and the only amendment notified was the addition of '*Recreation*'.
75. In addition, it is noted that Plan Change 14 is proposing to amend Appendix 6.1.ii by further defining "*access*" and "*hazard mitigation*". We were advised by Mr Rawson that the changes proposed by the Department of Conservation are largely addressed by the changes to Appendix 6.1.ii proposed by Plan Change 14. Furthermore, because only submissions in support have been received to those provisions within that Plan Change they are now beyond challenge. Were this committee to make changes to the values as sought by the Department of Conservation, it risks creating conflict with Plan Change 14, even if we consider we had jurisdiction to do so.

Reasons for Decision

76. We agree with Mr Rawson's view that the addition of '*Recreation*' as a value of Saxton Creek will accurately reflect the use of esplanade reserves along its banks, once they are established. Submissions 1.1 and 12.2.1 are therefore accepted. The associated further submissions 12, 13 and 14 are accepted for the same reason.
77. Submission 12.2.2 is rejected as it seeks a remedy that is beyond the scope of Plan Change 18.

Modifications to Proposed Plan Change 18

78. None.

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 first preference , 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"> <u>Where Saxton Creek adjoins Lot 2 DP14458. In this case no esplanade reserve is required.</u> Where adjoining land already has ... 	
			<p>As second preference, the submitter seeks to delete the 20m esplanade requirement and replace with a 5m reserve as follows:</p> <p><i>20m on both river banks except:</i></p> <ul style="list-style-type: none"> Where adjoining land already has subdivision approval for a different esplanade reserve width prior to this rule being notified (28 August 2010), 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. <u>Where Saxton Creek adjoins</u> 	

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>^{PC18}</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"> • where adjoining land already has subdivision approval for a different esplanade reserve width prior to this rule being notified (28 August 2010) • 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>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>^{PC18}

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

DECISIONS REQUESTED BY SUBMITTERS

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
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	

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
			any hearings for this change and that service requirements for 44 Hill street are specifically identified and embedded into Change 18. A simple generic and non-specific "services overlay" will not result in a fair and equitable outcome for Mr and Mrs Winter due to a previous lack of services planning up to this point.	
Michael and Maria-Luisa Lowe	4	2	Delete Services Overlay from 3A-3D Hill Street.	Further submitter 28 - RG Griffins Children's Trust - support in part
CD Strong, PS Fry, NA McFadden and PJ McFadden	5	2	Delete Services Overlay from 3A-3D Hill Street.	Further submitter 28 - RG Griffins Children's Trust - support in part
Tasman District Council	11	4	Retain proposed Services Overlay on the left hand planning map until all the required services, including the road network service, are provided for or upgraded.	
Tasman District Council	11	9	Retain proposed Services Overlay on the left hand planning map and apply service overlay provisions to include road network upgrading, to all Nelson South subdivision and development, until the traffic effects of the Plan Change are mitigated by upgrades to the affected parts of the surrounding road network.	Further submitter 9 - Michael and Maria Luisa Lowe – oppose in part Further submitter 10 - PS Fry, CD Strong, NA McFadden and PJ McFadden – oppose in part Further submitter 11 - P& A Hamilton – oppose in part

Discussion

151. Submissions on this topic fall into two parts:

151.1 Mr Winter's submission that PC18 embody specific Services Overlay requirements for all undeveloped land downstream or affecting any and all of his property at 44 Hill Street, and that staff carry out associated investigations, as he considered the Services Overlay would not result in a fair and equitable outcome for his property; and

151.2 Submissions from 3B – 3C Hill Street seeking the deletion of the Services Overlay from 3A-3D Hill Street (which is supported in part by a further submission from RG Griffins Children's Trust), and an opposing submission by the Tasman District Council seeking the retention of the Services Overlay.

152. Currently in the Rural zone rule table there is no rule relating to the Services Overlay. However PC14 introduces a rule providing control over the Services Overlay provisions. That Plan Change seeks to, amongst other matters, alter and strengthen the operative Services Overlay objective, policy and rule wording to ensure that the development potential of adjoining land with respect to services provision is accounted for, in that roads and services interconnect and provide sufficient capacity. Mr Rawson's staff report advised that the intent of the Services Overlay and the changes proposed by Plan Change 14 are that the provision of new or additional services to facilitate new development within the community should occur in a manner that is well planned, represents an efficient use of resources and does not create a future financial burden on the community. The administration section of the Plan, in chapter 3, has AD11.3.3 Services Overlay. It is this section which is proposed to be changed by PC14. AD11.3.3.1c is proposed to read (underlining is the additional wording from PC14):

The area is one where extension of services is required to serve other land or contribute to a network. This includes the provision of legal road and utilities up to the boundary of the development site to serve the development potential of adjoining land in the Services Overlay.

153. 44 Hill Street is adjacent to the Sutton (and others) subdivisions in the block between Champion Road and Hill Street North. An existing connection for wastewater and stormwater could be provided to 44 Hill Street from existing services on the boundary at 29 Taranaki Place. Stormwater connection could also be provided from the existing services located within the pedestrian walkway between 11 and 13 Joyce Place. The committee was of the view that the most efficient method of providing infrastructure services to 44 Hill Street is through the subdivision process, and does not support Mr Winter's submission as it is premature. It notes the advice of Mr Ruffell that Council does not evaluate detailed service needs of any individual property prior to subdivision. However it does appreciate Mr Winter's concern that his property be appropriately serviced. The Committee is satisfied that the potential is there for this to occur, depending of course on the scale and timing of the subdivision, which are both unknowns at this point. The committee also appreciated Mr Winter's point that subdivisions on surrounding land, whether downstream or otherwise, could affect 44 Hill Street, and again this is a matter which is appropriately addressed at the subdivision consent stage for those blocks of land.

154. Turning to the application of the services overlay to 3A – 3D Hill Street, this was a matter that Mr Lile gave evidence on, as well as Mrs McNae on behalf of the Smiths. Mrs McNae addressed the application of the Services Overlay to the Rural Higher Density Smallholdings Area zone proposed over the R G Griffin Children's Trust property. Mrs McNae was puzzled why a Services Overlay should apply given her view that the expectation under the Nelson Resource Management Plan subdivision rules is that land in the Higher Density Smallholdings Area will not be serviced with reticulated services. However, subrule (e)(iii) of the General subdivision rule RUr.78.2

- for a controlled activity (operative) requires that allotments in the Higher Density Small Holdings Area comply in all respects with the servicing requirements of Appendix 14; and (f) specifies that *"the proposed allotment ... includes adequate provision for effluent disposal, ..."* Where this is not achieved a discretionary activity consent is required.
155. Furthermore, Freshwater rule FW.29 encourages communal effluent disposal as a controlled activity and requires that discharges to a new on-site effluent disposal field for a single residential unit obtain a discretionary activity consent.
 156. Thus whilst Appendix 14 sets parameters for infrastructure in the Rural zone, but does not itself require connection to reticulated services, the rules make it clear that reticulated connections for rural land are to be preferred, even if the reticulation is only of the size of a communal scheme rather than connection to the city wide reticulated sewerage scheme. Making future subdivision of the Griffin land fully discretionary does not improve or alter the situation from that which applies at present.
 157. The purposes of a Services Overlay are set out in AD11.3.3. Generally, an overlay is applied to land that has one or more servicing constraints, which must be addressed before development of the area can proceed. Mrs McNae argued that where there are rural areas which are required to be serviced with reticulated services, such as Marsden Valley or Ngawhātu, then although they are also zoned rural their minimum subdivision size is reduced from 5000m² (as applies to the rural land in PC18) to 2000m². Here the lot size is large enough to provide for a non-reticulated solution for effluent disposal yet there is no benefit, either by way of lot size reduction or activity status, to this land even though it is subject to a requirement to connect. Mrs McNae was clearly of the view that the size of the lots allowed onsite effluent disposal and that water could be provided through rainwater tanks, which are normal in the Rural Higher Density Smallholdings zone throughout the district. She therefore saw the imposition of a Services Overlay as not only unnecessary but also providing a further level of control on the land.
 158. There is a potential introduction of a new rule via Plan Change 14 for subdivision within the Services Overlay. Under PC14, new rule RUr.85.3 provides that subdivision in the Services Overlay is a restricted discretionary activity, if, amongst other things, the development is provided with reticulated water, stormwater and wastewater services. Discretion is restricted to five matters, including: (v) ensuring the proposal provides for future roading and servicing connections to adjoining land in the Services Overlay. Thus rule RUr.85 under PC14 encourages communal facilities rather than individual, and whilst subdivision will become a restricted discretionary activity where the development connects to public reticulation, it will otherwise be discretionary if there is no such connection. Therefore PC14 arguably does not change the status quo.
 159. However PC14 also removes reference to Appendix 14 in rule RUr.78.2. This means that for services other than wastewater disposal (such as roading) there is no rule in the Rural zone Higher Density Smallholdings Area which requires consideration at subdivision consent stage of connectivity. The purposes of the Services Overlay has not changed significantly as a result of PC14 – Services Overlays are appropriate for the reasons summarised above, and because of the importance of co-ordinating the provision of services. Therefore the Services Overlay is important to ensure that adequate provision for services is made in the Higher Density Smallholdings area.
 160. Dr Fisher considered that having the Services Overlay on surrounding PC18 land provides more control regarding stormwater discharge from hard stand and how that stormwater might migrate into Saxton Creek.

