

NELSON CITY COUNCIL

## **Nelson Resource Management Plan**

Proposed Plan Change 25

Technical Fixes

**Planning Officer's Report - addressing submissions on  
the Proposed Plan Change prior to Hearing**

**Date of hearing**

15 July 2011



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# PART A – INTRODUCTION

## 1. Reporting Officer

- 1.1 My name is Debra Bradley. I am employed by Nelson City Council in the role of Planning Adviser. I have been with the Council for 16 years, eight years as a Planning Assistant, and the remainder in my current role.
- 1.2 I have a Bachelor of Arts (Hons) from the University of Waikato and a Diploma of Environmental Studies from the Open Polytechnic of New Zealand.
- 1.3 I have been involved in this Plan Change from the beginning and have led the process through the notification period.

## 2. Overview of Proposed Plan Change

### 2.1 *Plan Change 25.1 – Hazardous substances*

This change to Appendix 21 (hazardous substances) is to reflect the update of a NZ Standard since the Plan became operative. AS/NZS 1596:2008 The storage and handling of LP Gas has replaced the former standard, the AS/NZS 1596:1997 Storage and Handling of LP Gas. This Plan Change also corrects two inconsistencies between the total effects ratios rule (shown in Table 21.2.4) and the reasons for the industrial zone effects ratio (AP21.4.16).

### 2.2 *Plan Change 25.2 – Noise*

This change corrects an inconsistency in the noise rule in three zones (REr.43, ICr.42 and SCr.36). REr.43.3, ICr.42.3 and SCr.36.3 state activities that contravene a permitted condition are discretionary. The explanations in REr.43.5, ICr.42.5 and SCr.36.5 incorrectly state that noise in excess of the permitted standard will be assessed as a non-complying activity. The Plan Change deletes this sentence from the explanations to be consistent with the rule.

### 2.3 *Plan Change 25.3 – Tahunanui Slump Slope Risk Overlay*

The change amends the rule (REr.76) controlling heavy structures in the Tahunanui Slump Slope Risk Overlay, to include control over reductions in structure weight as well as increases. This change has been made because weight reductions can also impact on slope stability.

### 2.4 *Plan Change 25.4 – Soil disturbance, earthworks and vegetation clearance*

The change amends the soil disturbance rules in three zones (REr.60, OSr.48 and RUr.26), earthworks rules in seven zones (REr.61, ICr.55, SCr.48, INr.54, OSr.49, RUr.27 and COr.25) and the vegetation clearance rules in four zones (REr.59, OSr.47, RUr.25 and COr.25) to require remediation of bare soil areas as soon as practicable but no later than six months after the soil disturbance has occurred, rather than allowing soil to remain bare for up to 12 months. This change has been made to reduce the risk of erosion and soil sedimentation occurring after earthworks.

## 2.5 *Plan Change 25.5 – Definitions*

This change:

- amends the wording of the road boundary definition to improve consistency with other, related definitions in the NRMP (with no change in effect).
- adds a definition for 'drip line' (around trees) to provide more certainty in the implementation of rules REr.95, ICr.68, SCr.65, INr.67, OSr.70 and RUr.70 (Activities within the dripline of a Heritage or Landscape Tree identified in Appendix 2).
- amends the defensible space definition by allowing for a lesser area to apply if this has been approved in writing by the Principal Rural Fire Officer.
- amends the 'net area' definition to simplify it.
- adds a definition for 'predominant slope'. This term is used in the soil disturbance rule to determine activity status (less than 25 degrees from horizontal is a permitted activity, 35 degrees or less is a controlled activity, and a greater slope is a discretionary activity). It is therefore important to clearly define how to determine this slope.
- amends the definition for 'revegetation' to remove the reference to 60% coverage of soil surfaces.

## 2.6 *Plan Change 25.6 – Landscape rules in the Rural Zone*

The changes to the landscape rules in the Rural Zone improve the link between the controlled activity rules related to structures (RUr.54), earthworks (RUr.56) and subdivision (RUr.80) within the Landscape Overlay, and Appendix 7 (guide for subdivision and structures in the Landscape Overlay).

2.7 Definitions for construction and erection have been added, to provide certainty that these terms include the relocation of a building or structure. This activity has similar effects to construction and erection of new buildings and structures.

## 3. **Purpose of this Officer's Report**

3.1 This Officer Report has been prepared under Section 42A of the Resource Management Act:

- to assist the Independent Commissioner in making decisions on the submissions to Proposed Plan Change 25 – 'Technical Fixes' to the Nelson Resource Management Plan (the Plan);
- to assist submitters who requested to be heard, by providing, prior to the hearing, a staff evaluation of decisions requested in submissions.

3.2 The evaluations and recommendations presented in the report are based on the information available prior to the hearing, including that contained in the submissions. In evaluating the submissions the matters considered include whether a decision requested:

- falls within the functions of Nelson City Council under the Resource Management Act 1991 (RMA);
- will enhance the ability of the Plan to achieve the purpose of the RMA;
- will improve a policy, rule or other method so that it is more efficient and effective for achieving the relevant objectives;
- will improve the Plan in relation to such matters as its lawfulness, clarity, accuracy, effectiveness and coherence.

#### 4. Consultation

- 4.1 Proposed Plan Change 25 was developed with advice from the Council's resource consents planners regarding a range of small changes that could be made to assist with implementation of the Plan.
- 4.2 The Council's Geotechnical Adviser Paul Denton assisted with the development of the Tahunanui Slump Slope Risk Overlay portion of this Plan Change, Rule REr.76 (which controls heavy structures in the Tahunanui Slump Slope Risk Overlay) because decreases in weight within the Tahunanui Slump Slope Risk Overlay are also a potential hazard.
- 4.3 Environmental Inspections Limited, which is responsible for monitoring compliance with resource consents in Nelson, assisted with the revegetation definition.

#### 5. Notification, submissions and further submissions

- 5.1 The Proposed Plan Change was publicly notified on 25 September 2010, with submissions closing on 3 December 2010. Fourteen submissions were received.
- 5.2 A summary of the decisions requested was notified on 30 January 2011 and closed on 12 February 2011. No further submissions were received.
- 5.3 The table below lists the submissions received:

Submission Number	Submission Name
1	Rex Bloomfield and Glen Rowling
2	Marsden Park Ltd
3	Nelson Grey Power Association Inc
4	Terry Holton
5	Dan McGuire
6	Cadwallader Tree Consultancy & New Zealand Notable Trees Trust
7	Christine Grove
8	David Brathwaite
9	Jaap C Buys
10	Jocelyn Smith
11	Lance Edwardes
12	Chris Appleton
13	Colin Kerby
14	C I Hurley and I L T Turner

There is a summary of the submissions in Part D of this report.

## 6. Statutory assessment

6.1 Council must consider the relevant provisions of the RMA in its assessment of the Plan Change. This includes an assessment of the purpose and principles of the Act (part 2), consideration of Council's functions (s31), an assessment of the alternatives and their costs and benefits (s32), and shall consider the Regional Policy Statement, regional plans, and management plans prepared under other acts (s74 and 75). The relevant provisions of the RMA are assessed below.

### 6.2 Part 2

This plan change makes minor amendments to existing provisions related to hazardous substances, noise, natural hazards, management of earthworks, vegetation clearance and soil disturbance to reduce the risk of erosion and sedimentation, and landscape protection. The existing provisions are relevant to the following aspects of Part 2 of the RMA:

- enabling people and communities to provide for their health and safety
- safeguarding the life-supporting capacity of water
- the maintenance and enhancement of amenity values
- the maintenance and enhancement of the quality of the environment
- the protection of the habitat of trout and salmon.

