

Decision on Nelson City Council Plan Change 06/04, Railway Reserve, Stoke and Recommendation on Requirement

This document contains a record of decision on the following Plan Change: Stoke Railway Reserve

This document contains a record of the recommendation on the following Requirement: extension of Railway Reserve (Stoke) designation DN9.

DECISION DATE:
January 2008

Delegation of Authority

1. I have been appointed by the Nelson City Council as an independent hearing commissioner, by letter dated 22 June 2007, pursuant to section 34A of the Resource Management Act 1991 ("RMA"), to hear and determine the submissions and further submission in respect of Council Plan Change 06/04 (Stoke Railway Reserve) to the Nelson Resource Management Plan.

Council Plan Change 06/04

2. Proposed Plan Change 06/04 was publicly notified on 25 January 2007. The Proposed Plan Change seeks to make the following amendments to the Nelson Resource Management Plan:

- Amend Planning Map 29R to show a 5 metre strip (being part Lot 34 DP349352 and Lot 34 DP362586) from Industrial zoning to Residential zoning;
- Amend Planning Map 29L to amend an existing cycleway/walkway designation DN9 over the 5 metre strip contained in part Lot 34 DP349352 and Lot 34 DP362586;
- Amend Rule INr.27.1c (Buildings and Structures; Permitted Activity Rule) by adding the following words at the end of the existing sentence:

"where the site adjoins the 5 metre strip (being part of Lot 34 DP349352 and Lot 34 DP362586) the site boundary shall be deemed to be the eastern boundary of the said strip for the purposes of measuring daylight angles."

- Amend Appendix AP15.3.2 (Appendix 15 Daylight admission (Residential) – where to take measurements from) by adding an explanation for where measurements are taken from in zones other than a residential zone, as follows:

"NB: That in respect of the 5 metre strip which forms part of the Railway Reserve and is contained in part Lot 34 DP349352 and Lot 43 DP 362586, measurements shall be taken from the eastern boundary of the said strip (Refer to Rule INr.27.1 c)."

Notice of Requirement

3. In addition to the public notification of the Plan Change the Council also notified a Notice of Requirement. This sought to amend the designation DN9 which applies to the

cycleway/walkway known as the Railway Reserve. This Notice of Requirement was issued by the Nelson City Council in its capacity as requiring authority pursuant to the RMA. Designation DN9 is "Walkway and Cycleway (Railway Reserve from Quarantine Road to Saxtons Road West)".

Submissions

4. Following public notification the Council received twenty six submissions, which were then summarised. The summary of the submissions was publicly notified on 21 April 2007 and further submissions invited. One further submission was received.

History of Plan Change 06/04

5. The walkway/cycleway development is the result of the retention of land by the Nelson City Council for and as a railway reserve.
6. With the march of development, what was rural land was rezoned. Firstly, residential properties lying to the northwest of Main Road, Stoke and adjoining the part of the Railway Reserve which is the subject of this Plan Change were rezoned from rural to residential by Variation 01/01 to the NRMP in 2001. That Variation also rezoned the adjoining portion of the Railway Reserve from rural to residential. This brought rezoning into line with that applying to the balance of the reserve as it extended to the north.
7. A private Plan Change application to change the zoning of the land immediately to the north west of the Railway Reserve from rural to industrial was subsequently lodged, and heard by a commissioner. Whilst the rezoning was granted, the conditions upon which it was granted were not acceptable to two parties, both of whom lodged references to the Environment Court. The outcome of this was the Environment Court consent order dated 23 July 2001.
8. That order by way of clause 3 required that a 5m wide landscaping strip be established and maintained within the industrial land, and a 3m high acoustic fence constructed.
9. Subsequently, an application was made for consent to subdivide the industrial land, and this included an offer to vest the 5m landscaping strip in the Council. The officer's report on the present Plan Change records at paragraph 3.4:

"For reasons which are still unclear, this offer was accepted by Council, and, as a consequence, the responsibility to plant and maintain the 5m landscaping strip (with an Industrial zoning) no longer rests with the industrial landowner, but with the Council. This is the 5m strip that is the subject of the Proposed Change."

Consequences of the Change in Ownership

10. The change in ownership from the industrial owner to the Council was significant. Even though the land was not rezoned when it was vested, retaining its industrial zoning, because it changed ownership the land owned by the industrial developers was now adjacent to industrially zoned land (owned by the Council), not to residentially zoned land. Therefore, the daylight admission rule, Rule INR.27.1(a) and (c), did not apply, because it only applies “where the site adjoins the residential zone, and for sites in the Nayland Road South industrial area, any other zone”.
11. Because this rule no longer applied, and no other daylight admission rule applied in its place, there were, purely because of a change in ownership from industrial owners to the Council, suddenly no controls in terms of daylight admission on the construction of buildings on the boundary of this industrial land with the 5m strip.
12. As a consequence, Council considered it appropriate to introduce a Plan Change which would rezone the 5m strip from “industrial” to “residential”. However, that was not a complete solution, because that would result in the recession plane being applied on the industrial side of the 5m strip, thus requiring industrial properties planning to erect buildings adjacent to the acoustic wall to possibly move them a further 5m away from the reserve boundary, which was not what was intended by the Environment Court consent order. The Plan Change thus proposed the measurement of daylight angles on this boundary, and this boundary alone, therefore be set at the Railway Reserve side of the strip.
13. This is best illustrated by **Attachment 1** to this decision, which was the original **Attachment 4** to the commissioner’s report “Daylight Provisions – Different Scenarios”. This illustrates the application of the daylight around rule to four different scenarios. It will be seen from this (Figure 4) that the proposed Plan Change, although involving a change in zoning of the 5m strip, retains the daylight angle measurement point that would have applied without the Plan Change but prior to the land vesting in the Council (Figure 1). Figure 3 shows the daylight provision which would apply if the 5m strip is zoned residential, and the normal recession plane measurement location applies at the boundary between industrial and residential land (i.e. the north western side of the 5m strip). From Figure 3 it can be seen that buildings would have to be, as a matter of reality, set further back into the industrial sites in order to avoid infringing the recession plane angle.