Reasons for Decision

161. The committee was of the view that the lot sizes for the Rural Higher Density Smallholdings Area would generally be considered under the Plan to be sufficient to provide for water (whether or not water subsequently becomes available from the Tasman District Council) and for onsite sewerage disposal, but that reticulated connection was preferred. However, we are conscious that the Services Overlay also imposes a requirement to have regard to transport linkages when the subdivision occurs, and considered for that aspect alone the Services Overlay was appropriate.
162. If we remove the Services Overlay from the PC18 land for any matter other than roading connectivity this would treat this zone differently on this area of land than it is treated elsewhere in the district, without there being a fundamental difference in the land here compared to elsewhere in the district. We therefore consider that overall the Services Overlay should remain.

Decision

- Paul S Winter – Submission point # 3.1: Reject
- Michael and Maria-Luisa Lowe – Submission point # 4.2 : Reject
- CD Strong, PS Fry, NA McFadden and PJ McFadden – Submission point #5.2: Reject
- Tasman District Council – Submission point #11.4: Accept
- Tasman District Council – Submission point #11.9: Accept
- RG Griffins Children's Trust - Further submitter 28: Reject
- Michael and Maria Luisa Lowe – Further submitter 9: Reject
- PS Fry, CD Strong, NA McFadden and PJ McFadden – Further submitter 10: Reject
- P& A Hamilton – Further submitter 11: Reject

Modification to Proposed Plan Change 18

163. Nil.

Decision on Topic 4 – Extent of Residential Zone

DECISIONS REQUESTED BY SUBMITTERS

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
KN & DG Smith	8	2	The Submitters seek the retention of the proposed residential zoning over their property (located at 167 Champion Road) and adjoining properties.	
Peter and Andrea Hamilton	10	1	Retain the proposed residential zoning of 25 Hill Street.	
Tasman District Council	11	1	Retain Residential rezoning provisions as shown on the right hand planning map	

Discussion

164. Four submissions and no further submissions were made on this topic. All sought the retention of the proposed residential zoning as shown in PC18.
165. The committee agrees that the residential zoning as proposed is consistent with both the existing and potential future character of the area, fitting in as it does with previous subdivision approvals which are currently in the process of being established (to the extent that houses are built on many of the lots). This has altered the character of the area to a residential character and it is appropriate that the surrounding land also be zoned residential. Further, the rezoning fits with the Nelson Urban Growth Strategy and the policy direction of the Regional Policy Statement and the Nelson Resource Management Plan.

Reason for Decision

166. The submissions and further submissions all support the new zoning, and this zoning is consistent with both the policy direction of the Regional Policy Statement and the Nelson Resource Management Plan, and the character of the area.

Decision

- KN & DG Smith – Submission point #8.2: Accept
- Peter and Andrea Hamilton – Submission point #10.1: Accept
- Tasman District Council – Submission point #11.1: Accept

Modification to Proposed Plan Change 18

167. Nil.

Decision on Topic 5 – Extent of Rural Higher Density Small Holdings Area Zone

DECISIONS REQUESTED BY SUBMITTERS

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
RG Griffin Children's Trust	7	3	The Submitter seeks the retention of the proposed Residential zoning and proposed Higher Density Small Holdings Area over its property, which is located at 187 Champion Road.	
Tasman District Council	11	2	Retain Rural rezoning provisions as shown on the right hand planning map.	<p>Further submitter 9 - Michael and Maria Luisa Lowe – support</p> <p>Further submitter 10 - PS Fry, CD Strong, NA McFadden and PJ McFadden – support</p> <p>Further submitter 11 - P& A Hamilton – support</p>

Discussion

168. Two submitters, the RG Griffin Children's Trust and the Tasman District Council, sought the retention of the proposed Higher Density Small Holdings Area as shown in PC 18 as notified. Further submissions were all in support.
169. Similar to Topic 4 (Extent of residential zone), the committee considers that the rezoning of 3A-3D Hill Street North and the upper portion of 187 Champion Road to a Rural Higher Density Small Holdings zone is appropriate as it complements the Nelson Resource Management Plan, the Nelson Urban Growth Strategy and the Regional Policy Statement. As currently developed, particularly 3A-3D Hill Street, their character is consistent with such a zoning, with 3A-3C Hill Street currently 4 hectares each in size and 3D Hill Street 1.7 hectares. The upper portion of 187 Champion Road is also approximately 4 hectares in size.
170. The zoning would act as a buffer between the Residential zoned land on the other side of Saxton Creek and the Rural zoned land north eastwards. Even if 3A-3D Hill Street were not to be further developed (although it is possible to subdivide Rural Higher Density Small Holdings Area to an average of 1 hectare with no lots smaller than 5000 metres²) this buffer between residential and rural would still be achieved.

Reason for Decision

171. The submissions and further submissions all support the new zoning, and this zoning is consistent with both the policy direction of the Regional Policy Statement and the Nelson Resource Management Plan, and the character of the area. Further, the zoning will act as a buffer between neighbouring Residential zoned land and Rural zoned land.

Decision

- RG Griffin Children's Trust – Submission point #7.3: Accept
- Tasman District Council – Submission point #11.2: Accept
- Michael and Maria Luisa Lowe – Further submitter 9: Accept
- PS Fry, CD Strong, NA McFadden and PJ McFadden – Further submitter 10: Accept
- P& A Hamilton – Further submitter 11: Accept

Modification to Proposed Plan Change 18

172. Nil.

Decision on Topic 6 – Other Amendments to Planning Maps

DECISION REQUESTED FROM SUBMITTER

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
Department of Conservation	12	1	Retain the existing Heritage and Landscape Trees, Riparian and Land Management Overlays on the left hand Map titled "Proposed Plan Change 18 Nelson South".	

Discussion

173. The Department of Conservation sought the retention of existing Heritage and Landscape trees, Riparian and Land Management overlays on the land covered by Plan Change 18. Plan Change 18 never sought to amend these overlays, only seeking the addition of a Services Overlay. Thus these overlays are not altered by the Plan Change.

Reason for Decision

174. The Committee considers it is appropriate that these overlays remain in place, as sought by the Department of Conservation, and sees no differential between the land within Plan Change 18 and other areas of the Nelson District which have such overlays applying. It therefore agrees with the submission.

Decision

- Department of Conservation – Submission points #12.1: Accept

Modification to Proposed Plan Change 18

175. Nil.

Decision on Topic 7 – New Zealand Fire Service Commission submission

DECISION REQUESTED FROM SUBMITTER

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
New Zealand Fire Service Commission (The Commission)	2	1	Provide assurance that future reticulated water supply services in the area subject to the Proposed Plan Change are able to meet SNZ 4509:2008.	
New Zealand Fire Service Commission	2	2	Provide assurance that any development taking place in the area subject to the Proposed Plan Change that is not connected to the reticulated water supply will still comply with SNZ 4509:2008.	

Discussion

176. The New Zealand Fire Service Commission sought that the Council “provide assurance” that future reticulated water supply services in the area subject to PC 18 are able to meet SNZ 4509:2008, and that any development undertaken in the area that is not connected to the reticulated water supply will still comply with that standard.
177. The committee notes Mr Ruffel's advice that new subdivision consents involving both reticulated and non-reticulated supplies are evaluated against the Nelson City Council Land Development Manual which specifically references SNZPAS4509. Mr Ruffel advised that the Council endeavours to ensure adherence to the Standard, but given the nature of the resource consent process is not in a position to provide the blanket confirmation sought by the New Zealand Fire Service Commission.
178. The New Zealand Fire Service Commission has expressed in its letter of 26 October 2011 that it understands that Council cannot provide guaranteed compliance for future developments due to the nature of the resource consent process. However the letter goes on to note that the Commission's submission “was also concerned with Council provision of reticulated water supply, in which it is in there [sic] power to design the standards.” From our reading of the letter the Commission's concern is about adequate water flows to meet its operational requirements, and it would seem the Commission is satisfied that the Council has provisions in place that aim to achieve these requirements (in particular the design standards implemented by the

Land Development Manual). It would appear therefore that the Commission is satisfied that no further changes need to be made to PC18.

