

**Nelson Resource Management
Plan:
Plan Change 05/01**

NELSON CITY COUNCIL

**Notified
March 5th 2005**

Part 1: Background and Section 32 RMA Assessment

1. Summary

Plan change 05/01 is an interim plan change which promotes tighter controls on rural and rural smallholdings subdivision in Nelson North to:

- Avoid irreversible land fragmentation.
- Avoid reduction of opportunities for future land use.
- Avoid significant adverse cumulative effects arising from continued land fragmentation below the minimum subdivisions standards set out in the Nelson Resource Management Plan.
- Better enable forward planning for infrastructural services and community facilities.
- Give effect to the recommendations of the 2002 Hira Village Centre Strategy Study.
- Provide clearer direction and greater certainty for applicants, the Applications Committee and Council staff.

Plan Change 05/01 seeks to amend the subdivision rules in the Nelson Resource Management Plan ("RM Plan") so that subdivision between The Glen Road and Whangamoia Saddle is more restrictive. Plan change 05/01 proposes the following amendments:

- Minimum lot size in the Rural Low Density Small Holdings Zone changes from 2ha minimum and 3ha average (current), to 3ha minimum (proposed)
- Activity status for subdivisions less than the minimum changes from discretionary (current) to non-complying (proposed).
- Clearer policies.

This plan change is the result of continued land fragmentation in the Nelson North area, and reflects particular concern at the cumulative effects of continued subdivision below minimum lot size. The plan change gives effect to the following recommendations in the Hira Village Centre strategy Study (2002):

That a critical review and "gap analysis" of Council policy and decision making relating to subdivisions in Nelson North be undertaken with a view to ensuring rural character, considered vital by the Nelson North Community, is maintained in the study area. This study [s32 of this plan change] would examine the cumulative effects of undersized subdivision, the effects on rural character, and whether the present Council policy provides enough guidance to decision makers to avoid, remedy or mitigate any effects identified.

The plan change is also intended to avoid distorted market land values and speculative subdivisions arising from the Nelson Urban Growth Strategy 2004 (NUGS). In this respect, the plan change should be considered an interim solution until a clearer strategic land use direction emerges from NUGS mid 2005. At that stage, Proposed Plan Change 05/01 will be either confirmed or amended so it is aligned with the outcome of NUGS and the Community expectations for the future land use pattern of Nelson North.

2. Section 32 RMA

Section 32 of the RMA requires councils to consider alternative ways to achieve the environmental outcomes being sought. Essentially, s32 tests to determine the most appropriate means, and the appropriateness of any selected methods. It assists in reasoning why changes are needed and formalises a process for working out how best to deal with environmental issues.

S32 requires that councils must do the following:

- Determine the environmental issue.
- Evaluate the extent to which any new objective is the most appropriate way to achieve the purpose of the Act.
- Evaluate whether the policies, rules, or other methods are the most appropriate for achieving the objective.
- Explore different methods/ways of dealing with the issue.
- Evaluate the benefits and costs of the proposed policies, rules, or other methods.
- Examine the risk of acting or not acting if there is uncertain or insufficient information on the policies, rules, or other methods.
- Decide which method or methods is the most appropriate to achieve the purpose of the RMA.
- Carry out the evaluation prior to the provisions being adopted and summarise the evaluation in a report.

This process of documenting s32 considerations also helps satisfy obligations under the Local Government Act 2002 (LGA). In preparing this plan change, the Council has considered the requirements at LGA s76 in that it has followed the decision making requirements of the LGA 02.

This plan change incorporates the reporting requirements of s32 RMA.

3. Issue - Rural land fragmentation, Nelson North

3.1 Background

Nelson has for the past several years been experiencing strong interest in rural residential development in Nelson North (generally north of but excluding Todds Valley, and including The Glen, Hillwood Valley, Cable Bay Road, Hira, Lud Valley and Teal Valley).

Analysis of subdivision consents since the Nelson Resource Management Plan (NRMP) was notified in 1996 indicates a trend towards re-subdivision of previous rural-residential developments, particularly in the Hira/Lud Valley area. The NRMP contains no controls on re-subdivision other than the standard minimum and average lot sizes. Subdivision below those minimum standards is a discretionary activity.

The result of this fairly permissive approach has been subdivision and re-subdivision into lots below the minimum lot size in the NRMP.

Council undertook a comprehensive study of the Hira area in April 2002¹ to assess the future of Hira as a village. Part of this study included examining non-complying subdivisions at mesh block level up to 2002. Although not within the study brief, consultation revealed strong concern about undersized lots. That study found in particular that:

"...a significant percentage of sections created since 1996 [to 2002] are under the size limits of the Proposed Plan. Over 70% of sections created in the Rural Zone and 43% of sections created in the Rural Low Density Small Holdings Zone are undersized (emphasis added).

Concern at the number of small low development was expressed by the community through the questionnaire and phone calls received...it is recommended that Council undertake a critical review of the policy and decision making to ensure that objectives of the Proposed Plan (i.e. to retain rural character) are being appropriately implemented."

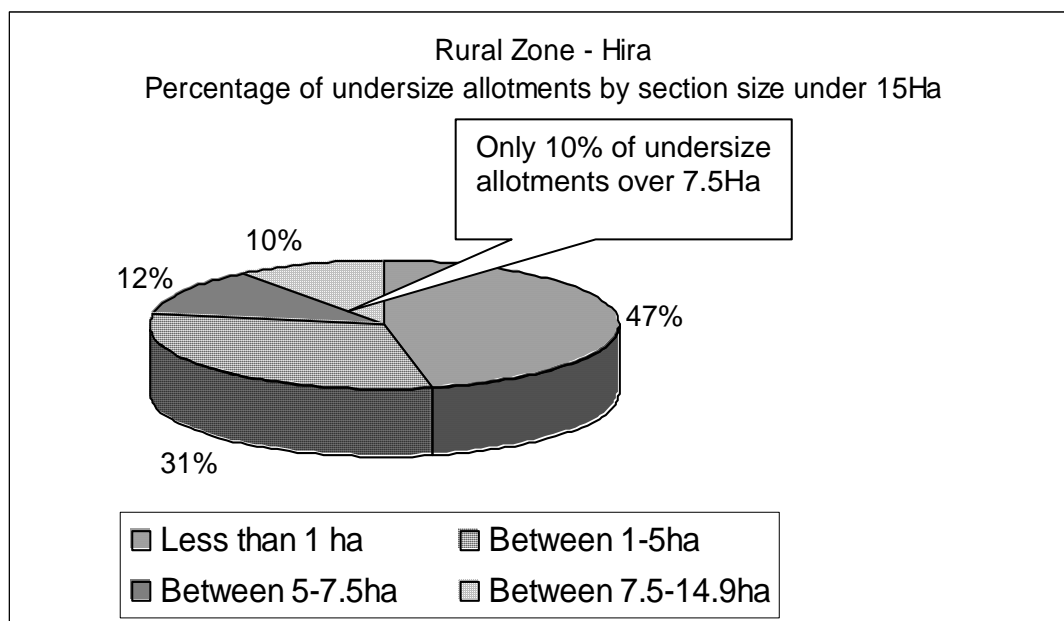
The study went on to recommend:

" An in-depth review of this issue and critical review and "gap analysis" of Council policy and decision making relating to subdivision in Nelson North be undertaken with a view to ensuring rural character, considered vital by the Nelson North community, is maintained in the study area. This study would examine the cumulative effects of undersized subdivision, the effects on rural character and whether the present Council policy provides enough guidance to decision makers to avoid, remedy or mitigate any effects identified."

Analysis of all subdivisions in Nelson North between 1996 and 2002 revealed two important trends:

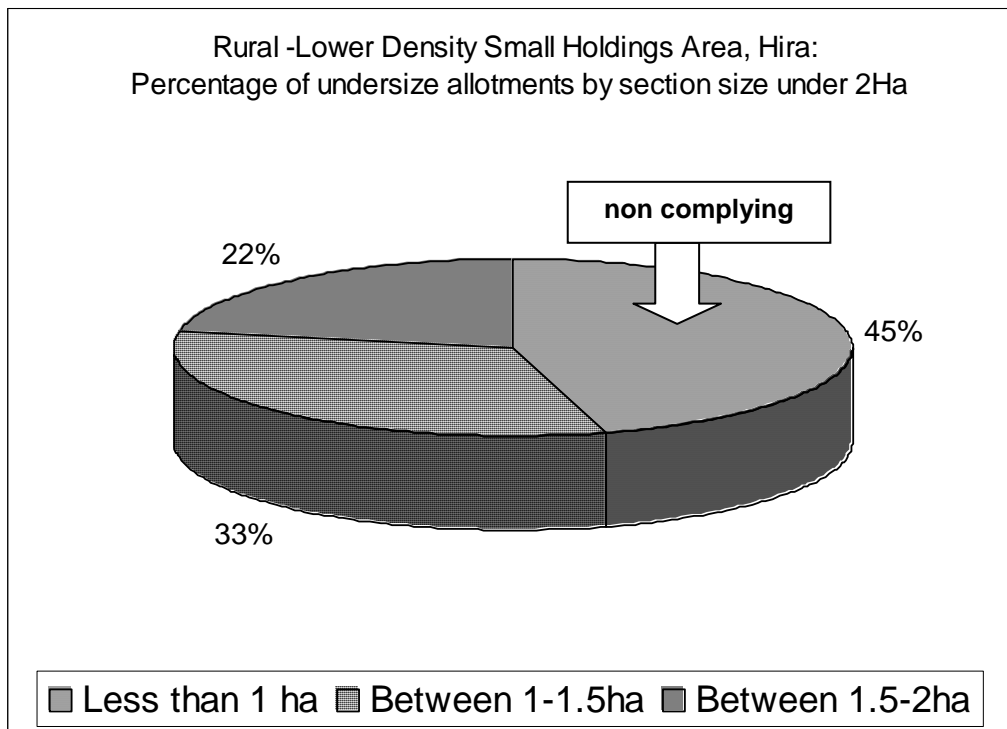
- 90% of undersize Rural Zone allotments are less than ½ permitted size
- 45% of all undersize Rural Small holdings sites were non complying (below 1ha).

Figure 1: Nelson North Undersize Allotments Rural Zone 1996-2002



¹ Hira Village Centre Strategy Study Stage 1. Opus, April 2002

Figure 2: Nelson North Undersize Allotments Smallholdings Zone 1996-2002



The Nelson Urban Growth Strategy (NUGS04) has also highlighted the demand for rural lifestyle lots, and the need for a more structured approach to subdivision and development than is occurring at present. NUGS 04 stage 1 report found that:

"Rural-residential land uses are popular and there continues to be a demand for the lifestyle this is perceived to allow. However, this demand may slow in response to the aging population and increasing travel costs and the benefits and costs of this land use need to be considered."

It is anticipated that NUGS 04 will provide better guidance for future development in Nelson North than exists at present.

3.2 Plan Review

The trend uncovered in the Hira Study appears to be continuing, as shown in table 1.

Table 1: Summary of below minimum subdivisions, Nelson North. 2002-2004

Zone	Consents in process	Consents Declined	Consents Granted	Total no. lots	lots complying with min	lots below min	Range of sizes below min (% of min)
LDSH ²	5	1	4	27	67%	33%	10%-98%
Rural	2	0	5	23	43%	56%	4%-33%

² Lower Density Small Holdings Zone

The minimum lot size for the Low Density Rural Small Holdings for controlled subdivisions is 2ha. However, subdivision applications and evidence presented at subdivision consent hearings (supported by the figures in table 1) indicates the plan is being interpreted with 1ha (the threshold for non-complying subdivisions) as the assumed "minimum" subdivision standard. A review of subdivision consents and decisions indicates an apparent expectation that discretionary subdivisions between 1ha and 2ha will be granted. Precedent is also often used as justification for approving below minimum subdivision.

The "averaging" provision in the Resource Management Plan also appears to be leading to increased land fragmentation. This provision allows landowners to use one significantly over-size lot to offset undersize lots in order to achieve compliance with the average lot size requirement. This trend is apparent in the Rural Zone (refer Table 1), where over half of all subdivisions from 2002 were below minimum, and of those all were significantly smaller than the 15ha minimum. This averaging provision makes it very difficult to exercise discretion to decline such consents.

The observed effects of the RM Plan being applied in this way are as follows:

- Actual adverse cumulative effects in terms of loss of rural character, land fragmentation, increased traffic movements.
- Potential adverse cumulative effects in terms of domestic abstraction from finite water sources and discharges from sewerage disposal.
- Increased pressure for public reticulated services without having undertaken any structure planning.
- Land use patterns evolving through market-led ad hoc subdivision rather than through a more planned and integrated approach.
- Reduced opportunity for future land use planning at a strategic (community) level.
- Reduced opportunity for public land acquisition for reserve and recreational purposes.

