

13 September 2013

Memo To: Mayor and Councillors

Memo From: Louise Laird, Administration Adviser

**Subject: COUNCIL TO DELIBERATE ON SUBMISSIONS REGARDING
THE POTENTIAL SALE OF LAND FOR COMMERCIAL
DEVELOPMENT – 16 SEPTEMBER 2013
LATE ITEM**

**1. Minutes of the Council Meeting to Hear Submissions to the
Potential Sale of Land for Commercial Development
–12 September 2013**

Document 1595474

3-12

Minutes of the Council meeting to Hear Submissions to the Potential Sale of Land for Commercial Development – 12 September 2013 are attached to be considered as a major late item at this meeting.

These minutes were listed as item 3 on the public agenda for the Council meeting to Deliberate on Submissions regarding the Potential Sale of Land for Commercial Development on 16 September 2013 to ensure elected members were aware that it would be presented to this meeting.

In accordance with section 46A(7) of the Local Government Official Information and Meetings Act 1987 and Standing Order 3.7.5, a procedural resolution is required before a major item that is not on the agenda for the meeting may be dealt with.

In accordance with section 46A(7)(b)(i) the reason why the items were not on the agenda is because they came to hand after the agenda had been distributed.

In accordance with section 46A(7)(b)(ii) the reason why discussion of these items cannot be delayed until a subsequent meeting is because a decision on this matter is required to enable the Council's deliberations on submissions to the Potential Sale of Land for Commercial Development to comply with the decision-making principles as outlined in section 79 of the Local Government Act 2002.

Recommendation

THAT the minutes of the Council meeting to Hear Submissions regarding the Potential Sale of Land for Commercial Development – 12 September 2013 be considered at this meeting as a major item not on the agenda, pursuant to Section 46A(7)(a) of the

Local Government Official Information and Meetings Act 1987, to enable the Council's deliberations on submissions to the Potential Sale of Land for Commercial Development to comply with the decision-making principles as outlined in section 79 of the Local Government Act 2002.

2. Submissions on the Statement of Proposal – Potential Sale of Land for Commercial Development

Document 1592569

13-65

A report titled Submissions of the Statement of Proposal – Potential Sale of Land for Commercial Development is attached to be considered as a major late item at this meeting.

This report was listed as item 4 on the public agenda for the Council meeting to Deliberate on Submissions regarding the Potential Sale of Land for Commercial Development on 16 September 2013 to ensure elected members were aware that it would be presented to this meeting.

In accordance with section 46A(7) of the Local Government Official Information and Meetings Act 1987 and Standing Order 3.7.5, a procedural resolution is required before a major item that is not on the agenda for the meeting may be dealt with.

In accordance with section 46A(7)(b)(i) the reason why the items were not on the agenda is because they came to hand after the agenda had been distributed.

In accordance with section 46A(7)(b)(ii) the reason why discussion of these items cannot be delayed until a subsequent meeting is because a decision on this matter is required to enable Council to consider a time-bound commercial development opportunity.

Recommendation

THAT the public item regarding the Submissions on the Statement of Proposal – Potential Sale of Land for Commercial Development be considered at this meeting as a major item not on the agenda, pursuant to Section 46A(7)(a) of the Local Government Official Information and Meetings Act 1987, to enable Council to consider a time-bound commercial development opportunity.

Minutes of a meeting of the Nelson City Council to hear submissions to the Potential Sale of Land for Commercial Development

**Held in the Council Chamber, Civic House, Trafalgar Street, Nelson
On Thursday 12 September 2013, commencing at 9.02am**

Present: His Worship the Mayor A Miccio (Chairperson), Councillors I Barker, A Boswijk, G Collingwood, R Copeland, E Davy, K Fulton, P Matheson, J Rackley, P Rainey, R Reese, D Shaw, and M Ward

In Attendance: Chief Executive (C Hadley), Executive Manager Support Services/Acting Executive Manager Community Services (H Kettlewell), Executive Manager Network Services (A Louverdis), Executive Manager Kaihautū/Community Relations (G Mullen), Manager Administration (P Langley), Administration Adviser (L Laird)

Apologies: Councillors A Boswijk and E Davy for early departure

1. Interests

Concern was expressed as to the information and comments about the Statement of Proposal for the sale of land at Wakatu Square on His Worship the Mayor's website. It was stated that these comments limited the ability of the Mayor to avoid a biased and pre-determined view of the matter.

