

3 September 2007

The Chairman and Councillors
Environment Committee

WITHDRAWAL OF PART OF PROPOSED PLAN CHANGE 05/02

1. Reason for report

- 1.1. This report seeks the Committee's approval to withdraw one of the changes (No 23 Alterations/Additions) contained in Proposed Plan Change 05/02.

2. Background

- 2.1. Proposed Plan Change 05/02, comprising fifty individual changes to the Nelson Resource Management Plan, was publicly notified on 29 October 2005. Fifteen submissions and five further submissions were received. A public hearing was held before an independent Commissioner on 17 April 2007, and the Commissioner's recommendations on the proposed plan changes were reported to Council for adoption at its meeting on 5 July 2007.
- 2.2. The Council resolved at its 15 July meeting that: "*with the exception of Change No 23 the recommended decisions of the Hearing Commissioner on the submissions received to Plan Change 05/02 and the reasons for those decisions, as set out within the report dated 16 May 2007, entitled "Commissioners Report and Recommendations to Nelson City Council on Plan Change 05/02", be adopted*".
- 2.3 Change No 23 was proposed because of a perceived problem relating to alterations and additions to existing buildings, where one method of daylight control has been applied to the original building but a subsequent addition or alteration uses a different method. For example, the owner of an existing building may have utilised daylight-over controls but, finding that an addition could not comply with this method, instead elected to use the daylight-around control. The overall effect has often proved to be to the detriment of adjacent properties.
- 2.4 The Proposed Change sought that any addition/alteration to existing buildings be assessed for daylight compliance using the same method of measurement that was used for the original building construction. The two submissions received supported the change but an amendment was proposed which permitted either method of daylight control to be used provided that both the original construction and the subsequent addition/alteration complied with either one method or the other. This solution was considered by the Commissioner to be a simpler solution which would also take into account situations where the original building was erected prior to the adoption of daylight controls, or where Council records failed to show what control (if any) was used.
- 2.5 Subsequent discussions with staff have brought to light a number of concerns which have cast doubts on the wisdom of proceeding with this change at this time. While withdrawal of the change will still require properties "that cannot comply with existing

daylight controls” to seek resource consent, and despite the fact that long-established houses are likely, in the absence of an appropriate building/resource consent, to have existing use right, there are still a number of matters that merit further consideration by staff and councillors.

- 2.6 Some of the matters considered to warrant closer examination are:
- (a) The extent to which an addition/alteration should be tied to any prior method of daylight over/daylight around assessment for an existing building.
 - (b) How should with the existing building be dealt with, i.e. there are existing use right issues as well as the legal issue in respect of what constitutes the permitted baseline.
 - (c) The appropriateness of the existing daylight angle provisions in the Plan.
 - (d) How other local authorities, particularly those dealing with significant hilly sites, are dealing with daylight admission issues.
 - (e) The relationship between the policy framework and the rules in the Plan.

3 Significance of Decision

- 3.1 This decision is not significant in terms of the Council’s policy on significance.

4 Staff recommendation

- 4.1 Staff consider it would be prudent to withdraw the change pending further consideration of the issues outlined above.

5 Delegations Register reference

- 5.1 The Environment Committee has the following authority delegated to it under delegation 91:

“The power to determine procedural matters relating to the preparation, review, or changes to a plan or policy statement under the RMA 1991”.

6 Recommendation

THAT Plan Change Number 23 (Alterations/Additions), comprising part of Proposed Plan Change 05/02, be withdrawn.

V R Altmants
Chief Executive
JP: