

# PUBLIC EXCLUDED

3 October 2014

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**REPORT A1248765**

## **Plan Change 18 Appeals**

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### **1. Purpose of Report**

- 1.1 To update the Resource Management Act Procedures Committee (RMAPC) on progress of the appeals to Plan Change 18 (Nelson South) and confirm the strategy to be followed for Environment Court appeals.

### **2. Delegations**

- 2.1 The strategy to be followed for Environment Court appeals are delegated to the RMAPC in accordance with the functions and delegations outlined in the Nelson City Council Delegations Register (section 7.8).

### **3. Exclusion of the Public**

- 3.1 This report has been placed in the public excluded part of the agenda in accordance with section 48(1)(a) and section 7 of the Local Government Official Information and Meetings Act 1987. The reason for withholding information in this report under this Act is to carry out negotiations.

### **4. Recommendation**

***THAT the report Plan Change 18 Appeals (A1248765) and its attachment (A1248845) be received;***

***AND THAT Council officers continue discussions with landowners and prepare for Environment Court mediation/hearing.***

### **5. Background**

- 5.1 At the 1 July 2014 meeting of the RMAPC, officers presented a 26m wide plan for Saxton creek upgrade which provided for esplanade reserve functions on both sides of the creek. Officers were instructed to continue discussions with landowners and advise the court that mediation time was required for the PC18 appeals. If landowner agreement could not be secured by August 2014 Council would reconsider the priority given to the Saxton Creek upgrade. Council officers were also instructed to commence preparing the resource consent for the lower reaches of Saxton creek and consider implications from Main Road Stoke to State Highway 6.

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- 5.2 Since the 1 July 2014 RMAPC meeting Council officers have met with the landowners to present the 26m wide concept. At the landowner meeting Julian Raine proposed an alternative concept that diverted the stream onto his land. The landowners went away to consider both proposals and have since indicated that they (with the exception of Julian Raine) prefer the location originally proposed by Council but with a reduced width of approximately 22m. A consent order was sent to the landowners on this basis in an attempt to secure agreement prior to the end of August 2014. A copy of the consent order and associated plan are attached (Attachment 1).
- 5.3 To date the appellants (with the exception of Julian Raine) have indicated general support for the latest proposal but have sought further clarification on a number of matters, which officers are currently working on.
- 5.4 The parties have generally agreed to Environment court mediation on the basis that a number of landowner agreement matters are pursued in the meantime.

### **6. Discussion**

- 6.1 Officers have been discussing this matter with landowners for over two years. Officers have moved significantly in terms of reductions in stream corridor width (from a total of between 36-53m down to 22m). Officers believe that 22m is the bare minimum possible to secure the necessary resource consents to undertake the stream upgrade work and is an appropriate width to be indicated in the Nelson Resource Management Plan.
- 6.2 Council is now at a cross roads in terms of direction on the PC18 appeal. It would appear that agreement is likely with the majority of appellants on the consent order proposal. Council is unlikely to get agreement from Julian Raine who prefers an alternative route.
- 6.3 An alternative route is not favoured for a number of reasons:
- 6.4 It would be outside the scope of PC18;
- 6.5 The majority of the landowners are not supportive;
- 6.6 Required approval from key landowners will not be given;
- 6.7 There may be difficulties in obtaining resource consent;
- 6.8 A portion of the Council preferred route would still need to be retained to manage overland flow and stormwater from the adjacent properties now, and should the future development provided for in PC18 take place;
- 6.9 It would be difficult to deal with flooding if the stop-bank proposed by Julian Raine is breached, particularly in the case of potential up stream dam burst.

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- 6.10 If Julian Raine will not agree with Council and the majority of appellants then Environment Court mediation would be useful to focus the scope of any outstanding issues. Council has also signalled that it will review the priority given to Saxton Creek upgrade if it cannot get landowner agreement by August 2014.
- 6.11 If Environment Court mediation will not be agreed to by Julian Raine it would appear that the only way to progress forward is to set the matter down for Environment Court hearing and let the Court decide the outcome of the appeal. If this approach is taken then it is unlikely that full landowner agreement will be reached in relation to securing the land necessary to undertake the required upgrade works. Where land cannot be secured by agreement, it would either need to be secured as owners subdivide over time or land would need to be taken under the Public Works Act.
- 6.12 If land is to be taken at subdivision, it could be sometime until upgrade works could commence as a connection would not be established until the last landowner subdivides. Given the relative urgency of the work it is considered that the Public Works Act is used to secure the land where landowner agreement cannot be achieved in the short term.
- 6.13 The alternative is for Council to walk away from the upgrade work and invest elsewhere in the city and progress the PC18 matter to the Environment Court independently.

### **7. Consultation**

- 7.1 As noted there has been extensive consultation undertaken with landowners as part of the PC18 process and in developing a concept for the Saxton Creek upgrade project. Funding has been added to the 2014/2015 Annual Plan and is planned for the subsequent years. This funding will be a matter for future consultation as part of the LTP process.

### **8. Alignment with relevant Council Policy**

- 8.1 \$2,500,000 has been budgeted for in the 2014/2015 Annual Plan for the Saxton Creek upgrade. A total of \$4,680,000 has currently been budgeted in the subsequent years for later stages of the Saxton Creek upgrade. The ability to spend this money will be contingent on getting landowner agreement and necessary resource consents to commence this work.
- 8.2 A range of values are identified in the Nelson Resource Management Plan for Saxton Creek. These include hazard management, ecological, access and recreational values. These values would need to be maintained and enhanced in order to be consistent with resource management policy. This approach is consistent with the Nelson Biodiversity Strategy that seeks the protection and restoration of natural ecosystems.

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- 8.3 The upgrading of Saxton Creek will be consistent with Nelson 2060 should the values of Saxton Creek be maintained and enhanced. In particular enhancement of Saxton Creek will contribute to the themes of Nelson being a sustainable city of beauty and connectivity and outstanding lifestyles immersed in nature. This work will also contribute to Goal 3: Our natural environment – air, land, rivers and sea are protected and healthy and Goal 8: Nelson is a centre of learning and practice in kaitiakitanga and sustainable development.

### **9. Inclusion of Māori in the decision making process**

- 9.1 Maori have been involved to date via the plan change process and preliminary consultation has commenced as part of the stream upgrade project.

### **10. Conclusion**

- 10.1 This report updates the RMAPC with respect to progress on PC 18 appeals and the Saxton Creek upgrade project. Council officers have had extensive discussions with landowners in an attempt to resolve flooding and appeal matters associated with Saxton Creek. Substantial funds have been provided in the 2014/2015 Annual Plan and are planned for subsequent years to cover the cost of the Saxton Creek upgrade. Officers are now at the point where any further reduction in corridor width cannot be agreed to given the need to secure a resource consent for the work and to address hazard, conservation, access, and recreation requirements.
- 10.2 It is recommended that the RMAPC authorises Council Officers and legal adviser to continue discussions with landowners while a mediation date is finalised.

Matt Heale  
**Manager Planning**

### **Attachments**

Attachment 1: Consent Order [A1248845](#)