



McFADDEN McMEEKEN PHILLIPS
L A W Y E R S

8 August 2012

The Chief Executive
Nelson City Council
PO Box 645
NELSON 7040

By Fax: 546 0239

MICHAEL JAMES LOWE and MAIRA-LOUISA LOWE and CHRISTOPHER DANIEL STRONG, PETER STEPHENSON FRY, NIGEL ALEXANDER MCFADDEN and PHILIPPA JANE MCFADDEN (AS TRUSTEES OF THE MCFADDEN FAMILY TRUST) v NELSON CITY COUNCIL - PLAN CHANGE 18

We act for Michael James Lowe and Maria-Louisa Lowe the owners of 3C Hill Street, Richmond, Nelson, and Christopher Daniel Strong, Peter Stephenson Fry, Nigel Alexander McFadden and Philippa Jane McFadden (as Trustees of the McFadden Family Trust) the owners of 3B Hill Street, Richmond, Nelson.

We have received instructions to lodge a Notice of Appeal against decisions made by the Council in relation to Plan Change 18 to the Nelson Resource Management Plan.

Accordingly please find **enclosed** a copy of the Notice of Appeal which has now been filed with the Environment Court.

Yours faithfully
McFADDEN McMEEKEN PHILLIPS

Victoria Hall
Partner

Victoria@mmp.co.nz

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RICHMOND OFFICE 6 Florence Street, PO Box 3846, Richmond 7050, Phone: 03 544 9845, Fax 03 544 8693
TAKAKA OFFICE Commercial Street, Takaka, Phone: 03 525 0020 (visiting fortnightly)

IN THE ENVIRONMENT COURT

ENV-2012-WLG-

IN THE MATTER OF

an Appeal under Clause 14(1) of the First Schedule to the Resource Management Act 1991

BETWEEN

**MICHAEL JAMES LOWE and
MARIA-LOUISA LOWE and
CHRISTOPHER DANIEL
STRONG, PETER
STEPHENSON FRY, NIGEL
ALEXANDER McFADDEN and
PHILIPPA JANE McFADDEN (as
Trustees of the McFADDEN
FAMILY TRUST)**

Appellants

AND

NELSON CITY COUNCIL

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON
PLAN CHANGE 18 TO NELSON RESOURCE MANAGEMENT PLAN**

Clause 14(1) of Schedule 1, Resource Management Act 1991

McFADDEN McMEEKEN PHILLIPS
SOLICITORS
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NELSON

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Person Acting: V J Hall

To: The Registrar
Environment Court
WELLINGTON

- 1 **MICHAEL JAMES LOWE and MARIA-LOUISA LOWE and CHRISTOPHER DANIEL STRONG, PETER STEPHENSON FRY, NIGEL ALEXANDER McFADDEN and PHILIPPA JANE McFADDEN (as Trustees of the McFADDEN FAMILY TRUST)**, appeal against a decision of the Nelson City Council on Plan Change 18 (Nelson South) to the Nelson Resource Management Plan.
- 2 **MICHAEL JAMES LOWE and MARIA-LOUISA LOWE and CHRISTOPHER DANIEL STRONG, PETER STEPHENSON FRY, NIGEL ALEXANDER McFADDEN and PHILIPPA JANE McFADDEN (as Trustees of the McFADDEN FAMILY TRUST)** made a submission on that Plan Change.
- 3 The decision is dated the 30th June 2012 and was received by the Appellants' on or about the 1st July 2012.
- 4 The decisions were made by five Hearing Commissioners on behalf of the Nelson City Council.
- 5 The part of the decision appealed against is as follows:

5.1 **Topic 2 – Esplanade Reserve Width**

1. Plan Change 18 introduced a new Rule in relation to Saxton Creek (from the south eastern boundary of Saxton Field Recreation Reserve to Champion Road) requiring that a 20 metre esplanade reserve be taken on both banks of Saxton Creek except where adjoining land already has subdivision approval for a different esplanade reserve and where Saxton Creek adjoins the right of ways to 3A, 3B, 3C and 3D Hill Street respectively – a 5 metre esplanade reserve width was to apply to the river bank on the right of way side.
2. The Appellants are the owners of 3B and 3C Hill Street. The Appellants opposed the requirement that a 5 metre esplanade reserve be taken along their side of Saxton Creek upon any subdivision being undertaken of adjoining land. The 5 metre esplanade reserve would be wholly located within an existing right of way with a width of six metres which provides the only physical access to the Appellants' properties (and properties located at 3A and 3D Hill Street).