Councillor Reese, seconded by Councillor Davy moved a motion

THAT to assist in maintaining public confidence in the process, and in light of his public statements on this matter, the Mayor is asked to withdraw from hearing and deliberating on this Statement of Proposal.

Attendance: the meeting adjourned from 9.07am – 9.11am.

On advice from the Chief Executive, His Worship the Mayor said that the implications expressed through the above motion were not anticipated, and that the hearings should continue with all members present.

The Council discussed the motion and different views were expressed.

Resolved

THAT the motion under debate be now put.

Copeland/Fulton

Carried

The motion was put and a division was called:

| Councillor | |
|------------------------|-----|
| Councillor Barker | Aye |
| Councillor Boswijk | No |
| Councillor Collingwood | No |
| Councillor Copeland | No |
| Councillor Davy | Aye |
| Councillor Fulton | No |
| Councillor Matheson | Aye |
| Councillor Rackley | No |
| Councillor Rainey | No |
| Councillor Reese | Aye |
| Councillor Shaw | No |
| Councillor Ward | No |
| His Worship the Mayor | No |

The motion was lost.

Councillor Collingwood declared an interest with the submission from the Nelson Tasman Kindergartens.

2. Confirmation of Order of Business

Concern was expressed as to the amount of time given to submitters in the hearing schedule. A view was expressed that the amount of time provided was sufficient, and that the hearings should be consistent with other such meetings. A differing view suggested that submitters should have a longer time to present.

Councillor Reese, seconded by Councillor Davy moved a motion

THAT submitters are given sufficient time to present their submissions subject to the material being relevant to the Statement of Proposal.

The motion was put and a division was called:

| Councillor Barker | |
|--------------------------|-----|
| Councillor Barker | Aye |
| Councillor Boswijk | No |
| Councillor Collingwood | No |
| Councillor Copeland | No |
| Councillor Davy | Aye |
| Councillor Fulton | No |
| Councillor Matheson | Aye |
| Councillor Rackley | No |
| Councillor Rainey | No |
| Councillor Reese | Aye |
| Councillor Shaw | No |
| Councillor Ward | No |
| His Worship the Mayor | No |

The motion was lost.

3. Submissions to the Potential Sale of Land for Commercial Development

3.1 Nelson Tasman Kindergartens

Wendy Logan spoke to the submission and highlighted key points on behalf of the Kindergartens. She encouraged the Council to ensure kerbs in the proposed area were of a height that increased safety for children. She also asked the Council to consider the effects of shade, access to Anzac Park, and pedestrian access to Bridge Street and the bus depot when making its decision.

3.2 Hugh Briggs

Hugh Briggs spoke in support of the proposal and tabled additional information (1596202). He commented on the loss of a large amount of open space and questioned the design concept.

In summary, he said he supported the overall concept but asked the Council to consider changes in line with his submission.

3.3 Ken Beckett

Ken Beckett spoke to his submission and emphasised his opinion that the Council should abandon the current proposal.

He expressed concern at the process, and suggested that Council could face judicial review of the process. He noted his opinions that the information around the Statement of Proposal was not made available to the public in a timely manner and that parts of the information were purposefully withheld.

Mr Beckett cautioned the councillors as to their personal liability should the land be sold beneath its valuation.

In response to a question, Mr Beckett said he did not have a particular view as to the development, rather his concerns were about the process. In response to further questions, Mr Beckett said an agreement could constitute correspondence or any other documents.

3.4 John Fitchett Family Trust

John Fitchett said he would support the proposal to sell the land to Windermere Holdings if it was identified to ratepayers that the financial loss of selling the land beneath its valuation price was for the benefit of the Nelson community, in order to ensure a vital anchor store could remain in the central business district.

Mr Fitchett emphasised the importance of an open and transparent process, and encouraged the Council to be proactive.

3.5 The Farmers Trading Company Limited

Michael Power and Ahmed Aessop presented the submission from Farmers Trading Company. Mr Power stated that their submission did not consider whether the land should be sold.

Mr Power outlined the position from Farmers, and said the current arrangement, where Farmers occupied two stores, was inefficient. He said Farmers had been looking for a large single footprint building, ideally in the central business district, for about the last seven years, and that Farmers would prefer to stay close to Trafalgar Street.

