

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14 of the First  
Schedule to the Act

BETWEEN GIBBONS HOLDINGS LIMITED AND  
FULTON HOGAN LIMITED  
(ENV-2012-WLG-000086)

Appellants

AND NELSON CITY COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge B P Dwyer sitting alone pursuant to section 279 of the Act.

IN CHAMBERS

#### CONSENT ORDER

##### *Introduction*

[1] The Court has read and considered the appeal and the parties' memorandum received 6 August 2013.

[2] No person gave notice of an intention to become a party under section 274.

[3] The Court is making this order under section 279(1)(b) of the Act, such an order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for the present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order; and
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Act, including in particular Part 2.



*Order*

[4] The Court orders, by consent, that the Nelson Resource Management Plan be amended in accordance with the attached document setting out the amendments agreed by the parties.

[5] The appeal is otherwise dismissed.

[6] There is no order as to costs.

DATED at Wellington this 22<sup>nd</sup> day of August 2013

\_\_\_\_\_  
B P Dwyer  
Environment Judge



## Attachment to Consent Order for ENV-2012 WLG 086

### Chapter 2, Meanings of Words, Nelson Resource Management Plan

'Generally Accord'. For the purpose of interpretation of any rules relating to Structure Plans, the term "generally accord" shall mean that items shown on these plans must be provided for in the general locations shown within the development area and with linkages to each other or adjoining areas as shown in the Structure Plan except for the indicative education facility in Marsden Valley Schedule I (Clause I.6). It is not intended that the positions are exact or can be identified by scaling from the Structure Plan; it is intended that any connections between points are achieved or provided for with no restrictions. The final location will depend upon detailed analysis of the physical suitability of an alignment (including the presence of existing natural features and ecological sensitive habitats such as streams where providing for Biodiversity Corridors), other servicing implications, appropriate location in respect of final residential development layout and amenity, costing considerations, and impact on other land uses. The key proviso is that the items on the Structure Plan must be provided for, and that any connections must occur or be able to occur in the future.

### Chapter 3, Administration, AD11.4A Structure Plans

AD11.4A.vi: Subdivision applications are to show how they provide for items on a Structure Plan including those listed in AD11.4A.v a) - d). In relation to location these items are generally shown "indicatively" on the Structure Plan as they show an intent rather than precise location for those features. This may be shown by way of an indicative line or through the use of text. These then form a matter of control which the Council will exercise as part of any subdivision consent process. It is intended that this provides an element of design flexibility to meet both the objectives of the Council and the developer, but while still achieving the overall objective of integrated and sustainable urban resource management and development.

AD11.4A.vii: The Council acknowledges that the indicative connections may not directly serve or enhance a particular subdivision, for example where shown, or described, within a balance area. This, along with the formation and management of public use of certain connections, may also be at odds with farming, rural industry (including quarrying) or other legitimate rural land use practice activities on adjoining land. The Council will in those cases work with the land owners and any other landowners that may be affected in determining the appropriate time and method to provide the items described in AD11.4A.v or to set aside land upon subdivision for those purposes. In the interim, the objective will be to avoid activities and structures on the land which would compromise the future attainment of those connections or corridors. Any walkways/cycleways through the Rural Zone shown, or described, on a Structure Plan will only be opened by the Council for public use when network connection has been secured to other walkways, cycleways or roads, or when otherwise agreed by the adjacent landowners. The Council must at that time, where requested and in consultation with adjacent land owners, set in place a management regime to minimise any adverse effects on adjoining land.

AD11.4A.viii: For the purpose of interpretation of any rules relating to Structure Plans, the term "generally accord" shall mean that items on these plans must be provided for in the general locations shown, or described, within the development area and linking to adjoining areas as shown in the Structure Plan except for the indicative education facility in Marsden Valley Schedule I (Clause I.6). It is not intended that the positions are exact or can be identified by scaling from the Structure Plan. It is intended that connections between points are achieved or provided for with no restrictions. The final location will depend upon detailed analysis of the physical suitability of an alignment (including the presence of existing natural features and ecological sensitive habitats such as streams where providing for Biodiversity Corridors), other servicing implications, appropriate location in respect of final residential



development layout and amenity, costing considerations, and impact on other land uses. The key proviso is that the items on the Structure Plan must be provided for, and that any connections must occur or be able to occur in the future.

#### **Chapter 5, Policy DO10.1.7 Pedestrian and Bicycle Traffic, Methods**

DO10.1.7.viii: Within the Rural Zone in particular, recognise and promote management practices, placement, and construction of public walkways and cycleways that minimise the potential for cross-boundary effects, in liaison with adjoining land owners.

#### **Chapter 5, Policy DO14.3.1 Roads and Traffic**

- f) providing for, or avoiding impediment, to future road, walkway and cycleway linkages where these are shown, or described, indicatively on Structure Plans or within the Planning Maps.