### 6.3 Section 32

Before adopting for public notification any objective, policy, rule or other method promoted through this proposed Plan Change, section 32 of the RMA imposes upon the Council a duty to consider:

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

6.4 A Section 32 assessment was prepared and made available as part of the public notification process (see Attachment 1 of this report, document [953031](#)).

6.5 Two key options were assessed in the section 32 report relating to Plan Change 25.1:

- not proceeding with the Plan Change
- proceeding with the Plan Change.

6.6 This evaluation identified that proceeding with Part 25.1 of the Proposed Plan Change has the following benefits:

- it applies the most up to date standard for management of LP Gas
- it clarifies the total effects ratios that apply in the Industrial Zone, by deleting an inconsistency in the text.

6.7 Two key options were assessed in the section 32 report relating to Plan Change 25.2:

- not proceeding with the Plan Change
- proceeding with the Plan Change.

- 6.8 This evaluation identified that proceeding with Part 25.2 of the Proposed Plan Change has the following benefit:
- it clarifies the activity status of noise which is in excess of the permitted standard, by correcting the inaccurate explanation to the rule
- 6.9 Two key options were assessed in the section 32 report relating to Plan Change 25.3:
- not proceeding with the Plan Change
  - proceeding with the Plan Change.
- 6.10 This evaluation identified that proceeding with Part 25.3 of the Proposed Plan Change has the following benefits:
- more control over activities with potential to impact on slope stability
  - reduced risk to people's safety and
  - reduced risk of damage to property.
- 6.11 These benefits outweigh the cost of resource consent for property owners within the Overlay who remove heavy structures (of more than 1000 kg) from their property.
- 6.12 Two key options were assessed in the section 32 report relating to Plan Change 25.4:
- not proceeding with the Plan Change
  - proceeding with the Plan Change.
- 6.13 This evaluation identified that proceeding with Part 25.4 of the Proposed Plan Change has the following benefit:
- it clarifies that works to prevent soil erosion must begin as soon as practicable after soil disturbance and/or earthworks have occurred, and cannot be delayed for 12 months after soil disturbance, earthworks or vegetation clearance.
- 6.14 Two key options were assessed in the section 32 report relating to Plan Change 25.5:
- not proceeding with the Plan Change
  - proceeding with the Plan Change.
- 6.15 This evaluation identified that proceeding with Part 25.5 of the Proposed Plan Change has the following benefit:
- it improves clarity around interpretation of the NRMP, which will improve consistency and efficiency when processing resource consents related to these matters.
- 6.16 Two key options were assessed in the section 32 report relating to Plan Change 25.6:
- not proceeding with the Plan Change
  - proceeding with the Plan Change.
- 6.17 This evaluation identified that proceeding with Part 25.6 of the Proposed Plan Change has the following benefit:
- Greater protection of landscape components in the Rural Zone when structures, earthworks or subdivision are proposed to occur as controlled activities within the Landscape Overlay.
- 6.18 This benefit outweighs the potential additional costs to mitigate the effects of these activities. The Plan Change is an efficient and effective way to address the operative issues and achieve the objectives because it improves the link between the Rural Zone rules related to the Landscape Overlay and Appendix 7 (guide for subdivision and structures in the Landscape Overlay).

### 6.19 **Regional Policy Statement**

The Proposed Plan Change is not inconsistent with the Nelson Regional Policy Statement (RPS), particularly the following chapters:

- WM2 – management of hazardous substances and contaminated sites
- DA2 – noise
- DH2 – natural hazards
- SO1 – sustainability of the soil resource
- NA2 – landscape values and natural features

### 6.20 **NRMP**

No new objectives are being proposed in this Proposed Plan Change. Instead the Plan Change relies on existing operative objectives within Chapter 5 – District Wide Objectives and Policies of the Plan, specifically:

- Objective DO3.1 - Management of the actual and potential effects arising from the storage, use, disposal, and transportation of hazardous substances to ensure that any potential or actual adverse environmental effects are avoided, remedied, or mitigated.
- Objective DO2.1 - An environment within which adverse effects of natural hazards on people, property, and the environment are avoided or mitigated.
- Objective DO4.1 – Retention and enhancement of heritage items that contribute to the character, heritage values, or visual amenity of Nelson, in a setting that enhances such items.
- Objective DO13.1 - An environment where the adverse effects of accelerated soil erosion are avoided, remedied or mitigated.
- DO9.1 - A landscape that preserves and enhances the character and quality of the setting of the city and in which its landscape components and significant natural features are protected.

6.21 The Plan Change also relies on an existing operative objective in the Nelson Regional Policy Statement:

- Objective DA2.2.1 - An environment in which unreasonable noise is avoided, remedied or mitigated.

6.22 The amendments to Appendix 21 (hazardous substances) aligns the Council's management of hazardous substances with the updated New Zealand Standards, ensuring best practice is followed.

6.23 Corrections to the explanation of the noise rule in three zones (REr.43, ICr.42 and SCr.36) does not alter how the Council achieves DA2.2.1 because the rule remains unchanged.

6.24 The amendment to the rule (REr.76) controlling heavy structures in the Tahunanui Slump Slope Risk Overlay enhances the Council's ability to avoid or mitigate the adverse effects of land instability, which supports objective DO2.1.



- 6.25 The changes to the soil disturbance, earthworks and vegetation clearance rules has been made to reduce the risk of erosion and soil sedimentation occurring after earthworks. These changes support achievement of objective DO13.1.
- 6.26 The amendments to definitions in chapter two of the NRMP are primarily to assist interpretation. The most significant elements are:
  - the addition of a dripline definition to improve clarity about the area around heritage trees which needs to be protected. This supports the achievement of objective DO4.1.
  - not limiting the area of soil surfaces to be covered during revegetation. This supports the achievement of objective DO13.1.
- 6.27 Improving the link between the controlled activity rules related to structures, earthworks and subdivision within the Landscape Overlay, and Appendix 7 supports the achievement of objective DO9.1.

**7. Conclusions**

- 7.1 This report provides a statutory and effects based assessment of proposed Plan Change 25. I have described the general approach and the background and consultation leading to the development of this Plan Change. I have also assessed it against the statutory requirements under the RMA and have concluded that it meets all the relevant matters.
- 7.2 I acknowledged the various concerns, and suggestions for improvement, outlined in the submissions and further submissions, and have commented on those and made specific recommendations in Part B of this Report.
- 7.3 A number of recommended amendments to the Plan Change are outlined in Part C.
- 7.4 With those amendments I am of the opinion that the package of measures embodied in Plan Change 25 will provide a workable and realistic planning response to these resource management issues in Nelson.

**Author: Debra Bradley**

**Date:**

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**Peer Reviewed: Matt Heale**

**Date:**

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## PART B – RECOMMENDATIONS AND REASONS

### Recommendation for Plan Change 25.2

#### Noise explanations – REr.43.3, ICr.42.5 and SCr.36.5

##### Recommendation:

A) *Accept submissions 1/1, 3/1, 4/1, 5/1, 9/1.*

Retain the following sentence in REr.43.5, with the correction of the activity status, as follows:  
“As noise has a major influence on the amenity of an area, any proposal for noise in excess of the permitted standard will be assessed as a ~~non-complying~~discretionary activity.”