Mr Power said Farmers was committed to staying in Nelson but needed a solution to their long term occupancy.

In response to questions, Mr Power provided detail as to the previous options that have been explored, however none have eventuated into a permanent solution. He added that the current draft proposal with Windermere Holdings Limited was the best solution they had seen that accommodated their requirements.

In response to a question, Mr Power said the re-development of their current site did not meet their requirements as well as the current proposal, and re-iterated their preference for a single location close to Trafalgar Street.

3.6 Seddon Marshall

Mr Marshall spoke to his submission and tabled additional information (1596199). He spoke about the importance of having a Council with vision and leadership.

Mr Marshall said he did not support the sale of land and encouraged the Council to reconsider its position that Wakatu Square was not a strategic asset. He also encouraged the Council to maintain adequate car parking spaces in the city.

Mr Marshall briefly spoke about possible contaminants on the proposed site due to historic usage.

3.7 Furama Investments Ltd

David Lyttle spoke to the submission from Furama Investments. He encouraged the Council to carefully consider the urban design effects that the proposed building would have on neighbouring buildings, particularly the possible line of shade cast by the building. He said the proposed building would reduce the options for development of the neighbouring properties.

Mr Lyttle asked Council to ensure that the same amount of land between buildings was afforded to other proposed developments and in accordance with the law.

Mr Lyttle emphasised the possible shortage of parking and suggested that a retail space as proposed would create a high demand for parking. He added that access to buses was important. Mr Lyttle proposed that these issues could be addressed by shifting the building closer to Rutherford Street.

3.8 Rutherford Hotel Nelson/Rutherford Holdings Ltd

Bevan McGillicuddy spoke on behalf of the Rutherford Holdings Board of Directors. He said that the main concern was around the potential loss of car parking should the proposed development of Wakatu Square be approved.

Mr McGillicuddy said the submitters were concerned that parking constraints in Wakatu Square would have flow on effects for users of the Rutherford Hotel conference facilities.

In response to a question, Mr McGillicuddy said the proposed development should include a provision that ensured the maintenance of the current number of car parks.

3.9 Unichem Nelson City Pharmacy

Renata and Tom Schrader spoke to their submission and said their retail business relied strongly on foot traffic created as a result of being located next to Farmers.

The submitters spoke about how the location of Farmers would affect the flow and volume of foot traffic through the central business district, and the effect this would have on other retailers.

Other points of concern to the submitters were the lack of parking, particularly all day parking, and that the proposed sale price was too low.

In response to a question, the submitters said their preference would be for Farmers to remain where they currently are, and that the current building be re-developed to accommodate Farmer's store requirements.

3.10 Scott Gibbons

Scott Gibbons spoke on behalf of the submission from Roger Gibbons. He tabled annex papers (1596191) that detailed concerns with the process, and read these out. Mr Gibbons suggested that the process as it was lacked honesty and transparency, and expressed concern at the potential loss of car parking spaces.

In response to a question, Mr Gibbons said he was not aware that Farmers would only deal with Windermere Holdings, but his concern was largely that no other developers had been consulted on the proposal.

Mr Gibbons said he would provide the Council with a copy of the valuation he had undertaken on the land.

In response to further questions, Mr Gibbons confirmed that in his opinion, Farmers were in live discussions with other developers, and that Gibbons Construction had been in negotiations with Farmers since 2006. He added further that his discussion with Farmers led him to the belief that they would not leave the Nelson central business district.

Mr Gibbons responded to a question about why no development with Farmers had eventuated. He said the development model and funding cap imposed by Farmers restricted options, but he was confident that Gibbons Construction would find a solution.

In summary, Mr Gibbons encouraged the Council to withdraw the proposal and allow other developers that had been involved to follow through with a solution for Farmers.

He added that it was still the opinion of Gibbons Construction that Nelson needed good anchor tenants and that the supply of car parking would remain important for many years to come.

3.11 The New Zealand Institute of Landscape Architects, Nelson Marlborough Branch

Rory Langbridge highlighted the submission from the New Zealand Institute of Landscape Architects and expressed concerns the Institute had with the proposed design concept.

In summary, Mr Langbridge said the Institute supported the proposal, however offered suggested improvements for a quality design outcome. He said the proposed development would impact on the surrounding outdoor urban space, especially the linkages, and asked the Council to ensure the building presented as a 'good neighbour' to its surroundings.

Attendance: Councillor Davy left the meeting at 11.21am

3.12 Adrienne Matthews

Adrienne Matthews spoke to her submission and expressed concern at the current climate of the central business district. Ms Matthews said she believed the central business district was unappealing to residents and needed re-vitalising.

Ms Matthews noted the lack of free car parking as a concern, and said the proposed development would require a large amount of car parking. Ms Matthews encouraged the Council to ensure boutique stores, as opposed to the large franchise stores, remained in the central business district to promote a point of difference.

In summary, Ms Matthews said the proposal went against the greater vision of Nelson, that it was piecemeal and lacked long term vision.

In response to a question, Ms Matthews said Nelson needed a car parking building to ensure people could move around the city easily.

Attendance: Councillor Boswijk left the meeting at 11.40am.

3.13 Topz Shoe Repairs

Don Harris spoke to his submission and said the proposed development would impact negatively on his store. He said the proposed building would create a narrow and dark lane beside his store, thereby reducing its appeal. He also expressed concern about the loss of car parking created by the proposal.

The submitter discussed historic flood events in Wakatu Square.

3.14 Achilles Properties Ltd (and Achilles Properties Ltd and Frivin Ltd)

Attendance: Councillor Collingwood left the meeting at 11.45am

Rob Stevenson spoke to the submission from Achilles Properties Ltd and Frivin Ltd and tabled additional information (1596187). Mr Stevenson expressed concern with the process to date, particularly that the valuation has resulted in a figure higher than that of the current proposal.

Mr Stevenson re-iterated the importance of car parking to the vitality of the central business district.

He said he supported moving Farmers, as they were an important anchor store and Nelson needed to provide both anchor and boutique stores. He added his opinion that the proposed building should be moved to the western edge of the Square as this would improve its amenity value and provide space for a green area.

In summary, the submitter asked the Council to withdraw the proposal and leave it to the new Council to consider. He also asked the Council to ensure local developers had the opportunity to participate in the development.

It was noted that this submission from Mr Stevenson covered the points raised in the submission from Frivin Ltd.

3.15 Gaire Thompson

Nannette Thompson presented the submission on behalf of Gaire Thompson. Mrs Thompson said they did not support the proposal as it did not contribute to the long term viability of the Nelson central business district. She added that it was their opinion that the valuation did not take into account the costs of necessary improvements to car parking that would be required of such a development.

Ms Thompson encouraged councillors to see the effects of such a building on the road frontage of neighbouring buildings, such as shadows and a lack of appeal.

In response to questions, the submitter felt it was a matter the next Council should consider, and that the development should not be limited to only Windermere Holdings.

3.16 Thompson, Daly and Co

Barry Thompson spoke to the submission. He noted his concerns regarding the Wakatu Square site and suggested that any new building in that area should be situated at the Rutherford Street end of the site. He also suggested that it would be preferable to utilise space from Buxton Square to create a new development that joined the two current Farmers' sites on Trafalgar and Bridge Streets.

The submitter outlined his concerns regarding the proposed sale price, what would happen to the current Farmers sites on Trafalgar and Bridge Streets, and the overall level of car parking in the city centre.

In response to a question, the submitter suggested that there would only be a small beneficial 'ripple effect' from the new development to nearby retailers.

3.17 Windermere Holdings Ltd

Paul Smith spoke to the submission. He explained that Farmers had been considering its Nelson central business district location for several years, and had considered numerous offers from developers that had not been suitable. He spoke about the importance of the economic equation being correct prior to any new development taking place, and noted that Windermere Holdings Limited (WHL) would be taking on the contingent risk of refurbishing car parks at the western end of the site, to Council's benefit.

Mr Smith outlined the background to the proposal, and noted that Farmers had identified Wakatu Square as a potential site prior to approaching WHL. He noted the focus that had been placed on urban design, appropriate car parking and the interconnectivity of the development with Trafalgar Street, and emphasised Farmers' preference that the building was as close to Trafalgar Street as possible.

