

23 August 2021

Pat Dougherty  
Chief Executive  
Nelson City Council  
PO Box 645  
Nelson, 7040

Dear Pat

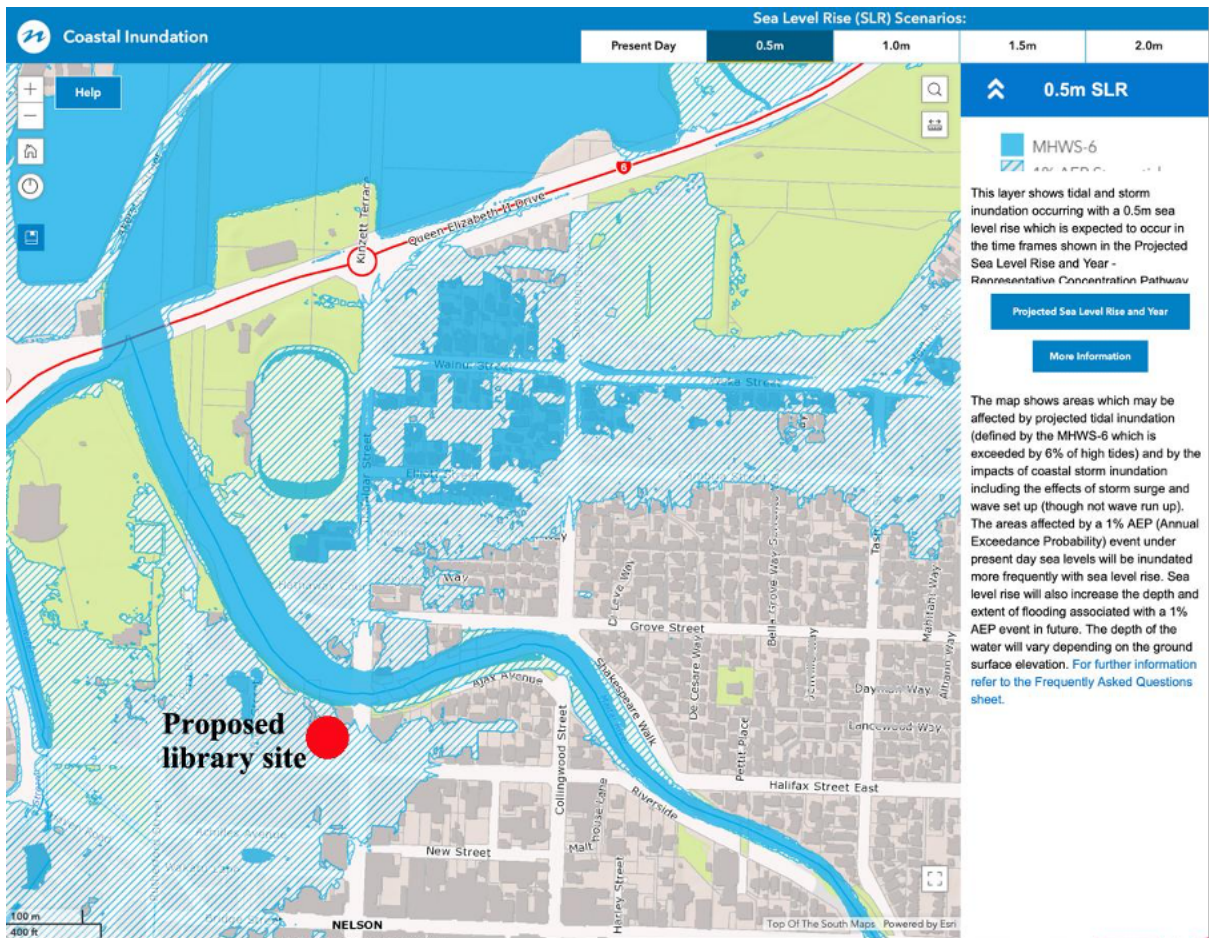
**Re: Decision to develop Elma Turner Public Library**

1. Lawyers for Climate Action NZ Inc was approached by Zero Carbon Nelson Tasman in July 2020 and again more recently regarding Nelson City Council's decision to develop the Elma Turner Public Library (**Library**) on a site near the Maitai River.
2. The decision was made at a Council meeting on 18 February 2021 and is reflected in the Long-Term Plan adopted in June 2021. The proposed development is an area that is expected to be at an increased risk of flooding and coastal inundation due to the effects of climate change in the coming decades.
3. Zero Carbon Nelson Tasman's concern is that the Council has failed to properly sequence the Library decision with adaptation decisions in relation to the Maitai floodplain which might include protection measures and/or managed retreat.
4. These will be difficult issues for the Nelson community to address. However, they cannot be side-lined from the decision to develop the Library. In particular:
  - 4.1. the Library development decision could be seen as predetermining the adaptation strategies by excluding managed retreat from this area;
  - 4.2. at a minimum, the Library development decision will be a finger on the scales against managed retreat even though this might be the option that would minimise the long term costs for ratepayers; and
  - 4.3. if managed retreat is ultimately the favoured option, then ratepayer expenditure on the Library development in this location may need to be written off.
5. Accordingly, Zero Carbon Nelson Tasman considers that the Council's consultation and decision-making in relation to the Library development may have breached both the Local Government Act 2002 (**LGA**) and the Council's commitments under its Declaration of a Climate Emergency dated 16 May 2019.
6. In particular, the Library development decision was taken:
  - 6.1. without regard to the proper sequence of first taking a decision on the appropriate climate change adaptation response in the Maitai floodplain before committing to Library development in an at-risk site;
  - 6.2. without transparency as to the options for the response to climate change induced flood risk and sea level rises, and as to the costs and benefits of those options;
  - 6.3. without considering the costs and benefits of different sites in detail, including in light of climate change induced risks; and
  - 6.4. without discharging obligations to consult with and be accountable to the community.

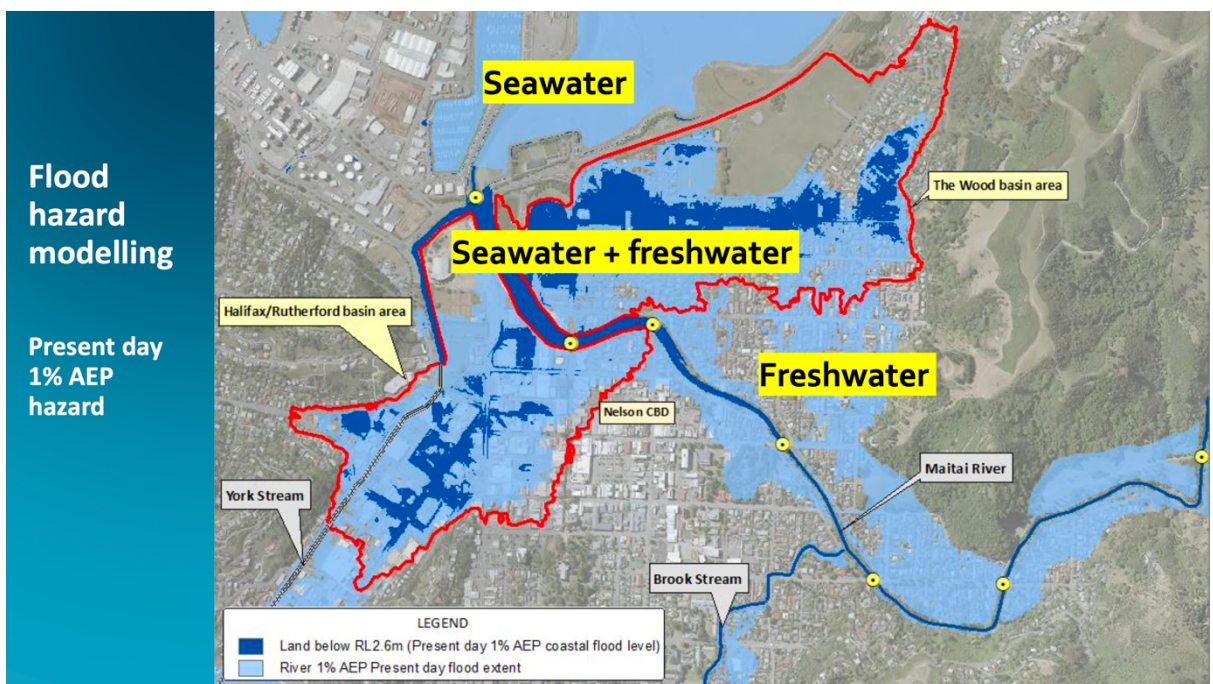
7. In this regard, we note the Council’s obligations under the LGA to:
  - 7.1. give effect to the principle of transparency and provide interested persons with “reasonable access to relevant information”, which would include a fair and adequate summary of the climate change risks, adaptation options and effects (ss 14 and 82(a));
  - 7.2. assess the costs and benefits of alternative sites in light of climate change induced risks of flood and coastal inundation and the need for consequential steps, such as raising the surrounding road and services networks (ss 77(1)(b) and 79(2));
  - 7.3. make the draft Long Term Plan an “effective basis for public participation” which would include identifying the relationship between the Library development decision and the as yet undeveloped Maitai floodplain adaptation strategy (s 93B);
  - 7.4. identify in the consultation documents the implications of the principal adaptation options in respect of the Maitai floodplain (that is, managed retreat or protection) for the Library development (s 93C(2)(b)(i)); and
  - 7.5. ensure the consultation documents conform with the purpose of a long-term plan, namely to provide “integrated decision-making”, a “long-term focus” for decisions, and a “basis for accountability of the local authority to the community” (s 93(6)).
8. The Council has also made various commitments under its Declaration of a Climate Emergency, including to prioritise collaboration with the Government, other councils and Governing Bodies, iwi, business, industry and scientific sectors, and with the wider community, in order to maximise collective action that will achieve climate change mitigation, adaptation and resilience. The Council also recognised that transparency and accessibility of climate change information, along with education and participatory community engagement in collective action, will be essential to achieve climate change mitigation, adaptation and resilience.
9. We also refer to the New Zealand Coastal Policy Statement 2010 (**NZCPS**). The NZCPS identifies exacerbation of coastal erosion and other natural hazards by climate change as a key issue. Objective 5 of the NZCPS is to ensure, taking account of climate change, that coastal hazard risks are managed by locating new development away from areas prone to such risks, and considering responses, including managed retreat, for existing development in this situation. Policy 25 requires encouragement of redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation, and encouraging the location of infrastructure away from areas of hazard risk where practicable. We fail to see how the Library development decision aligns with either the objectives or policies of the NZCPS.

**Implications of flooding and coastal inundation for the Maitai floodplain and for the Library development**

10. The Council recognises that there is an existing flooding risk to this part of the city centre, and that this risk will increase due to sea level rise and more extreme rainfall.
11. The Council’s decision-making has considered these issues in relation to the resilience of the proposed Library building. However, they have not been properly assessed in the context of the Maitai floodplain precinct as a whole in terms of maintaining access and services to the area.
12. The Council’s own inundation map shows the extent of flooding (at 1% AEP) for 0.5m of sea level rise with the obvious implications for access to the library:



13. Tonkin and Taylor presented the following flood hazard model to the Council Infrastructure Committee Workshop on 11 February 2021 as to risks that exist in this region *today*:




14. The key points to take from this are that:
  - 14.1. Climate change induced sea level rise and increased rainfall events will have implications for access and the supply of infrastructure services to the new Library. In other words, it is a far broader issue than the floor level of the new Library building itself.
  - 14.2. A decision about the Library development must be made in conjunction with a decision about the adaptation plan for the Maitai floodplain precinct as a whole; the Library development decision cannot be separated off.
15. The Council reports have recorded that Council officers apparently “believe that general access to a new building in the Riverside Precinct can and will be maintained over the next 100 years and beyond” (see February Council report at [6.23] and May Council report at [5.17]). However, no assessment has taken place as to the relative costs and benefits of different adaptation options, no consultation has taken place on adaptation options, and no decision has been made regarding the preferred adaptation strategy. Rather, the Council report simply makes a simplistic assumption, which rules out managed retreat and prefers unspecified and un-costed protective measures.

**Request to engage with the Council**

16. Zero Carbon Nelson Tasman is open to working with the Council to address the concerns about the Library development decision in a manner that would meet the Council’s legal obligations, as a preference to challenging the Council’s decision-making through an application for judicial review.
17. In order to facilitate such a discussion, we request the following information from you as a matter of urgency:
  - 17.1. the Council’s intended timeline for decision-making in respect of the Library development and climate change adaptation plan;
  - 17.2. your views as to how the Library development decision will impact on the development of a climate change adaptation plan in respect of the Maitai floodplain;
  - 17.3. the Council’s willingness to include future “off ramps” where the Council can revisit the Library development site location; and
  - 17.4. the Council’s willingness and ability to include clauses in any commercial arrangements entered into (for example in the proposed land transfer with Wakatū Corporation) to minimise the costs to ratepayers if such an off ramp was exercised and to ensure that the Library development decision does not become practically or legally irreversible before the development of a climate change adaptation plan in respect of the Maitai floodplain.
18. We look forward to hearing from you shortly.

Yours faithfully



Lawyers for Climate Action NZ  
James Every-Palmer QC