179. The Committee concurs that the subdivision stage is the best time to ensure compliance with the standard and that in terms of the Plan Change it is unnecessary to provide any further assurance of compliance.

Reason for Decision

180. The Council has provisions in place (in particular the design standards implemented by the Land Development Manual) to achieve adequate water flows to meet the operational requirements of the Fire Service. The subdivision stage is the best time to ensure compliance with the appropriate New Zealand Standard, and no further changes need to be made to PC18.

Decision

- New Zealand Fire Service Commission – Submission points #2.1 and #2.2: Reject.

Modification to Proposed Plan Change 18

181. Nil.

Decision on Topic 8 – Road Links/Connections

DECISIONS REQUESTED FROM SUBMITTERS

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
Michael and Maria-Luisa Lowe	4	3	Provide for indicative roading over the area of land between Champion Road and 3A-3D Hill Street.	Further submitter 15 - P& A Hamilton – support
CD Strong, PS Fry, NA McFadden and PJ McFadden	5	3	Provide for indicative roading over the area of land between Champion Road and 3A-3D Hill Street.	
RG Griffin Childrens Trust	7	4	Confirmation that road access for the subject property can be taken from Champion Road to service the Submitter's land.	Further submitter 2 - Michael and Maria Luisa Lowe – support Further submitter 3 - PS Fry, CD Strong, NA McFadden and PJ McFadden – support
KN & DG Smith	8	3	Confirmation that road access from Champion Road is acceptable for the Submitter's land.	
NZ Transport Agency	9	1	The NZTA seeks that a traffic impact assessment be	

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
(NZTA)			undertaken and completed in a timely manner in order to inform the staff report and submissions prior to the hearing on PC18.	
Tasman District Council	11	3	Facilitate optimal urban design through the Plan Change by:	
			(i) Providing for the integration of the pattern of built development and network services, including the land transport network, and	
			(ii) Showing the intended land transport network in the Plan Change documents (text or maps).	
Tasman District Council	11	5	Amend Plan Change documents to provide or to show the intention to provide for a road link from Hill Street North to Suffolk Road of connector / collector class. The requested links are shown on the map (attached to submission).	Further submitter 1 – New Zealand Transport Agency – support
Tasman District Council	11	6	Amend Plan Change documents to provide or to show the intention to provide for road access of local class from the proposed residential (and as yet undeveloped) land located north of Hill Street to Hill Street North. The requested links are shown on the map (attached to	Further submitter 9 - Michael and Maria Luisa Lowe – support in part Further submitter 10 - PS Fry, CD Strong, NA McFadden and PJ McFadden – support in part Further submitter 11 - P& A Hamilton –

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
			submission).	support in part
Tasman District Council	11	7	<p>Amend Plan Change documents to provide or to show the intention to provide for movement links from the proposed residential (and as yet undeveloped) land located south of Hill Street to the proposed Saxton Creek greenway.</p> <p>The requested links are shown on the map (attached to submission).</p>	

Discussion

182. The topic of road links or connections covers indicative roads as well, and there are several which have been submitted on in submissions, as summarised below:
- 182.1 Link to John Sutton Place: shown on a plan attached to the TDC's submission;
 - 182.2 Link from Hill Street North through to Suffolk Road/Saxton Road corner: raised in submissions of Tasman District Council but shown as arrows and no plan of route provided;
 - 182.3 Link to Champion Road from 187 Champion Road (RG Griffin Children's Trust): addressed in submission but no plan provided;
 - 182.4 Link from 167 Champion Road (Smith land) to Champion Road: KN and DG Smith addressed this in their submission but no plan was provided;
 - 182.5 Link from 3A – 3D Hill Street over Smith land to Champion Road: referred to as "roading to serve 3A-3D Hill Street will need to be brought through to and across from Champion Road to meet the boundary of 3A-3D Hill Street ..." in submissions from landowners at 3B – 3C but no plan provided until the Petrie Plan produced by Mr McFadden at the hearing; and
 - 182.6 Link (described as '*movement link ... to the proposed Saxton Creek greenway*' in the TDC submission) over land adjacent to the Hamilton land and owned by BW Kearns, who was not a submitter to the Plan Change. The link was shown as an 'indicative connection' on the plan attached to the TDC's submission.
183. Also relevant to these submissions is the submission of the New Zealand Transport Agency which sought that a traffic impact assessment be undertaken to inform Plan Change 18. Although the staff report (at page 71) notes that this has been

undertaken through the 'Three Roundabouts – Saxton Field Transportation Study Project Feasibility Report', it was Mr Oliver's evidence (at paragraph 8) that:

"The study [Project Feasibility Report] scope was to investigate potential highway network improvement options for the three roundabouts, and is not a Transport Impact Assessment to assess the impact of the Plan Changes [ie Nelson City Council Plan Change 18 and Tasman District Council Plan Change 20] on the transport network. However, the study does provide some information regarding the expected impact of the traffic associated with the Plan Changes on the three roundabouts."

184. We note that what we are discussing here are road locations which are 'indicative', they are not exact. This acknowledges that it is the connection which is important, not exactly where the road is placed. This allows flexibility in both location and design of the road. We also note, in regard to the timing of forming connections, that it may be some years potentially before such linkages are formed. Notwithstanding the advantage of showing likely connections, the committee considers they should only be shown where there is a real degree of certainty, firstly, that they will be required in this general location and, secondly, that enough is known about the potential link to justify its inclusion in the Plan.

Link to John Sutton Place

185. The evidence on this was that the Nelson City Council is in the process of purchasing a lot, accessed off John Sutton Place, which will provide a connection to the undeveloped block of land adjacent to Hill Street. We therefore conclude that the development of this link is likely and the location, being fixed at one end, reasonably certain.
186. We find that the roading connection between John Sutton Place and Hill Street North will provide increased connectivity between and within communities. We consider that the wider community benefits of this future connection outweigh any potential loss of amenity values.

Link from Hill Street North through to Suffolk Road/Saxton Road corner

187. Although there is no traffic impact assessment as such, the evidence was unanimous that all three intersections (Champion Road; Stoke; and State Highway 6 roundabouts) are currently subject to peak time delay and congestion which is in excess of the project objective of Level of Service D for the local road and Level of Service E for State Highway 6. This is therefore an unacceptable level of service and any further demand, which includes that associated with both Plan Changes 18 and 20, would further degrade the current operation of the roundabouts. It was equally clear that the upgrade of these roundabouts is being seriously examined by the Tasman District Council, Nelson City Council and New Zealand Transport Agency in co-operation.
188. All three bodies were of the view that a link road from Hill Street to Suffolk Road would provide assistance in addressing the peak time delay, reducing traffic congestion issues and improve trip reliability at the Champion Road, Main Road Stoke and link road roundabouts. These issues are currently experienced with the roundabouts and expected to be exacerbated in the 2016-2036 period.
189. The Committee is of the view that the link road to Suffolk Street, although clearly desirable, is outside the scope of Plan Change 18. In addition there is at present insufficient information to determine exactly where that link road will go, its viability or cost. Therefore, providing an indicative road through the Plan Change 18 process (even were it within jurisdiction) would be premature as the route shown may not be appropriate.

190. The Committee was unanimous in its view, however, that it should recommend to Council that the second stage of the study following the project feasibility report's completion should be undertaken and that Stage 2, a Scheme Assessment Report to investigate the project in further detail, should include consideration of this link road. A possible plan change in future addressing this link could be feasible.

Link to Champion Road from 187 Champion Road (RG Griffin Children's Trust) and from 167 Champion Road (Smith land).

191. The history of planning for this area, including these properties, has previously addressed indicative road layouts.
192. The Draft Structure Plan that applied to the Smith property included 2 roading connections that provided connectivity from the adjoining land to the northwest. That land has since been subdivided, and now provides for 2 pedestrian links and a 5.3m wide roading connection. The Smith land therefore only has connectivity at present via this link, or via access to Champion Road, which it fronts. However the connection to Champion Road does not reflect the Structure Plan and therefore the submitter was concerned to seek assurance that gaining a road connection to Champion Road would not be a major issue when it comes time to develop their land as part of PC18.
193. The committee is of the view that there is no other logical link for the Smith land than via Champion Road, and to a certain extent via the proposed link to the Wahanga subdivision to the north. Whilst PC18 does not provide an indicative road layout for the Smith land, this would be unnecessary given the opportunities for access from Champion Road that exist.
194. The situation is slightly different for the Griffin land, in two respects. Firstly, the Draft Structure Plan did not provide an indicative roading layout in respect of this land as at that time the land was proposed to remain rural, which is obviously no longer the case. Secondly, the location of Saxton Creek along the boundary of the land means there is no opportunity to provide road linkages to the Smith land without bridging the Creek, which would interfere with any esplanade reserve along, and riparian values of, the Creek.
195. As the submitter points out, there is nothing in Plan Change 18 which precludes a road intersection with Champion Road to service the subject land. Like the Smith land, the connection to Champion Road is logical, although for the Griffin land a connection to the land at 3A-3D Hill Street is not precluded either.
196. There is nothing in the Plan Change which needs to be altered in response to either of these submissions, but the committee acknowledges that at the time of development the connection to Champion Road will almost inevitably need to be established.