Mr Smith also noted the importance of Council facilitating private investment within the central business district, in order to fortify it against future developments in Richmond and Nelson Junction. He explained the recent Farmers development that had taken place in Pukekohe, and noted the beneficial effects for the local business district there as a result of the development.

In response to questions, Mr Smith said that WHL was happy to consider urban design principles through the development, but noted that doing so would be subject to Farmers' agreement, and to costs being kept within the threshold of the economic equation for the site.

In response to further questions, Mr Smith explained that there had been correspondence and an increasing level of negotiations with Council since late 2012. He said that the written proposal constituted what was currently being consulted on, and that there was no formal sale and purchase agreement at this point.

In response to questions regarding price, Mr Smith explained the way in which price offers were based on the economic equation of the proposed development. He added that WHL would carry a significant cost in demolition and refurbishing car parking at the western end of the site, and added that Council would need to consider whether the benefits to be gained in fortifying the central business district outweighed any potential difference between Council's independent valuation of the land, and the sale price plus the additional costs WHL would be bearing.

In response to questions regarding car parking, Mr Smith explained that WHL would provide financial compensation should there be a decrease in the overall number of car parks available at Wakatu Square. He confirmed that WHL would be willing to work with Council should Council indicate it would prefer to increase the number of car parks available.

In response to questions regarding the effect of the development on other inner city retailers, Mr Smith explained that Farmers had enormous pull power, which tended to rub off on other local properties. He suggested that the overall central business district would also benefit from the regeneration of the current Farmers sites.

Attendance: Councillor Davy returned to the meeting at 1.06pm.

In response to further questions, Mr Smith explained that consideration had not been given to including further storeys with residential apartments on top of the proposed development, and emphasised the differences between developing retail stores and apartment blocks.

3.18 Doug McKee

Mr McKee spoke to his submission. He said the Statement of Proposal did not meet the requirements of such a process under the Local Government Act 2002.

Mr McKee said a valuation should have been undertaken at the start of the process and should have been released to the public at an earlier point. He expressed concern that no other developer had been asked to submit on the proposed development.

Attendance: Councillor Matheson left the meeting at 1.40pm.

In response to a question, the submitter was of the opinion that no deal had eventuated between a developer and Farmers to date due to a shortage of suitable land.

Further to questions about the Statement of Proposal, the submitter said it was lacking in information from the start.

There being no further business the meeting ended at 2.00pm.

Confirmed as a correct record of proceedings:

_____ Chairperson _____ Date

16 September 2013

REPORT 1588542

Submissions on the Statement of Proposal - Potential Sale of Land for Commercial Development

1. Purpose of Report

- 1.1 To provide information to support the consideration of submissions on the 6 August 2013 Statement of Proposal (SOP) – Potential Sale of Land for Commercial Development.

2. Recommendation

THAT the report Submissions on the Statement of Proposal - Potential Sale of Land for Commercial Development (1588542) and its attachments (1572021, 1585025, 1595196, and 1593146) be received;

AND THAT the Council consider and deliberate on all submissions received on the Statement of Proposal – Potential Sale of Land for Commercial Development;

AND THAT the Council decide:

- i. To confirm the proposal as set out in Option 1 the Statement of Proposal - Potential Sale of Land for Commercial Development;***

OR

- ii. To confirm the proposal as set out in Option 1 the Statement of Proposal - Potential Sale of Land for Commercial Development subject to the following conditions;***

OR

- iii. To reject the proposal as set out in the Statement of Proposal - Potential Sale of Land for Commercial Development;***

AND THAT the Council make decisions and give reasons for those decisions on the submissions received on the Statement of Proposal – Potential Sale of Land for Commercial Development;

AND THAT the Council’s decisions on submissions made at this meeting be reported back to Council for adoption.

3. Background

3.1 A Statement of Proposal (the Proposal) was released on 6 August 2013 for consultation via the special consultative procedure (Attachment 1). The proposal in summary is:

- To sell to Windermere Holdings Ltd (WHL) at a price negotiated between Council and WHL two parcels of land within Wakatu Square, as defined in the proposal, for the purpose of developing a retail anchor store to house Farmers Trading Company and approximately 500m² of other retail.
- For WHL, at their cost and to Council standards, to extend the existing public Wakatu Square to the west as shown in the proposal.
- If the replacement carparking for any reason is fewer than the existing number of public parking spaces, WHL will pay Council financial compensation to fund replacement parking in close proximity within the City Centre.
- If WHL for any reason fails to secure Farmers as a tenant, or the proposal fails to proceed as described, the sale would not proceed.