Appearances at the hearing

14. A hearing in this matter was held on Wednesday 29 August 2007 at the Nelson City Council. In attendance was Mr John Pattison, Policy Planning Advisor with the Nelson City Council, who prepared the officer's report to the hearings commissioner on Plan Change 06/04. This report was dated 7 August 2007. Also in attendance were:
- Diane Chandler (submitter 1 and further submitter 1);
 - Robert Ikink (submitter 26) – not present in person but represented by Ms Chandler;
 - Gary Adcock (submitters 18, 22 and 24). Mr Adcock spoke for the Nayland South Industrial Park Group, Nayland Industrial Park Limited, and for Adcock and Donaldson (the latter of which he is a director); and
 - Robert Gibson (submitter 19).
15. I undertook a site visit after the conclusion of the hearing.

The Law

16. Pursuant to s32 Resource Management Act 1991 ("RMA") before a proposed Plan Change is publicly notified, an evaluation must be carried out of alternatives, benefits and costs. Also pursuant to that section a further evaluation must be made by the consent authority before making a decision under clause 10 of the First Schedule to the RMA. The evaluation must examine:
- “(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.”*
17. For the purposes of the s32(3) evaluation, the evaluation must take into account:
- “(a) the benefits and costs of policies, rules, or other methods; and*
 - (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.”*

18. Thus the test in s32(3) is whether the proposed amendment to Rule INr.27.1c) and the consequent amendments to Planning Maps No. 29L and 29R and the amendment to Appendix AP15.3.2, are the “most appropriate” in terms of achieving the purpose of the Act and achieving the relevant Plan objectives. As there are no amendments to objectives in the District Plan, the assessment focuses on the methods in the Plan, which in this case are a combination of rules and zoning. There is no issue regarding s32(3)(b) uncertainty or insufficiency of information, so this subsection is not relevant.
19. In *Eldamos Investments Limited v Gisborne District Council* Environment Court, W047/05, which was adopted in *Geotherm Group Limited v Waikato Regional Council* Environment Court, A047/06, the Court proposed that when evaluating policies, rules and other methods, they are to be evaluated by whether:
- “1. *It is the most appropriate way to achieve the objectives of the Plan (s32(3)(b)); and*
 2. *It assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (s72);*
 3. *It is in accordance with the provisions of Part 2 (s74(1)); and*
 4. *(if a rule) it achieves the objectives and policies of the plan (s76(1)(b)).”*
20. The evaluation of a policy rule or other method should be done by considering all the provisions of the Act that apply: *Eldamos*.
21. There is no presumption in favour of any particular zoning of a site. That is, the current industrial zoning (the status quo) does not have more weight or is worthy of more consideration than the suggested residential zoning. See *Infinity Group v Queenstown Lakes District Council*, Environment Court, CO10/05.
22. With regard to the requirement, s171, which is subject to Part 2 of the Act, requires the consent authority to consider the effects on the environment of allowing the requirement, having particular regard to:
- (a) any relevant provisions of statutory documents; and
 - (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if the requiring authority does not have an interest in the land sufficient for undertaking the work or it is likely the work will have a significant adverse effect on the environment; and

- (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation sought; and
 - (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.
23. The territorial authority may recommend to the requiring authority either that it confirm, modify or withdraw the requirement, and/or that it impose conditions. Reasons for the recommendation must be provided in this decision. As this is regarding the 5 metre strip, the body of case law relating to requirements is somewhat out of scale with the issue at hand. For example, alternative sites, routes or methods are not relevant to the present situation. However the objectives of the requiring authority are relevant, as are, in particular, the relevant provisions of the NRMP.

The Issues

24. From the 27 submissions and further submissions two positions emerged, which can broadly be described as that put forward by Ms Chandler, with Mr Ikin in support; and that put forward by Mr Adcock, with Mr Gibson in support. Having said that, each position had considerable sympathy for the reverse view. Ms Chandler's position, mirrored by 16 others (some of whom filed a 'form' submission identical to others), was support for rezoning the strip as residential zone, but opposition to changing the daylight angle to be measured at the eastern boundary of the strip.
25. The reverse position, that of the industrial land owners and/or occupiers, opposed the rezoning of the strip to residential. It follows from this that if no residential zoning applies, there is no need to alter the daylight around angle measurement point. However at hearing Mr Adcock modified his position to, whilst still opposing the rezoning of the 5 metre strip, supporting the alteration of the measurement point for the daylight around angle. i.e. he supported Figure 1.
26. Essentially the issue is one of the cross boundary effects in terms of the effects of industrial land uses on residential land (including the railway reserve), and one of reverse sensitivity in terms of the actual or potential limitations that may arise for industrial users should the 5m strip be rezoned from industrial to residential. As a hearings commissioner – Mr David Collins – has previously (1998) expressed it in terms of his decision on the Private Plan Change seeking industrial zoning for what is now the industrial land.

“One of the most important issues raised in these proceedings is the question of how to create an industrial/residential interface which minimises the adverse effects of industry on the housing area”.

27. Today that is the sole issue at the heart of this Plan Change.

THE SUBMISSIONS

The Submissions – those in favour of rezoning but against a site specific daylight around rule.

28. I shall take as representative of this group the submissions of Mr Ikink and Ms Chandler. Mr Ikink’s submission supported the zoning of the 5 metre strip as residential but sought that the daylight angle should be measured from the western boundary. His concern was motivated by the amenity values of the Railway Reserve, and in particular use of buffers to protect the visual appeal of the area. He considers these buffers have been eroded over time through various consent orders, but the visual appeal has been “maintained” by landscaping. However, high buildings bordering the 5 metre strip are not visually appealing and moving them back would lessen their impact, make it easier to hide them via landscaping and lead to increased safety. The latter point is that tall buildings and plants have led to icing on the walkway/cycleway. His overall view was that the minor alteration of where to measure the daylight angles has a major impact on the area and leads to a major departure from the original intent of the Plan when the reserve was developed. It become evident his concern was also with regard to a perceived lack of notification and consultation with the Council regarding the Railway Reserve, and with resource consent applicants regarding their consents on adjacent land.