Link from 3A – 3D Hill Street over 167 Champion Road (Smith land) to Champion Road

197. On behalf of the owners of 3C (the Lowes) and 3B (McFadden Family Trust) Hill Street Mr McFadden drew the location of the indicative road on an aerial photograph which he presented at the hearing, the location having been determined in consultation with Mr David Petrie of Traffic Design Group. This showed a roading connection from the ROW providing access to 3A-3D Hill Street to Champion Road over the Smith property. In fact, the Smith land did not quite connect to its neighbouring 3C-3D Hill Street properties so any road linkage would need to cross over into the Hamilton property and then cross (via a new bridge) Saxton Creek in order to reach the ROW serving 3A-3D Hill Street. Mr McFadden advised that the Hamiltons had no issue with the indicative road crossing their property at that corner.
198. The Hamilton land is currently accessed from Hill Street North via a leg-in driveway. The new Wahanga subdivision also provides a walkway connection to the Hamilton

land, and an opportunity for a potential future roading link to the Hamilton land, which is recorded in the Advice Note after condition 17 to the Wahanga consent:

199. It is acknowledged that Lot 46 is capable of providing a future connecting road link to Lot 2 DP19728 to the north-east and shall be required by Council to vest as road should Lot 2 DP19728 be further developed for residential purposes. If a future road link is to be provided, Road 6 may also be required to be upgraded.
200. Given this option we do not see connectivity to the Hamilton land as providing a reason to impose an indicative road over the Smith land.
201. In any event the Committee is of the view that it does not have jurisdiction to include in PC18 the linkage drawn by Mr McFadden, as this was insufficiently addressed in the submissions. In particular, there was no plan of the suggested location and no indication that the Smith land was the proposed location of any indicative road.
202. Whilst we received conflicting views on whether the relief now sought was within the scope of the submissions, the committee has real concern that the Smiths could not have been expected to realise that the submissions from landowners at 3B-3D Hill Street meant that an indicative road would traverse their land – it could equally have connected to Champion road via the Griffin Family Trust land, and in that case the link would not require the bridging of Saxton Creek. In addition, the proposed location shown on Mr Petrie's map does not appear to be the logical location because, as Mrs McNae pointed out on behalf of the Smiths, no subdivider would create such a road as it would be uneconomic to do so, providing as it would access to lots only along one side of its formation. That the committee has to comment on this level of design detail is an indicator that this is a matter for a resource consent process, and not for a plan change. It is not for the committee to have to design the road and where it should go. This also supports the services overlay approach which allows these decisions to be appropriately considered at resource consent stage.
203. Finally, we note that the land at 3A-3D Hill Street has other options for connectivity, including potentially through the Raine property to Hill Street, or a route linking the properties to Champion Road via the back of either 3A or 3B Hill Street (which is via another Raine property). Again this suggests that ahead of any specific consideration of subdivision plans, the nomination of the generally appropriate location for a road linkage is premature.

Link from Saxton Creek to Hill Street

204. Although described in the Tasman District Council's submission as a '*movement link ... to the proposed Saxton Creek greenway*', and shown as being located over land adjacent to the Hamilton land and owned by BW Kearns, at the hearing the discussion centred around roading connectivity to the Hamilton land, and onto the land at 3A-3D Hill Street, which we have discussed above.
205. With regard to the connection sought by the Tasman District Council to any Saxton Creek esplanade reserve the committee considers that the esplanade reserve itself will provide the primary connectivity. Access into the walkway from adjacent subdivision, which is the reason for seeking an indicative movement path, will be determined at the time of subdivision. The pedestrian linkage already imposed by way of consent condition from the Wahanga subdivision to the Hamilton land is an illustration of how such linkages are created in practice.

Reasons for Decision

206. The committee takes the opportunity to acknowledge the clarity and usefulness of Mr Markham's evidence regarding the power to secure road links and the menu of options or methods that would secure road links. The committee found this most useful.

207. Although not yet finalised, the committee takes some comfort from the fact that PC 14 as notified does require connectivity. This, in combination with the imposition of a Services Overlay via Plan Change 18, is likely to ensure that future development in both the Residential land and the Rural Higher Density Small Holdings Area will address the issue of connectivity between land blocks. Therefore any subdivision or development may not result in a formed connection, but will have to ensure that there is the ability to achieve connectivity.
208. The following requests for relief were outside our jurisdiction and therefore could not be granted:
- 208.1 Link from Hill Street North through to Suffolk Road/Saxton Road corner; and
- 208.2 Link from 3A – 3D Hill Street over Smith land to Champion Road.
209. For all but the link from John Sutton Place to Hill Street North we have insufficient information to determine the appropriate location of the suggested routes and their viability. Therefore, showing them as indicative roads through the Plan Change 18 process would be premature.
210. For the links to Champion Road from 187 Champion Road (RG Griffin Children's Trust) and from 167 Champion Road (Smith land) we consider that Plan Change 18 does not prevent such links being established in future.

Decision

- Michael and Maria-Luisa Lowe – Submission point # 4.3: Reject
- CD Strong, PS Fry, NA McFadden and PJ McFadden– Submission point # 5.3: Reject
- RG Griffin Children's Trust – Submission point # 7.4: Reject
- KN & DG Smith – Submission point # 8.3: Reject
- New Zealand Transport Agency (NZTA) – Submission point #9.1: Accept
- Tasman District Council – Submission point #11.3: Reject
- Tasman District Council – Submission point #11.5: Reject
- Tasman District Council – Submission point #11.6: Accept
- Tasman District Council – Submission point #11.7: Reject
- New Zealand Transport Agency – Further submitter 1: Reject
- Michael and Maria Luisa Lowe – Further submitter 2 & 9: Reject
- PS Fry, CD Strong, NA McFadden and PJ McFadden – Further submitters 3 & 10: Reject
- P& A Hamilton – Further submitter 11 & 15: Reject

Modification to Proposed Plan Change 18

211. Show on planning maps 'Proposed Road (Indicative Alignment Only)' overlay from John Sutton Place via lot 130 and 44 Hill Street North through to Hill Street North (refer left hand planning map of Plan Change for location).
212. No other changes.

Recommendation to Council

213. That the Council progress Stage 2, Scheme Assessment Report, to investigate the 'Three Roundabouts – Saxton Field Transportation Study Project Feasibility Report' project in further detail, and that this Scheme Assessment Report include consideration of a link road between Hill Street North and Saxton Road/Suffolk Street.

Decision on Topic 9 – Financial Contribution Provisions

DECISIONS REQUESTED FROM SUBMITTERS

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
NZ Transport Agency (NZTA)	9	2	That PC18 is amended to include a financial contribution regime that will provide Nelson City Council with the option of imposing conditions on resource consents that will enable the payment of financial contributions towards the cost of any upgrades to SH6.	<p>Further submitter 20 - PS Fry, CD Strong, NA McFadden and PJ McFadden – oppose</p> <p>Further submitter 21 - Michael and Maria Luisa Lowe – oppose</p> <p>Further submitter 22 - P& A Hamilton – oppose</p> <p>Further submitter 28 - RG Griffins Children's Trust - oppose</p> <p>Further submitter 29 – KN and DG Smith – oppose</p>
Tasman District Council	11	8	NCC provide for a financial contribution to be paid to TDC to offset the adverse effects of development directly attributable to the Plan Change on the transport network of	Further submitter 1 – New Zealand Transport