3.2 The report which contained the WHL proposal, the price they offered, and approved the Statement of Proposal for public notification, was considered in public excluded session at the 6 August Council meeting. Although not legally required, on 27 August 2013 the Council resolved to release this report. It was made available on Council’s website, at the Customer Service Centre and at the Libraries. Answers to frequently asked questions were also prepared and made available to the public.

3.3 Submissions closed on 9 September 2013 and 65 written submissions were received. 19 of those submitters made oral submissions to Council at a meeting on 12 September 2013. The submissions are summarised in Attachment 2 and the minutes of the 12 September meeting have been included on the agenda for this Council meeting.

3.4 The Council needs to consider the submissions, and make a decision whether to confirm Option 1 as set out in the Statement of Proposal, reject Option 1, or confirm Option 1 subject to sale and purchase conditions proposed to address issues raised in the submissions.

4. Summary of Submissions

- 4.1 A summary of submissions is in Attachment 2.
- 4.2 25 (38%) of submissions supported or conditionally supported the Proposal; 33 (51%) opposed the Proposal or conditionally opposed it. Seven submissions (11%) did not state a clear position for or against the proposal.
- 4.3 Farmer’s submission to the SOP is if the Wakatu Square option fell through, they would remain in their current locations in the short term, but that “While our preference is to remain with the CBD, we will consider all options presented to us that meet our requirements. This could include moving out of the Nelson CBD if we were unable to find a suitable location within the CBD.”¹

External Advice – Heart of Nelson

- 4.4 Earlier advice to Council from Kobus Mentz of Urbanismplus during development of the Heart of Nelson Strategy was that there was a risk of Farmers leaving the City Centre if it could not find adequate premises and that would be a significant threat to the viability of the City Centre. Similar advice was given by retail expert Mike Cullen, of Urbacity Ltd in his report for Council ‘Nelson Centres Study’.
- 4.5 The Heart of Nelson Strategy saw Wakatu Square as the most suitable location for a large format retail store.

5. Decision Scope

- 5.1 The scope of the decision Council is able to make through deliberations is either:
- to accept Option 1 in the statement of proposal as notified, or
 - to accept Option 1 subject to conditions, or
 - reject Option 1.
- 5.2 The SOP as notified was to seek public comment on Council’s preferred option; Option 1 to sell Area A & B of Wakatu Square to WHL to facilitate the establishment of a retail store to house Farmers, subject to conditions.
- 5.3 A number of submitters discussed alternative locations for the Farmers building, including utilising the land to the west and retaining Wakatu Square as a car park. This is not within the scope of Option 1, and cannot lawfully be part of any decision made on the Statement of Proposal.

¹ This statement is from Farmers written submission.

- 5.4 In making a decision on what the preferred option was for public notification, Council considered three other options. The scope of Council’s decision is to adopt Option 1(with or without conditions) or reject it. If one of the other three options is sought to be pursued, then this Statement of Proposal is required to be rejected and a new Statement of Proposal considered for the different preferred option.

6. Price and Valuation

- 6.1 The potential sale price and the valuation were not part of the Statement of Proposal. The Council did not consult the public on the sale price in relation to a valuation. The Council consulted on preferred Option 1: to sell Area A & B of Wakatu Square to WHL to facilitate the establishment of a retail store to house Farmers.
- 6.2 In essence the consultation was about facilitating Farmers, the last retail anchor store in Nelson Central City, to remain in the city centre by selling Windermere Holdings the land to enable this to occur and while remaining neutral with respect to public carparks by requiring that Windermere construct a new carpark to the west. Council did not seek public views on the sale price. The proposal is not about maximising commercial gain from sale of property as would be a private developers’ motivation. Rather it is about balancing the social, economic and cultural benefits to the City Centre from retaining a large retail anchor store, without significant loss of public car parks and through obtaining a reasonable purchase price.
- 6.3 Report 1547583 Potential Sale of Land for Commercial Development stated that Council had not commissioned an independent valuation and that the price is slightly lower than it should be (anywhere between \$154,000 and \$770,000). A valuation has since been obtained which is \$750k higher than the sale price. A submitter has also obtained a valuation which was presented² at the hearing as being \$1million higher than the sale price. Valuations have to be considered in conjunction with the brief to the valuer, and the clauses they are subject to (i.e. does not include investigation into extent of contamination).
- 6.4 Under the Proposal WHL is funding the development of the new car park at the west of Wakatu Square. This is estimated to cost \$500,000 to \$700,000 for demolition of the Hunting and Fishing building, land preparation, stormwater, landscaping and lighting and is at WHL’s risk. The value of this work was not considered in the valuation obtained by Council.
- 6.5 Originally the proposal had WHL paying Council an additional \$500,000 to cover the cost of Council developing the new car parks. However, Council had concerns that it might cost more than this. WHL opted

