

NELSON CITY COUNCIL

**Nelson Resource Management Plan**

Plan Change 22  
Heritage Trees

**Report of Hearing and Decisions on Submissions**

Hearings Commissioner  
Sylvia Allan



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## APPENDIX 1 – CONSOLIDATED AMENDMENTS TO PLAN CHANGE 22

# COMMISSIONER DECISION ON PROPOSED PLAN CHANGE 22 – NELSON RESOURCE MANAGEMENT PLAN

## HERITAGE TREES

### 1. INTRODUCTION

- 1.1 I, Sylvia Allan, was appointed by Nelson City Council on 27<sup>th</sup> April 2011 as a Hearings Commissioner, to hear, consider and decide the submissions and further submissions on proposed Plan Change 22 to the Nelson Resource Management Plan.
- 1.2 The hearing was conducted in accordance with the requirements of the Resource Management Act 1991 (RMA), including the First Schedule to the Act. This report provides the record of the hearing and decisions in terms of Clause 10 of the First Schedule.
- 1.3 Proposed Plan Change 22 resulted from an ongoing consultative procedure by Nelson City Council over several years. The Proposed Plan Change seeks to add 24 additional Heritage, Landscape and Local trees at 22 different locations to the existing list in Appendix 2 ‘Heritage Trees’ (Volume 3) of the Nelson Resource Management Plan and to add corresponding symbols to the left-hand planning maps in Volume 4. No changes to associated objectives, policies, rules or other provisions of the Nelson Resource Management Plan are involved.
- 1.4 The Proposed Plan Change was publicly notified on 25<sup>th</sup> September 2010. Twelve submissions were received. The decisions requested were summarised and notified for further submissions on 22<sup>nd</sup> January 2011. One further submission was received.
- 1.5 The nature and content of the submissions received means that some aspects of the Proposed Plan Change do not require decisions. This includes the specific trees listed below which are neither exotic trees (all subject to one general submission in opposition) nor subject to one or more specific submissions.

	Category	Street No.	Address	Location	Type	Tree Name (Latin)	Tree name (common)	No. of trees
d)	Heritage	31	Cleveland Terrace		S	Alectryon excelsus	Titoki	1
e)	Heritage	31	Cleveland Terrace		S	Podocarpus totara	Totara	1
f)	Heritage	277	Hampden Street		S	Metrosideros robusta	Rata	1
i)	Heritage	30	Marybank Road		G	Dacrycarpus dacrydioides	Kahikatea	2
o)	Heritage	52	Russell Street		S	Metrosideros excelsa	Pohutukawa	1
s)	Landscape	29	Stanley Crescent		S	Metrosideros excelsa	Pohutukawa	1
t)	Local	39	Stansell Avenue		S	Nothofagus solandri	Black beech	1
w)	Heritage	384	Trafalgar St South		S	Podocarpus Totara	Totara	1

## **2. OFFICER'S REPORT**

- 2.1 A comprehensive Planning Officer's Report (Section 42A Report) was prepared for the hearing and provided to submitters and further submitters. This included a description of the Proposed Plan Change, a discussion of the statutory background of the RMA and the relevant context of the Nelson Regional Policy Statement and the Nelson Resource Management Plan; an outline of the Nelson Biodiversity Strategy; the method for assessment of the appropriateness of trees for inclusion in the Plan; and an outline of the management of trees included in Appendix 2 to the Plan.
- 2.2 The Report provided discussion 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.
- 2.3 As well as the Planning Officer's Report, a Section 32 Report – an evaluation of alternatives, benefits and costs in relation to the Proposed Plan Change – was available.

## **3. HEARING**

- 3.1 The hearing of submissions on Plan Change 22 was held on 14<sup>th</sup> July 2011 between 9am and 10am at the offices of Nelson City Council. Prior to that, on 13<sup>th</sup> July, I undertook a site visit in relation to the trees in the Proposed Plan Change where the listing was contested through specific submissions.
- 3.2 The following parties appeared at the hearing:
- Mr Alan Winwood  
Ms Lynn Cadenhead – on behalf of Nelson Kindergarten Association  
Mr Robert and Mrs Faith Fraser
- 3.3 Council officers in attendance were:
- Mr Paul Harrington (Planning Adviser and author of the Section 42A Report)  
Mr Matt Heale (Principal Adviser, Resource Management Plan)  
Mr Peter Grundy (Horticultural Supervisor)  
Ms Bev McShea (Administrative support)

## **4. DECISIONS SUMMARY**

As the person with delegated authority to hear and determine submissions on Proposed Plan Change 22 to the Nelson Resource Management Plan, I have given careful consideration to the generalities and details of the Proposed Plan Change, the advice from Council officers, 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:

1. that Proposed Plan Change 22 should be approved subject to the amendments set out in this Report and compiled in Appendix 1 of this Report;
2. to adopt the Section 32 Report included in the Planning Officers Report, subject to any modifications set out in section 7 of this Report;

3. to accept in whole or in part, or to reject the submissions as set out in the Decisions Summary Table below; and
4. that these decisions be publicly notified and advice served on submitters pursuant to clauses 10(4)(b) and 11(1) and (3) of the First Schedule to the RMA.

