

Plan Change 05/02

Section 32 Evaluation Report

NELSON CITY COUNCIL

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PART 1 – BACKGROUND

1. *What is Section 32?*

Section 32 of the Resource Management Act 1991 imposes a duty on Councils to follow a defined process when preparing, or making changes to, a resource management plan. This process involves the consideration of various options and the appropriateness of any provisions intended for inclusion in the plan – how effective and how efficient they may or may not be.

2. *The Components of a Section 32 Analysis*

Before a change to a resource management plan is notified by a territorial local or regional authority, the authority must carry out an evaluation of the proposed change under Section 32 of the Act.

The evaluation under Section 32 must examine:

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

The above evaluation must take account of:

- the benefits and costs of policies, rules, or other methods, and
- uncertainty – the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or methods.

The evaluation must be summarised in a report (referred to here as a Section 32 report) and that report has to be available for public inspection when the plan change is publicly notified.

3. *Development of the Plan Change*

Since the Nelson Resource Management Plan was released as a proposed plan in 1996, a number of shortcomings have become apparent in the course of its use and administration, largely as a result of dealings with the public and through the processing of applications for resource consent. As Council staff have become aware of problems with various plan provisions, these have been recorded and filed until such time as it was appropriate to consider introducing a plan change. They have since been assessed and prioritised, and those matters which were considered to have the greatest priority have been incorporated into the present plan change.

By and large, the changes introduce few new provisions. Essentially, the changes represent a “fix it” solution to rectify what is seen by the Council as some of the more common problems encountered when administering the Plan. Because of the nature of the changes, consultation has been limited, but the issues have been widely discussed by staff within the Council in order to assess the workability of the “adjusted” provisions.

PART 2 – EVALUATION

4. Summary of Proposed Plan Changes

The following changes have been put forward in response to issues that have arisen in the nine years since the Nelson Resource Management Plan was prepared. While most of the proposed changes are minor, the implications of some of the changes are more significant and are expected to have a significant effect on the activities they relate to. For the most part, the proposed changes do not break fresh ground, but rather amend existing provisions in the Plan in order to make those provisions more workable. In effect, the adverse implications in terms of costs, effectiveness and efficiency are greater if the Plan is left unchanged than by changing those provisions.

The Plan Change as a whole is identified as Change 05/02, being the second plan change proposed in 2005. Individual changes are numbered from 1 to 50.

The individual changes are grouped below under broad topics such as “heritage” and “daylight”. Because there have been a number of deletions from, and additions to, the original list since the process of preparing this plan change began, some of the changes no longer fit so readily under the broad headings. The groupings have not, however, been restructured as the individual change topics are largely self explanatory.

Topic 1 – Heritage

Plan Changes 1 to 2 consist of minor changes to wording.

Change 1 introduces a specific reference to the archaeological overlay as well as to sites. This is justified as Iwi sites in particular are rarely identified by site.

Changes 2 & 3 introduce the term “heritage overlay” to the text (as already occurs in the planning maps) as an umbrella term to cover: heritage buildings, sites and places; heritage and landscape trees; heritage precincts; Wakefield Quay precinct; archaeological sites; and the archaeological overlay.

Changes 4 & 5 clarify the links between Resource Management Issue RI13 and District-wide objective DO4.1 and Appendices 1 and 3 respectively.

Changes 6 to 8 are more significant.

Change 6 changes the status for significant alterations to Group A heritage buildings in the Wakefield Quay Precinct from a non-complying to a discretionary activity.

Change 7 amends the list of archaeological sites in Appendix 3 and on the planning maps.

Change 8 adds additional trees to the list of heritage trees identified in Appendix 2

Topic 2 – Buildings: drainage/water

Change 9 deals with the separation of structures and pipes/drains on sloping ground in all zones, including the rural zone where it did not previously apply.

Change 10 adds the additional assessment criterion, ‘hydraulic characteristics of the stormwater system’, to the rules relating to building on low-lying sites.