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions										
			<p>TDC, by:</p> <p>(i) Inserting the following new policy after NRMP policy FC1.5:</p> <p>As a condition of subdivision, in terms of S 108(9-10) of the RMA, the Council may require a financial contribution / amount in money to be paid to Tasman District Council to offset the actual or potential adverse effects of the activity on the Richmond transport network (which includes roads, intersections, foot and cycle paths, berms, kerbs and channels).</p> <p>(ii) Inserting the following new rule, after rule FC2.7:</p> <p>As a condition of resource consent for subdivision activity in the Nelson Plan Change 18 area, a financial contribution /amount in money is required to be paid to Tasman District Council. The financial contribution is payable in mitigation of the actual or potential adverse effects of the increased traffic flows attributable to Plan Change 18 on Richmond transport network. The financial contribution represents the likely cost to Tasman District Council of upgrading the Champion / Salisbury Road intersection being that part of the Richmond transport network that will be affected by development resulting from Plan Change 18. The pro rata amount of the financial contribution payable per lot is \$1,690.00 as calculated below</p> <table border="1"><tr><td colspan="2">Financial Contribution payable</td></tr><tr><td colspan="2">per lot located in the Nelson</td></tr><tr><td colspan="2">South Plan Change 18 area</td></tr><tr><td>Total estimated cost of upgrading the Champion / Salisbury Road intersection</td><td>\$400,000</td></tr><tr><td>Proportion of cost from additional traffic flows attributable to Nelson South NRMP Plan Change 18. (Proportion of additional traffic flows attributable to NRMP Plan Change 18: 90%. Proportion of additional traffic flows</td><td>\$360,000</td></tr></table>	Financial Contribution payable		per lot located in the Nelson		South Plan Change 18 area		Total estimated cost of upgrading the Champion / Salisbury Road intersection	\$400,000	Proportion of cost from additional traffic flows attributable to Nelson South NRMP Plan Change 18. (Proportion of additional traffic flows attributable to NRMP Plan Change 18: 90%. Proportion of additional traffic flows	\$360,000	<p>Agency – support in part</p> <p>Further submitter 9 - Michael and Maria Luisa Lowe – oppose</p> <p>Further submitter 10 - PS Fry, CD Strong, NA McFadden and PJ McFadden – oppose</p> <p>Further submitter 11 - P& A Hamilton – oppose</p> <p>Further submitter 28 - RG Griffins Children's Trust - oppose</p> <p>Further submitter 29 – KN and DG Smith – oppose</p>
Financial Contribution payable														
per lot located in the Nelson														
South Plan Change 18 area														
Total estimated cost of upgrading the Champion / Salisbury Road intersection	\$400,000													
Proportion of cost from additional traffic flows attributable to Nelson South NRMP Plan Change 18. (Proportion of additional traffic flows attributable to NRMP Plan Change 18: 90%. Proportion of additional traffic flows	\$360,000													

Submitter Name	Submission Number	Statement Number	Decision Requested		Further Submissions
			attributable to TRMP Plan Change 20: 10%.)		
			Contribution received for Champion / Salisbury Road intersection upgrading from the subdivision of 135 Champion Road, Nelson South	\$50,000	
			Total amount of upgrade cost attributable to Plan Change 18	\$310,000	
			Pro rata financial contribution per potential lot (total potential lot yield 183) located in the Nelson South Plan Change area	\$1,690	

Discussion

214. Both submitters sought a *financial contribution* regime that would allow the Nelson City Council to have the option of imposing conditions on resource consents allowing, respectively, the payment of financial contributions towards the cost of any upgrades to State Highway 6, and to offset the adverse affects of development attributable to the Plan Change on the transport network of the Tasman District Council. Thus both submissions focussed on the payment of financial (not development) contributions to third parties (ie not the developer paying a financial contribution to the Nelson City Council). However, the submissions were overtaken by events and essentially this matter has been resolved.
215. Beginning firstly with the New Zealand Transport Agency submission, at the hearing Mr Weir held the view that financial contributions are an option as a source of funding for State Highway upgrades and are not solely dedicated to Local Authority roading works. However, he concurred with the Officer's Report, which had recorded the joint undertaking by the Tasman District Council, the Nelson City Council and the New Zealand Transport Agency of a Project Feasibility Report on the 'Three Roundabouts – Saxton Field Transportation Study. The outcome of this study is the Officer's recommendations (on behalf of all three bodies) unanimously recommending development contributions under the Local Government Act, rather than financial contributions under the RMA. The New Zealand Transport Agency takes that view that development contributions, with the agreement of the local Councils concerned, and subject to certain conditions being met (such as who shall undertake the works), are a legitimate method for funding of the State Highway upgrade as well as for local authority roads. Mr Weir indicated that the New Zealand Transport Agency held a legal opinion to that effect.
216. The committee did not seek a copy of this opinion, as it is of the view that as this matter is agreed to be one of development contributions that is outside the ambit of this Plan Change and is a matter for the review of development contributions under the Long Term Plan process. The committee further notes that following the completion of the Project Feasibility Report, and as outlined by Mr Oliver in his evidence, the next step is a Scheme Assessment Report to investigate the project in

further detail. At that point the actual costing of what have been identified as options to address future and present traffic demands (as there is already a congestion problem at these roundabouts) can be further detailed, and a costing worked up. From that Scheme Assessment Report a discussion on development contributions and the relative contributions of the Nelson City Council as compared to the Tasman District Council, and a share (if any) being provided to the New Zealand Transport Agency, can then occur. It is premature to undertake any sort of discussion without that further information.

217. The committee, for the reasons expressed above, rejects the New Zealand Transport Agency submission but takes the opportunity to recommend to the Nelson City Council that it approve the next stage of investigation (i.e. the Scheme Assessment Report) to consider the project in further detail. In making this recommendation the committee emphasises the unanimous evidence from the Nelson City Council's own transport planner Mr Andrew James, the evidence of Mr Oliver and the evidence of the Tasman District Council (Mr Steve Markham and Mr Gary Clark) that:

- Improvements to the three roundabouts are required now, irrespective of any additional development;
- Additional traffic from further development will exacerbate the existing congestion problem and is also required to be accommodated by any upgrade options;
- The three roundabouts effectively function as a single network, usually at a close proximity and are interdependent due to the interactions of traffic flow and movement between the three roundabouts; and
- Highway improvements to the three roundabouts are required in addition to any link road to accommodate future traffic demands and to meet level of service (LOS) objectives. That is, there is no one solution, an upgrade of roundabouts as well as a link road are likely to be required to address efficient traffic management. Thus the committee also recommends that the Council undertake an investigation into a potential link road between Hill Street and Suffolk Road, and notes that this matter is addressed under Topic 8: Roadlinks/Connections.

218. In its' submission the Tasman District Council (like the New Zealand Transport Agency) sought a share of financial contributions to allow it to upgrade its roading network as a result of roading impacts arising from resource consents granted in the Plan Change 18 area. However, between the making of that submission and the hearing the completion of the Project Feasibility Report on the Three Roundabouts, which the Tasman District Council refers to as the "*Saxton roundabouts*", has meant that the TDC now acknowledges that the wider network effects will be considered outside the Plan Change process by way of development contributions (and Mr Markham noted "hopefully New Zealand Transport Agency funding").

Reasons for Decision

219. That both the New Zealand Transport Agency submission and the Tasman District Council submission be declined, for the reasons set out above, and that no changes be made to Plan Change 18.

220. The recommendation regarding Stage 2 of the 'Three Roundabouts – Saxton Field Transportation Study Project Feasibility Report', as set out above with regard to road linkages, is repeated here, because of the need to upgrade these roundabouts as soon as possible in order to address current congestion problems, as well as the need to plan for future development enabled by Plan Change 18 (and the Tasman District Council's Plan Change 20).

Decision

- Tasman District Council – Submission point #11.8: Reject
- NZ Transport Agency (NZTA) – Submission point #9.2 and further submitter 1: Reject
- Michael and Maria Luisa Lowe – Further submitter 9 & 21: Accept
- PS Fry, CD Strong, NA McFadden and PJ McFadden – Further submitter 10 & 20: Accept
- P & A Hamilton – Further submitter 11 & 22: Accept
- RG Griffin Children's Trust – Further submitter 28: Accept
- KN & DG Smith – Further submitter 29: Accept

Modification to Proposed Plan Change 18

221. Nil.

Recommendation to Council

222. That the Council progress Stage 2, Scheme Assessment Report, to investigate the 'Three Roundabouts – Saxton Field Transportation Study Project Feasibility Report' project in further detail, and that this Scheme Assessment Report include consideration of a link road between Hill Street North and Saxton Road/Suffolk Street.

Decision on Topic 10 – Structure Plan

DECISION REQUESTED FROM SUBMITTER

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
Julian Raine	14	2	The submitter seeks to amend Plan Change 18 to incorporate a structure plan (similar to or along the lines of the structure plan titled "Figure 3" in the section 32 analysis), and to require any development in the area covered by the Plan Change to conform with the structure plan.	

