

21 March 2007

PLANNERS REPORT TO HEARINGS COMMITTEE - HEARING ON PLAN CHANGE 06/02 - 44 TRAFALGAR STREET

1. Introduction

- 1.1 My name is John Stuart 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 NZ Planning Institute and have worked as an employee of Councils, a private consulting firm, and in my own consultancy, for over thirty years.

2. Reason for report

- 2.1. At the 5 September 2006 meeting of the Environment Committee, it was resolved that Plan Change 06/02, involving the rezoning of the property at 44 Trafalgar Street from 'Open Space Recreation' to 'Residential', be adopted and publicly notified at the earliest suitable date.
- 2.2. The Plan Change has now progressed through the various statutory stages of submission and further submission. The Hearings Committee 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 property at 44 Trafalgar Street was originally owned by the Nelson City Council and utilised as a residence for the caretaker of Trafalgar Park (**See Attachment A**). In 1996 the property was sold to 'Women in Nelson' (WIN) after first subdividing the house from the balance of the land. New titles were issued in December 1996, with the new rear lot vesting as Recreation Reserve in the Council, and the front lot (now owned by WIN) becoming freehold title with a 'Residential (Higher Density)' zoning. The issue of these new titles occurred close to the date of notification of the Proposed Nelson Resource Management Plan (NRMP).
- 3.2. A late submission to the NRMP from the Council's Parks and Recreation Department requested that this and other sites adjoining Trafalgar Park be rezoned as 'Open Space Recreation'. This submission attracted two 'further submissions', one in support and one in opposition. The Council upheld the Parks and Recreation Department's submission and rezoned the land as 'Open Space Recreation'. WIN did not lodge a submission in response to the Parks and Recreation department's submission, and there is no evidence to suggest that it knew of the proposal to rezone.
- 3.3. The effect of the rezoning is that WIN has title to a property with a very restrictive zoning. This is despite the fact that it negotiated a sale and purchase agreement on the understanding, confirmed by an exchange of letters in 1995, that the property had a residential zoning.

3.4. The Council has recognised that, by accepting, hearing, and upholding a late submission from one of its departments without consulting the owner of the property, it was leaving itself open to potential claims of having acted inappropriately. Accordingly, the Council resolved to rectify the situation by way of a Plan Change in order to reinstate the 'Residential (Higher Density)' zoning (Environment Committee Resolution of 25 October 2005).

4. Public Submissions

4.1 Proposed Plan Change 06/02 was publicly notified on 5 August 2006. Due to a procedural error by staff, the Proposed Change was re-advertised on 9 September 2006. Two submissions were received. These are appended to this report as **Attachment B**.

4.2 One submission was received from Women in Nelson (WIN). WIN completely supports the rezoning of the land from 'Open Space Recreation' to 'Residential (Higher Density)'. In support of their submission they state that they purchased the land in 1996 on the understanding that the property had a residential zoning; they were not notified of the plan to rezone the land as 'Open Space Recreation'; and that they have been seeking to have the zoning corrected for some time. WIN has advised that it does wish to be heard at the hearing.

4.3 The second submission was from B & J Woods, acting as trustees for the trust which owns Unit 11, 39 Trafalgar Street. They are opposed to the Change. They maintain that the current status of the property has been satisfactory until now. They do not accept that the Change is merely a "fixing" of a problem or it would have been done long ago, and they see the proposal as an indication that the owner now wishes to develop the site. They believe there has been sufficient high density development in this area and that any further development of this nature would not be in the interests of existing residents. The Woods have advised that they do not wish to be heard.

4.4 In accordance with the requirements of the Resource Management Act, a summary of submissions was publicly notified on 28 October 2006 and further submissions invited. One further submission was received, from WIN. In their further submission, which is appended to this report as **Attachment C**, they emphasise their role as a growth, healing, and resource centre for women, their need for a central city location, and the fact that they have no intention of either moving their location or changing the use of the property. They state that their interest is in holding the former owner of the property (Nelson City Council) to the full terms of the purchase agreement made many years ago.

5. Evaluation

5.1 WIN negotiated a sale and purchase agreement over an extended period on the understanding that the zoning was Residential, as confirmed by the exchange of letters in 1995. It did not lodge submissions in response to the Council submission and on the face of it seemed not to have known of the proposal to rezone to 'Open Space Recreation'.