3. Plan Change 18 also rezoned the land located at 3A, 3B, 3C and 3D Hill Street from Rural to Rural-Higher Density Small Holdings Area. That rezoning was not opposed by the Appellants, or any other party.
4. The decision of the Hearing Commissioners was to retain the requirement that a 5 metre esplanade reserve be taken on the Appellants' properties side of Saxton Creek and reject the submissions made by the Appellants.
5. The Appellants oppose the requirement that a 5 metre esplanade reserve be taken on the Appellants' properties side of Saxton Creek.
6. It is considered that the presence of an existing right of way running alongside Saxton Creek, within which the esplanade reserve would be wholly located, would lead to conflict between the uses provided for as an esplanade reserve and the uses preserved by the terms of the right of way.
7. As the right of way provides the only physical access to properties located at 3A, 3B, 3C and 3D Hill Street, it is also considered that the esplanade reserve requirement may well preclude opportunities for development of this land.

5.2 **Relief Sought**

Delete the requirement contained in Appendix 6, Table 6.2 that requires an Esplanade Reserve of 5 metres along side Saxton Creek where the Creek adjoins the right of way to 3A, 3B, 3C and 3D Hill Street.

5.3 **Topic 3 – Amendments to and extent of Services Overlay**

1. Plan Change 18 introduced a Services Overlay over the land rezoned both Residential and Rural – Higher Density Small Holdings Area through the Plan Change. The purpose of the Services Overlay being “to ensure the adequate and orderly provision of infrastructure services to these areas.”
2. The Appellants opposed the introduction of the Services Overlay over the land at 3A – 3D Hill Street and sought that it be deleted. The reason for the opposition was that the land at 3A – 3D Hill Street has been rezoned Higher Density Small Holdings Area through Plan Change 18 and will not be serviced with reticulated services.

3. The decision of the Hearing Commissioners was to retain the Services Overlay over the Rural-Higher Density Small Holdings Area and reject the Appellants' submissions.
4. The Appellants' oppose the Services Overlay over 3A – 3D Hill Street. Given the rezoning of the Appellants' land as Rural-Higher Density Small Holdings Area the subdivision potential of the land is necessarily constrained such that any potential allotments would be approximately 1 hectare in area and therefore of a size where services can be adequately dealt with on site. It is considered that the imposition of a Services Overlay is both unnecessary and provides a further level of control on the development of the land that will impede efficient development.

5.4 **Relief Sought**

Delete the Services Overlay from the land at 3A – 3D Hill Street, Richmond, Nelson.

5.5 **Topic 8 – Road Links/Connections**

1. The Appellants sought that Plan Change 18 provide for indicative roading over the area of land between Champion Road and 3A – 3D Hill Street. It was submitted that if the properties at 3A – 3D Hill Street are to be developed and subdivided as envisaged by Plan Change 18 then Plan Change 18 should also provide for an indicative roading connection from Champion Road to serve those properties. A plan was produced at the Hearing showing the proposed location of the indicative road.
2. The decision of the Hearings Committee was to reject the Appellants' submission.
3. The Appellants' consider that if the purpose of Plan Change 18 is to be achieved it is essential that an indicative road is shown linking the properties at 3A – 3D Hill Street with Champion Road.

5.6 **Relief Sought**

Provide an indicative road over the area of land between Champion Road and 3A – 3D Hill Street as part of Plan Change 18.

6 The Appellants' seek the following relief:

- (a) The relief set out herein and any consequential amendments to Plan Change 18 as may be required to provide for the relief herein.
- (d) The costs of this appeal.
- (e) Such further or other relief that the Environment Court deems just.