The net result is a character and density which was not intended at the time the plan was notified. The intention was to assess discretionary subdivisions on a case by case basis so as to retain rural character as set out in the following objectives and policies of the RM Plan:

- RU2 – environment dominated by open space and natural features. "Small holdings are not rural residential areas but large enough to provide a range of rural activities...character predominantly rural rather than residential...horticulture interspersed with grazing"
- RU2.1 – sufficiently large separations between clusters of buildings or adverse effects on rural character avoided or mitigated provided that minimum lot sizes are met
- RU2.2 - small holdings of sufficient size to provide for: rural character; visually unobtrusive; separation of dwellings; containment of adverse effects on-site
- RU2.3 – scale, height and density of structures should not compromise the character of the area, or detract further from amenity
- RU2.4 – adverse visual effects from recontouring should be avoided, remedied or mitigated

- RU3.3 – activities should not give rise to adverse effects which compromise the amenity of adjacent properties

In summary, it appears that the existing objectives, policies and rules of the RM Plan are not effectively achieving the anticipated environmental results of the Plan, in that there is a clear trend and market expectation for below minimum subdivisions to occur as of right.

Given the Council Hira report and NUGS 04 findings, along with observed trends and concerns of Council staff and the community (through the Hira study and consent appeals), this plan change proposes an interim solution by “tightening” up on rural residential subdivision in Nelson North until such time as a clearer strategic planning direction emerges from the NUGS 04 process.

4. Consultation

The period 2000-2003 saw an unprecedented property boom in Nelson. This resulted in significant land value increases as demand for property far outstripped the available supply. This was accompanied by speculative behaviour by landowners and developers seeking to “cash in” during the boom. Although the property boom appears to have eased, there is still strong demand in Nelson for subdivision and development, including speculative subdivision.

Pre-notification consultation on plan change 05/01 would have almost certainly resulted in a high number of speculative subdivisions coming before the Council. This was experienced during development of the RM Plan, when pre-notification consultation resulted in a spike of speculative subdivisions shortly before the RM Plan was notified. Such speculative behaviour would have had the consequence of distorting market land values, as well as posing a potential administrative issue for the Council to deal with.

In addition, NUGS identifies future changes for the Nelson North area. Given the level of interest in subdivision in this area and past experience of the RM Plan notification, it is highly probable that the NUGS Nelson North options will induce speculative development as landowners position themselves to achieve maximum personal gain from any potential zoning changes.

Given the above, minimal pre-notification consultation has been undertaken in the form of a briefing to local surveyors and planning consultants and statutory consultation required under the first schedule to the RMA.

5. Process

The timetable in Table 2 outlines the decision making process of Council.

Table2: Plan Change 05/01 Development Process

Date	Detail
April 2002	Hira Village Centre Strategy Study Produced
July 2004	NUGS04 Stage 1 report released
August 2004	Review of recent subdivision trends
November 2004	Draft NUGS04 stage 2 growth options reviewed
February 2 2005	NUGS04 stage 2 growth options adopted by Policy Committee for public consultation
February 8 2005	Plan Change 05/01 and s32 assessment adopted by Environment Committee for notification
February 2005	Briefing to local surveyors and planning consultants
February 2005	NUGS growth options presented to landowners
March 2005	Plan Change 05/01 notified
March 2005	NUGS growth options opened for public submissions

7. Evaluation proposed changes

7.1 Options: costs and benefits and effectiveness

In considering the issue of below minimum subdivisions, the following alternative options have been considered. "Effectiveness" is a measure of how effective the option is at achieving the relevant objectives and policies of the RM Plan, but in particular Policy DO16.1.1.6³ (Rural Zone) and anticipated environmental result DO16e.1⁴ and DO16e.2⁵.

