

NELSON RESOURCE MANAGEMENT PLAN

OFFICER'S REPORT TO HEARING COMMISSIONER ON

COUNCIL PLAN CHANGE 06/04 (STOKE RAILWAY RESERVE)

7 August 2007

The Commissioner

**OFFICER'S REPORT TO HEARINGS COMMISSIONER - PLAN CHANGE 06/04 –
STOKE RAILWAY RESERVE**

1. Introduction

- 1.1. My name is John Pattison. I hold the position of Policy Planning Advisor with the Nelson City Council. I have been employed by the Council in a variety of planning positions since 1992.
- 1.2. I have a Masters degree in Geography and Economics and a Diploma in Town Planning. I am a member of the New Zealand Planning Institute and have worked as an employee of Councils, a private consulting firm, and in my own consultancy, for over thirty years.

2. Contents of Plan Change 06/04

- 2.1. At the 12 December 2006 meeting of the Environment Committee, it was resolved:

THAT Plan Change 06/04 and accompanying S32 Evaluation be adopted;

AND THAT the issue of a notice of requirement to extend the cycleway/walkway designation (DN9) over the 5 metre strip contained in part Lot 34 DP349352 and Lot 34 DP362586 be approved;

AND THAT it be confirmed that Plan Change 06/04 has been prepared in accordance with the statutory procedures set down in Part One of the First Schedule to the Resource Management Act 1991;

AND THAT Proposed Plan Change 06/04 and the accompanying Notice of Requirement as adopted be publicly notified;

AND THAT in accordance with Clause 16B(2) of the First Schedule of the Resource Management Act 1991, the provisions of Proposed Change 06/04 have effect from the date of notification.

- 2.2. Plan Change 06/04 and the accompanying Notice of Requirement involved the following amendments to the Nelson Resource Management Plan.

- Rule INr.27.1c) was amended 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*
- Planning Map No 29R was amended to show the 5 metre strip (being part of Lot No 34 DP349352 and Lot No 34 DP362586) as having a Residential zoning.

- Appendix AP15.3.2 was amended by adding the following explanation at the end of the existing paragraph: *“NB that in respect of the 5 metre strip which forms part of the Railway Reserve and is contained in part Lot No 34 DP349352 and Lot No 34 DP362586, measurements shall be taken from the eastern boundary of the said strip (Refer Rule INr.27.1 c) ”*
- Planning Map No 291, was amended to extend the cycleway/walkway designation DN9 over the 5 metre strip contained in part Lot No 34 DP349352 and Lot No 34 DP362586.

Refer to **Attachment 1** for the location map of the land which is the subject of the Plan Change. **Attachments 2 and 3** show the details of the Proposed Change and the Section 32 Evaluation.

- 2.3 Proposed Change 06/04 has now progressed through the statutory stages of submission and further submission. The Hearings Commissioner must now consider the matters raised in those submissions and, in accordance with the Council’s Register of Delegations, make a recommendation to Council.

3. Background

- 3.1. The residential properties which lie to the northwest of Main Road Stoke and adjoin that part of the Railway Reserve which is the subject of this Plan Change, were rezoned from Rural to Residential by a Variation to the Plan in 2001 (*Variation 01/01*). This land is shaded green on the attached map (**Attachment 1**). The Variation also rezoned the adjoining portion of the Railway Reserve (shaded orange) from Rural to Residential to bring the zoning into line with that applying to the balance of the reserve which extends to the north.
- 3.2 A private plan change application was subsequently lodged to change the zoning of the land immediately to the northwest of the Railway Reserve from Rural to Industrial. The Commissioner who heard that application agreed to the change except in respect of a 30m wide strip of land adjoining and parallel to the Railway Reserve, for which the Rural zoning was retained. This was done in order to provide *“some protection for the row of properties adjoining the proposed industrial area across the former railway reserve.”* In addition to the 30 metre rural “buffer”, a 10 metre setback also applied, in effect creating a 40 metre strip of land which could not be used for industrial purposes. (In reality, this restriction would have had only limited effect as most industrial activities are permitted activities in the Rural zone provided they do not exceed 300m².)
- 3.3 References (appeals) were lodged by two of the industrial properties to the northwest of the Railway Reserve. The outcome of negotiations between the referrers and the respondent (Council) was an Environment Court Consent Order dated 23 July 2001. This resulted in the rezoning of the 30 metre “amenity strip” from ‘Rural’ to ‘Industrial’. It also required that a landscaped 5 metre setback be established and maintained within the industrial land, a 3 metre high acoustic fence constructed, all work to be undertaken by the industrial property owners. This would suggest the expectation at that time was that the property would remain in private ownership.
- 3.4 Subsequent to the above events, an application was made for consent to subdivide the industrial land referred to above. The application included an offer to vest the 5 metre setback in the Council. For reasons which are still unclear, this offer was accepted by Council and, as a consequence, the responsibility to plant and maintain the 5 metre landscaping strip (with an Industrial zoning) no longer rests with the industrial landowner, but with the Council. This is the 5 metre strip that is the subject of the Proposed Change.

- 3.5 It is clear that the previous Industrial zoning of the 5 metre strip was no accident nor was it an "oversight" as has been claimed by one of the submitters in correspondence with Council. Under the terms of the Consent Order this strip was envisaged as remaining in the ownership of the adjacent industrial property owners and being maintained by them. It was not anticipated that the developers would offer to vest it with Council, or that Council would agree to accept ownership of the land. It is as a consequence of vesting the land in the Council that the complications which led to the current Plan Change have arisen.
- 3.6 Had the 5 metre strip remained part of the industrial sites as originally proposed these sites would adjoin a residential site (the Railway Reserve) and any buildings erected would be required to comply with the daylight provisions set out in the Industrial rules and in Appendix 15 of the Nelson Resource Management Plan, as measured at the boundary of the 5 metre strip with the reserve (i.e. the southeast side of the 5 metre strip). Refer to **Figure 1 in Attachment 4**.
- 3.7 As a consequence of the 5 metre strip being vested with the Council, while the strip still retains its 'Industrial' zoning, it has effectively become a neighbouring industrial property (albeit owned by the Council). See **Figure 2 in Attachment 4**. One effect of this is that the daylight provisions of Appendix 15 no longer apply and taller buildings than would normally be permitted can be constructed on these sites in close proximity to the acoustic wall. This came about by virtue of Rule INr.27.1a) c) which specifies that buildings should "*not penetrate a 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.*" As the 5 metre strip now has an Industrial zoning, it does not represent any other zone and the provision no longer applies. Furthermore, the general provision contained in Rule INr.29.1 which required a 3 metre setback from residential boundaries, can no longer be relied upon, as it is overruled by the more specific Rule INr.30 which does not require such a setback provided "*a 5m wide landscaping strip is established and maintained*".
- 3.8 It was recognised that the vesting of the 5 metre strip with Council had disadvantaged the residential property owners to some degree and Council considered it appropriate to introduce a Plan Change which would rezone the 5 metre strip from 'Industrial' to 'Residential.' However, a straight rezoning to Residential would result in the recession plane being applied at the northwest (Industrial) side of the strip, a solution that could impact unfairly on those industrial properties planning to erect buildings adjacent to the acoustic wall, possibly moving them a further 5 metres away from the reserve. See **Figure 3, Attachment 4**. For this reason the Plan Change proposes that the measurement of daylight angles (i.e. the application of the recession plane) take place at the southeastern (Railway Reserve) side of the strip. The effect of this is to reinstate the situation that applied as a consequence of the July 2001 Consent Order. See **Figure 4 Attachment 4**. Another advantage of the proposed change is that it would be administratively neater, with the land being added to the existing reserve and carrying the same zoning as the balance of the reserve

4. Submissions and Further Submissions

- 4.1 Proposed Plan Change 06/04 was publicly notified on 25 January 2007. Twenty six submissions were received. In accordance with the requirements of the Resource Management Act, a summary of submissions was publicly notified on 21 April 2007 and further submissions invited. One 'further submission' was received. A copy of the submissions and the 'further submission' are appended as **Attachments 5 and 6 A**

summary of each submission, detailing the significant issues and the remedy sought, is set out in **Appendix A** to this report.

- 4.2 The submissions may be divided into two main groups: those that would like daylight angles to apply from the new boundary of the individual Industrial sites and who generally want tighter controls on the effects of the industrial activities, and those who believe industrial activities are already being treated unreasonably and who wish to minimise the imposition of restrictions now and in the future.
- 4.3 In respect of the Notice of Requirement to extend the cycleway/walkway designation (DN9) over the 5 metre strip as defined in the Plan Change documents, only five of the submissions specifically referred to the designation. All five were in favour of the designation proceeding. Several other submissions, while silent on the specific issue of the designation, were opposed to the Plan Change proceeding in its present form, so this could be interpreted as tacit opposition.

5. Evaluation

- 5.1 In respect of the proposal to measure daylight angles at the southeast boundary of the 5 metre strip, it is considered necessary to clarify a number of apparent misunderstandings in submissions. What is proposed in the Plan Change is entirely consistent with the Environment Court Consent Order. Daylight angles will be taken from the same position proposed by the Court even though changes have occurred in land ownership and the proposed zoning. Figure 1 in Attachment 4 illustrates the situation which applied subsequent to the Environment Court Consent Order, with the daylight angle being measured at the point where the Railway Reserve (zoned Residential) adjoined the 5 metre strip (zoned Industrial and at that time in the ownership of the industrial landowners). Figure 2 shows the situation that applied subsequent to the vesting of the 5 metre strip with the Council. While the 5 metre strip has retained its Industrial zoning the different ownership means that daylight provisions no longer apply. Figure 3 shows the situation that would result if the 5 metre strip was rezoned Residential and the daylight provision was applied at the Western boundary of the Residential zone (as sought by the residential submitters). Figure 4 indicates that the Plan Change will result in the same situation as applied subsequent to the Consent Order (Figure 1) except that the zoning of the 5 metre strip will now be Residential.
- 5.2 Had the Plan Change not been proposed, industrial properties would not be required to satisfy daylight admission requirements. Every other industrial zone in Nelson has to satisfy this requirement which is intended to protect the interests of adjoining residential properties. Furthermore, it was not intended by the Consent Order (Refer Para 3.5). Equally, any move to have daylight angles taken from the northwest side of the 5 metre strip would have the effect of imposing further restrictions on the industrial sites, another situation not envisaged by the Consent Order.
- 5.3 The Council has not, as claimed, "omitted" the 10 metre 'no build' zone, dispensed with or eroded buffers recommended by the Court, eroded previous protection accorded the Railway Reserve, or made concessions intended to favour one party as opposed to the other. As explained in paragraphs 3.5 to 3.8 of this report, the Plan Change has attempted to reinstate the situation which existed subsequent to the signing of the Consent Order.
- 5.4 One of the more common concerns expressed by residential submitters was the effect of high walls/buildings on the cycleway/walkway, particularly during the winter months, where the 'lack of daylight angles will result in icy and dangerous cycleway and walkways'. In view of the width of the Railway Reserve (22 metres, or 27 metres including the 5 metre strip) and the fact that any sunlight obstruction by industrial

buildings would only occur during the afternoon as they are on the western side of the reserve, such an effect would seem unlikely. As the writer is not a regular user of the reserve, the matter was referred to the Nelson City Council Transport and Road Safety Co-ordinator (Margaret Parfitt) for comment. Margaret cycles the route each day on her way to and from work. She responded as follows: "I do not believe the part of the railway reserve in question will be unduly affected by icy conditions due to the plan change. The path runs north-south so it is unlikely that any buildings of height to the west will cause it to be shaded all day, although it may lose sunshine earlier in the afternoon."