Retain the following sentences in ICr.42.5 and SCr.36.5, with the correction of the activity status, as follows:

“Noise has a major influence on the amenity of an area. For this reason any proposal for noise in excess of the permitted standard will be assessed as a ~~non-complying~~discretionary activity where it affects a Residential Zone.”

B) *Accept in part submission 13/1.*

C) *Reject submission 7/1.*

D) *Reject submissions 10/1, 11/1, 12/1.*

E) *Reject submission 8/1*

##### **Reasons for Recommendations:**

A) Submitters 1, 3, 4, 5 and 9 request retention of the explanation stating the importance of noise. This can be done by retaining the explanation but correcting the error within it. The activity status referred to in the explanation needs to be changed to ‘discretionary’ in order to be consistent with the objectives, policies and the rule. The risk of not making the change to the activity status referred to in the explanation is the potential for confusion about the activity status of noise in excess of the permitted standard.

The change falls within the functions of Nelson City Council under the RMA because the maintenance and enhancement of amenity values is a matter to which the Council must have particular regard under section 7 of the RMA.

The submitters are correct and it is useful to have the explanation aligning with the rule. Retaining the explanation (with the correction of replacing ‘non-complying’ with ‘discretionary’) enhances the ability of the Plan to achieve the purpose of the RMA by clearly stating that noise is an important issue, which has a major influence on the amenity of an area.

This is aligned with:

- Residential Zone Policy RE2.1 which states: “Noise levels received at adjacent site boundaries should be consistent with a predominantly residential environment.”
- Inner City Zone Policy IC4.2 which states: “Activities should not give rise to levels of noise, smell, dust, and smoke, or traffic, landscape, aesthetic or other adverse effects which will detract from the character being sought for the City Centre and City Fringe areas.
- Suburban Commercial Zone Policy SC2.3, which states: “Activities should not give rise to odour, dust, glare, or noise:
  - a) in any neighbouring zone, inconsistent with levels or times that can reasonably be

expected in such a zone, or

- b) at levels, or times which would adversely affect the character and function of the centre.

- B) Submitter 13 requests retention of the explanation stating the importance of noise. This can be done by retaining the explanation but correcting the error within it.

The second part of the submission relates to not increasing noise levels at Council-run events. The relevant policy is Open Space Policy OS1.3 which states: "Activities on open space and recreation zone land should be compatible with the amenity values of surrounding zones."

Noise in the Open Space and Recreation Zone is subject to rule OSr.37 which states that noise levels measured at the boundary of any site in the Residential Zone must not exceed 55 dBA in day time hours and 45 dBA at other times. This is the same requirement that applies in the Residential Zone (under rule REr.43).

Any noise in the Open Space and Recreation Zone that is louder than this is not permitted, and anyone intending to generate the noise is required to gain resource consent, including the Council when it is planning activities such as festivals. The only exemption listed in Open Space and Recreation Zone rule OSr.37 is for sound from events and spectators at Trafalgar Park, Rutherford Park or Saxton Field, provided the events do not occur outside the hours of 7am to 10pm, and the sound does not involve electrically amplified music.

Amendments to the noise rule in the Open Space Zone are considered to be outside the scope of Plan Change 25.2 and therefore are not recommended. It would not be fair to other people who would potentially be affected by this change, because they would not have had the opportunity to submit on the change to the Plan.

- C) The submitter would support any plan change resulting in a quieter environment. However, the Proposed Plan Change does not change the effect of the noise rules in the Residential, Inner City and Suburban Commercial zones.

No changes can be made to the activity status or conditions of the noise rules as a result of this submission because this type of change was not included in the Proposed Plan Change that was notified in September 2010. It would not be fair to other people who would potentially be affected by this change, because they would not have had the opportunity to submit on the proposed change.

- D) Submitters 10, 11 and 12 request Proposed Plan Change 25.2 to be withdrawn in its entirety. If this approach was taken the inconsistency between the rule and the explanation would remain.

This option was considered as Option 1 in the section 32 report (Attachment 1 to this report). That evaluation identified Option 1 to be an inefficient and ineffective way to meet the objectives of the Plan, because it allows inconsistencies to remain in the noise rule in the Residential, Inner City and Suburban Commercial zones.

Retaining the current explanation in REr.43.5, ICr.42.5 and SCr.36.5 would not address the inconsistency between the rules and their explanations.

- E) Submitter 8 has requested changes to the activity status of noise that does not meet the permitted standard – from its current status of discretionary to non-complying. However, the operative rule has legal effect, and takes precedence over an explanation of a rule. This change corrects an error, and is a matter of aligning the explanation with the rule. It is

outside the scope of the Plan Change to change the activity status of the rule.

Section 75 of the RMA requires district plans to have rules to implement the policies. Explanations and reasons are optional.

Any changes to the activity status of the noise rules cannot be made as a result of this submission because this was not included in the Proposed Plan Change that was notified in September 2010. It would not be fair to other people who would potentially be affected by this change, because they would not have had the opportunity to submit on the proposed change.

## Recommendation for Plan Change 25.5

### Dripline definition

#### Recommendation:

Accept submissions 6/1, 6/2 and 6/3.

Delete the 'Dripline' definition from the Meaning of Words chapter of the Plan, and add a definition for 'Root Protection Zone' as follows:

"Root Protection Zone means the minimum area required to ensure a tree's health and stability is safeguarded, as calculated using the following table:

#### Protection of Trees on Development Sites

<u>Tree age</u>	<u>Tree vigour</u>	<u>Root Protection Zone radius (m)</u>
<u>Young trees</u>  <u>(where the age of tree is less than 20% of life expectancy)</u>	<u>Good vigour</u>	<u>9 x DBH*</u>
	<u>Poor vigour</u>	<u>6 x DBH</u>
<u>Mature trees</u>  <u>(where the age of tree is between 20% and 80% of life expectancy)</u>	<u>Good vigour</u>	<u>9 x DBH</u>
	<u>Poor vigour</u>	<u>12 x DBH</u>
<u>Over mature trees</u>  <u>(where the age of tree is greater than 80% of life expectancy)</u>	<u>Good vigour</u>	<u>12 x DBH</u>
	<u>Poor vigour</u>	<u>15 x DBH</u>

DBH means Diameter at Breast Height which in NZ is diameter at 1.4m high (the diameter of the stem 1.4m above ground level."

**Consequential amendment:**

Replace the term ‘dripline’ with ‘root protection zone’ in rules REr.95, ICr.68, SCr.65, INr.67, OSr.70 and RUr.70 as follows:

Item	Permitted	Controlled	Discretionary/Non-complying
REr.95 Heritage and Landscape Trees Activities within the <del>dripline</del> <u>root protection zone</u> of a Heritage or Landscape Tree identified in Appendix 2	REr.95.1 Activities within the <del>dripline</del> <u>root protection zone</u> of a Landscape Tree or a Heritage Tree identified in Appendix 2 are permitted if: a) parking or storage of materials, vehicles, or machinery is on an existing sealed, formed surface, and b) it does not involve compaction, sealing, removal or addition of soil, and c) there is no discharge of a toxic substance, and d) there is no excavation or construction of structures. except where the tree is on Road Reserve, where activities are permitted if: i) excavation is no deeper than 200mm and no less than 2m from the tree trunk, and ii) sealing is within the existing formed carriageway or footpath.	REr.95.2 Activities within the <del>dripline</del> <u>root protection zone</u> of Landscape or Heritage Trees on Road Reserve that contravene a permitted condition are controlled.  Control reserved over: i) location, proximity to tree trunk, timing and manner in which the activity is carried out, and ii) remedial measures.  Resource consent applications will be considered without notification, or obtaining written approval of affected persons, under section 94 of the Act.	REr.95.3 Activities within the <del>dripline</del> <u>root protection zone</u> of Landscape or Heritage Trees (not on Road Reserve) that contravene a permitted condition are discretionary.