I have also made a recommendation to the Council relating to minor corrections to associated provisions in the Nelson Resource Management Plan which are beyond the scope of my delegated authority. This recommendation is covered in section 7 of this report.

### Decisions Summary Table – Proposed Plan Change 22

The table below summarises the matters that were raised in submissions and the decisions sought, and the further submissions. It states the decision made in respect of each submission. Further discussion and reasons are set out in the next section of this report.

Topic	Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
<b>2.1 General</b>	Robert Bruce Mutton	1	2	Retain Plan Change 22.	Accept in part
	John and Daphne Ryder	4	1	Do not protect any exotic trees on private property.	Reject
	<i>Alan and Helen Winwood</i>	<i>Further submission X1</i>	<i>1</i>	<i>Oppose Submission 4, Statement 1. Exotic trees should be protected.</i>	Accept
	Brad Cadwallader	5	1	Amend all proposed listings to apply the correct formatting: lower case common names unless they are proper nouns, i.e. English oak, coral tree, rata, totara, black beech, Phoenix palm, pohutukawa, box elder, pin oak, titoki.	Accept in part
	Department of Conservation	7	1	Retain those trees that are of indigenous species that naturally occur within Nelson City. These trees are Podocarpus totara, Metrosideros robusta, Alectryon excelsus, Dacrycarpus dacrydiodes, and Nothofagus solandri.	Accept
	Linnea Brown	12	1	Retain Plan Change 22.	Accept in part

Topic	Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
<b>2.1.b) 18 Campbell Street (Road Reserve) – English Oak</b>	Robert Bruce Mutton	1	1	Retain Plan Change 22 to protect the oak tree at 18 Campbell Street (“our tree”).	Accept
<b>2.1.d) 31 Cleveland Terrace – Titoki</b>	Ben and Rachael Holmes	2	1	Retain Plan Change 22 to protect the titoki tree at 31 Cleveland Terrace.	Accept
<b>2.1.e) 31 Cleveland Terrace – Totara</b>	Ben and Rachael Holmes	2	2	Retain Plan Change 22 to protect the totara tree at 31 Cleveland Terrace.	Accept
<b>2.1.k) 1/138 Nile Street – Pin Oak</b>	Linnea Brown	12	2	Retain the Plan Change to protect the pin oak tree at 1/138 Nile Street.	Accept
<b>2.1.m) 19 Richmond Avenue – Sweet Gum</b>	John and Daphne Ryder	4	2	Do not proceed with listing the liquidambar styraciflua at 19 Richmond Avenue. The tree is unsightly and a danger to property so should be removed rather than given heritage tree status.	Reject
	<i>Alan and Helen Winwood</i>	<i>Further submission X1</i>	2	<i>Oppose Submission 4, Statement 2. Contests several of the points raised by original submitter.</i>	Accept
	Alan and Helen Winwood	8	1	Retain Plan Change 22 to include the liquidamber tree at 19 Richmond Ave.	Accept
<b>2.1.n) 16 Riverside – Phoenix Palm</b>	Gerard Malcolm and Alice Fong	10	1	Retain Plan Change 22 to protect the Phoenix palm at 16 Riverside.	Accept

Topic	Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
<b>2.1.p) 247 Rutherford Street – Box Elder</b>	Robert Malcolm Fraser	11	1	I support in part the tree being protected, BUT only with the proviso that adequate light levels are initially allowed and maintained to my section. The tree MUST be initially heavily pruned and shaped. If Council cannot meet these requirements, then I must alter my submission to OPPOSING the Plan Change.	Accept in part
<b>2.1.q) 18 Sowman Street – Saucer Magnolia</b>	Brad Cadwallader	5	2	Amend 2.1.q) to read "Magnolia x soulangeana - saucer magnolia". The multiplication sign is placed between the genus and species name to show that the tree is a hybrid of two species. The correct spelling of the species name is soulangeana as the person the hybrid was named after was Mr Soulange. Lower case common names should always be used unless they are proper nouns.	Accept
	Mitzi and Aidan Curran	6	1	Do not proceed with listing the magnolia tree at 18 Sowman Street.	Reject
<b>2.1.r) 166 St Vincent Street – English Oak</b>	Wendy Logan	3	1	Retain Plan Change 22 to protect the oak tree at 166 St Vincent Street.	Accept
	June Flemming	9	1	Amend Plan Change 22 to ensure that the tree is regularly thinned and looked after. The listing is not supported if no maintenance is provided [confirmed with submitter verbally].	Reject

### Consolidated Amendments to Plan Change 22

Appendix 1 shows the text of Plan Change 22 as notified, with further changes as a result of the decisions set out in this report shown as tracked changes in colour.