Change 11 requires all buildings in the Rural Zone, rather than just residential buildings, to meet the requirements for defensible space/water for firefighting. It also requires the water available for firefighting use to be within 150 metres of the building, and for the water to be accessible by a portable pump.

Topic 3 – Buildings: bulk/location

This section consists of a number of “tidy up” plan changes (12, 13, 16, 17 and 18).

Plan changes 14 and 15, deal with more significant resource management issues.

Change 12 requires a 2m horizontal setback of decks and balconies from the property boundary to adequately cover sloping sections. It also clarifies where ground level is to be measured from when considering the effects of decks 1.2m above ground level.

Change 13 reduces the minimum height for garage doors from 2.2m to 1.95m.

Change 14 increases the level of regulation of large commercial buildings in the Suburban Commercial Zone.

Change 15 makes it clear that the specific dimension requirements for verandahs (in Appendix 17e), now overrides Appendix 17b, which relates to continuity with neighbouring verandahs.

Change 16 makes it clear that the more specific dictates of the Air Plan now take precedence over the chimney height restrictions in the RM Plan.

Change 17 reduces the maximum building height for the Wakatu Industrial Estate (ex-Nelson Bays Meat Producers property) from 20m to 15m.

Change 18 clarifies the situation with regard to the maximum building height - that two methods can be used in its calculation, and that maximum height can be exceeded on occasions.

Topic 4 – Daylight

This section consists mainly of “tidy ups” to the daylight provisions, particularly the application of the daylight-over and daylight-around calculation methods. However changes 33 and 34 are more significant resource management issues.

Change 19 clarifies the situation with regard to development on sites adjoining the residential zone - such properties must comply with the 7.5m height restriction when the daylight-around method is used. This is to ensure that the daylight admission to the residential site is the same as if the neighbour was located within the residential zone.

Change 20 amends the provision applying a 45° recession plane restriction so that the provision applies only to those parts of a building within 4 metres of the road boundary.

Change 21 limits the application of the daylight calculation from the centre line of a right-of-way or access to those serving more than one, but less than five, actual or potential residential units.

Change 22 clarifies what constitutes “original” and “finished” ground level. It also provides safeguards to ensure that where land is required to be filled, the rules do not discriminate against property owners, and also provide some protection against potential shading.

Change 23 makes it clear that any additions or alterations to existing buildings should not have the effect of reducing the level of daylight admission to neighbouring properties.

Change 24 strengthens the daylight-over rule to allow only minor intrusions, and therefore provide additional protection to neighbouring properties.

Change 25 improves implementation of the daylight-around method in relation to sloping land.

Change 26 amends the definition of building in relation to chimneys, to achieve consistency with the Air Quality Plan.

Topic 5 – Industrial

Changes 27 and 28 tidy up and clarify points which were not sufficiently clear, and Change 31 reflects a change in land use since the RM Plan was drafted. Changes 29 and 30 attempt to achieve greater consistency between policies and rules in the Industrial zone.

Change 27 further clarifies the types of industrial activities which are considered inappropriate home occupations within the Residential Zone.

Change 28 amends Policy IN1.1 (Limiting Non-Industrial activities) to refer to policies IN1.2 to IN1.4, so that all these policies come under the umbrella intent of Policy IN1.1.

Change 29 amends the rule relating to office facilities in industrial zones in order to achieve greater consistency between the relevant policy and rule.

Change 30 clarifies the provisions relating to non-industrial activities in the port area.

Change 31 provides a description of the changed industrial land use in the Saxtons Industrial area.

Topic 6 – Planning maps

Change 32 rezones the former ‘Mr Beans’ site in Stoke (Standish Pl), which has been developed as a residential subdivision, from “Suburban Commercial” to “Residential”.

Topic 7 – Legislative “Catch-Ups”

Change 33 amends the definition of “contaminant” in line with the 2003 Amendment to the Resource Management Act.