29. When Ms Chandler presented Mr Ikink’s notes he developed the point about erosion of buffers, noting that originally the buffer was 100 metres, then 30 metres, then 10 metres, and now 5 metres. To the extent that a consent order has been reached in *Wholesale Landscapes and Others v Nelson City Council*, dated 25 March 2004, this is beyond my jurisdiction and I cannot provide any explanation for why that consent order specified that, in respect solely of the northern boundary, no part of any industrial activity shall locate with 100 metres of any residential zone, except where a buffer strip of not less than 20 metres in width has been set aside which contains a landscape bund of not less than 3 metres in height. It is part of the factual context in which I make my decision that that consent order not only made that decision, but specified that in respect of the Railway Reserve boundary a 5 metre wide landscaping strip was to be established and maintained and a 3 metre high acoustic fence was to be erected and maintained.

30. Ms Chandler's submission supported the rezoning of the 5 metre landscaping strip to residential and opposed the daylight angles being taken at the eastern boundary of the 5 metre landscaping strip. On the first point, her support was in order to protect users of the Railway Reserve and residents. Essentially, zoning the land residential ensures that the Railway Reserve receives all the protection that residential land receives. As a resident living opposite the industrial park Ms Chandler recorded that her family was "severely disadvantaged by the incorrect zoning".
31. The reason for Ms Chandler's opposition to changing the measurement point for daylight angles was that she considered the daylight angles should be taken from the industrial park boundary as the industrial park is on the western boundary of the landscaping strip. A lack of daylight angles in her view would result in icy and dangerous cycleways and walkways which reduce the enjoyment of a popular reserve in winter.
32. Insofar as Ms Chandler's submission addresses the northern boundary of the industrial park that is outside my jurisdiction and I cannot address it. Her ultimate relief sought was that daylight angles should be taken from the new residential/industrial boundary.
33. Ms Chandler lodged a further submission in opposition to the submissions made by industrial owners/occupiers. In her further submission she referred to some of the history of the site, including court cases which have arisen through residents concerns regarding the use of the industrial land. It is her view that the 5 metre buffer is an error and it should have been 10 metres. Therefore rezoning the 5 metre strip residential puts right what was originally intended. The further submission stated that the eroding of entitled buffers has already had a detrimental effect on their residential property values and more than that it has a detrimental noise and visual pollution effect. It is evident from Ms Chandler's further submission that what type of industry can locate on the industrially zoned land ("light" industry and what that means) has led to considerable concern for residents.
34. At the hearing Ms Chandler expanded on her written submission and further submission. It is her view that if the daylight around angle is measured from the proposed new residential/industrial boundary it would protect the undeveloped site on the industrial land and also development on that land in future. For example there is a 1 storey high set of storage units which could in future if redeveloped could go to two storeys. One of her biggest concerns was that a 15 metre high building could be built as of right without any restrictions along the Railway Reserve because of the incorrect zoning of the 5 metre landscaping strip.

35. Ms Chandler sought residential rezoning in order to ensure the NRMP is followed. In particular, her biggest concern was that when a resource consent on industrial land is sought the land will be adjacent to residential land and thus it was her view residents, and users of the reserve, would be considered as affected parties who should at a minimum be consulted and whose consent may in fact be required if a hearing into the consent is to be avoided. She gave the example of the Gibson Timber resource consent application, where the surrounding land was (correctly) identified as comprising industrial properties. However, whilst this may be technically correct in her view the surrounding land was residential and should have been considered as such.

The Submissions – those in opposition to the Plan Change

36. Indicative of those in opposition to the Plan Change are submissions by Nevada Properties Limited, Nayland Industrial Park Limited, Gibson Timber Limited and Adcock and Donaldson. These submissions cover businesses and employees of those businesses located on the industrial land. Concerns include an anticipated adverse effect on earnings of those located within the industrial reserve. Nayland South Industrial Park Group suggested that the 5 metre strip should be given to the neighbouring industrial section with an arrangement that maintenance is carried out by the organisation looking after the Railway Reserve, which would be the Nelson City Council. This could be effected with a simple boundary change and would not affect the daylight angle issue. Others, such as Nevada Properties Limited, bought the land on the understanding that it would remain as industrial and consider they would be seriously disadvantaged if any change occurred, although how this would result was not specified.
37. Nayland Industrial Park Limited originally vested the land in the NCC as part of the industrial subdivision which it carried out on the land. Thus the land is vested in the NCC and maintained by it as part of the Railway Reserve. Nayland Industrial Park Limited recorded in its submission, however, that it was never intended that the zoning be changed. Concerns relate to whether changing the zoning would restrict the types of businesses wishing to operate in the area, effects on those who have already invested in developing the businesses in the industrial zone, and concepts of “moving goal posts” given that the Environment Court consent order had settled the matter. I note residents also considered the situation was one that kept changing from what they had understood it to be. However, planning rules are not static.
38. Gibson Timber Limited’s submission made it clear that industry concerns were not merely hypothetical, as Gibson Timber Limited’s business had been restricted with regard to such things as height of buildings and restricted opening hours, even though it was

located on industrial land, due to the proximity of the Railway Reserve/Residential land. Although this is a matter that is outside my jurisdiction and is now settled, the submission included an example of what might occur should an alteration to the zone rules with regard to daylight angles be made. It is these possible repercussions which are at the heart of the industrial users concern.