## **5. DISCUSSION**

### **Background**

- 5.1 The Proposed Plan Change adds 24 additional trees to the list of trees in Appendix 2 (Volume 3) and shows them on the Planning Maps of the Nelson Resource Management Plan (except for the Local trees which are not identified on the maps).
- 5.2 The trees to be added have all been identified by members of the public and/or property owners as being worthy of protection. Following this, a STEM assessment was carried out (STEM being the acronym for Standard Tree Evaluation Method), involving an expert judgment by the Council's Horticultural Supervisor on the basis of stated Arboricultural criteria, Amenity criteria and Outstanding criteria. The STEM assessment is the accepted consistent method which is used by this and other Councils to identify significant trees. It has been applied in an earlier plan change by Nelson City Council (Plan Change 05/02) and has been accepted by the Environment Court in a range of cases.
- 5.3 The inclusion of trees on the list was subject to consultation prior to notifying the Proposed Plan Change. If owners opposed the listing, the trees were not included on the list.
- 5.4 The Section 42A report notes that a significant storm in July 2009 resulted in the loss of 30 of Nelson's listed trees and damage to 100 others. The Proposed Plan Change is taking place at an opportune time in terms of "refreshing" the list of identified trees.
- 5.5 There is a comprehensive set of provisions within the Nelson Resource Management Plan relating to trees which are identified as worthy of protection, including relevant stated issues, objectives and policies in Chapter 5 (under DO4 – Heritage), rules in the various zones in the Plan, and the listing of trees in Appendix 2. The methods to achieve objectives and policies relating to trees include listing, plan rules and protection incentives including provision of information on tree care, free or reduced-cost tree inspection and pruning services by the Council for listed trees, and favourable consideration of other aspects of development if trees are protected (all under DO4.1.13). These provisions give effect to objectives, policies and methods within the Nelson Regional Policy Statement relating to the district's amenity values (in NA1).
- 5.6 Proposed Plan Change 22 makes no alterations or amendments to the issues, objectives, policies, rules or other methods relating to listed trees in the Plan. Thus there is clarity as to the regime that will apply to the trees which are the subject of the Plan Change, if they become listed.
- 5.7 At the start of the hearing, Mr Grundy outlined the approach that the Council applies at present in support of trees listed in Appendix 2. This includes advice and an inspection every two years and corrective pruning. As far as is practicable, officers take into account and endeavour to address any matters raised by neighbours and landowners, but they are also guided by the permitted activity provisions of the zones.

### **Submissions and Format of Decisions**

- 5.8 The submissions and further submissions received were of two types:
- submissions relating to general matters, and
  - submissions relating to a small number of specific listed trees.

5.9 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.

## 6. DECISIONS AND REASONS FOR DECISIONS

### 6.1 Decisions on Topic 2.1 – General matters

Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
Robert Bruce Mutton	1	2	Retain Plan Change 22.	Accept in part
John and Daphne Ryder	4	1	Do not protect any exotic trees on private property.	Reject
<i>Alan and Helen Winwood</i>	<i>Further submission X1</i>	<i>1</i>	<i>Oppose Submission 4, Statement 1. Exotic trees should be protected.</i>	Accept
Brad Cadwallader	5	1	Amend all proposed listings to apply the correct formatting: lower case common names unless they are proper nouns, i.e. English oak, coral tree, rata, totara, black beech, Phoenix palm, pohutukawa, box elder, pin oak, titoki.	Accept in part
Department of Conservation	7	1	Retain those trees that are of indigenous species that naturally occur within Nelson City. These trees are <i>Podocarpus totara</i> , <i>Metrosideros robusta</i> , <i>Alectryon excelsus</i> , <i>Dacrycarpus dacrydioides</i> , and <i>Nothofagus solandri</i> .	Accept
Linnea Brown	12	1	Retain Plan Change 22.	Accept in part

#### Discussion

Two submissions (from submitters 1 and 12) were in unconditional support of Proposed Plan Change 22. One provided a number of reasons for support which align closely with the objectives and policies of the Nelson Resource Management Plan relating to amenity, heritage and landscape values.

Submitter 7 similarly supports the content of Plan Change 22, but the support is limited to those trees that are naturally-occurring species within the district, being *Podocarpus totara*, *Metrosideros robusta*, *Alectryon excelsus*, *Dacrycarpus dacrydioides* and *Nothofagus solandri*. The submitter considers that these will support the key goals of the Nelson Biodiversity Strategy, add historic and amenity value and provide a potential seed source.

Submission 4 opposes the protection of exotic trees stating that they should not be granted Heritage Tree status unless they contribute to the landscape and grow on public land. The submission notes that exotic trees were not a part of the original landscape and states that such trees should not be afforded protection under the district scheme, except for large trees in parks and reserves and

pohutukawa and kauri trees which, although not endemic to the area, are native to New Zealand/Aotearoa. The submission states that growing large trees on small domestic residential sections should be discouraged (or forbidden), rather than given special status.

Further submitter X1 opposes this view stating “if no exotic trees on private property were protected, Nelson would be a city of shrubs with patches of native and exotic trees in a few parks, gardens and at the Cathedral”.

In describing the rationale for protecting trees the NRMP does not distinguish between exotics and natives. Both contribute to the values and environmental attributes the Plan’s provision seeks to achieve. Plan Change 22 does not amend this stance. To provide the relief sought by the submitter, existing objectives and policies would need to be altered. This is not part of the Proposed Plan Change, therefore any request for a blanket veto on the listing of exotics is not within scope of Plan Change 22. Similarly, treating public and privately owned trees differently is also beyond the scope of the Plan Change as the NRMP does not distinguish between private and public ownership.

The final general submission was from submitter 5 and relates to how the common names of the trees listed in Appendix 2 are expressed.