It is not intended that Margaret present evidence at the hearing. However, should the Commissioner wish, she will make herself available to respond to any questions.

- 5.5 The consequences of the transfer of the 5 metre strip and the implications of the strip being zoned either 'Residential' or 'Industrial', can best be demonstrated by example. The Gibson Timber building was constructed on the boundary in accordance with what was permitted prior to the notification of this Plan Change and as a consequence of the vesting of the strip with Council i.e. no provision for daylight admission applied. Had the strip not been vested with Council and the daylight recession angle measured from the boundary with the Residential zone (i.e. the southeast side of the 5 metre strip) the existing building would have largely complied, apart from a very minor issue of non-compliance at the top of the boundary wall. However, if the daylight recession angle was measured at the northwest side of the strip the building would not comply and in order to achieve compliance it would need to move 5.6 metres further back into the site. A diagram to illustrate this example will be produced at the hearing.
- 5.6 It is important that residential properties are afforded some daylight protection from development on adjacent industrial sites. In some instances around the City, industrial buildings will locate within 5 metres or less from the common boundary with a residential property, with the houses located a similar distance back from the boundary. The situation is quite different along the Railway Reserve, with a reserve width of 22 metres, a further 5 metres for the landscaping strip, and with houses to the east of the reserve set back distances varying between 5 and 25 metres. While these properties have significantly greater separation distances than elsewhere in the City and there is little basis for concern about daylight admission, the residents rightfully point out that at the time many purchased their land, even greater buffers existed (Refer 3.2).
- 5.7 It has been suggested that the proposed rezoning of the 5 metre strip 'Residential' will push back the 'Industrial' boundaries and result in greater restrictions on industrial operations. Some concerns have also been raised that industrial activities are already constrained and that the proposed change may result in further (unspecified) problems in the future. It is correct that rezoning the 5 metre strip 'Residential' will push the zone boundary back to the position of the acoustic wall, and it will also have the effect of reinstating daylight controls at the industrial/residential interface as they applied prior to the transfer of the 5 metre strip to Council, as intended by the Consent Order and as prescribed in the Plan. The daylight controls will however be applied in the same way as elsewhere in the zone and industrial properties will not be disadvantaged provided that the daylight controls are measured from the southeast side of the strip.
- 5.8 It is difficult to imagine any other problems likely to arise as a consequence of rezoning the 5 metre strip. The provisions that apply to the industrial zone, the reasons for them and the assessment criteria that apply are clearly specified in the District Plan. The industrial sites which adjoin the acoustic wall along the Railway Reserve are, with the exception of three sites, now fully developed. None of the other sites within the industrial zone are likely to be affected by the Proposed Change.

- 5.9 One submission suggested that ownership of the land contained in the 5 metre strip vested in the Council as reserve should be transferred back to the adjacent industrial properties, but that the ongoing maintenance of the plantings should be carried out by Council. It further recommended that the Plan Change should be abandoned. Had the Council been awake to the implications of accepting the land at the time of subdivision it is unlikely that the transfer would have proceeded. It is also most unlikely that the Council would be prepared to plant and maintain land belonging to another party without reimbursement.
- 5.10 It has been accepted by Council that rezoning the land comprising the 5 metre strip 'Residential' to give it the same zoning as the balance of the reserve would be administratively neater. The same argument applies to the Notice of Requirement to extend the cycleway/walkway designation over the 5 metre strip. Unless it can be demonstrated that the Plan Change should not proceed, there is no reason why the Notice of Requirement should not also proceed.
- 5.11 The submissions for and against the zoning of the 5 metre strip 'Residential' fall clearly into two groups. One group, predominantly residential property owners, want the strip zoned 'Residential', with daylight provisions applying at the "new" boundary. The other group, comprising largely industrial property owners, want the 'Industrial' zoning to remain and a variety of other options considered, including the abandonment of the proposed change, gifting of the land to the industrial owners, or Council coming up with some alternative unspecified solution.
- 5.12 The Council had never intended that the Railway Reserve be extended. It would have been preferable if the Environment Court Consent Order of 2001 had survived and the 5 metre strip remained as part of the industrial subdivision. Now that transfer of the strip has become a reality the Council could leave the strip with an Industrial zoning but it would be an anomaly. It makes more sense to accord it the same zoning as the balance of the reserve land. In any event, the transfer of the strip had rendered the daylight provisions unworkable and the Council considered it necessary to rectify this situation by reinstating the provisions as they stood subsequent to the signing of the Consent Order.