**Reasons for Recommendations:**

Replacing the undefined term ‘dripline’ with ‘root protection zone’ in rules REr.95, ICr.68, SCr.65, OSr.70 and RUr.70, and adding a definition for ‘root protection zone’ in Chapter 2 (Meaning of Words) supports the implementation of District Wide Policy DO4.1.11 which states:

“The heritage significance and integrity of any listed tree should not be unreasonably compromised by any work directly or indirectly affecting the tree, or any adjacent development, having regard to the category of protection afforded the tree, and the purpose of that protection.”

The amended wording in the rules and the new definition will improve clarity about the extent of the area around Heritage and Landscape trees that needs to be protected from activities that could impact on the health of the trees, such as compaction, sealing, removal or addition of soil, and excavation or construction of structures.

## **Recommendation for Plan Change 25.6 RUr.56.2, Landscape Overlay – Earthworks**

### **Recommendations:**

*Accept submissions 2/1 and 14/1.*

Do not add 'the location of tracks and access roads' as a further matter of control in RUr.56.2.

### **Reasons for Recommendations:**

The purpose of the proposed change is to enable the matters in Appendix 7 (guide for subdivision and structures in the landscape overlay) to be considered as part of controlled activity consents, as well as discretionary activities. However, control over earthworks related to the location of tracks and access roads is sufficiently covered by the first matter over which control is reserved in rule RUr.56 (the extent, form and duration of earthworks).

## **Recommendation for Plan Change 25.6 RUr.80.2, Subdivision within the Landscape Overlay**

### **Recommendation:**

*Reject submissions 2/2 and 14/2.*

### **Reasons for Recommendations:**

The purpose of the proposed change is to enable the matters in Appendix 7 (guide for subdivision and structures in the landscape overlay) to be considered as part of controlled activity consents, as well as discretionary activities. The submitters consider requiring applicants to establish the specific number of lots at the subdivision stage is overly onerous, as it could result in developers having to gain a variation to their consent if the preferred number of lots changes later in the development process.

However, the number of lots in a subdivision has potential to affect landscape values, which is why "the number [of allotments]" should be retained as matter of control.

The proposed changes to Rule RUr.80.2 will assist in the implementation of District Wide Policy DO9.1.2: "Development should be undertaken in a manner which avoids, remedies, or mitigates adverse effects on the landscape, coastal features and amenity values."

## **Recommendation for Plan Change 25.6 Consequential amendments**

### **Recommendation:**

*Accept submission 2/3.*

### **Reason for Recommendation:**

The submitter has requested that all necessary consequential amendments be made to give effect to the Marsden Park Ltd submissions. No further changes are required to give effect to the Marsden Park Ltd submission.

## PART C – RECOMMENDED PLAN AMENDMENTS

**Note: these amendments reflect both the original plan change and the recommended changes in response to submissions.**

### Format of the Plan Change provisions

Within this Plan Change:

‘Normal’ text applies to current operative provisions to remain unchanged.

‘Underline’ text applies to proposed new provisions.

‘~~Strike through~~’ text applies to operative provisions proposed to be deleted or amended as described.

‘*Italic*’ text applies to instructions.

### Plan Change 25.1 – Hazardous substances

*Amend the wording in AP21.4.16.ii as follows:*

Ap21.4.16.ii The Industrial Zone at the Port, Tahunanui, Nayland Road South and the Airport have an effects ratio of 0.75. This permits storage of 22,500 litres of diesel, 7,500 litres of petrol, or 750 litres of an environmentally highly toxic substance. ~~The Vanguard St and Nayland Rd South Industrial areas area receive~~ has a rating of -0.25 and 0.5 respectively 0.2. The Vanguard St area is in the vicinity of Residential and Inner City Zones, and it is desirable to minimise hazardous substances use in this area as much as possible. ~~The Nayland South Industrial area comprises mainly food processing industries, which generally are not compatible with industry manufacturing or using large quantities of hazardous substances. However, food processing industries have hazardous substances requirements for transportation and refrigeration.”~~

*Amend wording in AP21.3.2.ii and AP21.3.2.iii as follows:*

AP21.3.2.ii Storage of LPG in cylinders, provided it can be demonstrated that ~~“AS/NZS 1596:1997 Storage and Handling of LP Gas”~~ AS/NZS 1596:2008 The storage and handling of LP Gas” is adhered to.

AP21.3.2.iii Storage of up to 6 tonnes (single vessel storage) of LPG in a receptacle of a liquid capacity greater than 250l, provided it can be demonstrated that ~~AS/NZS 1596 Storage and Handling of LP Gas”~~

“AS/NZS 1596:2008 The storage and handling of LP Gas “ is adhered to.

### Plan Change 25.2 - Noise

*Amend REr.43.5 as follows:*

“As noise has a major influence on the amenity of an area, any proposal for noise in excess of the permitted standard will be assessed as a ~~non-complying~~ discretionary activity.”



Amend ICr.42.5 and SCr.36.5 as follows:

“Noise has a major influence on the amenity of an area. For this reason any proposal for noise in excess of the permitted standard will be assessed as a ~~non-complying~~ discretionary activity where it affects a Residential Zone.”

### Plan Change 25.3 – Tahunanui Slump Slope Risk Overlay

Amend REr.76.1 as follows:

Within the Tahunanui Slump Core Risk Overlay, and the Tahunanui Slump Fringe Slope Risk Overlay:

- a) any structure must not ~~change the loading~~ add a load to the site of ~~greater~~ by more than 1000 kg (including any structure with a storage capacity in excess of 1000 litres of liquid, such as a swimming pool).

### Plan Change 25.4 - Soil disturbance, earthworks and vegetation clearance

#### Soil disturbance rules

Amend REr.60.1d), OSr.48.1d) and RUR.26.1d) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance:

- i) stabilised so that no earth moves off-site or presents a danger to life or property; and
- ii) vegetated, paved, metalled or built over, and ~~revegetated or otherwise~~ protected from soil erosion as soon as practicable and not later than 12 months from the date of the earthworks.

Amend REr.60.2c), OSr.48.2c), RUR.26.2c) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance, or the time specified in the sedimentation and erosion control plan for the site:

- i) stabilised so that no earth moves off-site or presents a danger to life or property; and
- ii) vegetated, paved, metalled or built over, and ~~revegetated or otherwise~~ protected from soil erosion as soon as practicable, and not later than 12 months from the date of the earthworks.

#### Earthworks rules

Amend REr.61.1f), ICr.55.1f), SCr.48.1f), INr.54.1f), OSr.49.1f) and RUR.27.1f) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance:

- ii) stabilised so that no earth moves off-site or presents a danger to life or property; and
- iii) vegetated, paved, metalled or built over, and ~~revegetated or otherwise~~ protected from soil erosion as soon as practicable and not later than 12 months from the date of the earthworks.