The submitter seeks amendments to the formatting of some listings, specifically relating to the capitalisation of tree names. The submission seeks that the proposed listing be corrected to apply standard nomenclature systems. That is, to apply lower case common names, unless proper names are involved. For example, English oak, coral tree, rata, totara, black beech, Phoenix palm, pohutukawa, box elder, pin oak, titoki.

In reviewing the listing of common names, the point raised is clear and it is appropriate to correct the names in line with usual conventions. However, there is a matter of Plan presentation which means that to accept the submission in full would result in inconsistent presentation with the remainder of the Plan. Throughout the Plan, all listed items or matters that are presented in tabular form commence with a capital letter and to depart from this convention would appear inconsistent. Thus a compromise position has been decided upon where the first word in the common name list is to be retained with a capital letter, but non-proper words elsewhere in the common name do not have a capital letter.

This decision raises a further minor matter of consistency in the wider Appendix 2 listing resulting in a separate recommendation to the Council, later in this report (see section 8 of this report).

### **Reasons for Decisions**

Submissions 1.2 and 12.1 are accepted as they are based on the rationale for listing of heritage trees in the Plan. However, as minor changes are to be made to the Proposed Plan Change as notified as a result of other submissions, they can only be accepted in part. Submission 7.1 is accepted in full, as no changes are made to the listing of the trees covered by that submission.

Submission 4.1 is rejected as it seeks a remedy that is beyond the scope of Plan Change 22 and would be inconsistent with provisions within the Regional Policy Statement and other parts of the Nelson Resource Management Plan. The associated further submission X1.1 is accepted for the same reason.

Submission 5.1 is accepted in part as it involves a minor correction to the presentation of information in the Plan Change. However, it is not accepted in full, as it is appropriate to retain capital letters at the start of all names in column 7 of Appendix 2, in line with the convention used elsewhere in the Plan.

## Modifications to Proposed Plan Change 22

Modify the items in the “Tree name (common)” column of Table 2.1 in Appendix 2 (Volume 3) by replacing the capital letter with a lower case letter in the names, except where the word is the first word in the column. This will result in changes to the listing in the seventh column of the table in terms of items a), b), c), g), h), j), k), l), m), n), p), q), r), u) and v).

### 6.2 Decision on Topic 2.1.b) – Tree at 18 Campbell Street (Road Reserve) – *Quercus robur* (English oak)

Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
Robert Bruce Mutton	1	1	Retain Plan Change 22 to protect the oak tree at 18 Campbell Street (“our tree”).	Accept

#### Discussion

There is a single submission in support of retaining the listing of this specific tree. The tree has been included in the Plan Change as a result of a rigorous assessment, and is appreciated by the submitter. As there are no opposing submissions other than the general submission (submission 4.1) relating to the listing of all exotic species, which has been rejected for reasons set out in the relevant decision, this submission is accepted.

#### Reason for Decision

The submission seeks the retention of a specific item in Proposed Plan Change 22 which has been included in accordance with the relevant policy provisions of the Nelson Resource Management Plan, and the STEM assessment.

## Modification to Proposed Plan Change 22

Nil.

### 6.3 Decisions on Topic 2.1.d) and e) – Trees at 31 Cleveland Terrace – *Alectryon excelsus* (titoki) and *Podocarpus totara* (totara)

Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
Ben and Rachael Holmes	2	1	Retain Plan Change 22 to protect the titoki tree at 31 Cleveland Terrace.	Accept
Ben and Rachael Holmes	2	2	Retain Plan Change 22 to protect the totara tree at 31 Cleveland Terrace.	Accept

#### Discussion

Submissions 2.1 and 2.2 seek the retention of the listing of these two specific trees. The trees have been included in the Plan Change as a result of a rigorous STEM assessment, and are appreciated by the submitter. As there are no opposing submissions this submission is accepted.

#### Reason for Decision

The submissions seek the retention of two specific items in Proposed Plan Change 22 which have been included in accordance with the relevant policy provisions of the Nelson Resource Management Plan, and the STEM assessment.

#### Modification to Proposed Plan Change 22

Nil.

#### 6.4 Decision on Topic 2.1.k) – Tree at 1/183 Nile Street – *Quercus palustris* (pin oak)

Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
Linnea Brown	12	2	Retain the Plan Change to protect the pin oak tree at 1/138 Nile Street.	Accept

#### Discussion

There is a single submission in support of retaining the listing of this specific tree. The tree has been included in the Plan Change as a result of a rigorous assessment, and is appreciated by the submitter. As there are no opposing submissions other than the general submission (submission 4.1) relating to the listing of all exotic species, which has been rejected for reasons set out in the relevant decision, this submission is accepted.

#### Reason for Decision

The submission seeks the retention of a specific item in Proposed Plan Change 22 which has been included in accordance with the relevant policy provisions of the Nelson Resource Management Plan, and the STEM assessment.

#### Modification to Proposed Plan Change 22

Nil.

