



**Nelson City Council**  
Te Kaunihera o **Whakatū**

# **OPEN**

# **MINUTE ITEM**

# **ATTACHMENTS**

**Ordinary meeting of the  
Nelson City Council**

***Te Kaunihera o Whakatū***

**Thursday 23 March 2023**

**Commencing at 1.00p.m. - TO APPROVE AP CONSULTATION DOCUMENT  
Council Chamber**

**Floor 2A, Civic House**

**110 Trafalgar Street, Nelson**

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**Council**  
**23 March 2023**

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**REPORT R27573**

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## **Request for a Private Plan Change - Nelson Airport**

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*22 March 2023: this report was included in the Confidential Agenda (48(1)d) and at the request of the Mayor was moved to be considered in the Open Agenda*

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

- 1.1 To seek a resolution from the Council as to how to proceed with the private plan change (PPC) request received from Nelson Airport Limited (NAL), given the four options available under the Resource Management Act 1991 (RMA).
- 1.2 To summarise the content of the PPC request for the Council.

### **2. Summary**

- 2.1 Nelson Airport Limited lodged a Notice of Requirement to enable the construction and operation of an extension to the existing main runway at Nelson Airport, and a PPC request to update plan provisions relating to the operation of the airport including changes to related underlying zoning and noise rules.
- 2.2 This report deals only with the PPC as the Notice of Requirement follows a separate process but which will be aligned so as to seek public feedback at the same time.
- 2.3 The PPC was received by the Council on 9 March 2023 and has been assessed as ready for public notification if accepted by Council.
- 2.4 There are four options under the RMA available to the Council on how to deal with the request:
  - 2.4.1 To **adopt** the PPC request as a Council plan change.
  - 2.4.2 To **accept** the PPC request to continue as a private plan change pursued by a private party (NAL).
  - 2.4.3 To **reject** the PPC request.

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2.4.4 To **convert** the PPC request into a resource consent

2.5 Of these four options, it is recommended the Council **accepts** the PPC request for the following reasons (which are addressed in more detail later in this report) and provide for the PPC to move through the statutory RMA process:

2.5.1 **Accepting** the PPC request does not pre-empt the final outcome of the PPC through the formal Schedule 1 RMA process and the decision of the Hearings Panel.

2.5.2 **Accepting** the PPC allows the Council to maintain its regulatory position, as well as providing the Council the opportunity to submit on it if it wishes to seek changes as appropriate.

2.5.3 **Accepting** (as opposed to adopting) the request would allow the Council to recover its costs in processing it through the Schedule 1 RMA process.

2.5.4 **Accepting** the PPC means it will follow the Schedule 1 RMA process, including public notification, submissions and further submissions and a hearing and recommended decision by commissioners. The recommendation then comes back to Council for a decision.

2.5.5 **Accepting** the request would allow the Council to continue with other planning work without needing to divert resources to a Council-led plan change which would occur if it was adopted.

2.5.6 The applicant has requested that the PPC request be **accepted** and not adopted.

2.5.7 **Converting** the request to a resource consent would not be appropriate resource management practice as the NRMP zone provisions would not support the outcome sought by the PPC. Further, the applicant would not support that approach and indeed it provides no benefit to either the applicant or community.

2.5.8 There is no reason for the request to be **adopted** by the Council as its own.

2.5.9 There are no grounds under the RMA to **reject** the request.

### 3. Recommendation

*That the Council*

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1. ***Receives the report Request for a Private Plan Change - Nelson Airport (R27573) and its attachment (539570224-14194); and***
2. ***Accepts the Request for the Private Plan Change for Nelson Airport as Private Plan Change 30; and***
3. ***Agrees independent accredited commissioners will be appointed to consider Private Plan Change 30 and to make recommendations to Council, noting the same Panel will also be engaged to make recommendations to Council in relation to an accompanying Notice of Requirement; and***
4. ***Agrees that the decision-making options are set out in clause 25 of the First Schedule of the Resource Management Act (RMA) and that this clause 25 decision is a process decision in Council's capacity as regulator, noting this decision will be significant for those affected landowners.***
5. ***Agrees that the decision and the report remain confidential until the Private Plan Change and Notice of requirement have been publically notified under the Resource Management Act (RMA).***

