

<b>Decision released from confidential session</b>			
<b>Recommendation from (agenda report)</b>	<b>Date of meeting</b>	<b>Recommendation to (decision-making meeting)</b>	<b>Date of meeting</b>
Hearing Panel	4 December 2023	Council	14 December 2023
<b>Report Title and number</b>			
Plan Change 31 - Hearing Panel recommendations (R28214)			
<b>Documents released</b>			
Decision (CL/2023/315), report Plan Change 31 - Hearing Panel recommendations (R28214) and Attachment (539570224-18492)			
<b>Decision</b>			
Resolved			
That the Council			
<ol style="list-style-type: none"> <li>1. Receives the report Plan Change 31 - Hearing Panel recommendations (R28214) and its attachment (539570224-18492); and</li> <li>2. Accepts the recommendation of the Hearing Panel and, pursuant to Clause 29(4) of the First Schedule of the Resource Management Act 1991, approves Plan Change 31 for the reasons given in the Hearing Panel's report and recommendation in Attachment 1 (539570224-18492); and</li> <li>3. Approves for public notification the Council's decision on Plan Change 31 in accordance with Clause 11 of the First Schedule of the of the Resource Management Act 1991; and</li> <li>4. Approves the operative date for Plan Change 31 as 23 February 2024 if there are no appeals; and</li> <li>5. Agrees that that Report (R28214), Attachment (539570224-18492) and the decision be made publicly available following notice of the decision to all parties.</li> </ol>			

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Item 6: Plan Change 31 - Hearing Panel recommendations

Council



14 December 2023

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**Report Title:** Plan Change 31 - Hearing Panel recommendations  
**Report Author:** Dennis Bush-King - Manager Environmental Management  
**Report Authoriser:** Mandy Bishop - Group Manager Environmental Management  
**Report Number:** R28214

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## 1. Purpose of Report

- 1.1 To present the Hearing Panel's report and recommendation (1982984479-6909) on Plan Change 31 (PC31) and seek a decision from Council on that recommendation.

## 2. Summary

- 2.1 The Hearing Panel conducted a hearing on 4 December 2023 and has recommended that PC31 be approved without any change. The recommendation is accompanied by a report that sets out the reasons for its recommendation (1982984479-6909).

It is recommended that the Council accepts the Hearing Panel's recommendation and approves PC31 for the reasons provided in the Hearing Panel's report. If approved, Council would then proceed to publicly notify the decision. Appeals to the decision can subsequently be lodged with the Environment Court if any party remains dissatisfied.

## 3. Recommendation

### *That the Council*

1. ***Receives*** the report Plan Change 31 - Hearing Panel recommendations (R28214) and its attachment (539570224-18492); and
2. ***Accepts*** the recommendation of the Hearing Panel and, pursuant to Clause 29(4) of the First Schedule of the Resource Management Act 1991, approves Plan Change 31 for the reasons given in the Hearing Panel's report and recommendation in Attachment 1 (539570224-18492); and

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3. ***Approves for public notification the Council's decision on Plan Change 31 in accordance with Clause 11 of the First Schedule of the of the Resource Management Act 1991; and***
4. ***Approves the operative date for Plan Change 31 as 23 February 2024 if there are no appeals; and***
5. ***Agrees that that Report (R28214), Attachment (539570224-18492) and the decision be made publicly available following notice of the decision to all parties.***

## 4. Exclusion of the Public

- 4.1 This report has been placed in the confidential 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:

Section 48(1)(d) That the exclusion of the public from the whole or the relevant part of the proceedings of the meeting is necessary to enable the local authority to deliberate in private on its decision or recommendation in any proceedings to which this paragraph applies.

Section 48(2)

Paragraph (d) of subsection (1) applies to -

- (a) Any proceedings before a local authority where -
  - (i) A right of appeal lies to any Court or tribunal against the final decision of the local authority in those proceedings; or
  - (ii) The local authority is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings; and
- c) Any proceedings of a local authority in relation to any application or objection under the Marine Farming Act 1971.

## 5. Background

- 5.1 Plan Change 31 proposes to amend the Nelson Resource Management Plan in Schedule N to include supermarkets in the list of controlled activities rather than its current status as a non-complying activity.
- 5.2 Council at its meeting on 3 May 2023 established a mixed, three-person hearings panel comprising an independent chair (Greg Hill), Deputy Mayor O'Neill-Stephens and Councillor Brand to hear and recommend on submissions received in relation to Plan Changes 31. Public notification opened on 11 August 2023 and closed 19 September 2023. Six submissions were received, and three further submissions were received by 13 October.

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5.3 A hearing was held on 4 December 2023.

### 6. Discussion

6.1 Council retains the power and duty to make the final decision on PC31. However, as the Council has not heard and considered all the evidence and submissions, it is not in a position where it can re-evaluate those and substitute its own conclusions. Effectively, this means the decision-making options available to the Council on PC31 are limited to either:

6.1.1 Accepting the Hearing Panel's recommendation in its entirety and approving PC31 in the form proposed by the Hearing Panel – this results in a decision to approve PC31 in accordance with Clause 29(4) of the First Schedule; or

6.1.2 Rejecting the Hearing Panel's recommendation in its entirety and declining PC31, but only where the Council has a good reason for doing so – this results in no decision on PC31, leaving open the prospect that Council will have to rehear the matter unless it withdraws PC31.

6.2 It is recommended that the Council accepts the Hearing Panel's recommendation and approves PC31 for the reasons provided in the Hearing Panel's report. If approved, Council would then proceed to publicly notify the decision. Appeals to the decision can subsequently be lodged with the Environment Court if any party remains dissatisfied.