#### 6.5 Decisions on Topic 2.1.m) – Tree at 19 Richmond Avenue – *Liquidamber styraciflua* (sweet gum)

Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
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Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
John and Daphne Ryder	4	2	Do not proceed with listing the liquidambar styraciflua at 19 Richmond Avenue. The tree is unsightly and a danger to property so should be removed rather than given heritage tree status.	Reject
<i>Alan and Helen Winwood</i>	<i>Further submission X1</i>	2	<i>Oppose Submission 4, Statement 2. Contests several of the points raised by original submitter.</i>	Accept
Alan and Helen Winwood	8	1	Retain Plan Change 22 to include the liquidambar tree at 19 Richmond Ave.	Accept

### Discussion

There were two submissions relating to the inclusion of this tree in Plan Change 22; submission 8.1 sought to retain the listing and submission 4.2 sought to not proceed with the listing. A further submission (X1.2) was received in opposition to submission 4.2 from original submitter 8. The Officer's Report on the submissions includes a very full discussion, including advice received from other Council advisors on matters raised in the submissions. The Officer's recommendations in response to these submissions are that the tree should remain listed.

Submission 8.1 sets out the following reasons for retaining the listed tree (summarised):

- for the enjoyment of the present and future generations
- for its association with the listed heritage building which is on the same title and of similar age
- for its amenity values and other benefits to the property owners
- as a contribution to wider precinct values relating to trees
- for other environmental benefits including slowing stormwater runoff, carbon sequestration, and soil stability
- to benefit from the inspection and maintenance incentives provided by Nelson City Council.

Submission 4.2 sets out the following reasons for not retaining the listed tree (summarised):

- it is exotic and not part of the original landscape (a point arising from a wider part of the submission which seeks that no exotic trees be listed)
- it is not very old
- it is too large for the property
- the tree could cause damage if it were to fall. If a spring were to emerge (as is potentially likely in this area), this could increase the risk of a fall.
- leaves and roots cause inconvenience and potentially will damage services
- branches overhang houses (at 19 Richmond and 34 Brougham Streets), the roadway, and properties
- the tree is unsightly and has not been well-maintained
- the tree affects the north view from the submitter's property and will continue to do so.

The further submission comments on and/or rebuts many of these points.

Given the opposing submissions, the primary issue to be addressed is whether the listing of the tree will better serve the purposes of the RMA, including those enunciated through the relevant objectives and policies of the Nelson Resource Management Plan, than not to list the tree.

The STEM assessment indicates that this is an important tree overall. It has been assessed as having one of the highest of the scores amongst the 24 trees included in the Plan Change. A site visit generally confirmed the significance of the tree, including in terms of the wider neighbourhood, and its relationship to the listed heritage building noted in submission 8.1. At the hearing, Mr Grundy confirmed the age and health of the tree and outlined the ongoing care that the tree would receive from the Council if it became listed.

Given the significance of the tree and the general approach to tree protection included in the objectives and policies of the Nelson Resource Management Plan, it is then necessary to consider whether the reasons raised in the submission in opposition to the listing have sufficient merit to overcome what is an otherwise fully-justifiable inclusion of this tree in Appendix 2. Such reason could include significant actual or potential adverse effects.

The tree is located on a privately-owned section which is accessed off a private shared accessway. It is noted that no other party, including the remainder of those on the shared accessway, had opposed the listing. At the hearing, Mr Winwood, as landowner, described his current approach to ongoing maintenance such as leaf-sweeping and collection, and to observation of tree roots and branches in case of any potential adverse effects. He confirmed that work had been done in the past relating to accessway stormwater systems and that the plastic pipes now installed appeared to have overcome any problem of root penetration of pipes. He noted that previous professional arborist work had been done on the tree.

I am satisfied that some of the points in the opposing submission are not correct, such as the suggestion of the age of the tree and the claim that it has not been well-maintained.

In relation to the submission point on protection of exotic species, this matter has been addressed as a general submission earlier in this report, and has been determined not to be an accepted proposition in terms of the Nelson Resource Management Plan.

While there is risk of tree fall and future damage to services, I consider that these risks are small and are likely to be further reduced if the tree is listed, given the ongoing role of the Council in inspecting and assisting with tree maintenance. I also note that the tree is the property of the land-owner and, regardless of listing, can remain in place for as long as the land-owner wishes (subject to the provisions of other legislation). I note the current owners' enthusiasm for the tree and the attention paid to managing leaf fall as it affects the right-of-way. If the property was to change hands, listing will be a clear signal to a future owner that ongoing management and maintenance will be needed.

The remaining matter identified is the gradual reduction in part of the view from the submitter's property. As noted in the Officer's Report this is a matter of amenity values relating to one property compared to a wider matter of community amenity and other values. It is also a matter which would not be resolved by the remedy sought, of not listing the tree, as the tree would remain. Listing will ensure ongoing maintenance including crown cleaning, which may help reduce the adverse summer amenity effects noted by the submitter in opposition.

Weighing these considerations against the implications of listing the tree, there is a strong case for including this tree in the listed items in Appendix 2, and the decision is to do so.

### **Reason for Decision**

The tree has been identified as being of heritage significance. Its identification, protection and management as proposed in the Plan Change is in accordance with the objectives and policies and other provisions of the Nelson Resource Management Plan. The listing is also in line with section 6(f)

of the RMA (historic heritage protection), given that it has a close association with a listed building, and is consistent with several RMA section 7 matters (including maintenance of amenity values and quality of the environment, and the ethic of stewardship). Any aspects relating to safety are better managed through listing of the tree than not listing it.

