

18 August 2006

The Chairman and Councillors
Environment Committee

PRIVATE PLAN CHANGE P05/05 - PROCESS

1. Reason for report

- 1.1. To decide how to process private plan change P05/05 under the First Schedule of the Resource Management Act 1991 (RMA).

2. Background

- 2.1. Private plan change P05/05 was lodged by Solitaire Investments Ltd with the Council in December 2005 for rezoning in the Stoke Foothills, between Marsden Valley and Ngawhatu Valley. Further information was requested by Council, which was received and assessed as meeting the Council's request. The plan change text and a map of the area showing the proposed rezoning is attached (Attachment 1).
- 2.2. Plan change P05/05 is separate from the two other private rezoning plan changes lodged for the Stoke Foothills and Ngawhatu Valley, which have been notified, and submissions closed on 24 July 2006. The location of the areas covered by the three plan changes is shown in Attachment 2.
- 2.3. Clause 25 of the First Schedule of the RMA (Attachment 2) provides for up to 30 working days from the date of receiving all further information for Council to make the decision sought at this meeting, i.e. to decide how to process the plan change. Further information was submitted on 30 June 2006. Although the 30 day statutory timeframe has passed, staff have, with agreement of the applicants, extended this timeframe in accordance with the RMA to the maximum permitted extension of 60 working days. The 60 working days statutory timeframe for making a decision on processing the plan change expires on 22 September 2006.

3. Consultation

- 3.1. This decision does not require any consultation with other parties. The public's opportunity to submit on this plan change will occur if the Committee decides to accept the plan change for notification.
- 3.2. There is an obligation on the applicants under Clause 3 of the First Schedule of the RMA to consult with the following parties:
 - a) Minister for the Environment (MfE)
 - b) Any other ministers who may be affected
 - c) Local authorities who may be affected
 - d) Tangata whenua of the area
 - e) Board of any foreshore and seabed reserve in the area.

- 3.3. The applicant has confirmed that it has consulted with statutory parties (a), (c) (being MfE and TDC) and (d) (being the NIRMAK Committee). Parties (b) and (e) do not apply in this case. As such the applicant has met the consultation requirements of Clause 3.
- 3.4. Extensive pre and post application consultation has been undertaken between the applicant and Council officers. This has resulted in changes to the original application to take into account initial feedback from Council officers.
- 3.5. Discussions have also been held between the applicant, Council staff and the adjoining landowner in Marsden Valley (McLaughlin). The McLaughlin family has an interest in this application as their property is adjacent to the application site (see Attachment 2). These discussions confirmed that the extent of integration between the plan change and the McLaughlin’s property is limited.

4. Funding

- 4.1 Council’s funding policy provides for a 95% cost recovery of private plan changes from plan change applicants. Provision has been made for the 5% Council contribution, provided as staff time.
- 4.2 If Council was to adopt this plan change as its own, then it would incur 100% of the preparation and processing costs. This has not been budgeted and is discussed in more detail under “options”.

5. Views and preferences of interested or affected persons

- 5.1. The applicants have been advised of the recommendations in this report, and concur. Views of affected parties will be considered through the statutory submission process.

6. Significance of Decision

- 6.1 This is not a significant decision for Council as it relates only to process, rather than the merits of the plan change. The merits of the plan change will be assessed at a later date through the officer recommendation and decision process.

7. Relevant Council policies

- 7.1 There are no Council policies relevant to this decision, which relates to a statutory RMA process.

8. Options

- 8.1 Clause 25 of the First Schedule to the RMA (see Attachment 3) provides Council with the options for rejecting the request in Table 1. Note that these are matters of discretion, i.e. Council *may* reject on the basis of one or more of the following grounds, but is not obliged to reject because one or more conditions apply.

Table 1: RMA Reject Conditions

Reject Conditions (clause 25(4))	Assessment	Applicable
(a) Request is frivolous or vexatious	The plan change is considered a serious request, and is neither frivolous nor vexatious.	No
(b) Request has been considered by the Environment Court in the past 2 years	The plan change has not been before the Environment Court.	No
(c) Request is not in accordance with sound resource management practice	This request has been professionally prepared, and is considered to represent sound resource management practice.	No
(d) Request would make the Nelson Resource Management Plan (NRMP) or	Changes are proposed to the RM Plan as part of the plan change. It is considered that these changes will	No

Reject Conditions (clause 25(4))	Assessment	Applicable
Regional Policy Statement inconsistent with the purpose of the RMA	not make the RM Plan or Regional Policy Statement inconsistent with the purpose of the RMA.	
(e) The RM Plan has been operative for less than 2 years	The RM Plan has been operative for less than 2 years. However, the Environment Committee resolved at its meeting of 7 February 2006 not to invoke this clause.	No