6. Resource Management Act Considerations

- 6.1 Section 74 of the Act requires that each Council shall prepare and change its District Plan in accordance with the provisions of Part II; its functions under section 31; its duty under section 32; (or pursuant to a direction from the Minister for the Environment; or any regulations.)
- 6.2 The relevant Part II provisions contained in section 5 of the Act are:
- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations, and*
 - (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.*
- The following section 7 matters are also relevant to the proposed change:
- (b) the efficient use and development of natural and physical resources*
 - (e) the maintenance and enhancement of amenity values*
 - (f) the maintenance and enhancement of the quality of the environment*
- 6.3 The Nelson Resource Management Plan provides for the needs of industrial and residential activities, both of which may be described as *natural and physical resources*. It provides areas where industrial activities can take place, while incorporating provisions

to ensure that adequate separation distances exist for the provision of light to residential properties where they adjoin industrial land, and to accord them some protection from noise. It is considered that the requirements of Part II of the Act are met by the Proposed Plan Change which strikes an appropriate balance between safeguarding the interests of the residential owners and allowing for the development of the industrial land to the north west of the reserve.

- 6.4 The *efficient use and development of natural resources* would not in my view be enhanced by requiring the industrial sites to set back a further 5 metres (approximately) from their proposed boundary with the Residential zone at the acoustic wall. Because of the acoustic protection provided by the wall and the extensive separation between the private residential properties and the industrial sites, it is considered that the section 7 requirements for the *maintenance and enhancement of amenity values and quality of the environment* are not contravened by the Proposed Change.
- 6.5 The Section 32 Evaluation, which constitutes part of the documentation for the Proposed Plan Change, makes it clear that the intention of the change is to reinstate a situation that applied immediately subsequent to the signing of the Environment Court Consent Order. The acceptance of ownership of the 5 metre strip by Council effectively negated the effect of the Consent Order. The effect of the Proposed Plan Change is to accord the same level of protection/obligation to residents and industrial property owners as defined in the Consent Order. None of the Plan objectives have been amended, and the solution proposed by the Plan Change is seen as the most appropriate way of achieving the requirements of the Act.
- 6.6 The extension of the cycleway/walkway designation DN9 over the 5 metre strip is considered appropriate and in accordance with its application to the balance of the reserve. It complies with the requirements of sections 168A and 171 of the Act, having no adverse effects on the environment, being reasonably necessary, and not offending any provisions of the Regional Policy Statement or the Nelson Resource Management Plan.

7. Recommendation

- 7.1 It is recommended that Plan Change 06/04 be approved and the extension of Designation DN9 over the 5 metre strip contained in part Lot No 34 DP349352 and Lot No 34 DP362586 be confirmed.