Discussion

223. Mr Raine sought that Plan Change 18 be amended by incorporating a Structure Plan (similar to or along the lines of the Structure Plan which was contained in the section 32 analysis), and to require any development in the area covered by the Plan Change to conform with the structure plan.

224. The background to this is that a Structure Plan Report was prepared for some 160 hectares (i.e. including land outside Plan Change 18) in conjunction with the Tasman District Council. This Structure Plan Report looked at appropriate zoning and development opportunities for land on both sides of Champion Road and included land on the lower slopes of the hills, and a portion of flat land on the Raine's farm. Public consultation on this Structure Plan was undertaken during 2008, but three subdivisions on Champion Road were approved in the meantime, providing for 285 residential lots.
225. On behalf of Mr Raine, Mr Quickfall gave evidence that a structure plan would provide more certainty, with a concept plan having been agreed on by a number of interested parties including Mr Raine. The submitter did not seek an exact structure plan as previously outlined, but rather a general format consistent with what was consulted on. Mr Quickfall's evidence was that a structure plan (or something similar) would better enable integrated land use planning, rather than leaving this to individual land owners. He did not see a structure plan as directive or inflexible, considering it could be incorporated in a way that provides flexibility and final design and layout whilst providing broad conceptual guidance for the design framework. He pointed out that particular appendices in the Nelson Resource Management Plan do provide for structure plans over particular land titles, and the requirement is that development be "*generally in accordance with*" the structure plan.
226. In regard to the question of whether there was jurisdiction to include a structure plan in our decision, given that it had not been notified in Plan Change 18, Mr Quickfall indicated that even if outside scope there is still the ability to vary Plan Change 18 to include a structure plan.
227. Mr Rawson's view was that it was unnecessary to incorporate a structure plan in Plan Change 18 because:
- The Residential and Rural Higher Density Small Holdings zones in the Plan Change reflect the existing character of the area.
 - Opportunity exists for the development of retail/employment activities through existing operative rules within the Nelson Resource Management Plan, such as the home occupation activity or a non-residential activity in a residential zone, if there is any demand for such activity in this locality.
 - Previously approved subdivisions (such as Sutton and Wahanga) have already confirmed much of the roading pattern within the relevant areas of the Structure Plan map. Any future subdivision and development of the remaining land within the Plan Change will seek to encourage connectivity through the provisions of Plan Change 14 and in addition Topic 8 – road link/connections of PC 18.
 - Because the land within the Plan Change boundaries is flat there is a degree of flexibility in how activity can be achieved, and thus there is flexibility compared to a structure plan approach which in his view is more directed and less flexible.
228. The committee considered it is notable that these zone changes have only received submissions in support. We further note that they largely reflect the zoning outlined in the concept plan. In essence, the committee reads this as meaning that much of the area covered by the structure plan has already been developed, such that it is unnecessary to control development through the imposition of a structure plan. The remaining concepts shown by the structure plan in effect can already be achieved through the mix of zoning, overlays and existing operative objectives, policies and rules.

Reason for Decision

229. The committee rejects this submission point for the reasons outlined above and on the basis that the relief is outside the scope of the notified Plan Change so that in any event has no jurisdiction to alter the plan in this regard.

Decision

- Julian Raine – Submission point #14.2: Reject.

Modification to Proposed Plan Change 18

230. Nil.

Decision on Topic 11 – Potential Rates Increase

DECISION REQUESTED FROM SUBMITTER

Submitter Name	Submission Number	Statement Number	Decision Requested	Further Submissions
John Gray Sutherland	13	1	If the proposed Plan Change takes place then there should be the application of a rating differential until physical work for a subdivision is undertaken by the landowner.	Further submitter 23 - Michael and Maria Luisa Lowe – support in part Further submitter 24 - P& A Hamilton – support in part Further submitter 25 - PS Fry, CD Strong, NA McFadden and PJ McFadden – support in part

Discussion

231. Sometimes the issue of rates revenue is raised as a reason for promoting development, although no submitter made that exact submission. We confirm that rates revenue issues play no role in the consideration of this Plan Change.
232. Submitters sought that if their land is rezoned there should be a rating differential applied to the land until physical work for a subdivision is undertaken by the land owner. This is to offset the likely increase in rates resulting from an increase in land value due to rezoning, because Nelson City Council (unlike the Tasman District Council) rates on land value. Mr Sutherland presented submissions at the hearing, acknowledging that the correct forum for addressing the rates impact is that of the Annual Plan. However, he sought that this committee make recommendations to the Council regarding rates increases where the potential of the land had not yet been realised as subdivision had not yet occurred.

233. Although sympathetic to Mr Sutherland's submission, the committee also recognises that Mr Sutherland will reap not just a detriment from a change in zoning but also a benefit, in that the land will be re-zoned Residential and will therefore have an increased value should Mr Sutherland wish to sell. However, the key point for the committee is that this matter is more properly addressed when Council's ratings policy is struck, which as Mr Sutherland correctly notes is part of the Annual Plan process.

Reason for Decision

234. The committee declines to make a recommendation to Council in this regard, considering that at the time Council's rating policies are struck a more focussed attention to this topic is possible in the correct context. Therefore consideration to the detailed implications of this submission can be properly addressed at that time.

Decision

- John Gray Sutherland – Submission point #13.1: Reject
- Further submitters # 23, 24 and 25: Reject.

Recommendation to Council

235. That Mr Sutherland be encouraged to submit on the Annual Plan prior to the striking of rates as part of the Annual Plan process.

Modification to Proposed Plan Change 18

236. Nil.

SECTION 32 FURTHER EVALUATION

237. Mr and Mrs Lowe sought that the section 32 report be amended with regard to the implications of the 5 metre esplanade reserve width provision.
238. We have reviewed the section 32 evaluation carried out by the Council, dated August 2010. Having weighed up the costs and benefits of the various issues raised we are confident that the preliminary section 32 report together with the further analysis undertaken in detail through the submission and hearing process leads to the conclusion that the solution put forward in the proposed Plan Change is the correct one.
239. Michael and Maria-Luisa Lowe and the McFadden Family Trust both sought that the section 32 report be amended with regard to the implications of the 5 metre esplanade reserve width. This matter has been discussed in detail from paragraph 78 forward of this decision. The context of these particular submissions was relief seeking the deletion of the 5 metre reserve width due to the potential for conflict with the existing 6 metre wide right of way enjoyed by the owners and visitors to 3A-3D Hill Street. As set out above the actual reserve width is set at the time of subdivision and although we acknowledge the limitations that a 5 metre reserve width would provide in terms of recreational and riparian values we consider that overall an opportunity should still be provided to establish an esplanade reserve on this side of the Creek.

240. We confirm that we agree with the analysis as undertaken, and no changes to the Report are required.

Signed: Camilla Owen
Camilla Owen, Hearings Commissioner

Date: _____

Signed: Aldo Miccio
Aldo Miccio, Hearings Commissioner

Date: 21/5/12

Signed: Ali Boswijk
Ali Boswijk, Hearings Commissioner

Date: 22/5/12

Signed: Mike Ward
Mike Ward, Hearings Commissioner

Date: ~~22/5~~ 23/05/12

Signed: Kate Fulton
Kate Fulton, Hearings Commissioner

Date: 23/5/12

APPENDIX 1: CONSOLIDATED AMENDMENTS TO PLAN CHANGE 18.

1.1 Format of the Plan Change provisions

For the ease of the reader the full text of provisions to be changed have been used in this document.

Within this Plan Change:

- 'Normal' text applies to operative provisions which are to remain unchanged.
- 'Underline' black text applies to proposed new provisions notified as part of the Plan Change which are unchanged as part of the decision.
- '~~Strikethrough and underlined~~' text applies to notified text proposed to be deleted.
- 'Underline' red text applies to text inserted as a result of decisions on submissions
- '*Italic*' text applies to instructions (therefore are non statutory).
- Decisions on planning maps 32 and 35 are shown as:
 - Left hand map – Proposed Road (Indicative Alignment Only) and Proposed Services Overlay
 - Right hand map – Proposed Residential and Proposed Rural Higher Density Small Holdings Area

2.0 Proposed Plan Change 18 : Proposed Amendments to the Nelson Resource Management Plan (Statutory Provisions)

2.1 AMENDMENTS TO TEXT

- 2.1.1 Amend Chapter 12 Rural Zone, at the end of the first paragraph of clause RU2.iib add the following new text:

Part of the Nelson South area (land accessed off Champion Road and Hill St North) has been identified as a Rural – Higher Density Small Holding Area, because of its location adjacent to the Residential Zone, its small size and its role as a buffer to adjoining Rural Zone land^{PC18}

- 2.1.2 Amend Appendix 6 Riparian and Coastal Margin Overlay (Table 6.1 Riparian Values) by adding 'Recreation' to the values of Saxton Creek as follows:

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

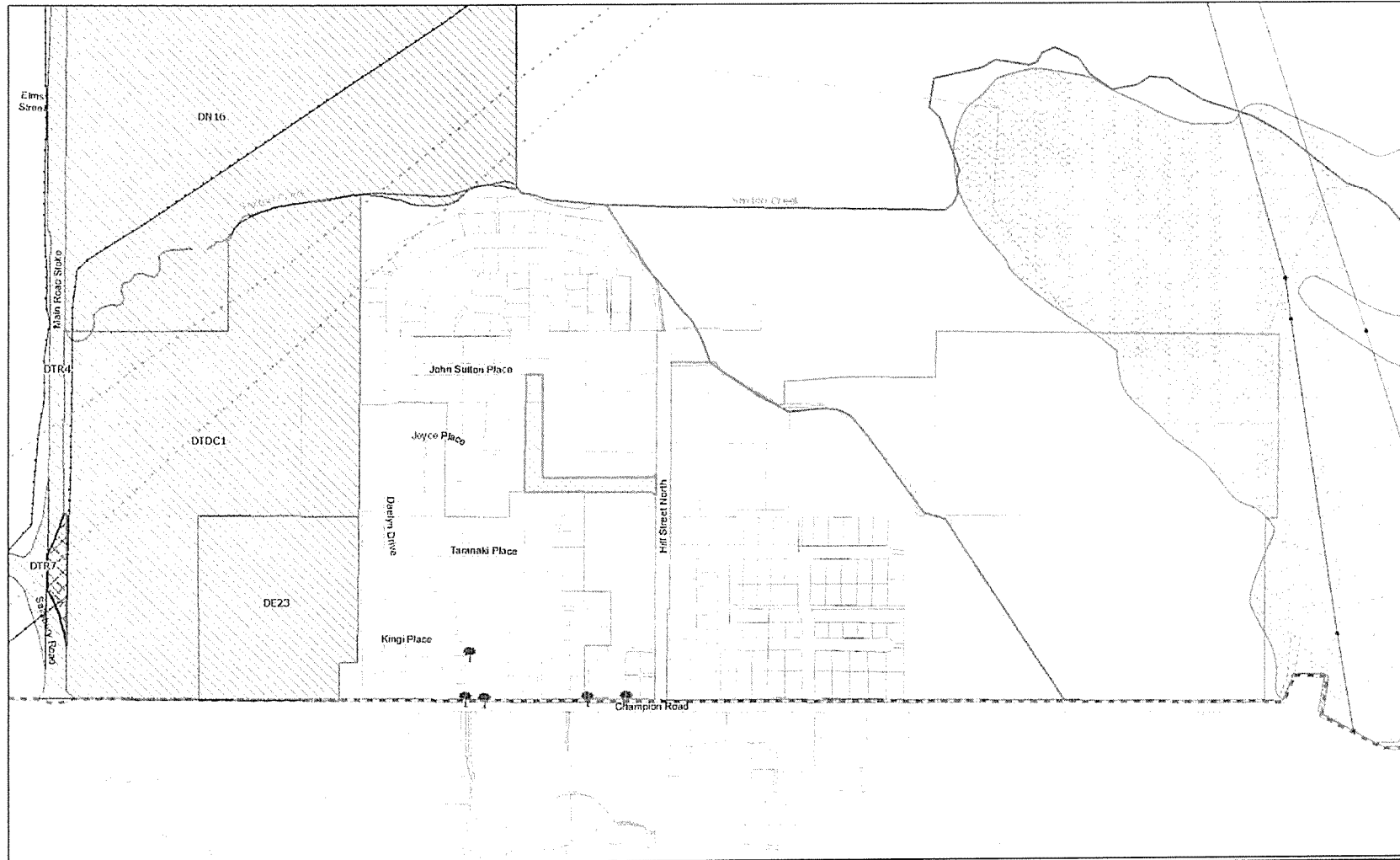
2.1.3 Amendments to Appendix 6 Riparian and Coastal Margin Overlay (Table 6.2 Priority Values) by adding Saxton Creek as a stream where an esplanade reserve will be taken. This will be done by inserting an additional row below the Roding River, as follows:

River	Reach	Values	Esplanade requirements
<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"> • where adjoining land already has subdivision approval for a different esplanade reserve width prior to this rule being notified (28 August 2010) • 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 • 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.^{PC18}

2.2 AMENDMENTS TO PLANNING MAPS

2.2.1 Amendments to Planning Maps 32 and 35 (left and right hand map) as set out below.

ALTERATIONS TO MAPS 32 AND 35 OF LEFT AND RIGHT HAND PLANNING MAPS



The map is an approximate representation only and must not be used to determine the location of any of the boundaries shown. It is the responsibility of the user to verify the location of any of the boundaries shown. The map is not a legal document and does not constitute a guarantee, warranty, or representation of any kind. The map is provided for information only and is not intended to be used for any other purpose. The map is not a legal document and does not constitute a guarantee, warranty, or representation of any kind. The map is provided for information only and is not intended to be used for any other purpose.

Proposed Plan Change 18 - Nelson South

Left Hand Map



PO Box 645 Nelson 7040 New Zealand
PH 03 5460200 FAX 03 5460239
www.nelsoncitycouncil.co.nz

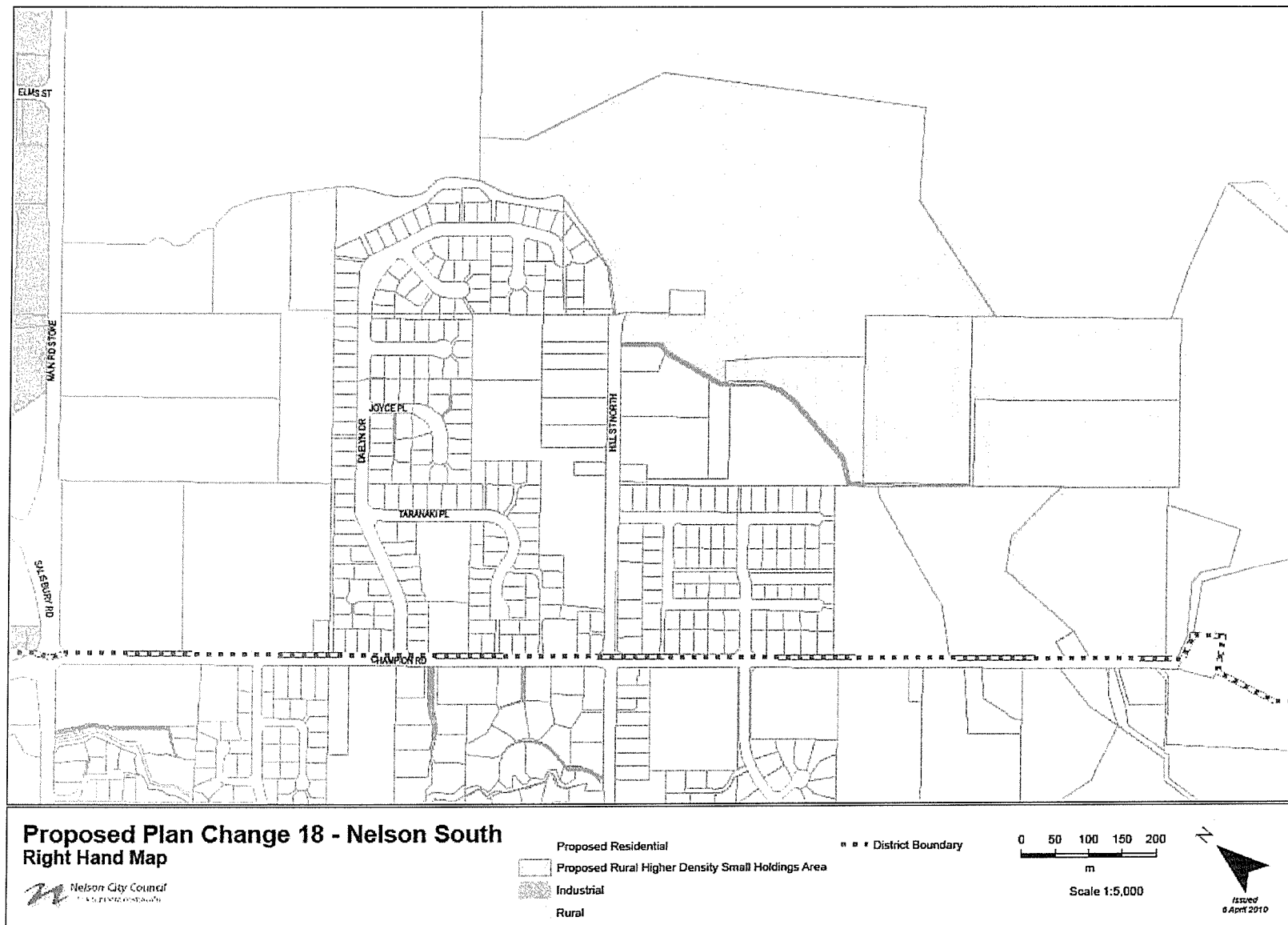
- 33kV ETL
- 66kV ETL
- 110kV ETL
- 220kV ETL
- Heritage; Landscape
- Heritage Building, Object, Place
- District Boundary
- Riparian Overlay

- Proposed Road (Indicative Alignment Only)
- Road to be Stopped
- Land Management Overlay Legend
- Proposed Services Overlay
- Designation Areas Legend

0 50 100 150 200 m



Issued
12 October 2011



The map is approximate only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council and its employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the use of the map. The map is provided as a guide only and does not constitute a contract. The information is provided by the GIS data and is not a guarantee of accuracy. This publication is copyright reserved by Nelson City Council. Copyright information derived from the CRS. Copyright reserved. Original map size A3.