#### **4. Background**

- 4.1 The Council has received a Notice of Requirement to enable the construction and operation of an extension to the existing main runway at Nelson Airport, and a PPC request to update plan provisions relating to the operation of the airport including changes to related underlying zoning, land use controls, and noise rules.
- 4.2 This Notice of Requirement is the means by which a requiring authority such as NAL secures land for a public work that it is financially responsible for. It is similar to a resource consent application except that the decision-maker only has the power to recommend back to the requiring authority any conditions or changes, should approval be given. There will be other resource consent applications required for construction but these will be sought closer to the time when needed.
- 4.3 This report deals only with the PPC. The Notice of Requirement will follow a separate process but will be aligned so as to seek public feedback at the same time.

#### **Private Plan Change Requests**

- 4.4 The process for a private plan change (PPC) is set out in Schedule 1 of the RMA. Any person may request a change to a district plan (or regional plan) and the Council must consider how that request will be dealt with, once it is satisfied it has all the information it needs.

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- 4.5 A PPC follows the same statutory process as a Council-initiated plan change, with one important additional step. Clause 25 of Schedule 1 of the RMA requires the Council at the start of the process to either:
- 4.5.1 **Adopt** the request (or part of it) as if it were a plan change made by the Council itself.
  - 4.5.2 **Accept** the request (in whole or part) which enables it to proceed as a PPC through the normal submission and decision process.
  - 4.5.3 **Reject** the request (in whole or part) on the grounds set out in clause 25(4)(a)-(e) of Schedule 1 of the RMA (and only on those grounds).
  - 4.5.4 Decide to deal with the request (**convert**) as if it were an application for resource consent.
- 4.6 In terms of the rejection option, this is constrained by the RMA and decision by the Council to reject a private plan change is only available where one of five specific grounds in Clause 25(4) of Schedule 1 of the RMA are met:
- 4.6.1 the request or part of the request is frivolous or vexatious; or
  - 4.6.2 within the last 2 years, the substance of the request or part of the request has been considered and given effect to, or rejected by, the local authority or the Environment Court; or has been given effect to by regulations made under [section 360A](#); or
  - 4.6.3 the request or part of the request is not in accordance with sound resource management practice; or
  - 4.6.4 the request or part of the request would make the policy statement or plan inconsistent with Part 5; or
  - 4.6.5 in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.
- 4.7 If there are no grounds for rejection then the Council must decide to adopt it, accept it or convert it to a resource consent application. Officers consider there are no grounds under the RMA to **reject** the request.
- 4.8 The Council's decision under Clause 25 is made in advance of public notification of the PPC, and therefore does not have the benefit of public submissions, evidence, and a full analysis from the Council officers or experts engaged by the Council. It is accordingly described by the High

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Court as a 'coarse filter'<sup>1</sup> of the PPC - in effect, a screening exercise. It is not the Council's full merits decision based on all relevant submissions and information. That comes later, after a full RMA process and opportunity for public involvement.

- 4.9 At this stage, the Council's decision is only whether the PPC should be able to continue being processed as a plan change and if so, whether it is treated as a Council initiated plan change (the adopt option) or whether it continues as a PPC request (the accept option).