8.1. It is the assessment of Council staff that there are no grounds for rejecting the plan change.

8.2. Options for accepting the plan change under the First Schedule are set out in Table 2.

Table 2: RMA Accept Options

Accept Options	Advantages	Disadvantages
(1) Adopt the plan change as Council's own (Cl.25(2)(a) First Schedule)	<ul style="list-style-type: none"> (a) May provide for better integration between the plan change and Council asset management plans and other strategies and plans. (b) Allows Council full discretion to modify the plan change. (c) May better ensure the style and approach of the change is consistent with the NRMP. 	<ul style="list-style-type: none"> (a) Council would be 100% financially responsible for all processing costs. These could be at least \$15,000, not including appeals. (b) Still requires notification within four months, so limited opportunity to link with other Council processes (eg. NUGS, transport planning) (c) There is limited opportunity to synchronise with other Council plan changes which have not yet been programmed.
(2) Accept the plan change as a private plan change and prepare the plan change in consultation with the person who made the request (Cl.25(2)(b) First Schedule)	<ul style="list-style-type: none"> (a) Council retains statutory authority to accept, reject or modify the plan change through the public process. (b) Council still makes the final decision on the plan change. (c) Applicants bear 95% of all processing costs. (d) The applicant is promoting a private plan change which will also contain some intrinsic public benefits e.g. improved walking connections, expanded living choices. (e) The applicant has indicated that this is their preference. (f) Savings in staff time. 	<ul style="list-style-type: none"> (a) The plan change may not be as well integrated with strategic planning processes.
(3) Deal with the plan change as if it were an application for resource consent	<ul style="list-style-type: none"> (a) None 	<ul style="list-style-type: none"> (a) The proposal is of a scale and nature contrary to some of the objectives and policies of the plan. This is not a feasible option.

8.2 The two feasible options are adopt as Council's own plan change, or accept as a private plan change.

8.3 On the face of it, adopting as Council's own plan change would provide the best strategic planning option, as it would allow the council to better integrate the rezoning with other

strategic land use decisions. However, the plan change has been lodged ahead of Council making firm decisions on strategic zoning changes. Neither the Nelson Urban Growth Strategy or the Corridor study have been finalised or adopted. Staff are therefore not in a position to know what the final preferred future land use zoning choices are. The statutory requirement to notify the plan change within 4 months of receiving all further information is likely to happen before any Council plan changes can be programmed.

- 8.4 A further consideration is that the degree of integration between this plan change and adjoining land is limited by topography, zoning and physical features. In particular, topography limits the extent of integration with development on Chings Flat (McLaughlin property). Given these limitations, the plan change is able to be processed as a ‘stand alone’ plan change without unduly compromising the ability to create integrated development.
- 8.5 Processing this plan change as Council’s own would require Council to fund the process. This could be at least \$15,000 if outside resources were utilised, or would mean reallocation of staff resources if processed in-house. Neither of these has been budgeted for.

9. Staff recommendation

- 9.1. It is recommended that plan change P05/05 be accepted as a private plan change for the following reasons:
- i) The Plan Change has been lodged ahead of Council’s decisions on future land use options, which limits the opportunity to integrate with Council processes.
 - ii) The plan change is able to be processed and considered on its own merits and still provide for integrated development with adjacent land uses.
 - iii) Processing as a private plan change will incur reduced processing costs for Council.
 - iv) The landowner involved has demonstrated a collaborative and cooperative approach which will simplify processing.
 - v) Council will retain significant influence on the outcome, through the submissions and hearings process. Council also retains the task of deciding on whether to accept, reject or modify the plan change as lodged.
 - vi) The applicants have expressed a preference for processing as a private plan change.

10. Delegations Register reference

- 10.1 *87. Power to hear, consider and determine submissions on policy issues arising from the preparation, operation, change or review of the Nelson Resource Management Plan ...*
- 90. Power to set the priorities for the preparation or review of the NRMP under the RMA 1991, and to confirm for public notification and submission discussion documents, strategies, variations and plan changes – First Schedule, RMA*
- 91. Power to determine procedural matters relating to the preparation, review, or changes to a plan or policy statement under the Resource Management Act, 1991.*

11. Recommendation

1. ***THAT*** plan change P05/05 be accepted under Clause 25(2)(b) of the First Schedule to the Resource Management Act 1991, as a private plan change.

2. ***And that Plan Change P05/05 be notified as soon as practicable.***

V R Altmants
Chief Executive
MW: RJ

ATTACHMENT 1: Private Plan Change P05/05 text and proposed rezoning map

ATTACHMENT 2

ATTACHMENT 3

Copy of Clause 25 of the First Schedule to the RMA

25. Local authority to consider request

(1) A local authority shall, within 30 working days of—

- (a) Receiving a request under clause 21; or
- (b) Receiving all required information or any report which was commissioned under clause 23;
or
- (c) Modifying the request under clause 24—

whichever is the latest, decide under which of subclauses (2), (3), and (4), or a combination of subclauses (2) and (4), the request shall be dealt with.

(2) The local authority may either—

- (a) Adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself and, if it does so,—
 - (i) The request must be notified in accordance with clause 5 of this Schedule within 4 months of the local authority adopting the request; and
 - (ii) The provisions of Part 1 of this Schedule must apply; and
 - (iii) The request has effect once publicly notified; or
- (b) Accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26.

(3) The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part 6 shall apply accordingly.

(4) The local authority may reject the request in whole or in part, but only on the grounds that—

- (a) The request or part of the request is frivolous or vexatious; or
- (b) The substance of the request or part of the request has been considered and given effect to or rejected by the local authority or [[Environment Court]] within the last 2 years; or
- (c) The request or part of the request is not in accordance with sound resource management practice; or
- (d) The request or part of the request would make the policy statement or plan inconsistent with Part 5; or
- (e) In the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.

(5) The local authority shall notify the person who made the request, within 10 working days, of its decision under this clause, and the reasons for that decision.