Attachment 3: a copy of my certificate of title



COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952



R.W. Muir
Registrar-General
of Land

Guaranteed Search Copy issued under Section 172A
of the Land Transfer Act 1952

Identifier NL9B/1247
Land Registration District Nelson
Date Issued 09 April 1991

Prior References

NL8C/676 NL8C/677

Estate Fee Simple
Area 20.8656 hectares more or less
Legal Description Lot 2 Deposited Plan 14458

Proprietors

Raine Estate "Oaklands" Limited

Interests

24549 Transfer creating the following easements

Type	Servient Tenement	Easement Area	Dominant Tenement	Statutory Restriction
Convey water	Part Lot 1 Deposited Plan 6053 - CT NL8B/700	Part	Part formerly in CT NL68/155 - herein	

144810 Easement Certificate specifying the following easements

Type	Servient Tenement	Easement Area	Dominant Tenement	Statutory Restriction
Right of way	Lot 2 Deposited Plan 8212 - CT NL3D/748	Yellow DP 8212	Part formerly in CT NL3D/747 - herein	
Right of way	Lot 4 Deposited Plan 8212 - CT NL3C/1249	Yellow DP 8212	Part formerly in CT NL3D/747 - herein	
Right of way	Lot 3 Deposited Plan 8212 - CT NL3C/1248	Blue DP 8212	Part formerly in CT NL3D/747 - herein	

306432.4 Easement Certificate specifying the following easements - 9.4.1991 at 10.46 am

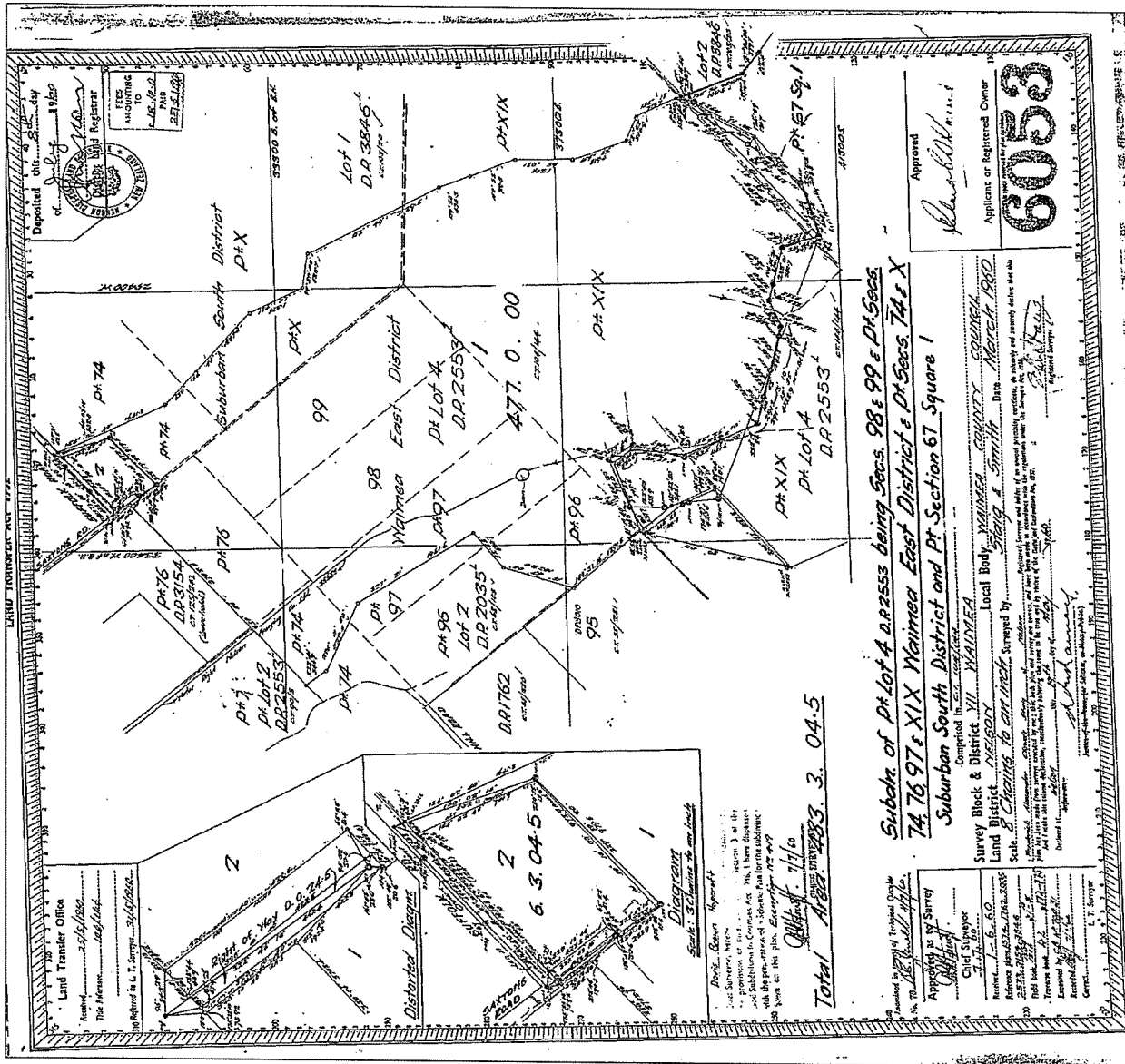
Type	Servient Tenement	Easement Area	Dominant Tenement	Statutory Restriction
Right of way	Lot 2 Deposited Plan 14458 - herein	A DP 14458	Lot 1 Deposited Plan 14458 - CT NL9B/1245	
Right of way	Lot 2 Deposited Plan 14458 - herein	B DP 14458	Lot 1 Deposited Plan 14458	

The easements specified in Easement Certificate 306432.4 are subject when created to Section 309 (1)(a) Local Government Act 1974

333159.1 Mortgage to The National Bank of New Zealand Limited - 3.12.1993 at 10.41 am

7997544.1 Variation of Mortgage 333159.1 - 19.11.2008 at 10:37 am

Guaranteed Search Copy Dated 10/08/12 11:03 am, Page 2 of 4
Register Only



[illegible]

Attachetmn 4: a list of names and addresses of persons to be served with a copy of this notice.

Contact	Name	Address
Policy Manager	Nelson City Council	Po Box 645, Nelson
	Tiakina te Taiao	C/- Hugh Briggs, PO Box 13, Nelson 7040
Michael and Maria-Luisa Lowe		C/- McFadden McMeeken Phillips, PO Box 656, Nelson
CD Strong, PS Fry, NA McFadden and PJ McFadden		C/- McFadden McMeeken Phillips, PO Box 656, Nelson
DJ Sutton, LA Sutton, SJ Sutton		C/- McFadden McMeeken Phillips, PO Box 656, Nelson
RG Griffin Children's Trust		C/- J McNae, Staig and Smith, PO Box 913, Nelson
KN & DG Smith		C/- J McNae, Staig and Smith, PO Box 913, Nelson
Peter and Andrea Hamilton		C/- McFadden McMeeken Phillips, PO Box 656, Nelson
Steve Markham	Tasman District Council	Private Bag 4, Richmond
	Department of Conservation	C/- Jo Gould, Department of Conservation, Private Bag 5, Nelson
Michael and Maria Luisa Lowe		C/- McFadden McMeeken Phillips, PO Box 656, Nelson