39. Mr Adcock's submission sought that the land remain industrial, but that the daylight angle could be altered in terms of where it is measured from. i.e. it would be measured at the industrial/residential boundary.
40. Both Mr Gibson and Mr Adcock expanded on their submissions at the hearing.
41. Mr Adcock emphasised that on two sites of the 84 sites developed on the new industrial areas (excluding ENZA) 110 staff were employed (Adcock and Donaldson 70; Chings Contracting 40) and that in a few years up to 1500 people will be employed in the area. He was well aware of the good things the Reserve supplies to the community and its use by a wide section of the community including industrial zone employees and their families. All parties recognised that the reserve is very popular and is heavily used throughout the year.
42. Mr Adcock was involved in the original decision to vest the 5 metre strip with Council and noted that it was driven by the Council in order to control the reserve and the plantings on that reserve, although the intention at the time of the consent order was that the industrial owners would maintain the plantings. However, once the acoustic fence was established the industrial land had no access to the land to maintain it, so NCC accepted responsibility for maintenance. This fitted with its new ownership of the 5 metre strip and with having integrated Reserve plantings.
43. Mr Adcock struggled with what issues apart from the daylight angle required the land's zoning to be altered. He did not see any disadvantage that the residential owners faced apart from the daylight angle. For example, the noise issue was already dealt with by the acoustic fence and changing the zoning will not in any way affect that. He acknowledged that the boundary location was critical in a lot of decisions regarding the placement of buildings. However, in his view bringing the boundary 5 metres closer (i.e. bringing the residential boundary up to the 5 metre strip next to the industrial land) has implications for the community as a whole and for industrial land users. He gave the example of placing gas tanks a certain distance from a residential boundary and the implications that might have of a site not being able to undertake such an activity and therefore impacting on a potential clean air option. I understand he chose that example because

of the need for cool stores to drop fruit temperature very fast and that “a future possibility of another way of doing it would foreclose long term options for the industrial users”.

44. Whilst he acknowledged that if the land were residential this would be “administratively neater” he questioned how much value this truly had. He had an important point that the general effect of industrial land adjacent to the Railway Reserve was something that already existed. He did not see why the proposed Plan Change would alter the visual aspects of the Reserve or anything that would control daylight angles. The land is still treated and used as reserve.
45. Ms Chandler’s view, with regard to what disadvantages residential owners face apart from the daylight angle, if the zone boundary were to stay as is, were:
- Visual – control is landscaping, which will not deal with a 15 metre high building.
 - Noise – she acknowledged that was the acoustic wall and this had been dealt with.
 - Dust – a consent condition is required if there is no food or storage use. For example, requiring sealed yards in order to minimise dust from industrial land activities.
46. Mr Adcock acknowledged it was important not to put 15 metre buildings on the site. He considered options such as vesting the land in the Council but ensuring it was always used as a reserve (the status quo), or leaving the zone as it was but measuring the daylight angle from the closest industrial boundary (this is Figure 1) whilst retaining the land as industrial zoning.
47. Finally, Mr Pattison’s view as the reporting officer was that the main item with the 5 metre strip is that because it is industrial there is no daylight angle at all so buildings 15 metres as of right on the boundary are possible. Thus something requires to be done in order to control this more intrusive potential. Whilst there are noise issues there is a large separation distance, more so then anywhere else in the city. His view was that if the daylight angle was put on the Railway Reserve boundary he did not see how any parties would be disadvantaged. This would mitigate the example given by Mr Adcock of gas storage close to the acoustic wall.
48. Mr Pattison did note that with regard to any noise issues it would be possible to have a special rule in the plan stating that, in respect of noise, the boundary when noise is measured on this site is on the far side of the Railway Reserve i.e. closest to the industrial land but within industrial land if the zoning of the 5 metre strip is not altered. However, although this may be a solution for the future, this aspect is outside my jurisdiction as it

is not part of the Plan Change. As I do not have the powers of the Environment Court under s293 to direct further changes to the Plan as a result of a hearing, I cannot address this aspect further.

The Plan Provisions

49. Under the present Planning Map 29, the Industrial land is zoned as the Nayland Road South Industrial Area. The land to the north, and along the Railway Reserve is zoned Residential. On residential land between the Railway Reserve and Main Road Stoke the zoning is Lower Density Area (Stoke). The overlay over the Railway Reserve provides that it is subject to designation DN9. Appendix 22 of the Plan sets out the designations. DN indicates that the Nelson City Council is the requiring authority. Designation DN9 is "Walkway and Cycleway (Railway Reserve from Quarantine Road to Saxtons Road West).

50. DN9.2 records the reason for the designation as being:

"The designation is existing. The designation is needed to secure, authorise, operate and maintain the walkway and cycleway and to:

- (a) ensure Nelson City residents and visitors continue to have walkway and cycleway access across the designated land*
- (b) to provide a corridor for essential services (subject to restrictions listed in this designation)*
- (c) to establish landscaping form to the surrounding residential area"*

51. The designation records the nature of the works as *"passive recreation on the land including accessibility by the public for walking, pedestrian exercise, cycling, horse riding and dog walking."* Its positive effects are the enhancement of recreational opportunities of Nelson residents.

52. Turning to industrial land, the Nayland South Industrial land is 1 of 6 main industrial areas in the city. The Plan records it as containing several major food – related industries, including apple processing, apple packing and fruit cool stores. The Plan records that the area is envisioned as a 'clean' industries, which will not conflict with the requirements of regionally important food processing industries. The industries which give rise to significant emissions of dust, particulates or noxious contaminants would generally be unsuited for this industrial area.

53. There are two objectives for the industrial zone. IN1 is “the efficient use of natural and physical resources within the industrial zone.” The reason for this objective records that there has been a significant area of land made available for specialist industrial use at Nayland Road South. Reasons also record a shortage of land suitable for industrial activity in the medium term in Nelson. *“It is critical therefore that what industrial land is left be used efficiently”.*
54. Objective IN2 is *“maintenance and enhancement of the amenity of the industrial zone and adjoining zones.”* Policy IN2.1 maintenance of amenity, Nayland Road South, is *“Activities that may have an adverse environmental effect in terms of air quality and amenity on the resource processing industry should not locate in the Nayland Road South Industrial Area.”*
55. The explanation and reasons to this policy record that Nayland Road South presently contains industry that is important for the regional economy and is highly sensitive to other industrial activities. The focus is on maintaining the high quality environment within the industrial area and minimising dust and other particulate contamination which have the potential to downgrade this environment. The explanation states that continued rural use of the buffer area is no longer viable and that over time residential zones have expanded towards the area. Thus it has been rezoned to cater for a range of compatible activities adjoining this specialist area. The explanation goes on to note that the provisions are intended to be interim until such time as Council notifies its air quality provisions, which is in fact now the case and an Air Quality Plan is in place in Nelson. However, the rules limiting the activities that may occur within the Nayland Road South Industrial Area have not yet been reviewed in light of that Plan.
56. Policy IN2.2 is that:
- “Activities should not produce, beyond the boundaries of the site and in particular on any zone boundary, levels of adverse effects such as noise, dust and other discharges to air, shading, and glare, which detract (or have the potential to the detract) from adjacent activities in the surrounding environment.”*
57. The explanation and reasons record that the policy primarily seeks to ensure that where activities establish on the edges of the industrial zone, as would be the case in the present circumstances, care is taken to ensure that adverse effects such as shading of adjacent property, visual effects of outdoor storage of materials and equipment, and noise, do not occur or are minimised and/or mitigated. Importantly, explanation IN2.2.iv states:

“Within the Nayland Road South Industrial Area, there are a number of existing dwellings. In this area, the policy seeks to provide protection for those living within this industrial environment, as well as for those that adjoin the area.” (my emphasis)

58. Methods set out under the Policy include:

- Setbacks of industrial activities and landscaping required where industrial activities occur on zone boundaries.
- Rules requiring provision of setbacks and/or a landscaped bund along the residential/industrial interface in the Nayland Road South Area.

59. Following on from those policies and objectives Rule INr.26 Nayland Road South Restrictions make industrial activities permitted in the Nayland Road South Industrial Area if they involve the handling, storage, processing or packaging of fruit or vegetable products, or involve activities which are incidental to or directly complement the above food processing industries. Apart from one site specific exception, all other activities are discretionary. The purpose of the rule is stated to be to protect the Nayland Road South food processing industries from the actual or potential effects associated with other potentially incompatible industrial activities. There is no reference to protection of nearby residences or the minimisation of cross boundary effects as being the driver for the rule.

60. Rule INr.27.1 makes building and structures permitted in the Nayland Road South Industrial Area to a height of 15 metres. The same rule specifies the recession plane in accordance with appendix 15 (daylight admission – residential) where the site adjoins the residential zone and for sites in the Nayland Road South Industrial Area, any other zone. Specifically Rule INr.27.1c) is sought to be amended by the Plan Change by adding in a new measurement site where the industrial site joints the 5 metre strip.

61. The explanation for the rule records that in the Nayland Road South Industrial Area, buildings are permitted to a greater height than in the remainder of the zone recognising the size of structure such as bulk cool stores. The explanation goes on to record that the conditions protect daylight admission to residential zoned sites to ensure that at least a minimum amount of daylight is received. In the Nayland Road South Industrial Area, it is important to also protect daylight admission to adjoining rural zones because many of the structures are very bulky (my emphasis).

62. No mention is made with regard to daylight admission to residential zones and the explanation now seems either historical or in error in that there are no rural zones and it should therefore more accurately refer to residential not rural zones.
63. Rule INr.30 provides a specific set back rule for the Nayland Road South Industrial Area. This is the Rule that specifies a 100 metre setback on the northern boundary of the industrial zone except where a buffer strip of not less than 20 metres has been set aside (including the landscape bund of not less than 3 metres in height); a 5 metre setback on the southern side of Saxton Road West; and a 50 metre setback from the boundary of the Railway Reserve except where a 5 metre wide landscaping strip has been established and maintained and a 3 metre high acoustic fence has been erected. Rule INr.30.1f) (Permitted Activities) also requires the landscaping required by the Rule *“shall be established and maintained using trees that grow in excess of 3 metres in height. This landscaping shall visually screen the industrial activities from other adjacent properties.”* Activities that contravene the performance criteria are discretionary. The explanation to the rule explains that setbacks, buffer strips and bunds are to mitigate the adverse effects from industrial activities on the amenity values of adjacent properties. No specific explanation is provided in respect of the Railway Reserve setback and landscaping strip.
64. Finally, I note that Rule INr.38 specifies that to be a permitted activity noise levels measured at, or within the boundary of, any site in the residential zone, or “at or beyond the south eastern boundary of the former railway reserve adjacent to the Nayland Road South Industrial Area” must not exceed 55 dBA daytime / 45dBA nighttime L₁₀. This rule was amended and inserted by clause 4 of the consent order in *Wholesale Landscapes and Others v NCC*.
65. Turning now to the residential zone provisions of the NRMP the explanation and reasons to policy RE1.4 Lower Density Areas records that the lower density residential land on Main Road Stoke was rezoned from Rural, in part to provide a greater level of protection from industrial type activities. The density has been kept low to preserve some measure of its former character, while at the same time recognising that the area will eventually be fully developed for residential purposes. Objective RE2 Residential Character specifies “an environment that is principally residential in character”. The reason given for this is that:

“The primary purpose of the residential zoning is to provide an environment that is suitable for the accommodation of people. The essential components of a principally residential environment included access to an adequate amount of

daylight, minimal disturbances from nuisance, and a reasonable degree to privacy.”

66. The first policy under this objective is Policy RE2.1 *“noise levels received at adjacent site boundaries should be consistent with a predominately residential environment.”* Two of the methods specified under this policy refer firstly to the landscape bund along the residential/industrial interface in the Nayland Road South Area and secondly the rules requiring the erection of an acoustic fence along the residential/industrial interface in Main Road, Stoke within the Industrial zone, prior to any industrial activity taking place.
67. Policy RE2.3 daylight and sunlight specifies *“buildings and structures should be designed and sited so that adjoining sites are not unduly shaded, and there is reasonable access to daylight”*. The reception of daylight and sunlight to each household unit is identified in the explanation as a critical component of residential amenity. The use of daylight controls is designed to ensure shading effects are minimised and there is sufficient space around buildings to allow the admission of daylight to the site. RE2.3.i states: *“The basic premise is that daylight and sunlight received on a residential site should be no different whether or not the neighbour is residential. This philosophy applies whether the building is on an adjoining site or across a street.”*
68. Finally, I note appendix 15 daylight admission (residential). This appendix includes daylight controls to ensure adequate minimum daylight standards to neighbouring residential properties. For those properties which are zoned other than residential and which adjoin a residential zone, the relevant rules in the Appendix still apply. AP15.3.2 requires that measurements in non residential zones are taken at the zone boundary. The explanation to this section is part of Plan Change 06/04.

Discussion

69. There are four options to assess in terms of whether they are the most appropriate for achieving the relevant objectives in the NRMP. Each option number relates to the relevant figure on Attachment 1.

- Option 1

Normal daylight provision subsequent to consent order but prior to vesting of 5 metres in Council. The measurement is taken from the industrial/residential boundary i.e. from the edge of the 5 metre strip (which is zoned industrial) next to the reserve. This is the option favoured by Mr Adcock.

- Option 2

No daylight provision applies because the industrial site adjoins an industrial site (the 5 metre strip is zoned industrial). Thus buildings could be 15 metres high under Rule INr.27. This is the status quo which has applied since the 5 metre strip was vested in the Council.

- Option 3

The 5 metre strip is zoned residential and the normal daylight rule applies regarding measurement at the industrial/zone boundary.

- Option 4

This option is Plan Change 06/04. The 5 metre strip is zoned residential but the daylight measurement is taken 5 metres inside the Council land/Railway Reserve. That is it is taken at the post consent order/pre-Council vesting location identical to that shown in Figure 1.

Discussion – Option 2

70. Option 2 is discussed first because it is the status quo. Thus the first question that arises is – is there any necessity to make an alteration to the Plan provisions? All parties held the view that it was unacceptable to have 15 metre high buildings erected on industrial land adjacent to the 5 metre strip. This was also the Council's view and the reason why it instituted the Plan Change. Notwithstanding that no buildings have been built to 15 metres, there is the clear ability to do so pursuant to Rule INr.27. This is against the intent of the Plan as that rule itself makes it clear that even where the Nayland South Industrial Zone adjoins any other zone, not just residential zones, the rule should apply. The rule does not, however, apply because industrial is next to industrial and therefore potential buildings are not technically “next to” any other zone.
71. Therefore this option is most easily disposed of – allowing this option gives the ability to erect 15 metre high buildings immediately proximate to the Railway Reserve. This would be in contrast to the intent of the Plan and would be against Policy RE2.3 daylight and sunlight, which requires that residential areas not be unduly shaded. It would also be against industrial zone policy IN2.2, which refers to such items as shading detracting from adjoining activities in the surrounding environment.

Discussion – Option 3

72. This is the option favoured by residents. It combines the proposed Plan Change of residential from industrial zoning for the 5 metre strip, with a new location for the daylight provision, whereby it is measured at the new industrial/residential zone boundary. As shown from Figure 3, and also expanded on in a diagram referred to at paragraph 5.5 of the Staff Report, there are potentially significant limitations on buildings due to the provision of this new measurement point.
73. The perceived benefits of this approach were identified by submitters (in summary) as:
- Enhancing amenity values;
 - Enhancing visual appeal;
 - Moving back industrial buildings from the industrial boundary;
 - Increasing safety (i.e. reducing icing on the walkway);
 - Reducing shading on residential land and on the Railway Reserve;
 - Follows original intent of Plan (5 metre buffer an error);
 - Reduces likelihood of dust nuisance being suffered by residents or the Railway Reserve users;
 - The Railway Reserve would received all protection that residential land achieves;
 - Would protect property values of residences;
 - Would reduce noise;
 - Would prevent 15 metre high buildings and 2 storey high buildings being erected on industrial land;
 - Would enhance likelihood of notification.
74. In addition the issues above also involve the overall question of what type of industry can locate on the Nayland Road South Industrial Area. However, that is already controlled by Rule INr.26 and that is not intended to be amended by this Plan Change.
75. Turning first to the issue of amenity values, which encompass aspects of dust, noise visual appeal and over height buildings, I note that the new setback would require

- buildings to either move back from the industrial boundary in order to comply with the recession plane, or be designed to comply with that recession plane – the latter of which does not necessarily require a setback from the actual boundary. This would have the benefit of reducing height and therefore limiting the visual impact of the buildings and thus enhancing amenity values.
76. The measurement at this point would therefore limit the height of buildings and this is the primary impact. Turning to Rule INr.27 it is clear that a 15 metre height is there to provide for bulk cool stores and the like. This fits in with the introduction to the industrial zone which notes that it is critical industrial land be used efficiently. Also the Nayland Road South Industrial Area is important to the regional economy. Therefore it is against those aspects of the Plan, although they are not contained in an objective. Objective IN2 to maintain and enhance amenity (quoted in paragraph 54 above) would favour reduced height, as would Policy IN2.2. However, the balance is between enhanced efficiency of a limited resource and maintenance of amenity. The Plan has both these aspects as themes within it. Therefore a solution which balances between the two, if possible, would be preferable.
77. In terms of dust, this is something which is of concern in the Nayland Road South Industrial Area and for that reason Rule INr.26 limits activity types. Objective IN2 makes it clear that the intended activities for this zone are highly sensitive to other industrial activities which may generate contaminants such as dust. Therefore I do not find that it is necessary to adopt any particular option (including option 3) in order to control dust, either from an industrial user's point of view or from that of residents.
78. A similar position is reached in terms of noise. Policy RE2.1 makes it clear that noise levels are an issue but the method specified is the acoustic fence, which is contained in INr.30. If Option 3 were adopted there may be an impact on noise but there may not be. i.e. there is no direct link between adopting this option and reducing noise from the industrial zone. Either way the acoustic fence is present. I therefore do not see a benefit from Option 3 in regard to noise.
79. In terms of property values this is not a matter which is relevant under the RMA and I set this aside.
80. In terms of visual appeal of buildings, I note that the intent of the landscape strip is to include trees of 3 metres and higher which are stated as being required to visually screen the acoustic fence (refer Rule INr.30). Therefore, once again the Environment Court order has addressed this aspect. Although some residents find the present acoustic fence and buildings such as that of Gibson Timber offensive, I note that this is something the Plan

envisages, and that whilst it will take landscaping time to reach maturity the intent is that the landscaping will screen the fence and the buildings.