Amend REr.61.2e), ICr.55.2e), SCr.48.2e), INr.54.2e), OSr.49.2e), and RUr.27.2e) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance, or the time specified in the sedimentation and erosion control plan for the site:

- iii) stabilised so that no earth moves off-site or presents a danger to life or property; and
- iv) vegetated, paved, metalled or built over, and  
~~revegetated or otherwise protected from soil erosion as soon as practicable, and not later than 12 months from the date of the earthworks.~~

### Vegetation clearance rules

Amend REr.59.1d), OSr.47.1d), RUr.25.1d) and COr.25.1e) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance:

- iv) stabilised so that no earth moves off-site or presents a danger to life or property; and
- v) vegetated, paved, metalled or built over, and  
~~revegetated or otherwise protected from soil erosion as soon as practicable, and not later than 12 months from the date of the earthworks.~~

Amend REr.59.2c), OSr.47.2c) and RUr.25.2c) as follows:

All bare soil areas are, as soon as practicable but no later than six months from the date of disturbance, or the time specified in the sedimentation and erosion control plan for the site:

- v) stabilised so that no earth moves off-site or presents a danger to life or property; and
- vi) vegetated, paved, metalled or built over, and  
~~revegetated or otherwise protected from soil erosion as soon as practicable, and not later than 12 months from the date of the earthworks.~~

### Plan Change 25.5 - Definitions

In Chapter 2 (Meaning of Words) amend the road boundary definition as follows:

**Road boundary** means any boundary of a site abutting a legal road, including a common vehicle access serving ~~five or more~~ than four actual or potential residential units.

In Chapter 2 (Meaning of Words) add a definition for root protection zone as follows:

**Root Protection Zone** means the minimum area required to ensure a tree's health and stability is safeguarded, as calculated using the following table:

Protection of Trees on Development Sites

Tree age	Tree vigour	Root Protection Zone radius (m)
Young trees  (where the age of tree is less than 20% of life expectancy)	Good vigour	9 x DBH*
	Poor vigour	6 x DBH
Mature trees  (where the age of tree is between 20% and 80% of life expectancy)	Good vigour	9 x DBH
	Poor vigour	12 x DBH
Over mature trees  (where the age of tree is greater than 80% of life expectancy)	Good vigour	12 x DBH
	Poor vigour	15 x DBH

DBH means Diameter at Breast Height which in NZ is diameter at 1.4m high (the diameter of the stem 1.4m above ground level).

Replace the term 'dripline' with 'root protection zone' in rules REr.95, ICr.68, SCr.65, INr.67, OSr.70 and RUr.70 as follows:

Item	Permitted	Controlled	Discretionary/Non-complying
<p><b>REr.95</b>  <b>Heritage and Landscape Trees</b>            Activities within the <u>dripline</u><u>root protection zone</u> of a Heritage or Landscape Tree identified in Appendix 2</p>	<p>REr.95.1            Activities within the <u>dripline</u><u>root protection zone</u> of a Landscape Tree or a Heritage Tree identified in Appendix 2 are permitted if:</p> <p>a) parking or storage of materials, vehicles, or machinery is on an existing sealed, formed surface, and</p> <p>b) it does not involve compaction, sealing, removal or addition of soil, and</p> <p>c) there is no discharge of a toxic substance, and</p> <p>d) there is no excavation or construction of structures.</p> <p>except where the tree is on Road Reserve, where activities are permitted if:</p> <p>i) excavation is no deeper than 200mm and no less than 2m from the tree trunk, and</p> <p>ii) sealing is within the existing formed carriageway or footpath.</p>	<p>REr.95.2            Activities within the <u>dripline</u><u>root protection zone</u> of Landscape or Heritage Trees on Road Reserve that contravene a permitted condition are controlled.</p> <p>Control reserved over:</p> <p>i) location, proximity to tree trunk, timing and manner in which the activity is carried out, and</p> <p>ii) remedial measures.</p> <p>Resource consent applications will be considered without notification, or obtaining written approval of affected persons, under section 94 of the Act.</p>	<p>REr.95.3            Activities within the <u>dripline</u><u>root protection zone</u> of Landscape or Heritage Trees (not on Road Reserve) that contravene a permitted condition are discretionary.</p>

In Chapter 2 (Meaning of Words) amend the defensible space definition as follows:

**Defensible space** in relation to fire safety, means an area maintained as a fire break or planted in low-flammability species to protect a structure from fire in surrounding vegetation or to protect vegetation from a fire in a structure. The area shall be at least the following dimensions:

- a) on flat land and slopes up to 10° – 25m from the structure, or
- b) on slopes greater than 10° – 10m up hill, 15m each side, 30m down hill, from the structure, or
- c) an area less than those described in a) or b) above if approved in writing by the Principal Rural Fire Officer.”

*In Chapter 2 (Meaning of Words) amend the net area definition as follows:*

**Net area** means the total area of a the-site or allotment (or in the case of more than one residential unit on a single allotment, the area of the allotment allocated exclusively to a particular residential unit), excluding any part that is:

- a) subject to any designation (see appendix 24—designations), or
- b) a right of way serving other sites, or
- c) in relation to rear sites, excludes the area of any access strip in relation to rear sites, part of any access to the site that is less than 6m in width.

*In Chapter 2 (Meaning of Words) add a definition for predominant slope:*

**Predominant slope** means the slope which is most common over the area. Slope can be calculated as a ratio of "rise over run" in which run is the horizontal distance and rise is the vertical distance. For the purpose of the soil disturbance rule in this Plan, the calculation of predominant slope should be applied to the slope area where the soil disturbance and any erosion control is to occur.

*In Chapter 2 (Meaning of Words) amend the revegetation definition as follows:*

**Revegetation** means the establishment of trees, plants or grasses to achieve a minimum of 60% coverage of soil surfaces.

## **Plan Change 25.6 – Landscape rules in the Rural Zone**

*Amend parts of RUr.80.2 (Subdivision within the Landscape Overlay) as follows:*

Subdivision of land within the Landscape Overlay and detailed in Appendix 9 (landscape components and views) is a controlled activity if:

- a) it meets the standards in Rule RUr.78 (subdivision -general), excluding Table 14.5.1 of Appendix 14 (design standards), and
- b) it is accompanied by a landscape assessment by an appropriately qualified person which takes into account the requirements in Appendix 7 (guide for subdivision and structures in the landscape overlay) and identifies any areas on which building should not occur because the landscape effects of a building cannot be mitigated in that area.

Control reserved over:

- iv) the alignment and location of roads, the width of carriageways and planting of berms, and the alignment of road accesses with the land contours, and
- v) the number, size, shape and orientation of allotments, and
- ix) changes to landform or landscape features, and
- x) views from roads and public reserves

*In Chapter 2 (Meaning of Words) add definitions for construction and erection as follows:*

**Construction** in the case of a building or structure, includes the relocation of a building or structure.

**Erection** in the case of a building or structure, includes the relocation of a building or structure.

## PART D – SUBMISSIONS

### Plan Change 25.2

#### Noise explanations - REr.43.5, ICr.42.5 and SCr.36.5

Submitter 1: Rex Bloomfield and Glen Rowling	Statement 1
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- Details We oppose the deletion of the regulations on noise control in REr.43.5, and ICr.42.5 and SCr.36.5 where it affects a Residential Zone.
- Reasons Quality of life and of the environment are key factors in developing the new Urban Plan. Control over disruption caused by an increase in noise is a key issue.
- Remedy Do not delete sentences from REr.43.5, ICr.42.5 and SCr.36.5.