#### **Chapter 7, REr.107.2 Subdivision**

xvii) For areas subject to a Structure Plan, the matters contained on those including:

- the provision of adequate road, walkway and cycleway linkages, 'greenspace' and Biodiversity Corridors with appropriate connections within the subdivision and to adjacent land, as defined by the indicative routes shown, or described, in the Structure Plan or within the Planning Maps;
- any specific rules, schedules or other notations shown, or described, on the Structure Plan as applying to that land.

#### **Chapter 12 Rural Zone, RUd.6**

... Higher Density Small Holdings areas have been provided to the rear of the Residential Zone at Ngawhatu, Marsden and Enner Glynn Valleys, adjoining the Rural farmland on the southern boundary of the land at Ngawhatu and near the entry to Marsden Valley. This zoning recognises the limited productive potential of these areas due to their topography and small size, and in the case of the Higher Density Small Holdings area in upper Marsden Valley, the maintenance of the open character of this visible slope. The zoning also allows for clustering of housing to mitigate visual amenity effects, and/or enables a transition from Residential to Rural Zoning. The Small Holdings Area in Enner Glynn Valley will enable a level of development that is compatible with the rural amenity values of the valley, and does not impact on the important regional resources (the landfill site and quarry) in York Valley.

#### **Chapter 12 Policy RU1.3 Management of Effects of Connections on Structure Plans**

Policy RU1.3: Management of Effects of Connections on Structure Plans

The provision for, and development of, road, walkway and cycleway linkages within Rural Zones where these have been identified on Structure Plans, at a time and in a manner that does not result in unreasonable reverse sensitivity effects with other land use activities.

#### **Chapter 12, RUr.28.1 Buildings (All)**

- i) the building does not compromise the achievement of an indicative road or walkway/cycleway shown, or described on a Structure Plan

#### **Chapter 12, RUr.28.4 Assessment Criteria**

- q) the effects on road and walkway/cycleway connectivity where the building is sited on, or close, to an indicative road, or walkway/cycleway shown, or described on a Structure Plan

#### **Chapter 12, RUr.78.2**

For areas subject to a Structure Plan, the matters contained in those including:

- the provision of adequate road, walkway and cycleway linkages, 'greenspace' and Biodiversity Corridors with appropriate connections



within the subdivision and to adjacent land, as defined by the indicative routes shown, or described in the Structure Plan or within the Planning Maps;

- any specific rules, schedules or other notations shown on the Structure Plan as applying to that land;
- the timing for land to be set aside and/or timing of construction of indicative roads, walkways and cycleways as it relates to the needs of the subdivision, connectivity objectives for the wider environment, and mitigating cross boundary effects for other land uses.

**Chapter 12, RUr.78.4 ee)**

*The effects of reverse sensitivity, or cross boundary effects, from subdivision, or introduction of public access, in proximity to the regionally significant resource of the York Valley Quarry.*

**Chapter 12, RUr.78.4 bb)**

bb) In Marsden Hills (Schedule V, Chapter 7), Marsden Valley (Schedule I, Chapter 7) and Ngawhatu Higher Density Small Holdings Areas, and between the Enner Glynn Valley and Bishopdale and the Upper Brook Valley (Schedule W), the extent of the provision of pedestrian and cycle linkages between Open Space areas, Residential and Rural Zone - High Density Small Holdings Area neighbourhoods, and neighbouring land, to ensure over time pedestrian and/or cycleway links connect up to the Barnicoat Walkway and extending between and within the Ngawhatu, Marsden, Enner Glynn, Upper Brook and York Valleys or as otherwise indicatively shown, or described on Structure Plans.

**Chapter 12, Schedule W, Enner Glynn and Upper Brook Valley, W.5 Explanation**

The **regionally significant resources** of the landfill and quarry are located in close proximity to the Upper Brook Valley and the York Valley / Enner Glynn Ridge and the potential for reverse sensitivity and cross boundary effects to occur have been recognised. To reduce the potential for these effects to occur, rural zoning has been retained in the Upper Brook Valley and along the York Valley / Enner Glynn Ridge so there is no increase in the development potential of this land adjacent to, and overlooking, the quarry and landfill. In addition the walkway / cycleway required by the structure plan (through rule W.2a) to connect the Brook / Enner Glynn Saddle to Brook Street does not have an indicative route shown. The reason for this is to ensure increased flexibility in the final choice of a suitable route. Route selection will take into account reverse sensitivity with, and effects on, the York Valley Quarry in particular as per Policy RU1.3, Rural subdivision assessment criteria RUr.78.4 p) and the relevant explanations under Chapter 3, AD11.4A.







Chapter 12, Enner Glynn and Upper Brook Valley Structure Plan map