6.3 Even though Deputy Mayor O'Neil-Stevens and Cr Brand sat on the first instance hearing, which was a meeting under Part VII the Local Government Official Information and Meetings Act, they are not debarred from being involved in this Council decision. A Hearing Panel operates in the same way as any subcommittee or committee reporting to Council.

### 7. Options

<b>Option 1: Accept the recommendation of the Hearing Panel to approve Plan Change 31.</b>	
Advantages	<ul style="list-style-type: none"><li>• There would be very low risk of challenge in respect of natural justice and fair process.</li><li>• There is no need for a rehearing of submissions by the Council.</li></ul>
Risks and Disadvantages	<ul style="list-style-type: none"><li>• Those who opposed PC31 may not be convinced of the reasons for approving PC31 and could appeal to the Environment Court (as is the case with any decision on a plan change).</li></ul>
<b>Option 2: Reject the recommendation of the Hearing Panel to approve Plan Change 31.</b>	

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Advantages	<ul style="list-style-type: none"><li>• Nil.</li></ul>
Risks and Disadvantages	<ul style="list-style-type: none"><li>• The Council could receive negative feedback from those who supported PC31.</li><li>• The Council would need to rehear the submissions. This would impose additional costs and time delays on all parties.</li><li>• The decision could be challenged by the original applicant through judicial review in the absence of substantive reasons.</li><li>• The outcome of a successful challenge through the Courts would be damaging to Council in terms of its reputation as a sound decision maker.</li></ul>

### 8. Next Steps

- 8.1 Should Council accept the recommendations of the Hearing Panel, this decision, and the date the plan change is to be operative, assuming there are no appeals, is to be made public.
- 8.2 Any party to the proceedings can appeal the decision if dissatisfied.

### Attachments

Attachment 1: 539570224-18492 - Plan Change 31 hearing recommendations

RELEASED FROM CONFIDENTIAL ON 23 JANUARY 2024

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### **Important considerations for decision making**

#### **Fit with Purpose of Local Government**

The Council has duties and obligations under the Resource Management Act 1991 (RMA) to make decisions on Plan Changes. The decision recommended in this report fits with the purpose of the Local Government Act as it has enabled the community to be consulted on the plan change and allowed the Council to make decisions on behalf of the community to promote its social, environmental, economic, and cultural well-being.

#### **Consistency with Community Outcomes and Council Policy**

Our urban and rural environments are people-friendly, well planned and sustainably managed. Nelson is a well-planned district with a carefully managed urban intensification and a clear urban/rural boundary. ...We work with our partners to support the development of a range of affordable, healthy and energy-efficient housing in our residential areas. Good urban design and thoughtful planning create safe, accessible public spaces for people of all ages, abilities and interests.

Enabling the matter to proceed through the RMA process meets this outcome. Consistent with Council meeting relevant Government legislation including the RMA and LGA.

#### **Risk**

The decision to approve the Plan Change involves a risk of appeal to the Environment Court by any submitter. If the Council rejects the Hearing Panel decision, there is a risk of judicial review.

#### **Financial impact**

Costs associated with legal appeals and any judicial review are borne by Council. Until and if such appeals are lodged a cost estimate cannot be provided. In terms of judicial review, if an applicant is successful against Council, Council may be subject to a costs award against it.

Infrastructure costs associated with developing the site will sit with the developer, or where there is a wider community benefit, costs may be apportioned through the Long Term Planning process; or Developer Agreements.

#### **Degree of significance and level of engagement**

This decision is of low significance according to Council's Significance and Engagement Policy because:

- it does not involve the sale of a strategic asset
- does not impact on levels of service or the way services are delivered

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- does not impact on council's debt or the level or rates it charges
- the impact on the community from this decision is minimal. It is the decision on the Plan Change that considered the effects of the development on the environment, including communities.
- while the substantive issues in the Plan Change are expected to generate a wider public interest, the decision to accept the Hearing Panel recommendation is governed by the RMA and if parties are dissatisfied, they can appeal to the Environment Court if they have standing. The decision to approve can be considered reversible by way of appeal to the Environment Court.

Schedule 1 of the RMA required the substantive content of the Plan Change to be consulted on, including receiving and hearing submissions from the public. It also dictates the process following the hearing and, on that basis, officers recommend that consultation under the LGA on this decision under the RMA is neither necessary nor appropriate.

### **Climate Impact**

The decision to approve the Plan Change does not have a specific climate impact. Considerations of climate change impacts will be considered as part of the Resource Consent Process.

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

No engagement with Māori has been undertaken in preparing this report. The submission process enabled engagement with iwi to occur.

### **Legal context**

- Council has power to make this decision under Schedule 1, Clause 29 (4) of the Resource Management Act, 1991. After considering a plan or change, undertaking a further evaluation of the plan or change in accordance with section 32AA, and having particular regard to that evaluation, the local authority (a) may decline, approve, or approve with modifications the plan or change; and (b) must give reasons for its decision.
- In addition to those persons covered by clause 11, the local authority shall serve a copy of its decision on the person who made the request under clause 21.
- Any person who made submissions on the plan or change, may appeal the decision of the local authority to the Environment Court.

### **Delegations**

The Council has the authority to accept the Hearing Panel's recommendation in its entirety and approve Plan Change 31.

**Recommendation following the hearing of Plan Change 31 to the to the Nelson Resource Management Plan (NRMP) under the Resource Management Act 1991.**

**PROPOSAL – To provide for Supermarkets as a Controlled Activity (as opposed to current Non-Complying Activity status) at The Junction – Industrial Zone - Schedule N (Quarantine Road Large Format Retail).**

This plan change is recommended to be **approved**. The reasons for this are set out below.

<b>Plan Change number:</b>	31 – Amendments to Schedule N of the NRMP in relation to the provision of supermarkets
<b>Hearing:</b>	Monday 4 December 2023
<b>Hearing Panel:</b>	Greg Hill (Chairperson) Trudie Brand Rohan O'Neill - Stevens
<b>Appearances:</b>	<p><u>For the Submitters:</u></p> <p><u>GP Investments Ltd</u> Julian Ironside – Legal Counsel; Mark Georgeson – traffic; and Natasha Wilson – planning.</p> <p><u>Mr Pearson</u></p> <p><u>Mr Cotterill</u></p> <p><u>For the Council:</u> Dennis Bush - King - Acting Environmental Planning Manager and section 42A author</p> <p><u>Hearing Manager</u> Nicole Ching - Project Manager Environmental Planning</p>
<b>Tabled Statement</b>	Ms Newton

<sup>1</sup> The Hearing Panel did not have questions for Mr Heath (economics) or the company representations, hence while available they did not 'appear' at the hearing



## Introduction

1. This recommendation is made on behalf of the Hearing Panel by Independent Hearing Commissioner Greg Hill (Chairperson) and Councillors Trudie Brand and Rohan O'Neill-Stevens (acting as Commissioners), appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (RMA).
2. The Hearing Panel had been given delegated authority by the Nelson City Council (the Council or NCC) to make a recommendation on Plan Change 31 (PC 31) to the NRMP after considering the plan change, submissions lodged to it, the section 32 evaluation, the section 42A report prepared by Mr Bush-King for the hearing and legal submissions and evidence presented to us.
3. PC 31 is a Council-initiated plan change that was prepared following the standard RMA Schedule 1 process (that is - the plan change is not the result of an alternative 'streamlined' or 'collaborative' process as enabled under the RMA).
4. PC 31 was publicly notified for submissions on the 11 August 2023, with the submissions period closing on the 19 September 2023. The Summary of Decisions Requested was notified on the 29 September 2023 with the further submissions closing period being 13 October 2023.
5. Six primary submissions and three further submissions were lodged.

## OVERVIEW

6. The NCC received a request for a private Plan Change to the NRMP from GP Investments Ltd. GP Investments Ltd is the landowner who is developing land at The Junction, Annesbrook, for large format bulk retail. The plan change sought to amend Schedule N of the Industrial Zone in the NRMP to provide for supermarket activities as a controlled activity instead of a non-complying activity.
7. The Council determined at its meeting on 4 June 2023 to "adopt" the plan change under clause 25 of the First Schedule of the RMA. The purpose of the plan change remained unchanged from that requested by GP Investments Ltd – i.e. a change in activity status for supermarkets.
8. The plan change adopted by the Council was supported by an Assessment of Environment Effects, Section 32 Evaluation, a traffic assessment, and an economic impact assessment which had been prepared for the private plan change. The Council adopted those assessments in support of PC 31.
9. The site is located at 33 Cadillac Way and is zoned Industrial under the NRMP. It was the subject of a previous Private Plan Change in 2006 (ref 06/01) which resulted in the addition of Schedule N into the NRMP. This provided for Large Format Retail activities as a controlled activity and supermarkets as a non-complying activity on the site. The non-complying activity status on supermarkets in the Private Plan Change arose following a submission from a supermarket operator.

10. In 2009, the RMA was amended to specifically prevent trade competition from being a reason for making an RMA decision. PC31 seeks to rectify this anomaly.

#### **SUMMARY OF THE PLAN CHANGE**

11. PC 31 was described in detail in the section 42A hearing report, and set out in the plan change itself. We have not repeated that in any detail, but a summary of key components is:

- PC 31 involves deleting the definition of "supermarket" and clause N3.3 which excludes supermarkets from being considered as a controlled activity on the affected land (as is other retail and trade related activities). The current operative plan provisions require any supermarket to be assessed as a non-complying activity.

#### **RELEVANT STATUTORY PROVISIONS CONSIDERED**

12. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them.
13. Sections 74 and 75 of the RMA set out legal obligations when changing a District Plan. Consideration needs to be given to whether the Plan Change accords with and will assist the Council in carrying out its functions under Section 31 of the RMA to, among other things, achieve integrated management of the effects of the use, development, or protection of land and associated resources. This includes the control of the actual and potential effects of land use or development on the environment in accordance with the provisions of Part 2 of the RMA.
14. As required by Sections 74 and 75 of the RMA, a plan change must specifically give effect to, not be inconsistent with, take into account, or have regard to the following "higher order" documents which provide directions for the issues relevant to this Plan Change request:
- National Policy Statement on Urban Development 2020
  - Nelson Tasman Future Development Strategy 2022
  - Nelson Regional Policy Statement 1997
  - Nelson Resource Management Plan 1996
15. We do not need to repeat the contents of the Plan Change Request and the section 32 Evaluation Report in any detail. They were set out in the section 42A report and the background material provided to us. We address the merits of these below. We accept the appropriate requirements for the formulation of a plan change has been appropriately addressed in the material before us.
16. We also note that the section 32 Evaluation Report, adopted by the Council (from the private plan change) clarifies that the analysis of efficiency and effectiveness of the plan change is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. Having considered the plan change and the evidence before us, we are satisfied that PC 31 has been developed in accordance with the relevant statutory requirements.
17. Clauses 10 and 29 of Schedule 1 require that any decision (and our recommendations) must include the reasons for accepting or rejecting submissions. We address these

matters below, setting out our reasons for accepting, accepting in part or rejecting the submissions.