81. This Plan Change is not an opportunity to re-litigate the *Wholesale Landscape's* consent order, unless it can be shown that there is a need to re-address the solution arrived at in those proceedings. I do not consider that the 5 metre buffer was an error. Again, the balance of efficiency (the potential to erect a two storey building) as against amenity is at the heart of the discussion. The residences on the south side of the Railway Reserve have the greatest separation distance between themselves and an industrial zone than anywhere else in Nelson City. Therefore issues of shading, noise and dust are already somewhat ameliorated by that separation distance. Although perceived by some residents as insufficient, there is the protection of the acoustic wall and the shading rule, provided the latter applies.
82. In terms of safety of the walkway, shading is an issue which was shown to exist from existing trees, including Poplars and Macrocarpa. Whether the shading is from a fence or from landscaping designed to screen that fence from view shading will be part of the environment. This may result in some iciness of the walkway in winter. However, not all the plantings along the walkway are evergreen, and there is a setback from the walkway itself to the landscaping, which undulates, coming into close proximity with the walkway at some points and then moving further away at others. The safety of Railway Reserve users does not appear to be a major adverse effect that needs solving by the adoption of Option 3, particularly as existing vegetation and buildings already contribute to the problem.
83. In terms of notification the anticipation of residents is that if the industrial zone is adjacent to the residential zone the likelihood of consent applications being notified will be enhanced. Unfortunately, this is not guaranteed as an outcome. It is clear that certain activities can establish as of right in the industrial zone and in such circumstances there will be no notification because there will be no resource consent required. Apart from two site specific exclusions specifically written into the Nayland Road South Industrial Area Rules (again by the *Wholesale Landscapes* decision), all other consents are discretionary. The Council also has the discretion whether or not to notify them. Placing Option 3 in the Plan in order to enhance notification would likely result in the disappointment of residents when resource consents are not subsequently notified.
84. In terms of zoning the land residential there is no particular benefit to the Railway Reserve, despite submitters views that the Railway Reserve would then receive all

protection that residential land achieves currently. Some submitters saw this protection as inadequate anyway.

85. Against this, there are the concerns of industrial users that the building height limitations would restrict potential development or redevelopment, or restrict existing business operations, or restrict the type of business which wishes to operate in the area. Overall, the limitation of building height imposed by the recession plane measured at the industrial/residential boundary seems unnecessary in terms of amenity values and would lead to an inefficient use of industrial land. Whilst the concerns of industrial users are somewhat hypothetical, it is clear that cross boundary and reverse sensitivity effects are real and that they exist at present. However, this is because of the permitted uses of the industrial land, which Option 3 and the other Options cannot address. Further, Option 3 would not remove the issues regarding amenity values, with the sole exception of limiting building height on the boundary. However, houses on the residential zone looking across will still see roofs and industrial buildings and it is anticipated would still hear the noise from the industrial zone. Even with the acoustic fence noise from adjacent zones is a reality. Appropriate noise rules are the solution, not limiting building height.
86. In terms of Part 2 of the Act, Option 3 is not generally in accordance with Part 2. There are no s6 Matters of National Importance which are relevant to my consideration. However, in terms of s7 its adoption runs counter to s7(b) the efficient use and development of natural and physical resources. In terms of s7(c) the maintenance and enhancement of amenity values and s7(f) the maintenance and enhancement of the quality of the environment both of these would be assisted by lower building heights on the industrial land but not to the extent that they are justified in terms of sustainable management. Again, in terms of s7(g) the proposed measurement point runs counter to the finite characteristics of the limited industrial land in the Nelson region.
87. Overall, in terms of the test to be applied Option 3 is not the most appropriate for achieving the objectives in the Plan, specifically those relating to amenity, in terms of the residential zone and the Railway Reserve and in terms of efficient and effective use of the industrially zoned land. Option 3 would not assist the Council to carry out its functions and to achieve sustainable management of the Railway Reserve land or the industrial land, because zoning the land residential does not enhance the Council's abilities to operate the Railway Reserve or maintain the landscaping on the landscaping strip. It would assist the Council in carrying out its function of limiting building heights on the industrial land, but this one is counted to the efficient use of industrial land.

Discussion – Options 4 and 1

88. Both of these Options would allow buildings such as Gibson Timber to be erected on the boundary of the industrial zone with the 5 metre strip, whilst not allowing the erection of buildings to a height of 15 metres. Under Option 4 the strip would be zoned residential, but a specific measurement point for the daylight around angle would be created to ensure that it did not apply on the boundary between the residential and industrial land as it would in Option 3.
89. The sole difference between Option 4 and Option 1 is that Option 4 has the 5 metre strip zoned residential whilst Option 1 has the 5 metre strip zoned industrial.
90. Turning first to the question of measurement point, both options achieve the efficient use of industrial land by allowing two storey buildings, yet prevent adverse effects on amenity values by excluding 15 metre high buildings as any such buildings are unlikely to obtain consent due to their degree of intrusion into the recession plane. As shown by the worked example given for the much lower Gibson Timber building, there was an extremely minor intrusion into the recession plane by the top of the acoustic wall at one point, thus indicating that a building of the kind illustrated by the Gibson Timber Building would be permitted should either option be adopted in terms of the measurement point.
91. This measurement point is favoured because it allows the efficient use of industrial land, yet goes some way towards preserving amenity values. It stays with the original intent of the Plan, as expressed in the *Wholesale Landscapes* consent order. An acoustic wall or equivalent would still be required, as was the case for Gibson Timber which was required to satisfy the Council through provision of an acoustic consultants report that its wall would equate to (or in that case was said to be better than) the acoustic wall required by the Plan.
92. This measurement point would not address Ms Chandler's concerns regarding amenity values and visual impact of buildings such as Gibson Timber which she considers are unacceptable. It would lead to some shading and potential icing effects of the Reserve, and in winter shadows would be cast onto residential land when the sun is at a low angle. However, that is the case with vegetation as well. Again, the setback distance between the residences and the industrial land due to their separation by the Railway Reserve is a significant benefit which will remain unaffected by either Option 4 or Option 1.
93. Adopting this measurement point would not create issues regarding enforcement or administrative efficiency, as the point 5 metres from the acoustic fence is easily

measurable and located. Council would retain its control over the Reserve and plantings on that land.