Change 34 - The 2003 amendment has elevated ‘historic heritage’ from a Section 7 matter to Section 6 (matters of national importance). Consequently, the higher level of status.

Change 35 deals with provisions which must be taken into account as a consequence of the 2003 amendment. It also corrects an error relating to the operative date of the Nelson Regional Policy Statement.

Change 36 - The RMA has been clarified and simplified with respect to the information to be supplied with any application for resource consent. It is appropriate that these new requirements be reproduced in the Plan.

Change 37 relates to several other changes necessitated by the 2003 amendment.

Change 38 clarifies the effect of a designation per s176 of the Act as spelt out in the 2003 amendment.

Topic 8 – Traffic/roads

Change 39 clarifies the intention of the access rule whereby access across the frontage of scheduled streets/squares is not permitted as of right.

Change 40 changes the status of Ap11.1.ii(d) which relates to restrictions on crossings close to an intersection.

Change 41 provides the opportunity for Council to override the provisions of s77(3) of the Act in order to not take esplanade reserves in the case of road stopping, if it is considered neither appropriate nor necessary.

Topic 9 - Comprehensive housing

Change 42 provides for closer scrutiny of applications for comprehensive housing where there are significant departures from the accepted standards for site area and coverage in the zone.

Change 43 adds further criteria relating to on and off-site amenity in order to be more consistent with other sections of the Plan.

Change 44 amends the general residential policies to ensure consistency with the two previous changes.

Topic 10 - Various

Change 45 - this change to the planning maps includes this Nelson Polytechnic property within the scheduled Nelson Polytechnic area, in accordance with the provisions of a 1999 resource consent, and the stated intentions of the Council at that time.

Change 46 identifies the residential property at 46 Shelbourne Street as a Group A Heritage building.

Change 47 amends the table identifying road formation requirements in accordance with the NZS4404 and in line with the NCC Engineering Standards.

Change 48 limits the ability of activities associated with the sale, hire, service, or repair of vehicles to operate outside the confines of their site.

Change 49 clarifies some of the intentions of the earthworks rule and introduces new controls in respect of noise, dust, and traffic and access issues.

Change 50 introduces a new rule to cover landfills, which were previously intended to be covered by the earthworks rule. The earthwork provisions have proved inadequate for this purpose and the new rule provides additional criteria by which landfill applications can be assessed. This should assist in addressing matters which have been the cause of some concern in recent applications for minor landfill operations.

5. General assessment

A large number of the following changes are of minor significance and have not therefore been subject to extensive analysis. The purpose of the change is to clarify provisions and to aid interpretation. These changes have been grouped together (as Group 1) in the following tables to avoid unnecessary duplication.

Group 1 covers:

- From Topic 1 (heritage): 1, 2, 3, 4 & 5.
- From Topic 4 (daylight): 26
- From Topic 5 (industrial): 28 & 31
- From Topic 6 (maps): 32

- From Topic 7 (legislative catch-ups): 33, 34, 35, 36, 37, & 38
- From Topic 8 (traffic/roads): 40 & 41
- From Topic 10 (various): 45 & 46

Group 2 consists of a number of changes which are also ‘tidy ups’ to improve the interpretation and implementation of the Plan, but the changes have the potential to have more significant effects, particularly for individual resource consent applicants. While less significant as a group than Group 3, they still merit some examination as to the effects likely to result from the changes.

Group 2 covers:

- From Topic 2 (drainage/water): 9 & 10
- From Topic 3 (bulk/location): 12, 13, 15, 16, 17 & 18
- From Topic 4 (daylight): 19, 20, 21, 22, 25 & 27
- From Topic 8 (traffic/roads): 39
- From Topic 9: (comprehensive housing): 44
- From Topic 10 (various): 47, 48 & 49

Group 3 contains the most significant changes and these have been considered in greater detail when assessing their costs and benefits.