#### **Modification to Proposed Plan Change 22**

Nil.

#### **6.6 Decision on Topic 2.1.n) – Tree at 16 Riverside – *Phoenix canariensis* (phoenix palm)**

Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
Gerard Malcolm and Alice Fong	10	1	Retain Plan Change 22 to protect the Phoenix palm at 16 Riverside.	Accept

#### **Discussion**

There is a single submission in support of retaining the listing of this specific tree. The tree has been included in the Plan Change as a result of a rigorous assessment, and is appreciated by the submitter. As there are no opposing submissions other than the general submission (submission 4.1) relating to the listing of all exotic species, which has been rejected for reasons set out in the relevant decision, this submission is accepted.

#### **Reason for Decision**

The submission seeks the retention of a specific item in Proposed Plan Change 22 which has been included in accordance with the relevant policy provisions of the Nelson Resource Management Plan, and the STEM assessment.

#### **Modification to Proposed Plan Change 22**

Nil.

#### **6.7 Decision on Topic 2.1.p) – Tree at 247 Rutherford Street – *Acer negundo* (box elder)**

Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
Robert Malcolm Fraser	11	1	I support in part the tree being protected, BUT only with the proviso that adequate light levels are initially allowed and maintained to my section. The tree MUST be initially heavily pruned and shaped. If Council cannot meet these requirements, then I must alter my submission to OPPOSING the Plan Change.	Accept in part

## **Discussion**

Submission 11.1 relates to this tree. Despite the wording of the written submission, at the hearing Mr Fraser clarified that the submitter's position is not one of complete opposition – rather the submitter's appearance at the hearing sought reassurance that anyone doing work on the tree in future, should it be listed, should be mindful of the proximity of the tree to the submitter's house and the shading effect. Mr Fraser explained that the house is not angled well to the sun and is close to the boundary as well. The submitter acknowledges that the tree would remain, regardless of the listing.

The tree is large and close to the boundary. Mr Grundy described the history of past pruning of the tree and the likely approach that future pruning would take. While this is likely to provide more openness and light to the adjoining property, it could not be guaranteed that the submitter's satisfaction would necessarily be fully achieved, given the constraints of the permitted activities for listed trees.

The tree has been included in the Plan Change as a result of a rigorous assessment. There are no other opposing submissions other than the general submission (submission 4.1) relating to the listing of all exotic species, which has been rejected for reasons set out in the relevant decision.

On balance, I consider that the tree will be better managed, taking into account its effect on the adjacent property, if it is listed than if it is not.

## **Reason for Decision**

The tree has been identified as being of landscape significance. It provides considerable amenity to the surrounding area, and its listing will achieve outcomes which are in accordance with the objectives and policies for such listing within the Nelson Resource Management Plan and in line with several RMA section 7 matters (including maintenance and enhancement of amenity values and the quality of the environment, and stewardship).

Its effects on the neighbouring property will be better managed through listing of the tree than not listing it.

Because the relief sought in the submission is somewhat ambivalent, the submission is accepted in part, to the extent that it supports the listing of the tree at 247 Rutherford Street.

## **Modification to Proposed Plan Change 22**

Nil.

## 6.8 Decisions on Topic 2.1.q) – Tree at 18 Sowman Street – *Magnolia soulangiana (sic)* (saucer magnolia)

Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
Brad Cadwallader	5	2	Amend 2.1.q) to read "Magnolia x soulangeana - saucer magnolia". The multiplication sign is placed between the genus and species name to show that the tree is a hybrid of two species. The correct spelling of the species name is soulangeana as the person the hybrid was named after was Mr Soulange. Lower case common names should always be used unless they are proper nouns.	Accept
Mitzi and Aidan Curran	6	1	Do not proceed with listing the magnolia tree at 18 Sowman Street.	Reject

### Discussion

There were two submissions relating to this tree. One submission, submission 5.2, seeks correction of the botanical name of the tree, which is a hybrid of two species. I note that the Officer's Report has confirmed and corrected a typographic error in the original submission. The decision and change to the listing provides the correct species name.

The second relevant submission, submission 6.1, was from the present owners of the property and seeks the removal of the tree from Appendix 2 in the Proposed Plan Change. The submission states that the tree is not visible from the street, and the owners wish to have the opportunity to make changes to the property if they see fit although they have no intention of removing the tree. It appears that the property changed hands in the period following the tree initially being proposed for protection, and that the new owners were not aware of the previous owner's request to list the tree. No other submissions were received on this tree.

The tree is notated as a landscape tree in the Proposed Plan Change, rather than as a heritage tree. This is a reflection of its STEM assessment score, rather than a suggestion that it is particularly visible. It is nevertheless a significant tree, being estimated to be over 100 years old, of good form, an infrequent species in the district and in excellent health. These aspects were confirmed by Mr Grundy at the hearing. Mr Grundy also advised that the score was not at the lower end of landscape trees, and that the City has a number of trees already listed which have lower scores.