**Private Plan Change Proposal**

- 4.10 The requested PPC, including a s32 evaluation report, is attached to this report, and other supporting documents are viewable on the [Nelson Airport website](#). Note that the bundle also includes details relating to the Notice of Requirement and given the inter-dependencies, it is appropriate.
- 4.11 In brief, the PPC is outlined in the following Table – attachment references are to those in the application:

<p><b>Chapter 2</b> <b>Interpretation</b></p> <p><b>Attachment A1</b></p>	–	<p>To include meanings for a number of terms used within introduced provisions, including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. Airport Effects Control Overlay (<b>AECO</b>)</li> <li>2. ANB – Airport noise boundary</li> <li>3. Aircraft Operations</li> <li>4. Aircraft Engine Testing</li> <li>5. Airport Related Activity</li> <li>6. AANC - Annual Aircraft Noise Contour</li> <li>7. ASAN – activities sensitive to airport noise</li> <li>8. Aviation Activity</li> <li>9. Future Aircraft Noise Contours (<b>FANC</b>)</li> </ol>
<p><b>Chapter 3</b> <b>Administration</b></p> <p><b>Attachment A2</b></p>	–	<p>To include and amend:</p> <ol style="list-style-type: none"> <li>1. References to the Airport Zone within Section AD11.2 'Description of zones'.</li> <li>2. References to the ANB and <b>AECO</b> in Section AD11.3.13 'Airport Effects Overlays'.</li> </ol>

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<sup>1</sup> *Malory Corporation Limited v Rodney District Council* [2010] NZRMA 392, at para 33

# Request for Private Plan Change - Nelson Airport: Attachment 1

## Item 1: Request for a Private Plan Change - Nelson Airport

<p><b>Chapter 5 - District Wide</b></p> <p><b>Attachment A3</b></p>	<p>Amend provisions to:</p> <ol style="list-style-type: none"> <li>1. Increase clarity as to the role and function of Nelson Airport as nationally and regionally significant infrastructure, and amendments to Objective DO11.1 Airport Transport and associated policies (amendments to DO11.1.1, DO11.1.2, DO11.1.3 and DO11.1.5 and deletion of DO11.1.4) as to enablement of the Airport efficiently and effectively to recognise its contribution to economic and social wellbeing, and that aircraft operations are managed, as well as being protected from reverse sensitivity effects.</li> <li>2. Insert within DO15.1 requirements to manage effects associated with reverse sensitivity effects on nationally and regionally significant infrastructure, including amendments to Objective DO15.1 and Policy DO15.1.1.</li> <li>3. Insert text references to 'Airport Zone' within DO16.1 Management of Resources by location.</li> </ol>
<p><b>Chapter 7 – Residential Zone</b></p>	<p>Amendments including to:</p> <ol style="list-style-type: none"> <li>1. Policy RE1.1 to provide criteria accounting for the 'efficient and effective operation of infrastructure' in managing residential density.</li> <li>2. The explanation for Policy RE1.4 referencing ASAN.</li> </ol>
<p><b>Attachment A4 (Objectives and Policies) and Attachment A5 (Rules)</b></p>	<ol style="list-style-type: none"> <li>3. REr.64 to extend constraints on minimum site area to the ANB.</li> <li>4. REr.65 to preclude as non-complying new ASAN within the AECO, and require acoustic insulation and ventilation for existing lawfully established buildings seeking replacement or substantial alteration.</li> <li>5. Insert Rule REr.65A to preclude as prohibited activities new ASAN within the ANB, and otherwise require acoustic insulation and ventilation for existing lawfully established buildings seeking replacement or substantial alteration.</li> </ol>
<p><b>Chapter 9 – Suburban Commercial Zone</b></p> <p><b>Attachment A6</b></p>	<p>Insert:</p> <ol style="list-style-type: none"> <li>1. Rule SCr.71 to preclude as non-complying new ASAN within the AECO, and require acoustic insulation and ventilation for existing lawfully established buildings seeking replacement or substantial alteration.</li> <li>2. Rule SCr.71A to preclude as Prohibited Activities new ASAN within the ANB, and otherwise require acoustic insulation and ventilation for existing lawfully established buildings seeking replacement or substantial alteration.</li> </ol>



















































































































































































































































































































































