7 The following documents are attached to this notice:

- (a) A copy of the Appellants' submissions;
- (b) A copy of the relevant decision;
- (c) A list of names and addresses of persons to be served with a copy of this notice.

MICHAEL JAMES LOWE and MARIA-LOUISA LOWE and CHRISTOPHER DANIEL STRONG, PETER STEPHENSON FRY, NIGEL ALEXANDER McFADDEN and PHILIPPA JANE McFADDEN (as Trustees of the McFADDEN FAMILY TRUST)

By their solicitors and duly authorised agents

McFadden McMeeken Phillips

Per: _____

V J HALL

Dated 9th day of August 2012

Address for service of appellant:-

At the offices of McFadden McMeeken Phillips, Solicitors, PO Box 656, Nelson

Telephone: 03 – 548 2154

Fax: 03 – 548 2157

Email: Victoria@mmp.co.nz

Contact person: Victoria Hall

Advice to recipients of copy of notice of appeal*How to become party to proceedings*

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after this notice was lodged with the Environment Court. You may apply to the Environment Court under s 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

**How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission (or the decision (or part of the decision)) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington, or Christchurch.

Contact details of Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar

The Auckland address of the Environment Court is:

8th Floor, District Court Building
3 Kingston Street
Auckland

Its postal address is:

PO Box 7147
Wellesley Street
Auckland

And its telephone and fax numbers are:

Telephone: (09) 916 9091
Fax: (09) 916 9090

The Wellington address of the Environment Court is:

The District Court Building
43-49 Balance Street

Wellington

Its postal address is:

PO Box 5027

Lambton Quay

Wellington

And its telephone and fax numbers are:

Telephone: (04) 918 8300

Fax: (04) 918 8303

The Christchurch address of the Environment Court is:

83 Armagh Street (Corner Durham Street)

Christchurch

Its postal address is:

PO Box 2069

Christchurch

And its telephone and fax numbers are:

Telephone: (03) 962 4170

Fax: (03) 962 4171

Names and Addresses of Persons to be Served with a Copy of the Notice of Appeal:

The Chief Executive Officer
Nelson City Council
PO Box 645
NELSON 7040

As per **attached** list of Submitters.

Address for Service of Submitters

Plan Change 18 (Nelson South)

Sub No	Submitter Name	Submitter Address
1	Tiakina Te Talao Limited	C/o Hugh Briggs PO Box 13 Nelson 7040
2	New Zealand Fire Service Commission	C/o Alexandra Rielly Beca Carter Hollings & Ferner Ltd PO Box 3942 Wellington 6140
3	Paul S Winter	C/o Simon Jones Jones & Associates Ltd PO Box 562 Nelson
4	Michael & Maria-Luisa Lowe	C/o McFadden McMeeken Phillips Solicitors 187 Bridge St (PO Box 656) Nelson
5	CD Strong, PS Fry, NA McFadden and PJ McFadden	C/o McFadden McMeeken Phillips Solicitors 187 Bridge St (PO Box 656) Nelson
6	DJ Sutton, LA Sutton and SJ Sutton	C/o McFadden McMeeken Phillips Solicitors 187 Bridge St (PO Box 656) Nelson
7	RG Griffin Children's Trust	C/o J McNae Staig & Smith Ltd PO Box 913 Nelson 7010
8	KN and DG Smith	C/o J McNae Staig & Smith Ltd PO Box 913 Nelson 7010
9	New Zealand Transport Agency	PO Box 5084 Lambton Quay Wellington 6145
10	Peter & Andrea Hamilton	C/o McFadden McMeeken Phillips Solicitors 187 Bridge St (PO Box 656) Nelson
11	Tasman District Council	C/o Steve Markham Manager Policy Tasman District Council Private Bag 4 Richmond 7031
12	Department of Conservation	C/o Jo Gould - Community Relations Manager - Nelson / Marlborough Conservancy Department of Conservation Private Bag 5 Nelson 7040
13	John Gray Sutherland	135 Champion Richmond Nelson
14	Julian Raine	C/o Tony Quickfall ViaStrada 19 Halifax St (PO Box 1583) Nelson