The site visit demonstrated that the tree is close to and behind the house, and near the centre of the site. However, the tree is more visible from the road and nearby properties on both sides of the road than acknowledged in the submission, particularly as the road rises up the hill. While the tree is not particularly obvious in its winter form, when in flower it will be noticeable, particularly set against the dark bush of the hill behind, contributing to wider amenity values. The location and form of the tree also appears to contribute significantly to the amenity of the lot which it is on. Mr Harrington advised that his recommendation not to proceed with the listing was not a strong recommendation, and there were points to be made for retaining the listing of the tree.

The main concern of the submitter appears to relate to future development of the property. The Officer's Report notes that the zoning of the property is Residential, rather than Residential-Lower Density and the policy that applies is less explicit in providing for larger trees. It appears that the owner has no specific intentions yet for further development, or redevelopment of the property. As

the section is large, the tree could become a feature of a future development. Alternatively, it could impede future development. The listing of the tree would mean that development or redevelopment that did not retain the tree would require a resource consent

The policy provisions that relate to landscape trees are set out in DO4.1.8.i of the Nelson Resource Management Plan. This states that “the protection of Landscape Trees or groups of Landscape Trees is considered important, and removal should be avoided where this can reasonably be achieved”. The explanation that follows refers to the assessment matters which apply in the zone. While the Residential Zone policies do not emphasise the need for tree protection as strongly as those for Residential Zone-Lower Density, they do recognise the contribution of trees to the amenity and character of an area and seek to maintain established trees. The criteria for consents for either removal of a listed tree or more intensive residential development than permitted appear to allow for a balanced consideration of the protection of the tree and the use and development of the site. I also note that amongst the Methods for tree protection, in DO4.1.13.X, is the statement: “Favourably consider departure from plan rules on other aspects of development if trees or heritage items are protected”. Thus the Plan appears to suggest some offsetting of any perceived disadvantage of listing in terms of future site development.

In addition, listing brings the benefits to landowner in the meantime of advice and assistance with maintenance.

Thus, on balance, I consider that the benefits of listing this tree are greater in resource management terms than any perceived potential disbenefits in terms of future use and development of the site. The tree has been recognised as of value to the community in terms of the resource management objectives and policies that apply within Nelson City.

### Reasons for Decision

The correction to the botanical name of the tree is made as a matter of fact and in the interests of clarity.

The decision to retain the tree on the list is made on the basis that the tree has been identified as being of landscape significance. As well as having values as a significant tree, it provides amenity to the area. Its listing will achieve outcomes which are in accordance with the objectives and policies for such listing within the Nelson Resource Management Plan. The Plan and the RMA processes together provide opportunities for future site development, including through assessment criteria and methods, and including the tree in Appendix 2 will not preclude future site development.

### Modification to Proposed Plan Change 22

Change the words under item n) in the sixth column of Amendments to Appendix 2 (Volume 3) to read:

Magnolia x soulangeana

### 6.9 Decisions on Topic 2.1.r) – Tree at 166 St Vincent Street – *Quercus robur* (English oak)

Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
Wendy Logan	3	1	Retain Plan Change 22 to protect the oak tree at 166 St Vincent Street.	Accept

Submitter Name	Submitter Number	Statement Number	Decision Sought	Decision
June Flemming	9	1	Amend Plan Change 22 to ensure that the tree is regularly thinned and looked after. The listing is not supported if no maintenance is provided [confirmed with submitter verbally].	Reject

### Discussion

There were two submissions relating to this tree. One submission, submission 3.1, seeks to retain the listing of the tree in the Proposed Plan Change. The second, submission 9.1, seeks that the listing only be retained if the tree is regularly thinned and looked after. The submission does not support the listing if no maintenance is provided.

Submission 3.1 is from the Nelson District Kindergarten Association who represent the kindergarten occupying the site. The land is owned by the Ministry of Education.

At the hearing Ms Cadenhead spoke on behalf of the submission. She advised that the Association manages a number of properties with significant trees which are listed in Appendix 2. The Association has its own schedule and manages and maintains its own trees using experienced local contractors. While trees are very important to the Kindergarten Association for their contribution to childrens' education and childrens' experience of the natural world, there is safety to be considered, so any trees must be cared for and well-maintained. The tree provides shade, branches for swings, and leaves and acorns for activities. In this kindergarten there is a role of 85 children and the area is a low decile one where children do not necessarily have ready access to such experiences elsewhere. The site is 1500m<sup>2</sup> and large enough to accommodate the tree. However, Ms Cadenhead indicated that the site is on fill, meaning it would be difficult to establish other trees.

A site visit confirmed the significance of the tree and its current well-maintained state. This includes the placement of safety matting within the play area below the tree.

The other submission relating to this tree is from the neighbour whose house is almost due west of the tree. The submission notes that the tree is large and thick and needs to be looked after to allow the sun through and over it. The submitter is concerned about leaves in her gutters in the autumn, and effects on her house and health. Mr Grundy advised that the tree is well-maintained and crown maintenance may provide some relief to the submitter, but this could not be guaranteed. As noted earlier in this report (paragraph 5.7), officers try to take into account matters raised by neighbours.

I note that the tree would remain, regardless of the listing. The decision to retain the tree on the list is made on the basis that the tree has been identified as being of landscape significance. It provides amenity to the area and its listing will achieve outcomes which are in accordance with the objectives and policies for such listing within the Nelson Resource Management Plan.