Submitter 3: Nelson Greypower Association Inc	Statement 1
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- Details In 'Live Nelson' of 25 September 2010, Council advised this plan change as correcting inconsistencies between REr.43.3, ICr.42.3 and SCr.36.3, explaining them as technical fixes. From our observations, the proposed deletion of sentences from REr.43.5, ICr.42.5 and SCr.36.5 are far more than "technical fixes".
- Reasons As Council has signalled its intention to obtain a "Global Resource Consent" (newspaper article attached to the submission) for its own events, covering multiple venues, and that it intends to exceed nationally and internationally recognised safe (health) decibel levels for such events, we consider these notifications as "technical fixes" to be very misleading. These sentences clearly state permitted standards must be maintained and any proposal for noise in excess of these standards will be non-complying. In our opinion the removal of these sentences from the District Plan are far from merely being a technical fix, and are in fact the removal of legislation which would impede the proposed resource consent process.
- A number of Council venues, such as the Botanics, Founders, and Victory Square are in heavily populated residential areas with a substantial number of elderly residents. We would consider it irresponsible of Council to legislate to allow itself to exceed World Health Organisation and NZ Heath standard recognised decibel levels, when it polices a strict standard of noise control, 24 hours per day, throughout the City.
- We expect Council to take advice from the health sector as to the consequences of increasing noise levels before advancing any further with this proposal. We consider there are conflicts of interest within Council that may be dictating this proposal and Council must ensure the whole community is taken into consideration when deciding upon the merits of such a proposal. The Local Government Act 2002 makes reference to requiring Council to protect the public from nuisance, and to protect, promote and maintain public health and safety. We do not consider the removal of the sentences, as notified, enhances that requirement.
- Remedy Do not delete sentences from REr.43.5, ICr.42.5 and SCr.36.5.

Submitter 4: Terry Holton	Statement 1
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- Details The proposal to delete sentences from REr.43.5, ICr.42.5 and SCr.36.5 in their entirety would allow the Nelson City Council to use its own discretion when setting noise levels for social, musical and other functions in or near Residential Zones - a "lowering of the bar" as the saying goes. In my opinion, maximum noise levels at present allowable levels are too high, especially at night, without raising them further. This proposal is more than a 'technical fix'.

- Reasons If some people want to blast their own hearing with amplified noise, that is their business, but not at the expense of those people living in close proximity who are entitled to peace and quiet, especially when trying to sleep at night.
- Remedy Do not delete sentences from REr.43.5, ICr.42.5 and SCr.36.5.

Submitter 5: Dan McGuire

Statement 1

Details This proposed noise change has been introduced without any due process or authority.

A supposed 'technical fix' of noise provisions has been inserted in this plan change without the knowledge of the territorial authority. I have e-mails confirming that lack of approval and process.

The public is being misled and misinformed about what is being attempted through the noise changes hidden within this proposal.

In its own newspaper Live Nelson, and elsewhere, Council has unambiguously stated that the noise change involves only two words. In letters to the editor the CEO has publicly taken me to task about those noise changes, publicly denying their scope and extent, and unequivocally stating that the noise change only involves two words. However those written claims are quite simply devious and deceitful fabrications.

Instead this plan change overtly proposes the separate deletion of three entire sections of the plan, and as such goes way beyond a simple technical fix of a claimed wording error. I therefore object to this plan change and challenge Council's jurisdiction and authority to wring these changes under the guise, or pretence, and processes of a mere technical fix. It is far beyond the realms of a technical fix.

I accept that there is a 'technical' problem to be fixed. However that fix is wholly achieved simply by deleting the single offending word and replacing it with the correct word. Clearly then, any changes beyond those two words are entirely superfluous to, and wholly beyond the scope, of any technical fix required to resolve the identified technical problem of a simple wording error.

Instead the removal of three entire sections of the plan changes this proposal from being a simple technical fix, of a simple wording error, into a significant plan change. Deletion of those three sections will allow serious erosion and downgrading of the consideration of noise as a harmful health and environmental pollutant. Rightly or wrongly, those sections exist in the plan, whether by necessity or otherwise, and to remove them is by definition the stuff of plan changes, not technical fixes.

The Ministry of Health's official position is that explanations of rules are an aid to the interpretation of the rules and have no effect on the rule itself in a legal sense. However, in this case, these three aids to interpretation shout from the rooftops the very strong interpretation and statement that noise has a major amenity influence and therefore can only be interpreted as having just that; a major effect or influence. That stated interpretation simply slams the door shut on the ability of any consent authority to be able to otherwise interpret noise in excess of plan limits, as having 'less than minor' effects. Such definition is simply untenable in the face of those stated interpretation aids.

Removal of those interpretation aids will allow serious erosion and degradation of the background context and interpretation of noise as having a major influence on amenity and thus a major consideration for consent authorities when assessing consent applications.

Deleting those three sections which state that "Noise has a major influence on the amenity of an area," will allow noise to be considered as no longer having a major effect or influence on amenity, or that it may only have minor influence, or that it may have no influence at all. Such deletion allows any of those interpretations and positions to be held.

Consent authorities must have regard for whether or not noise is interpreted by the plan as having a major or a minor or a zero environmental effect, or influence on amenity, as a consideration in deciding whether or not to grant resource consent or impose conditions on resource consents. The removal of those three sections will allow consent authorities to regard noise pollution in the context of having a minor or lesser effect on health and amenity, which will allow consent authorities to exercise their discretion at a far lower threshold.

By definition those sorts of changes clearly need to be subjected to a full and rigorous public plan change process.

However the above debate on these issues is irrelevant to this particular objection. This particular objection simply takes the position that the noise provisions of this proposed plan change are not a minor technical fix for a simple wording error, but instead go far beyond that classification and trespass into the realms of a plan change.

Notwithstanding it is also interesting to note that if the plan is amended as proposed, then the rules for discretionary and restricted discretionary activities would have to be applied by Council.

Clause AD 8.5.ii requires council to serve 'limited notification' of applications to exceed permitted standards on all persons who may be adversely affected by the activity, except where Council judges the effect to be 'less than minor'.

In the case of noise activities in excess of the limits, a "less than minor" interpretation and judgement would by definition, be impossible, because of the existing interpretation aids which firmly shut the door on consent authorities holding that very interpretation and making that very judgement.

Those interpretation aids will effectively force Council to notify each and every application.

It would provide more certainty for the technical fix to wring a change to a non complying activity, rather than to a discretionary activity which exposes applications to challenge.

In the event that a change to discretionary activity occurs, rather than the other way around, to a non complying activity, then I for one, will rigorously hold Council to that impossibly high, "less than minor" standard, to ensure the appropriate notification of all applications, in the future.

Reasons

Remedy Delete the incorrect word and replace it with the correct word in REr.43.5, ICr.42.5 and SCr.36.5. Do not delete the sentences within which the word occurs.

Submitter 9: Jaap C Buys	Statement 1
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Details I oppose Plan Change 25.2. and the proposed deletion of sentences in REr.43.5, ICr.42.5 and SCr.36.5.

Reasons Removal of the sentences is inconsistent with Red.6 of the NRMP: "Residential areas provide the place where most people sleep and enjoy their leisure time, and quiet, peaceful surroundings are expected."

Removal of the sentence from REr.43.5 beginning and ending "As noise has a .. non complying activity" must remain as long as no exact meaning is given to the word "discretionary" in REr.43.3. It will allow for a process for laying a complaint. "Discretionary" is too vague to uphold the set noise levels in REr.43.1.

Remedy Do not delete sentences from REr.43.5, ICr.42.5 and SCr.36.5.