Group 3 covers:

- From Topic 1 (heritage): 6, 7 & 8
- From Topic 2 (drainage/water): 11
- From Topic 3 (bulk/location): 14
- From Topic 4 (daylight): 23 & 24
- From Topic 5 (industrial): 29 & 30
- From Topic 9 (comprehensive housing development): 42 & 43
- From Topic 10 (various): 50

6. *Relationships between the Plan Changes and the RM Plan Objectives*

Section 32 of the Act requires an evaluation to “examine the extent to which each objective is the most appropriate way to achieve the purpose of (the) Act.”

No new objectives have been proposed in the current plan change (05/02). Only one of the individual changes (Change 14) proposes to amend an existing objective. In this example some additional words have been added, not to change the intent of the objective, but rather to act as a counterpoint and serve as a reminder that other factors need to be considered if a balanced decision is to be arrived at.

For the above reason, no further assessment is considered necessary.

7. Likely costs and benefits (refer also to explanation for each plan change topic which provides further details on costs/benefits)

Analysis		
Proposed change	Likely costs	Likely benefits
Group 1	low (cost of plan change process)	Consistency throughout the Plan and with the RMA; improved clarity
Group 2		
9	minimal	Clarifies situation with regard to sloping ground, ensures adequate access to pipes for repair/maintenance.
10	minimal	Takes into account the relationship of the height of low-lying sites to the stormwater system servicing it.
12	More limitations when siting decks on sloping properties.	Avoids potential for crowding and invasion of privacy.
13	Restricted access for vehicles requiring clearance in excess of 1.95m	Avoids the need (& costs) to obtain resource consent for minimum garage door heights between 1.95 & 2.2m.
15	Minimal	Provides clarity as to which provision takes precedence.
16	Minimal	Provides clarity by indicating that the more specific provisions of the Air Plan will take precedence.
17	Possible restriction on height of buildings within the zone	More compatibility with other areas
18	Nil	Provisions may be more easily understood
19	Some height restriction on properties which adjoin residential zone	Ensures that residential properties which adjoin other zones have same daylight protection as if those adjoining properties were located within a residential zone
20	Some restriction remains due to need to use daylight-over provisions	45° recession plane now applies only within 4 metres of road boundary – less restrictive for property owners for this 4 metre strip
21	Minor height restriction on properties with access rights over a small access or ROW	Greater flexibility for properties adjoining smaller access or ROW (but lacking rights of access). Some protection against “canyon effect”
22	Some additional compliance costs for developers	Clearer Plan provisions. Some protection for neighbours against shading.

25	Tighter restrictions on building on sloping sites on downhill side of residence	More logical application of the daylight admission rules. Greater protection for downhill neighbours (adjacent). More flexible for people building on uphill side of residence.
27	More restrictive list of exclusions for home occupations	More protection for neighbours from inappropriate activities
39	Some limits on vehicle access in the inner city	Avoids breakdown of the continuity of facades in Trafalgar, Hardy and Bridge Streets, and therefore promotes an enhanced and safe pedestrian environment in the inner city.
44	Provides additional criteria against which developments must be measured	Policy amendments to ensure greater balance in assessing comprehensive developments.
47	Minor. NCC Engineering standards already amended – some toughening of requirements	Brings plan provisions into line with amended NZ Standards
48	Some restriction on off-site activities for certain businesses	More public space available for public use
49	Some restrictions due to greater control of fill materials	Better control of nuisance effects i.e. dust, traffic movements.
Group 3		
6	Minimal	Greater consistency in application of heritage rules in Wakefield Quay. Less restrictive for Group A properties wanting to make alterations
7	Compliance costs for landowners, and costs of administration and enforcement	Addition of new archaeological sites of significance. Better protection for heritage items per s6 & better achieves community outcomes for heritage.
8	Minimal. Some restriction on developments where conflict with tree status	Significant additions to list of protected trees. Reflects amendments to s6 of RMA
11	Increased costs of compliance for owners of commercial and industrial buildings in the Rural Zone.	Less risk from fire to industrial and commercial buildings in the Rural Zone.
14	Limits the scale of developments considered acceptable in the Suburban Commercial Zone.	Controls appearance of large buildings, and increases the opportunity to soften their impact.
23	Places some restriction on the development potential of existing buildings.	Avoids a worsening of the daylight effects on adjoining properties. Restricts development to use of one method of daylight control – a fairer system
24	Restricts development potential of new buildings	Minimises intrusions into daylight-over lines; improves daylight to adjoining properties.
29	Restricts development potential in the Industrial Zone.	Protects the opportunities for future industrial development.
30	Limits intrusion of non-industrial activities into the port industrial area.	Protects the opportunities for future industrial development.