JS Pattison

Policy Planning Advisor

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Appendix A - Submissions, Further Submissions and Recommendations

No.	Submitter	Status	Remedy Sought	Further submissions	Recommendation
1	D. Chandler	Support	<ul style="list-style-type: none"> Rezoning strip Residential 	None	Accept in part
2	K. S. Baber	Oppose	<ul style="list-style-type: none"> Daylight angles taken at Eastern boundary of strip 	None	Accept in part
3	Ericon Chandler	Support	<ul style="list-style-type: none"> Rezoning strip Residential 	None	Accept in part
4	Alison & Graham M. Daske	Support	<ul style="list-style-type: none"> Daylight angles taken at Eastern boundary 	None	Accept in part
5	Kathryn Breckelsby	Oppose	<ul style="list-style-type: none"> Daylight angles taken at Eastern boundary 	None	Accept in part
6	Sheryl Witsch	Support	<ul style="list-style-type: none"> Rezoning strip Residential 	None	Accept in part
7	Donnelly Fitchewark	Oppose	<ul style="list-style-type: none"> Daylight angles at Eastern boundary 	None	Accept in part
8	Karen Falloy	Support	<ul style="list-style-type: none"> Rezoning strip Residential 	None	Accept in part
9	Andrew & Christine Webster	Oppose	<ul style="list-style-type: none"> Daylight angles at Eastern boundary 	None	Accept in part
10	Erin & David Payne	Support	<ul style="list-style-type: none"> Daylight angles at Eastern boundary 	None	Accept in part
11	Dee Martin	Oppose	<ul style="list-style-type: none"> Daylight angles at Eastern boundary 	None	Accept in part

No.	Submitter	Status	Remedy Sought	Further submissions	Recommendation
12	Judith Burke	Support oppose	<ul style="list-style-type: none"> Re-zoning strip Residential Daylight angles at Eastern boundary 	None	Accept in part
13	Anne & Salvi Persico	Support oppose	<ul style="list-style-type: none"> Re-zoning strip Residential Daylight angles at Eastern boundary 	None	Accept in part
14	Central Self Storage 2 111)	oppose	<ul style="list-style-type: none"> Detrimental effect on property values Does not support buffer zone 	One opposed	Reject
15	Kerry Mitchenor	Support oppose	<ul style="list-style-type: none"> Re-zoning strip Residential Daylight angles at Eastern boundary 	None	Accept in part
16	James Hart	Support oppose	<ul style="list-style-type: none"> Re-zoning strip Residential Daylight angles at Eastern boundary 	None	Accept in part
17	Nigel & Christine Sutton	oppose	<ul style="list-style-type: none"> Re-zoning of vested 5 metre strip Further restrictions on Industrial operations 	One opposed	Reject
18	Gary Adcock	oppose	<ul style="list-style-type: none"> Repercussions of Change on Industrial activities No justification for the Change 	One opposed	Reject
19	Robert Gibson	oppose	<ul style="list-style-type: none"> Existing constraints on industrial activities Significant concessions already made to residents Change may have other implications 	One opposed	Reject
20	Roy Fator	oppose	<ul style="list-style-type: none"> Potential restrictions on future development Implications for viability of site 	One opposed	Reject
21	Ken Nell	oppose	<ul style="list-style-type: none"> Potential restrictions on businesses 	One opposed	Reject
22	Nayland Industrial Park	oppose	<ul style="list-style-type: none"> 5m strip vested due to issues of access It was never intended that zoning be changed Detrimental effects on industrial activities 	One opposed	Reject
23	Nevada Properties	oppose	<ul style="list-style-type: none"> Change will disadvantage landowners When 5m strip vested, it was understood that it would remain Industrial 	One opposed	Reject

No.	Submitter	Status	Remedy Sought	Further submissions	Recommendation
24	Newland South Industrial Park (06/09)	Oppose	<ul style="list-style-type: none"> • Effects on earnings • Daylight angles only one factor to consider 	One opposed	Reject
25	Margaret Gables	Support	<ul style="list-style-type: none"> • Rezoning strip Residential 	None	Accept in part
26	Robert Rank	Oppose	<ul style="list-style-type: none"> • Daylight angles at Eastern boundary 	None	Accept in part
		Support	<ul style="list-style-type: none"> • Rezoning strip Residential 	None	Accept in part
		Oppose	<ul style="list-style-type: none"> • Daylight angles at Eastern boundary 		