- Details** I oppose proposed Plan Change 25.2. The intended amendment goes further than a mere technical change. A mere technical change would change two words. Deleting the entire sentence regarding the impact on an area from noise changes the intent and meaning and context. By removing the statement in REr.43.5, ICr.42.5 and SCr.36.5, the bar is lowered for approving higher noise levels that would impact on public health. Council can then apply a lower standard at its discretion. This would be more than the technical change that has been advertised.
- Reasons**
1. I live in Tahunanui. Last summer I was almost forced to evacuate the home I live in by the excessive noise levels from Council-run events including the barbeque beach party organised by Councillor Pete Rainey. Several other events including the youth events at the beach were also accompanied by excessive noise levels that far exceeded the decibel levels that these events were supposed to operate at. I hope that the Council will consider monetary fines for the people who operate this summer. Opera in the Park was also excessively loud, and many more decibels over the limits the event was supposed to be restricted to, in my opinion.
  2. I think that a few councillors wish to markedly increase the noise levels at Council-run events, including the Smokefree Rockquest, and I strongly object to that because it will have a significant effect on public health and noise levels. The noise levels will be excessive throughout the Nelson city precincts. The amplification at events has already been at excessive decibel levels now. The Council has not been able to adequately police noise levels.
- Remedy**
1. Do not delete sentences from REr.43.5, ICr.42.5 and SCr.36.5.
  2. Council should abandon its proposal to markedly increase noise levels throughout Nelson City at Council-run events. The Council has not been able to adequately police the noise levels now, in my opinion, and ought to fine the people making excessive noise and make them pay a monetary penalty for the excess noise they create.

- Details**
- Reasons**
- Remedy** I support any existing or change in policy wording that will help create a QUIETER environment.

- Details** I oppose Proposed Plan Change 25.2
- Reasons** This is not a minor change. This is a major change which will change the environment I live in markedly. In fact, the change will allow my environment to become unrecognizable and untenable. You propose removing the statement in REr.43.5 and ICr.42.5 and SCr.36.5, allowing higher noise levels at Council discretion. This removes any right for me to object, as what I would be objecting to is the discretion of some Council employee. Technically then, a loud speaker could be aimed at my bedroom window and I would have no redress in law. I am prepared to fight very hard at this level to avoid lengthy and expensive civil action later.
- I live in the inner city. I made this decision based on current legislation controlling noise levels. I believe my presence in the inner city is beneficial to the City. I would want the area to be attractive to other inner city residents as I believe this is the way to the inner city being a vibrant and attractive place to be, day or night.
- Remedy** Delete Proposed Plan Change 25.2 entirely.

Submitter 11: Lance Edwardes	Statement 1
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Details I oppose the Proposed Plan Change 25.2.

Reasons By removing the statement in REr.43.5 and ICr.42.5 and SCr.36.5, the Council is attempting to neutralize the rules, thereby circumventing their responsibility to inner city residents. It is unreasonable to use personal discretion as an enforcement level, as this is too subjective and can't work. This is a major change in living conditions for inner city residents and will not lead to enhancement of the area. This change is an attempt to permanently avoid the need to enforce noise rules and removes any technical and/or objective measure of noise levels.

I seek to protect the rights, living conditions and public health and safety of folk who live and work in the inner city and on the periphery. The change proposed is from an objective measure of noise, to a subjective one.

Remedy Delete Proposed Plan Change 25.2 entirely.

Submitter 12: Chris Appleton	Statement 1
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Details I oppose the Proposed Plan Change 25.2.

Reasons Removing the noise caps in the Residential Zone (REr.43.5), Inter City Zone (ICr.42) and the Suburban Commercial Zone (SCr.36) is counter to improving residents' lives. The reason given for the change is to avoid confusion with the wording in REr.43.3, ICr.42.3 and SCr.36.3. I submit that the wording should be changed in these, such that they also have noise caps, thus removing any ambiguity and improving the noise pollution of all.

Noise pollution is an important issue in Nelson especially due to the geography of the area. Noise travels extremely well when unobstructed. People living close to the noise source will be affected along with those living much further away but higher up. Noise pollution is intrusive and unwanted and hence should be kept to a minimum. Removing the existing noise caps will further blight the lives of those affected by noise and will also blight the lives of many previously not affected. The proposed change may make the Council's job easier but the restrictions are there for a reason and should not be brushed aside as a mere technical fix. I also suspect the majority of Nelson residents are unaware of the proposed change due to the way it has been put forward.

Remedy Delete Proposed Plan Change 25.2 entirely.

Submitter 8: David Brathwaite	Statement 1
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Details The "technical fix" proposed is to correct an existing inconsistency between the wording of clauses REr.43.3 and REr.43.5 and two analogous pairs of clauses related to Inner City and Suburban Commercial zones. The Proposal is not the only way to 'fix' the inconsistency, nor is it the best way. I proposed a better way.

Reasons If the NRMP is amended as Council proposes, then the rules for Discretionary and Restricted Discretionary Activities would have to be applied.

Clause AD8.5.ii of the NRMP requires Council to serve "limited notification" of an application to exceed permitted standards on all persons who may be adversely affected by the activity, except where Council judges the effect on a particular site is "less than minor".

In the case of an application for an excessively noisy (that is, noise in excess of the standard) event such a judgement would be, I contend, extremely difficult but, more probably, impossible. Council must recognise that in the case of an application for an excessively noisy activity the number of persons who may be affected will often be very large.

For instance, experience has shown that an excessively noisy event at the Tahuna Beach Recreation Grounds will be heard at residential properties on the Tahuna hills in an area bounded by Maire Street, Princes Drive, Moncrief Avenue and Tahunanui Drive, plus others nearby on the Tahuna flats. (I have not counted the number of properties in the area

described above, but I guess it will be somewhere between 400 and 1000.) Under the "discretionary" rules, all of those properties would have to be communicated with, except those judged (by a Council officer) to suffer a "minor" or "less than a minor effect". Noise is a very subjective matter. Therefore, residents must be given an opportunity to express their opinion as to what is "reasonable" or "unreasonable" or of "minor" or "less than minor" effect on him/her, in advance, in all cases.

Other examples of similar situations where the extent to the area affected by excessive noise would be difficult to estimate correctly and conservatively includes Fairfield Park, Neale Park, Founders Park, Botanical reserve, Branford Park, Isel Park, Broadgreen Park, other public and private spaces and various school grounds, etc.

Council should not overlook both:

- 1) the administrative difficulties and the significant cost of the wide personal communications that would be necessary in this process, and
- 2) the ire of residents if the judgement of Council officers proves to have been wrong.

Existing clauses REr.43.5, SCr.36.5 and ICr.42.5 all state that: "Noise has a major influence on the amenity of an area."

If Council decides, in spite of my submission and those of others, to proceed with the change proposed, these existing words quoted in the previous paragraph must not be deleted from the respective clauses. They must be retained as a constant reminder of the fact they express. They have been in the NRMP and its predecessors for a long time and nothing has happened in recent times to reduce their importance in expressing the opinion of the community, nor to justify their removal as proposed.

The relevant "permitted limits" of noise in Nelson are higher than in some other cities. Nelson is already known as the "Noisy City." This is not necessarily because we make more noise, but because nature makes less, and that is one of the benefits and pleasures of living here. But because there is less atmospheric noise here on our very frequent light windy days and windless nights, any human generated noise is much more obtrusive. Any move to lessen the present strictures in the NRMP must be avoided in order to limit and control such excessive human generated noise, in the interests of all residents.

- Remedy
- (1) Existing Clauses REr.43.3, SCr.36.3 and ICr.42.3 should be deleted and replaced, in each case with "Activities that contravene a permitted condition are non-complying."
  - (2) Existing clauses REr.43.5, SCr.36.5 and ICr.42.5 should remain, unaltered.

These amendments to the Council proposal will achieve the objective of the "technical fix" in eliminating an "inconsistency" in the NRMP, and they will provide a result much more acceptable to residents, and less cumbersome and expensive for Council to administer.

## Plan Change 25.5      Dripline definition

Submitter 6: Cadwallader Tree Consultancy & NZ Notable Trees Trust      Statement 1

**Details**      I support, in principle, the intention to control adverse effects that may damage protected trees and other important council tree assets by safeguarding the 'dripline' or a minimum area of roots beneath a tree.

**Reasons**      Various technical references refer to the dripline as the area immediately below the canopy, ie.: 'The width of the crown, as measured by the lateral extent of the foliage'. (From Arboriculture - Integrated Management of Landscape Trees, by Harris, Clark and Matheny.)

A conflict in definitions may cause the Council's definition to be challenged. In my view the phrase 'Root Protection Zone' explains the intent better than 'dripline'.

Additionally, the dripline approach to defining an area to safeguard the root area of a tree does not adequately cater to many trees. Trees are quite variable and one size does not fit all trees. The dripline approach fails in most cases to accommodate the complex nature of trees and the variability amongst species, ages of trees and levels of vigour.

"There are problems with using the dripline as an indicator for the tree protection zone. Leaning trees that have the trunks located on one side of the canopy clearly have many support roots away from the lean, beyond the canopy. Narrow canopied trees would not be adequately protected. Nor would closely spaced trees." (From Arboriculture - Integrated Management of Landscape Trees, by Harris, Clark and Matheny, 2004.)

Other problems arise with the dripline method:

- for very old trees with low vigour, the dripline approach will cause serious damage and significant trees may be lost as a result.
- for young trees with high vigour, the dripline approach often unduly limits development potential.
- for palms, the dripline approach would not be enough for a nikau and would be too much for a phoenix, causing damage in one instance and limiting development potential on the other.

The dripline approach also under-prescribes a minimum root area for trees that have had their canopies modified by pruning.

**Remedy**      Replace the term 'Drip line' with 'Root Protection Zone', as explained in statement 2 of my submission.

Submitter 6: Cadwallader Tree Consultancy & NZ Notable Trees Trust      Statement 2

**Details**      To encourage Nelson City Council to adopt the guide in the Australian Standard AS 4970 2009 'Protection of Trees on Development Sites' to calculate the root protection zone (proposed drip line).

**Reasons**      This approach utilises the most current best practice and the latest research from around the world. It is based on a stem measurement being used to calculate the minimum area required to ensure a tree's health and stability is safeguarded. The Australian and American standard is based on the British standard. There is no New Zealand Standard, with industry recognising the aforementioned authorities.

"There is such variation in tree distribution and tree response, given the species, age and size, that general tree protection guidelines based solely on the dripline are not always dependable. A more appropriate guideline is trunk diameter." (Arboriculture - Integrated Management of Landscape Trees, by Harris, Clark and Matheny, 2004.)

This method ensures that trees with narrow canopies are accommodated, trees of different age and with different levels of health are accommodated and that development potential near healthy younger vigorous trees is maximised. The method also, importantly, ensures that trees are not caused to become hazardous by the excessive removal of important structural roots.

Our valuable Heritage and Landscape trees require a thoughtful approach to their ongoing care and preservation. Employing the latest in research and current best practice in their care will ensure they remain for future generations to benefit. The Australian Standard is very new and Nelson City Council would be the first authority in NZ to adopt it.

Remedy Amend the Proposed Plan Change to adopt the AS 4970 2009 'Protection of Trees on Development Sites' as a guide to calculate the root protection zone, as shown in the following table.

Tree age	Tree vigour	Root Protection Zone radius (m)
Young trees	Good vigour	9 x DBH*
	Poor vigour	6 x DBH
Mature trees	Good vigour	9 x DBH
	Poor vigour	12 x DBH
Over mature trees	Good vigour	12 x DBH
	Poor vigour	15 x DBH

DBH means Diameter at Breast Height which in NZ is diameter at 1.4m high (the diameter of the stem 1.4m above ground level).

Submitter 6: Cadwallader Tree Consultancy & NZ Notable Trees Trust	Statement 3
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Details The proposed definition uses the term 'diameter' where it is likely that 'radius' was intended.

No other authority in the world considers the dripline to be described as in the proposed definition. The proposed definition is either an error or it appears to halve the root area to be protected as recommended by current best practice and arboricultural standards such as the Australian, British and American standards.

Reasons The proposed definition suggests that a diameter, based from a measurement taken from the centre of the tree to the widest point of the canopy, is used to determine the circumference of the area to be protected.

This is a very small area and would result in the loss of the large majority of our heritage and landscape trees. The application of the proposed formula would also have the area to be protected placed well within the technical 'dripline' contradicting the use of the term. Perhaps the following was intended: Dripline: means a circumference defined by taking a **radius** from the centre of the tree to the widest point of the canopy.

Having said that, I bring to your attention my earlier submission (statement 1) that raises the shortcomings of using the dripline to define areas of protection.

Remedy Delete the term 'Drip line' and change it to 'Root Protection Zone'. Determine the root protection zones of trees based on the diameter of stems as provided for in the AS 4970 2009 'Protection of Trees on Development Sites'.

## Plan Change 25.6 - RUr.56.2, Landscape Overlay – Earthworks

Submitter 2: Marsden Park Ltd	Statement 1
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- Details Oppose new matter of control in RUr.56.2 (iv): the "location of tracks and access roads".
- Reasons This matter of control is problematic where tracks must be located, or are proposed, in a specific location. This matter of control will create administration issues where an application has applied for tracks in a specific location.
- Remedy Delete proposed change to RUr.56.2 (iv): "the location of tracks and access roads."

Submitter 14: C I Hurley and I L T Turner	Statement 1
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### LATE SUBMISSION

- Details We oppose RUr.56.2, matter of control iv) - the location of tracks and access roads.
- Reasons It will create administrative issues where an application has been applied for tracks in a specific location.
- Remedy We would like to see this change deleted: RUr.56.2, matter of control iv) - the location of tracks and access roads.

## Plan Change 25.6 - RUr.80.2, Subdivision within the Landscape Overlay

Submitter 2: Marsden Park Ltd	Statement 2
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- Details Oppose addition of new matter of control in RUr.80.2 (v): "the number" [of allotments]
- Reasons This matter of control will create administration issues where an application has applied for a specific number of lots. Controlled activity must be granted and rules already require a landscape assessment with identification of unsuitable sites. It is unreasonable to include further control over the number of lots.
- Remedy Delete the addition of new matter of control in RUr.80.2 (v): "the number" [of allotments].

Submitter 14: C I Hurley and I L T Turner	Statement 2
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### LATE SUBMISSION

- Details We oppose RUr.80.2, matter of control v) - number (of lots)
- Reasons Rules already require a landscape assessment with identification of unsuitable sites. Further control is unreasonable.
- Remedy We would like to see this change deleted: RUr.80.2, matter of control v) - the number (of lots).

## Plan Change 25.6 - Consequential amendments

Submitter 2: Marsden Park Ltd	Statement 3
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- Details Consequential amendments may be required to give effect to these submissions.
- Reasons
- Remedy Make all necessary consequential amendments to give effect to the Marsden Park Ltd submissions.