18. We also note that we must include a further evaluation of any proposed changes to the Plan Change arising from submissions; with that evaluation to be undertaken in accordance with section 32AA of the RMA<sup>2</sup>. We record that as we have not recommended any changes to the Plan Change arising from submissions; accordingly, we have not needed to undertake a section 32AA evaluation.

**SUBMISSIONS LODGED AND THE ISSUES RAISED**

19. Six primary submissions were lodged; two were in support of the plan change, two opposed it, and two were opposed in part. Three Further Submissions were lodged. One primary submitter lodged further submissions (FS 1) and two new submitters lodged further submissions (FS 2 and FS 3) as detailed in Table below.
20. As set out in the section 42A report<sup>3</sup> – *“Technically FS 2 and FS 3 were incomplete in not identifying what part of the original submissions they were in support of, or in opposition to, but in speaking with both parties I have allocated them against the appropriate original submission points. I have accepted both further submissions under delegated authority even though it is also unclear what aspect of the public interest the two further submitters represent. We accept this.*
21. The submitters and the issues raised, in summary, are:<sup>4</sup>

Submitter number & Name	Oppose Support	Summary	Relief sought	Further submission
2 Ruth Newton	Oppose	Nelson already has enough supermarkets	Reject Plan Change	H Pearson FS1 Opposed
	Oppose	Supermarkets will impact on other smaller traders and the CBD	Reject Plan Change	H Pearson FS1 Opposed
	Oppose		Reject Plan Change	H Pearson FS1 Opposed
3 H Pearson	Support	General support	Accept Plan Change	
4 Marty Miller	Oppose		Reject Plan Change	
5 Tahunanui Business and Citizen Association	Oppose in part	Would prefer a location in Tahunanui and oppose plan change in its current form		H Pearson FS1 Opposed in part

<sup>2</sup> RMA, section 32AA(1)(c)

<sup>3</sup> Paragraph 7.1

<sup>4</sup> Table extracted from the section 42A report

		Adverse traffic implications and poor access for buses and pedestrians		H Pearson FS 1 Opposed in part M Khong FS 2 Support
		Concern about land banking		H Pearson FS 1 Support
<b>6</b> <b>GP Investments Limited</b>	Support	Supportive of plan change in its entirety	Accept plan change	A Cotterill FS 3 Support
<b>7</b> <b>Tahunanui Community Hub</b>	Oppose in Part	Would prefer a location in Tahunanui		A Cotterill FS 3 Oppose

22. As set out earlier, the Further Submission period closed on Friday 13 October 2023. Mr Cotterill's further submission was dated 13 October 2023, but was date stamped (received) by the Council as 16 October 2023. This meant the submission was late.
23. Pursuant to section 37 of the RMA, the Hearing Panel accepts Mr Cotterill's further submission. The reasons being that it was not substantially late, did not affect the timing of the plan change hearing, and did not raise any new issues (it was a further submission supporting PC 31).

**THE HEARING PROCESS AND EVIDENCE**

24. The hearing was held on the 4 December 2023.
25. We heard from:
- GP Investments Limited (a primary and further submitter).
  - Mr Pearson (a primary and further submitter), and
  - Mr Cotterill (a further submitter).
26. We also heard from Mr Bush - King in relation to the section 42A report.
27. Ms Newton (a primary and further submitter) tabled a letter for the Hearing Panel to consider.

**OUR FINDINGS AND RECOMMENDATIONS ON THE SUBMISSIONS**

28. We address the submissions below and our findings and recommendations on them. For efficiency reasons we have essentially adopted the format of the section 42A report in terms of the topic headings and issues raised by submitters.
29. With respect to further submissions, they can only support or oppose an initial submission. Our recommendations on the further submissions reflect our recommendations on the primary submissions having regard, of course, to any relevant new material provided in that further submission. For example, if a further submission supports a submission(s) that opposes the Plan Change and we have determined that the initial submission(s) be rejected, then it follows that the further submission is also rejected.

### Submissions Supporting PC 31

30. The two primary submissions were in support of PC 31 (GP Investments Ltd and Mr Pearson<sup>5</sup>), and requested that the plan change be confirmed. A further submission from Mr Cotterill supported the primary submission of GP Investments Ltd. Given our reasons set out below, we accept these submissions.
31. Mr Ironside, GP Investment Ltd's legal counsel, submitted that there were two aspects to PC 31; a remedial aspect, and a responsive aspect.
32. With respect to the remedial aspect, he stated<sup>6</sup>:

*Plan Change 31 is remedial because it addresses what is now a jurisdictional anomaly in the development parameters for the Quarantine Road Large Format Retail area (the former Honda site), established through the 2006 private plan change request by the then owner of the site. (underlining is our emphasis).*

33. As set out in the legal submissions, the submission by Foodstuffs (South Island) Ltd to the 2006 plan change proposal (claiming potential adverse impacts on the existing Nelson, Stoke and Richmond shopping centres from the enablement of supermarkets) resulted in the non-comply activity status for supermarkets within the Quarantine Road Large Format Retail area.
34. Since 2006 there has been legislative amendment to the RMA to clarify that not only is trade competition an impermissible resource management consideration when preparing or changing a district plan, so too are the effects of trade competition<sup>7</sup>. The amendments to the RMA was the introduction of Part 11A, the introduction of new clauses 6(3) and (4) of the First Schedule, and amendments to relevant provisions relating to preparing or changing policy statements or plans, or in considering resource consent applications (and their notification) that Councils are not to have regard to the effects of trade competition.
35. As a consequence of the legislative amendments, Mr Ironside's submitted that<sup>8</sup>:

*For the Quarantine Road Large Format Retail development area, the effect of the 2009 amendments to the RMA is to create a jurisdictional anomaly in that the founding submission for the restrictive non-complying status for supermarkets would now be seen as ultra vires the RMA.*

36. We agree with Mr Ironside, and accept that trade competition and the effects of trade competition are not relevant, and therefore the original basis on which supermarkets were restricted (non-complying activity) is neither appropriate or vires.
37. In terms of the responsive aspect, Mr Ironside submitted that allowing the consideration of establishing a supermarket at this location as a controlled activity will "promote the purpose of the RMA by responding to the diverse and changing needs of the community, as required by the NPS on Urban Development 2020, and as identified in the most recent Future Development Strategy for the region. The Quarantine Road Large Format Retail area has already been successfully developed in part. Development of the remaining area is under construction, or imminent. This includes changes to the rule framework to allow more

<sup>5</sup> Noting that H Pearson also lodged further submissions opposing those submitters who opposed PC 31

<sup>6</sup> Paragraph 2 of the legal submissions

<sup>7</sup> Resource Management Amendment Act 2009

<sup>8</sup> Paragraph 7 of the legal submissions

*straightforward consideration of integrating a supermarket into the mix of other large format retail activities and trade related activities that are able to be accommodated at the site*<sup>9</sup>.

38. In support of its submission, GP Investments Ltd called three expert witnesses – economics, transport and planning. We briefly address that evidence below, but note it was not contested by any (expert) evidence. We also address the experts' evidence in relation to the submissions opposing PC 31, as those experts addressed those submitters' concerns in their evidence.
39. It was Mr Heath's expert economic opinion, for the reasons set out in his evidence and the Property Economic report Nelson Junction Retail Impact Assessment, March 2023 (as attached to the Plan Change request application), that<sup>10</sup>:

*Plan Change 31 seeks provision of supermarket activities at the Nelson Junction site. It is my opinion that Plan Change 31 will not have significant adverse retail distributional effects on the role, function, viability, or future growth potential of any existing centre in the network. There have been no matters raised through submissions and Section 42A report that change my original assessment. Based on economic grounds I therefore continue to support a proposed supermarket at the Nelson Junction site.*

40. It was Mr Georgeson's expert traffic opinion, for the reasons set out in his evidence and the Traffic Report dated March 2023 lodged with the Private Plan Change Request, that<sup>11</sup>:

*I remain of the view that the traffic outcomes anticipated by allowing development of a supermarket on the Nelson Junction site are in line with those already anticipated and accepted by the current Nelson Resource Management Plan, and I therefore concur with the recommendation of approval made by the Reporting Officer.*

41. Ms Wilson presented expert planning evidence for PC 31. She was also the author of the Request for a Private Plan Change which included the related Assessment of Environmental Effects and the Section 32 Evaluation report which sought amendment of Schedule N of the (NRMP). In relation to PC 31 it was Ms Wilson's opinion that<sup>12</sup>:

*Plan Change 31 seeks amendment of Schedule N of the Nelson Resource Management Plan to provide for supermarket activities as a controlled activity instead of a non-complying activity on the site at 33 Cadillac Way (known as Nelson Junction). It has been demonstrated through the Assessment of Environmental Effects and the Section 32 Evaluation report prepared for the Private Plan Change request, and the associated Traffic Report prepared by Stantec and Retail Impact Assessments prepared by Property Economics (which have been confirmed through Mark Georgeson's and Tim Heath's respective evidence) that:*

- a overall, the actual and potential effects of the Plan Change are considered to be acceptable from a resource management perspective; and*
- b the proposal is the most appropriate option under the requirements of the RMA.*

*I do not consider the Plan Change to be contrary to the intent of the relevant objectives and policies of the NRMP and believe the changes will meet Part 2 of the Act. I concur*

<sup>9</sup> Paragraph 8 of the legal submissions

<sup>10</sup> Paragraph 9 of Mr Heath's evidence

<sup>11</sup> Paragraph 9 of Mr Heath's evidence

<sup>12</sup> Paragraphs 26 and 27 of Ms Wilson's evidence

*with the overall recommendation of confirmation of the Plan Change made by the Council Officer.*

42. We agree with the opinions of Messrs Heath and Georgeson's and Ms Wilson's as set out in their evidence. Furthermore, we also agree with Mr Bush-King's evaluation and recommendation for the reasons set out in the section 42A report; - notably that PC 31 be recommended for approval.
43. Mr Pearson supported PC 31, but raised some transport related issues (efficient use of land for carparking, and public transport and the need for a bus stop on the site). We address these in the traffic related section below.
44. Mr Cotterill also supported PC 31. He strongly supported the commercial and retail development at The Junction. It was his view that the addition of a supermarket would enhance the commercial and retail development, and would have a positive effect on the community.

#### Recommendation on submissions

45. That the submissions supporting the plan change from GP Investments Ltd (6), Mr Pearson (3) and the further submission from A Cotterill (FS 3) be **accepted**.

#### **Submissions Opposing PC31**

46. Four submissions opposed PC 31 as set out in the table above. They addressed:

- Retail activity location;
- Traffic and parking;
- Land banking; and
- No reasons given.<sup>13</sup>

47. We address the submissions under these topics.

#### ***Retail Activity Location***

48. Two of the submissions expressed a preference for any supermarket to be located in the Tahunanui locality. While these submission points are technically out of scope<sup>14</sup>, we also do not agree with them. The reasons for this are as follows.
49. The proposed Plan Change does not consent a supermarket, but sets in place the planning provisions to assess any application for one. This Plan Change does not preclude other supermarket proposals elsewhere in other locations; subject of course to the relevant provisions of the NRMP.
50. The section 32 evaluation (including that provided as part of the initial private plan change request), and the economic evidence of Mr Heath addresses the impact of the change in planning provisions and the retail distributional effects of a supermarket on this site.
51. Submission Points 1 and 2 in the table above raise questions about the best location for retail activity across the city, and whether a supermarket located at The Junction would affect other retail opportunities.

<sup>13</sup> One submission (Mr Millar) did not provide any reasons for his opposition

<sup>14</sup> Not on the plan change – and the relief requested would require the Council to rezone land or amend the planning rules in a manner not currently contemplated in PC31

52. We record that Annexure G of the section 32 evaluation report contains a market assessment<sup>15</sup> and concludes there will be some redistribution effects if a supermarket were located at The Junction<sup>16</sup>. However, the overall assessment is that such an outcome would not have significant impacts on the role, function, viability vibrancy, and performance of any existing centre in the retail network.

53. In relation to the previous paragraph, Mr Heath reinforced and confirmed this point in his evidence. He set out that<sup>17</sup>:

*Plan Change 31 seeks provision of supermarket activities at the Nelson Junction site. It is my opinion that Plan Change 31 will not have significant adverse retail distributional effects on the role, function, viability, or future growth potential of any existing centre in the network. There have been no matters raised through submissions and Section 42A report that change my original assessment. Based on economic grounds I therefore continue to support a proposed supermarket at the Nelson Junction site.*

54. Mr Heath's evidence (and his Nelson Junction Retail Impact Assessment, March 2023) was not contested by any expert (economics or retail distributional effects). We accept Mr Heath's opinion and evidence.

55. We also note, as set out in the section 42A report, and the expert planning evidence of Ms Wilson, that PC31 is not inconsistent with the 2022 findings of the Commerce Commission which reported that competition is not working well for consumers in the retail grocery sector. It recommended a suite of changes to increase competition and included suggestions to change "planning laws to free up sites".

56. In short, we do not accept that PC 31 should (or can) be refused on the basis of submitters' concern about the planning provision of a supermarket on this site vis-à-vis other sites in a different location being more appropriate.

#### Recommendation on submissions

57. That submissions from Tahunanui Business and Citizen Association (5), Ms Newton (2), and Tahunanui Community Hub (7) be **rejected**. That the further submissions from Mr Pearson (FS1) and Mr Cotterill (FS3) be **accepted**.

#### **Traffic and parking**

58. Some submitters raised concerns about traffic and parking. Tahunanui Business and Citizen Association was concerned that permitting supermarket development on this site would create congestion and was not a good site for access by buses and cyclists, nor for foot traffic.

59. We note that The Junction is located close to a major roundabout system that circulates traffic through to the Airport, the Pascoe Street industrial area, onto the State Highway

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<sup>15</sup> By Mr Heath

<sup>16</sup> The report Nelson Junction Retail Impact Assessment, March 2023 was appended to the request for a Private Plan Change to the Nelson Resource Management Plan (NRMP) that was lodged with the Nelson City Council in April 2023 to amend the rules relating to the Nelson Junction at 33 Cadillac Way, Annesbrook, Nelson.

<sup>17</sup> Paragraph 16 of Mr Heath's evidence



south to Richmond and beyond, and the western Stoke residential area around Nayland Road. Site access will also be achieved using an entrance on Pascoe Street.

60. Mr Pearson, while supporting the proposal, suggested that the portion of the site used for carparking be limited, and that it would be efficient if a carparking building was constructed. He also suggested that a bus stop should be located on the site. While we acknowledge the concerns of Mr Pearson, these are not matters that we can consider as part of PC 31. A landowner may choose to build a carparking building if they wish (with the appropriate consents). Moreover, the role of determining bus routes and bus stops is not the role of the District Plan (and PC 31)<sup>18</sup>.
61. Mr Bush - King set out in the section 42A report that Schedule N already provides for a range of bulk retail and trade activities which have traffic generating effects. He set out that the addition of a supermarket on the site, if consented, based on the section 32 Report, the traffic assessment and Mr Georgeson's traffic evidence, will not disproportionately affect this permitted baseline.
62. Mr Georgeson agrees with Mr Bush - King setting out<sup>19</sup>:

*I agree with this interpretation, which arises from my Traffic Report of March 2023 submitted with the Plan Change Request. At Chapter 6, that Report presents an analysis of Site traffic generation and concludes that the forecast Site traffic flows are not materially different from the original PC06/01 traffic thresholds, being just +1% and -3% within the expected trip generation levels.*

63. Ms Newton raised a traffic concern of the Site being located alongside a complex traffic environment and being difficult for traffic to access from adjacent roundabouts. As set out by Mr Georgeson, the Site has been the subject of multiple traffic investigations and analyses, from which various roading upgrades have been determined and constructed in view of a full build-out of the Site. He provided the context for this in Chapters 2 and 3 of his Traffic Report.
64. Furthermore, Mr Georgeson set out<sup>20</sup>:

*It is relevant also that I engaged directly with Waka Kotahi as part of my traffic investigations from which they confirmed that "...inclusion of a supermarket as part of the controlled activity scheme for Nelson Junction does not trigger the need for further detailed transport modelling of the adjacent State Highway network, since the effects are no greater than those anticipated and assessed in detail during the prior PC06/01 process", as recorded at Section 4.1 of my Traffic Report. As such, the traffic concerns expressed by the submitter are not shared by Waka Kotahi as the relevant road controlling authority.*

65. We note that Waka Kotahi did not submit to PC 31, and were consulted by the private plan change proponent (as set out by Mr Georgeson).
66. We also find it important to note that the Site will not rely on single access via Cadillac Way, but incorporates an upgraded access to Pascoe Street (addressed more below in relation to Mey Khong's concerns) that will serve as a customer entry and exit point, not just its current servicing function for Mitre 10.