Table 3: Policy Options

Option	Advantages (Benefits)	Disadvantages (Costs)	Effectiveness
1. Do nothing	<ul style="list-style-type: none"> Meets market demand 	<ul style="list-style-type: none"> Continued land fragmentation Continued market expectation below minimum subdivisions will be granted Lack of clear policy guidance Reduced future land use opportunities 	ineffective
2. Increase minimum size only – no change in status	<ul style="list-style-type: none"> Possible larger lot sizes & less fragmentation 	<ul style="list-style-type: none"> Remains discretionary Assumption that undersize subdivisions will continue to be granted based on precedent 	ineffective
3. Change status of below minimum subdivisions from discretionary to non-complying & no increase in lot sizes	<ul style="list-style-type: none"> Decouples precedent from existing subdivision trends Better control over undersized lots 	<ul style="list-style-type: none"> Averaging provisions still can be used to achieve undersized lots Continued land fragmentation of undersized lots through the averaging 	moderately effective

³ DO16.1.1.6 – An environment within which soil, water and land resources are managed sustainably, and the rural character of the District, including water works catchments, and the surroundings of urban nelson, is maintained or enhanced.

⁴ DO16e.1 – A pattern of land use that reflects the varying needs and capabilities of the areas of the District.

⁵ DO16e.2 – A pattern of land use that locates activities according to their effects on the environment.

Option	Advantages (Benefits)	Disadvantages (Costs)	Effectiveness
		provision	
4. Increase minimum size <u>and</u> change status	<ul style="list-style-type: none"> • As for 2 and 3 combined • Maximises future land use options • Avoids speculative subdivision • Minimises adverse effects • Results in truer market land values 	<ul style="list-style-type: none"> • Least opportunity to meet market demand • More difficult for individual landowners to gain from land values and speculative subdivision 	highly effective
5. Moratorium on further subdivision	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No legal mechanism for a local authority placing a moratorium on a plan rule 	effective
6. Practice note on processing subdivision consents	<ul style="list-style-type: none"> • Maintains consistency of processing 	<ul style="list-style-type: none"> • Existing status would be retained • Subdivision likely to continue 	ineffective
7. Solicit landowners' agreement not to subdivide in the interim	<ul style="list-style-type: none"> • Cooperative approach 	<ul style="list-style-type: none"> • Relies entirely on landowner voluntary agreement • Many landowners with different aspirations • Very unlikely to reach agreement • Would require a large amount of consultation 	ineffective

Options 1,2,6 & 7 are all ineffective and there is no legal mechanism for undertaking option 5. None of these options are therefore appropriate.

While option 3 will be moderately effective, it still has the potential to result in continued land fragmentation at densities similar to those occurring at present. This option is therefore not considered to be appropriate.

Option 4 is the most effective, with potential benefits outweighing potential costs, and is considered the most appropriate policy response to the issue.

Option 4 has the effect of transferring benefits currently enjoyed as private benefits by individual landowners (status quo) to public/community benefits (proposed plan change).

Option 4 would change the planning process from market-led (demand) planning, to community-led planning. This option would result in more sustainable resource management outcomes and would retain a wider range of options for future land uses. In this respect, Option 4 is more likely to achieve the purpose of the RMA (section 5) than the status quo, which provides for dispersed land fragmentation.

7.2 Methods

Plan change 05/01 continues to apply the existing methods used in the RM Plan, i.e. zoning and rules relating to minimum lot sizes. This method has been subject to a recent statutory consultation process through the RM Plan drafting,

notification, submissions and appeals processes. As plan change 05/01 does not propose to change the existing method of implementation, an assessment of this method as the most appropriate means to achieve the anticipated outcome is not required.

7.3 *Appropriateness*

Option 4 is considered to be the most appropriate for the following reasons:

- Increased public / community benefits.
- The most effective option in terms of achieving the RM Plan objectives and policies.
- Best achieves the purpose of the RMA.
- Minimises adverse effects.
- Retains future land use options.
- Avoids distorted market land values through subdivision speculation

7.4 *Risk of acting or not acting*

Section 32 of the RMA requires an examination of the risk of acting or not acting if there is uncertain or insufficient information on the policies, rules, or other methods.

It is considered there is sufficient information in the form of studies (Hira and NUGS) and observed trends and analysed subdivision trends to act on the issue of undersized lots. The risk of not acting is the considered land fragmentation of Nelson North.

Part 2: Proposed Plan Change and Amendments

Plan change 05/01

Proposal

To restrict further subdivision and land fragmentation in Rural Zones and Low Density Small Holdings areas until a clearer strategic planning direction is indicated through NUGS 04.

Purpose

To:

- Avoid irreversible land fragmentation.
- Avoid reduction of opportunities for future land use.
- Avoid significant adverse cumulative effects arising from continued land fragmentation below the minimum subdivision standards set out in the Nelson Resource Management Plan.
- Better enable forward planning for infrastructural services and community facilities.
- Give effect to the recommendations of the 2002 Hira Village Centre Strategy Study.
- Provide clearer direction and greater certainty for applicants, the Applications Committee and Council staff.

Amendments

1. Amend RUr.78.2(e)(ii) to delete reference to 2ha minimum, and make the 3ha average the minimum lot size as follows:

e) the net area of every allotment is at least <ol style="list-style-type: none">i) 15ha except in the Small Holdings Area;ii) 3ha average lot size with a 2ha minimum lot size in the Lower Density Small Holdings Area...

2. Amend RUr.78.3 as follows:

Any subdivision that contravenes a controlled activity standard is discretionary if it is for the purposes of a network utility.
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Any other subdivision that contravenes a controlled activity standard is discretionary if:
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- | |
|--|
| a) it complies in all respects with all the standards relating to water, stormwater, and sewerage in Appendix 14 and |
| b) it is not located in the rural zone or small holdings area between the Glen Road (including all areas east of The Glen road) and Whangamoia Saddle the net area of allotments is greater than 1ha in the Small Holdings Area except where lots have been created for the purposes of network utilities |

Any subdivision in the rural zone or low density small holdings area located between the Glen Road (including all areas east of The Glen Road) and Whangamoia Saddle which does not meet the controlled activity minimum lot sizes is a non-complying activity, except where lots have been created for the purpose of access or network utilities.

3. Amend the last two sentences of DO16.1.1xi (pg 5-68) to read as follows:
" In line with Nelson City Council's philosophy of achieving ~~a similar or complimentary~~ an appropriate policy approach, ~~a flexible approach has been taken to the rural environment in the Nelson area~~ some provision is made in the rural environment in Nelson for rural small holdings, to help ease pressure on the quality soils which benefit both areas. However, protection of productive capability in Tasman should not be at the expense of loss of rural character and unsustainable, inefficient or inappropriate development in Nelson. To this end, a plan change was notified in 2005 to make undersize rural small holdings subdivisions in Nelson North a non-complying activity, until such time as a framework is in place to allow for more structured and coordinated rural small holdings subdivisions in Nelson North. The underlying philosophy of the management of this resource remains to protect its productive capacity and to meet other objectives of the zone.

4. Add the following new explanation after RU2.ii(b) (pg 12-3): *" Since the plan was notified in 1996, there has been a trend of undersize subdivisions in the North Nelson Rural Zone and Rural Smallholdings area. A plan change was notified in 2005 to make undersize subdivisions between The Glen Road and Whangamoia Saddle non-complying activities. This is an interim measure to halt this trend and avoid further adverse effects on rural character, until such time as a more structured and coordinated framework for subdivision is in place."*

5. Add the following new policy in Chapter 12 (pg 12-6)
*RU2.5 Structure Planning
 Subdivision of the Rural Zone and Rural Small Holdings area between The Glen Road and Whangamoia Saddle which do not meet the minimum site sizes should be restricted as non-complying activities until such time as the Council has developed a strategic plan for further development in this area.*

Explanation and reasons

Since the Plan was notified in 1996, there has been a clear trend towards undersize rural residential subdivisions in the Nelson North area. For example, 45% of all subdivisions granted in the Rural Small Holdings are in Nelson North between 1996 and 2002 were non-complying. A further 90% in the Rural Zone were less than half the permitted minimum lot size. The 2002 Hira Village and the Nelson Urban Growth Strategy 2004 both identified subdivisions and resubdivision in Nelson North as cause for concern as they are changing the character of the area to one not anticipated in the Plan. These concerns centre around:

- *Loss of rural character*
- *Adverse effects*
- *Precedent*
- *Cumulative effects*
- *Form, function and efficiency of dispersed rural-residential development*

Left unabated, there is the potential for continued undersize subdivisions to create a rural community and character more consistent with dispersed large residential holdings rather than rural small holdings.

Given this, and the continuing trend and demand for undersize rural lots, Council has identified the need for a more structured and coordinated

approach to rural residential development in Nelson North. This will allow future development and subdivision to be undertaken within a framework which takes into account the future long term form and function of this type of development. However, until such a framework is in place, further land fragmentation by rural residential development will be more tightly controlled.

Methods

Making undersize rural and small holdings subdivision in Nelson North a non-complying activity.