5.2 The creation of new titles late in 1996 occurred close to the notification of the Proposed NRMP and staff interestingly used an old legal description in the Council submission. The NRMP as Operative in part at 1 September 2004 also fails to use the new legal descriptions for 44 Trafalgar Street even though it purports to give effect to the Council decision on submissions. It could be argued that the schedule at OSs.4 p11-8 is in conflict with the planning map 10 in that the planning map includes land not identified in the schedule.

5.3 The effect of rezoning freehold title to 'Open Space Recreation' is to create a situation wherein an otherwise unencumbered title is restricted in the potential use and

development of the land to an extent not shared by otherwise similar land on Trafalgar Street, and land within the 'Residential (Higher Density)' zone. The range of permitted activities in the 'Open Space Recreation' zone reflects the zone's purpose being service buildings, aerials, play equipment, and activities permitted by a management plan and the like. A 'Residential (Higher Density)' zoning is more appropriate for a privately owned building which was used for residential purposes in the past and, in the event that the property is ever sold, may again be in the future. The activity occurring on site sits well within a residential zone and is unlikely to cause any conflict. The Council records show no evidence of complaints from neighbouring residents.

- 5.4 There is a potential issue in that the Council, having accepted, heard and upheld a submission lodged by itself, has potentially protected its own interests as the owner of Trafalgar Park when the landowner of a private title was not consulted directly on the matter. This is compounded by the submission being a late submission. On the face of it there has not been a clear separation of Council roles here.
- 5.5 WIN has the ability under s85 of the Resource Management Act 1991 to challenge any provision in a plan that renders an interest in land incapable of reasonable use through an application to change the NRMP. The general thrust of the Act is to enable people to make use of their land in a reasonable manner. The identity or characteristics of the landowner are not relevant; it is the potential use of the land that is the issue. The consent process should not be used to address a circumstance where reasonable use is limited or fettered by the NRMP.
- 5.6 The Council had limited options open to it in redressing issues of the past. It is clear that it has recognised that it has a moral obligation to ensure that the appropriate zoning is reinstated, and has recognised the risk of a potential Environment Court challenge if the zoning is left unaltered. On balance, a Plan Change represents the only effective way to resolve the issue.
- 5.7 The sole submission in opposition to the Plan Change, from B & J Woods, does not accept the justification for the change. Their concern centres on the likelihood that this is a thinly disguised excuse to develop the site, to the detriment of existing residents.
- 5.8 Given the history of the site, the role of the WIN organisation, and the statement made in WIN's 'further submission', it is difficult to envisage the concerns expressed in the Woods submission becoming a reality. In any event, the history of this site might be considered sufficient on its own account to justify a change of zoning. The activity at the site is lawfully established by resource consent, and the proposed change involves no changes to objectives, policies, or rules in the Plan. A minor map amendment is the only change to the Plan that is required. Accordingly, the effects of the change are considered to be minor.

6. Resource Management Considerations

- 6.1 Part II of the Resource Management Act sets out the purposes and principles of the Act. Section 5 defines the purpose of the Act as: "*to promote the sustainable development of natural and physical resources*", which, in respect of the proposed change, means "*avoiding, remedying, or mitigating any adverse effects of activities on the environment.*" It is not considered that allowing Plan Change 06/02 would contravene the provisions of Section 5 of the Act.
- 6.2 The Section 32 analysis that accompanied the Plan Change acknowledged that the Council was acting to rectify an incorrect decision on the zoning of the subject land. It concluded that the Change did not involve amendments to existing objectives, policies, or rules, and that a Plan Change was the most appropriate way to achieve this end. After

considering the submissions lodged in respect of the Proposed Change, I am still of the opinion that the zoning should be changed by way of plan change and that there are no resource management considerations that would suggest that the change should not be allowed.

7. Staff recommendation

- 7.1 I recommend that the Hearings Committee accept the submission and further submission from Women in Nelson, reject the submission of B & J Woods, and recommend to the Council that Plan Change 06/02 be adopted.

8. Recommendation

THAT the submission and further submission of Women in Nelson (WIN) be accepted.

AND THAT the submission of B & J Woods be rejected

AND THAT the Hearings Committee recommend to the Council that Plan Change 06/02 be adopted.

John Pattison

Policy Planning Advisor