<sup>18</sup> We address bus routes later in this report

<sup>19</sup> Paragraph 17 of Mr Georgeson's evidence

<sup>20</sup> Paragraph 23 of Mr Georgeson's evidence

67. Tāhunanui Business and Citizen Association considered that a better site for a supermarket would be in Tāhunanui, and raised concerns that the Nelson Junction Site was not well supported for access by non-car modes. The submission of the Tāhunanui Community Hub also expressed a view of an alternate supermarket site in Tāhunanui, suggesting it would be better served by new bus routes and be well connected to good pedestrian and cycling infrastructure already in place. Ms Newton also raised a concern regarding Site activities encouraging car use. Mr Georgeson disagreed that this was the case. In Chapter 3 of his Traffic Report, he described the connections to public transport, and provided a summary of the extent to which the Site is "well served by active modes".
68. Furthermore, we note that since Mr Georgeson prepared his Traffic Report, the Council has launched (1 August 2023) an e-bus service, providing more routes and greater bus frequencies. Route 2 follows adjacent the Site along Annesbrook Drive, Quarantine Road and Nayland Road, and Route 4 to and from the Airport via Bolt Road. Accordingly, it is our view that the layout of the Site does not foreclose the ability for these routes and services to be reviewed in the future, to offer better bus choice for Site staff and customers.
69. Ms Khong's Further Submission was concerned that as a result of developing The Junction site there will be a new road layout for Pascoe Street. While we acknowledge her concerns, they do not relate to PC 31, but a resource consent that has already been granted. Attachment 2 to the section 42A report contains a resource consent decision which approved the current development of the site, and which has a condition requiring the upgrade of the Pascoe Street entrance. We note from that resource consent that the installation of the right turn bay will result in the removal of some on-street parking which Mey Khong is concerned about (noting as above this is not related to PC 31).
70. Ms Wilson addressed this matter in her evidence. She stated<sup>21</sup>:

*As mentioned above under paragraph 16(e) of my evidence, I consider the points raised by the further submission of Mey Khong (FS2) relating to removal of on-street parking on Pascoe Street is a resource consent matter and falls outside the scope of Plan Change 31. I note that these changes to Pascoe Street are the result of resource consent RM085213 and the conditions of that consent decision (and subsequent variations to the consent conditions). This resource consent is currently being given effect to by GP Investments Ltd. I consider that regard of these matters is not appropriate as part of the deliberation of Plan Change 31.*

71. We agree with Mr Bush - King and Ms Wilson. This matter is one for any resource consent, and not directly for PC 31. It is possible that if a resource consent for a supermarket was applied for, and it was considered necessary, further changes could be made to site access.
72. We are satisfied on the evidence before us that from a traffic (vehicular, active modes and pedestrians) the site could accommodate the range of retail activities enabled for this site, including a supermarket. We note that with respect to controlled activities (which would apply to any supermarket), control is reserved over (among other things) – "the layout of the central parking area", the provision of safe pedestrian access and links within the parking area", and "the ongoing provision of sufficient pedestrian access to the Site from Pascoe Street and from the Site to Pascoe Street". Accordingly, we consider that any required improvements in access and traffic circulation can be adequately handled through any consent process.

<sup>21</sup> Paragraph 26 of Ms Wilson's evidence

Recommendation on submissions

73. That the submission from Tahunanui Business and Citizen Association (5), Tahunanui Community Hub (7) and the further submission from Mey Khong (FS 2) be **rejected**. That the further submission from Mr Pearson (FS 1) be **accepted in part**.

**Land banking**

74. Tahunanui Business and Citizen Association asserted that in the absence of a committed tenant, the landowner could manage the site in a way that would negatively impact on commercial activity in Tahunanui. We record that this matter is not a relevant RMA consideration, and this was also set out in the Section 42A report, with which we agree. As we have set out previously PC 31 simply seeks to change the activity status of supermarkets within this zone (Schedule N).
75. While this matter is not a relevant RMA consideration, in addressing the concern of the submitter, Ms Wilson, GP Investment Ltd's planner has stated in her evidence<sup>22</sup>:

*However, for reference purposes and to ease concerns of the submitters<sup>23</sup>, I note that GP Investments Ltd are currently preparing a resource consent application for the establishment of a supermarket at Nelson Junction (the site the subject to Plan Change 31). For the sake of transparency, it is proposed to lodge this application with Council, under the current NRMP framework, as soon as it has been finalised.*

Recommendation on submissions

76. That submissions from Tahunanui Business and Citizen Association (5), and further submission from Mr Pearson (FS1) be **rejected**.

**No reasons provided** (Mr Miller)

77. Submission 4 from Mr Millar asks that the plan change be rejected but he gave no reasons for his opposition. Mr Millar did not attend the hearing, nor provided any additional material to support his submission. As we have recommended PC 31 be approved, we have recommended Mr Millar's submission be rejected.

Recommendation on submissions

78. That the submission from Mr Millar (4) be **rejected**.

**OVERALL RECOMMENDATION**

79. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, we recommend that PC 31 to the NRMP be approved as publicly notified; that is - no amendments have been recommended to it.
80. Submissions on the plan change are accepted, accepted in part, and rejected in accordance with this recommendation report. The reasons for these recommendations are those addressed above in the body of this recommendation report.