42	Places greater restrictions on comprehensive developments where there are significant departures from the Plan provisions.	Ensures a reasonable standard of development. Provides greater protection for existing residential properties
43	Imposes tighter controls on on-site and off-site amenity for comprehensive developments. Also requires consideration of building density and privacy & shading of neighbours	Increases the amenity of comprehensive housing developments and the residential area around them.
50	Imposes tighter controls over landfill activities, which are now subject to a separate rule.	Imposes tighter controls over landfill activities. Clearer distinction between earthworks and landfill activities.

8. Assessing efficiency and effectiveness

Having listed the relevant objectives of the plan changes, and estimating the costs and benefits of the changes, the next step is to bring these factors together in an assessment of the effectiveness and the efficiency of the change. N.B. This is also reflected in the explanation for each individual plan change.

	Analysis	
Proposed change	Efficiency (i.e. overall benefits less costs) and administrative efficiency. (Very high, high, moderate, low)	Effectiveness (will it achieve the relevant objectives) (Very high, high, moderate, low)
Group 1	Very high	not applicable
Group 2		
9	Very high	High
10	Very high	High
12	High	High
13	Very high	High
15	High	Moderate
16	Very high	High
17	High	High
18	High	High
19	High	Moderate
20	High	High
21	High	High
22	High	High
25	High	High

27	High	Moderate
39	Moderate	Moderate
44	High	Moderate
47	Moderate	High
48	High	Moderate
49	High	High
Group 3		
6	High	Moderate
7	High	Moderate
8	High	Moderate
11	High	High
14	High	High
23	High	High
24	High	High
29	High	High
30	High	High
42	High	High
43	High	High
50	High	High

9. Risks

Where there is any uncertainty, or insufficient information, section 32 requires the Council to consider the risks of acting or not acting. Many of these plan changes have been proposed to respond to new information arising since the RM Plan was prepared. However, there is only one plan change for which there is considered to be some uncertainty or insufficient information. The analysis of this plan change is shown below:

Proposed change	Analysis	
	Uncertainty/lack of information	Risks of acting/not acting
11	The number of existing buildings in the Rural zone that will be affected by this change.	<u>Risks of not acting:</u> - ongoing risk from fire.

10. Appropriateness and alternatives

Section 32 requires the Council to consider if the proposed plan change is the most appropriate way to achieve the relevant objectives?

The principal motivation behind these changes to the Nelson Resource Management Plan is to improve administrative efficiency, provide increased certainty, and improve the effectiveness of the Plan, largely through the modification of weak or inadequate provisions. Some of these provisions have been circumvented by various means and require strengthening; some have simply failed to do the job expected of them; others require further explanatory text to spell out the intention behind the policies and rules.

The changes also perform a number of other functions, including the recognition of legal amendments which have already been incorporated into the Resource Management Act, the addition of new heritage trees, the removal of unreasonable and unintended restrictions, and amendments which recognise events which have rendered existing plan provisions obsolete.

The incorporation of the changes, the majority of which are relatively minor, does not, for the most part, change the basis intent of the plan provisions. For this reason, amending the existing plan provisions by way of a plan change is seen as the most appropriate way of ensuring that the existing objectives are achieved.