94. In terms of efficiency and effectiveness measurement point at 5 metres from the industrial buildings is most appropriate for achieving the two themes of the Plan in terms of amenity and efficient use of industrial land. It amounts to sustainable management of the land resource and is in accordance with Part 2 of the Act.
95. Turning now to the differences between Options 1 and 4 in terms of zoning, residential zoning of the strip was said to provide administrative efficiency. That is, the land is not industrial and should not be treated as industrial, but should be treated as residential since that is what the Railway Reserve is already zoned. I note firstly that the Council when it originally accepted the land to be vested in it wished to do so, so as to retain control over the Reserve and plantings. At this point in time it did not indicate that it needed the land to be rezoned in order to achieve those objectives. Similarly, for the Notice of Requirement and the existing designation there is no indication that the land needs to be rezoned to residential in order to achieve the objectives of the requiring authority. Mr Pattison acknowledged that there was little in the way of administrative efficiency that would be lost or gained if the strip were zoned residential.
96. On one hand is the view that if the strip is zoned residential the Railway Reserve will receive all protection that the residential land achieves, and on the other if the view that is the strip is zoned residential there are potential restrictions arising from that, possibly not evident today, but that will become evident in future, on existing or future activities on the industrial land. I note that some of these potential issues are not just resource management issues, but may relate to other statutory requirements such as those imposed by the Department of Labour under Occupational Safety and Health rules. e.g. the proximity of gas bottles to residential zones.
97. In terms of the relative benefits of an industrial zone as opposed to a residential zone, the major issue is that of daylight angles and height of buildings. As that has been dealt with through the location of the measurement point 5 metres beyond the acoustic fence, that issue falls away. Other remaining issues such as noise, safety, shading, dust and notification have been discussed above in terms of Option 2. Those comments also apply in terms of both of these Options. Zoning the land residential will not push the effect of industry further away, although that is the perceived benefit. In reality, the zoning will not create such a benefit. For example, when one examines the noise rule, that rule is not dependent on the actual boundary between industrial and residential land. The rule requires measurement "at or beyond the boundary between the former

Railway Reserve and the adjoining properties to the south east". The Reserve boundary itself is unaffected by any of the four options discussed above. Therefore the noise rule applies irrespective of whether the strip is rezoned. What type of industry can locate within the Nayland Road South Industrial Area is unaffected by the question of rezoning. The question of notification is again more one of a perceived benefit than an actual benefit.

98. Overall, the original intent of the Plan was that the land be industrial, but that the daylight around provision should apply at the edge of the 5 metre strip nearest to the Railway Reserve. Following that original intent by adopting Option 1 will fit within the objectives and policies of the industrial and residential chapters of the NRMP. It also provides industrial users with the ability to use their industrial land efficiently and effectively, whilst allowing Council as a requiring authority to undertake all necessary activities within its reserve, including the 5 metre strip.
99. In terms of the overall test Option 1 is the Option is most appropriate for achieving the objectives of the Plan and for efficiency and effectiveness and achieving sustainable management.

Notice of Requirement

100. The extension to the designation DN9 was sought at the same as the Plan Change was notified, with the intent that the landscape strip be rezoned residential. However, the designation should be extended to cover all of the Railway Reserve irrespective of the zoning of the 5 metre strip. This is because the designation is reasonably necessary for achieving the objectives of the requiring authority as set out in Appendix 22 of the Plan. Merely because the 5 metre strip is zoned industrial does not mean it should be treated any differently from the remainder of the Reserve. The Council owns the land and integrates the plantings with the rest of the landscaping within the Reserve and its ability to undertake those plantings and maintain those plantings, as well as to, if necessary, locate utility servicing within the 5 metre strip, should be recognised by an extension to the designation. There is no adverse effect on any party from extending this designation, as the land is already used as part of the Reserve and is part of the Reserve. There are no limitations on adjoining land users as a result of the extension of the designation.
101. I therefore recommend that the designation DN9 be extended to include the 5 metre strip.

Decision

102. The following amendments are to be made to the Nelson Resource Management Plan:

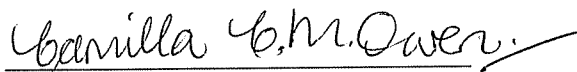
- Retain Planning Map 29R to show a 5 metre strip (being part Lot 34 DP349352 and Lot 34 DP362586) as Industrial zoning;
- Amend Planning Map 29L to amend an existing cycleway/walkway designation DN9 over the 5 metre strip contained in part Lot 34 DP349352 and Lot 34 DP362586;
- Amend Rule INr.27.1c (Buildings and Structures; Permitted Activity Rule) by adding the following words at the end of the existing sentence:

“where the site adjoins the 5 metre strip (being part of Lot 34 DP349352 and Lot 34 DP362586) the site boundary shall be deemed to be the eastern boundary of the said strip for the purposes of measuring daylight angles.”

- Amend Appendix AP15.3.2 (Appendix 15 Daylight admission (Residential) – where to take measurements from) by adding an explanation for where measurements are taken from in zones other than a residential zone, as follows:

“NB: That is respect of the 5 metre strip which forms part of the Railway Reserve and is contained in part Lot 34 DP349352 and Lot 34 DP 362586, measurements shall be taken from the eastern boundary of the said strip (Refer to Rule INr.27.1 c).”

103. It is recommended that the Nelson City Council confirm the Notice of Requirement specifying the proposed extension to designation DN9 so that it extends over the 5 metre strip (being part Lot 34 DP349352 and Lot 34 DP362586).



Camilla C M Owen
Commissioner