In this case, the tree provides additional values for an established community activity – i.e. the Kindergarten.

The tree has been included in the Plan Change as a result of a rigorous assessment. There are no other opposing submissions other than the general submission (submission 4.1) relating to the listing of all exotic species, which has been rejected for reasons set out in the relevant decision.

On balance, I consider that the tree will be better managed, and thus there is a greater probability of any adverse effects being limited, if it is listed than if it is not.

### **Reason for Decision**

The decision to retain the tree on the list is made on the basis that the tree has been identified as being of landscape significance. It provides amenity to the area and benefit to the present and future generations who use the site for community purposes. Its listing will achieve outcomes which are in accordance with the objectives and policies for such listing within the Nelson Resource Management Plan, and which also relate directly to section 5 of the RMA.

### **Modification to Proposed Plan Change 22**

Nil.

### **7. SECTION 32 FURTHER EVALUATION**

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

### **8. ADDITIONAL RECOMMENDATION UNDER RMA FIRST SCHEDULE, CLAUSE (20A)**

The Officer's Report on Plan Change 22, in recommending a standard and more correct format for common names of trees included in Appendix 2 (Volume 3) of the Nelson Resource Management Plan, in response to a submission (submission 5.1) proposed that similar and consistent changes be made throughout Appendix 2. This can be done, as a correction of minor errors, under clause 20A of the First Schedule to the RMA without following the full First Schedule process.

The decision I have made was to accept that submission in part, and corresponding amendments to the listing of items in Plan Change 22 are shown in Appendix 1 to this report.

A decision to undertake the further minor corrections proposed in the Officer's Report is beyond the scope of my delegated authority.

In the interests of consistency, it is my recommendation to the Council that such minor changes should be made, throughout the Nelson Resource Management Plan, Appendix 2 (Volume 3).

Signed:   
\_\_\_\_\_  
Hearings Commissioner

Date: 19 September 2011  
\_\_\_\_\_

**APPENDIX 1 – CONSOLIDATED AMENDMENTS TO PLAN CHANGE 22**

## PLAN CHANGE 22

### Amendments to Volume 3 (Appendices) following Decisions on Submissions

**Add** the following protected trees to Table 2.1 of Appendix 2 (Volume 3):

There are no further changes to the Planning Maps, which remain as notified.

	Category	Street No.	Address	Location	Type	Tree Name (Latin)	Tree name (common)	No. of trees
a)	Heritage	42	Arapiki Rd		S	<u>Quercus robur</u>	English <u>Oak oak</u>	1
b)	Landscape	18	Campbell St	Road reserve	S	<u>Quercus robur</u>	English <u>Oakoak</u>	1
c)	Landscape	7	City Heights		S	<u>Quercus robur</u>	English <u>Oakoak</u>	1
d)	Heritage	31	Cleveland Tce		S	<u>Alectryon excelsus</u>	Titoki	1
e)	Heritage	31	Cleveland Tce		S	<u>Podocarpus totara</u>	Totara	1
f)	Heritage	277	Hampden St		S	<u>Metrosideros robusta</u>	Rata	1
g)	Landscape		Harper St		S	<u>Ulmus procera</u>	English <u>Elmelm</u>	1
h)	Landscape	180	Kawai St		S	<u>Magnolia grandiflora</u>	Evergreen <u>Magnoliamagnolia</u>	1
i)	Heritage	30	Marybank Rd		G	<u>Dacrycarpus dacrydioides</u>	Kahikatea	2
j)	Heritage	16	Ngatitama St		S	<u>Quercus robur</u>	English <u>Oakoak</u>	1
k)	Landscape	1/138	Nile St		S	<u>Quercus palustris</u>	Pin <u>Oakoak</u>	1
l)	Local	142	Nile St		S	<u>Liquidambar styraciflua</u>	Sweet <u>Gumgum</u>	1
m)	Heritage	19	Richmond Ave		S	<u>Liquidambar styraciflua</u>	Sweet <u>Gumgum</u>	1
n)	Heritage	16	Riverside		S	<u>Phoenix canariensis</u>	Phoenix <u>Palmpalm</u>	1
o)	Heritage	52	Russell St		S	<u>Metrosideros excelsa</u>	Pohutukawa	1
p)	Landscape	247	Rutherford St		S	<u>Acer negundo</u>	Box <u>Elderelder</u>	1
q)	Landscape	18	Sowman St		S	<u>Magnolia x seoulangianaso ulangeana</u>	Saucer <u>Magnoliamagnolia</u>	1
r)	Landscape	166	St Vincent St		S	<u>Quercus robur</u>	English <u>Oakoak</u>	1
s)	Landscape	29	Stanley Cres		S	<u>Metrosideros excelsa</u>	Pohutukawa	1
t)	Local	39	Stansell Ave		S	<u>Nothofagus solandri</u>	Black beech	1
u)	Landscape	45	The Ridgeway		S	<u>Erythrina crista-galli</u>	Coral <u>Treetree</u>	1
v)	Heritage	26	Todd Bush Rd		S	<u>Quercus robur</u>	English <u>Oakoak</u>	1
w)	Heritage	384	Trafalgar St South		S	<u>Podocarpus totara</u>	Totara	1