<sup>22</sup> Paragraph 23 of Ms Wilson's evidence

<sup>23</sup> Ms Wilson also references Mr Pearson as a further submitter

81. Overall, the Plan Change is consistent with the relevant objectives and policies of the 'higher order' planning documents (National Policy Statement on Urban Development 2020, Nelson Tasman Future Development Strategy 2022 and the Nelson Regional Policy Statement), is consistent with the Nelson Resource Management Plan and is the most appropriate way to achieve the overall purpose of the Resource Management Act 1991.
82. The plan change that we recommend for approval is attached as Attachment 1.



**Greg Hill - Chairperson**

**Date:** 6 December 2023

RELEASED FROM CONFIDENTIAL ON 23 JANUARY 2024

**Attachment 1 – the Plan Change recommended for approval**

**Schedule Industrial Zone**

**Sch.N Quarantine Road Large Format Retail**

**N.1 Application of the schedule**

This schedule applies to the site shown as Schedule N on Planning Maps 22 and 23, being the former Honda Site in Tāhunanui (the Site). The Site is also identified on the plan provided with this Schedule.

This Schedule is referred to in Rule INr.75A.

**N.2 Permitted activities**

The extent to which the Industrial Zone Rule Table applies to this Site is explained in N.3(5) below.

**N.3 Controlled activities**

An activity on the site is controlled if:

- 1) the total gross floor area of all activities on the Site (excluding yard display space and parking) does **not exceed 30,000m<sup>2</sup>**; and
- 2) it is:
  - a) a trade related activity (see definition provided); or
  - b) a retail activity (see definition provided) occupying premises of no less than 500m<sup>2</sup> in gross floor area; or
  - c) a restaurant, takeaway food outlet or retail services provided that the total gross floor area devoted to such activities does not exceed the lesser of 1,200m<sup>2</sup> or 4% of the gross floor area that exists on the Site at any time; or
  - d) car parking; and
- 3) It is not a supermarket (see definition provided); and
- 4) With the exception of the activities referred to in clause 2(c) and 2(d) above, each activity is located in a separate building or premises. A building or premises in which an activity is undertaken may not be co-occupied by any other business under any lease, sublease, licence, concession or otherwise, unless the co-occupants individually satisfy clause 2 of this rule; and
- 5) The activities provided for under N.3 shall comply with the permitted activity rules for the Industrial Zone, with the exception of INr.21 and INr.22. For the purposes of this schedule, any reference in INr.22.1 "Office facilities" to "industrial use" is regarded as being a reference to a controlled activity under this schedule. INr.21 does not apply to land within Schedule N.

Control is reserved over:

- (i) the layout of the central parking area;
- (ii) the provision of appropriate landscape planting within the parking area (including large trees planted at 15m centres), and in locations that help mitigate the impacts of large unmodulated facades;
- (iii) the provision of safe pedestrian access and links within the parking area;
- (iv) the provision for adequate lighting within the parking area;

- (v) the colour of the external walls that face the boundary of the site;
- (vi) the modulation of externally facing walls;
- (vii) the ongoing provision of sufficient vehicular and pedestrian access to the Site from Pascoe Street and from the Site to Pascoe Street;
- (viii) the maintenance of open space, and appropriate landscaping (including large specimen trees), on all of the land identified as "open space" on the plan provided within this Schedule. (The purpose of this criterion is to exclude buildings. It is however anticipated that appropriate signage be located within the open space area).

**Definitions relevant to this Schedule:**

**Large Format Retailing:**

Means those activities provided for in N.3.2(b)

**Trade Related Activity:**

Means an activity that is engaged in the supply, by sale or hire, of goods or services in any one or more of the following areas or categories: automotive, marine, building, farming, agricultural, garden, patio, catering, industrial and safety products, office furniture and equipment.

**Retail Activity:**

Any land, building or part of building on or in which goods are displayed, sold, or offered for sale or hire direct to the public.

**Supermarket:**

Means an individual retail outlet with a gross floor area of not less than 500m<sup>2</sup> (or an equivalent area, including related back of house unloading, storage, preparation, staff and equipment space, within a larger store) and selling a comprehensive range of:

- a) fresh meat and produce; and
- b) of chilled, frozen, packaged, canned and bottled foods and beverages; and
- c) of general housekeeping and personal goods, including (but not limited to) cooking, cleaning and washing products; kitchenwares; toilet paper, diapers, and other paper tissue products; magazines and newspapers; greeting cards and stationary; cigarettes and related product; barbecue and heating fuels; batteries, flashlights and light bulbs; films; pharmaceutical, health and personal hygiene products and other toiletries.

**N.4 Discretionary activities**

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Activities that contravene N3.5 are discretionary activities. The relevant assessment criteria are provided in the Rule Table for the Industrial Zone.

**N.5 Non-Complying activities**

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Activities that contravene N3.1, or N3.2, or N3.3, or N3.4 are non-complying activities.

**N.6 Explanation**

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This schedule provides for limited large format retailing on a defined site. It recognises that only limited opportunities exist in the City Centre and the City Fringe for trade related and large format retailing and that the stores that may establish on this site are of a type that may affect the amenity of the City Centre and City Fringe if they were located there. This schedule seeks therefore to make provision for the increasing demand for such stores in such a way as

will not adversely affect the sustainability of the Inner City Zone and other commercially zoned centres. It seeks to achieve this by limiting retail opportunities on the site to stores that are clearly trade-related and otherwise to stores that trade as single entities with a strict minimum floor area of 500m<sup>2</sup>.

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