² This valuation has not been sighted at the time of writing this report.

instead to bear this cost itself. This is considered a better outcome than Council having to contract the work and bear the risk.

- 6.6 The value of the land is only what a purchaser is willing to pay. A number of historical proposals for the site have included higher, multi use and carpark building developments. Some submitters at the hearing said the land was worth more, with one saying they could sell it easily for the higher valuation. But that price may not be paid for a development including a large anchor retailer.
- 6.7 The proposal that the Council has in front of it is for purchase of a particular piece of land (Areas B & C) for a particular purpose (a Farmers store). That is the proposal Council needs to consider and accept, or reject, or accept with conditions.
- 6.8 It is unlikely that a sale negotiated at the market price would achieve such a high price if there were conditions on the sale regarding urban design and construction of carparks for public use. Nor under a private sale would the developer be subject to public scrutiny and interest, nor any threat to their reputation.
- 6.9 The site has a number of constraints to development including known contamination from underground petrol storage tanks and historical gas works fill, flood and sea water intrusion, underground high voltage transmission lines running through the centre of it.

7. Consultation Process

- 7.1 The Statement of Proposal was written in accordance with section 87(3) of the Local Government Act 2002 (the Act) and checked by Council's legal advisers Fletcher Vautier Moore. Council followed the process for consultation on the Statement of Proposal as set out in section 83 of the Act.
- 7.2 The submissions from Ken Beckett and Roger Gibbons questioned whether the SOP complied with the requirements of the Local Government Act 2002. Mr Beckett argued that the absence of the sale price and the lack of valuation, and asserting (wrongly in his view) that Farmers would leave, meant the SOP was inaccurate. Mr Gibbons submitted that the process did not involve genuine consultation as defined by various court cases.
- 7.3 Fletcher Vautier Moore has provided legal advice (Attachment 3) to Council on the issues raised in these submissions. They conclude:

"Having reviewed those submissions [Mr Beckett and Mr Gibbons] our advice is that there is no legal impediment to the Council now proceeding to hear and consider the submissions, and making a decision whether to accept or reject the proposal".

- 7.4 Fletcher Vautier Moore also state that 'the criticism of Council over consultation fails to appreciate that the special consultative procedure adopted by the Council (acting as a prudent Council, and not because it was required to do so) is the very essence of a consultation process.'

8. Public Works Act 1981

- 8.1 The land involved in the Statement of Proposal was not purchased by Council under the Public Works Act 1981. Notwithstanding this, officer's sought advice from Council's legal adviser Fletcher Vautier Moore on whether the offer back provisions in section 40 of the Public Works Act apply to the land in Wakatu Square. The offer back provisions were raised by submitter Ken Beckett at the hearing.
- 8.2 Fletcher Vautier Moore's advice is contained in Attachment 4, and they conclude:

"If the Council decides to proceed with the sale of the land to Windermere Holdings Limited the land will no longer be required for a public work, therefore triggering the application of section 40 of the Act. There are grounds on which the Chief Executive can decide that the exceptions to the offer back set out in section 40(2) of the Public works Act apply, and that the Council does not have to offer back the land to the former owners."

9. Other Issues: Urban Design/Amenity, Carparking and Buses

- 9.1 A number of submitters raised issues which are outside the scope of the SOP, and are issues that relate to the resource consent process yet to come. Some submitters found it difficult to support Option 1 without first knowing what the specific design of the building and car parking is. This is a 'catch 22' situation, similar to a proposal to rezone land which must be considered without knowing what will be built upon it but relying instead on the framework set out in the Nelson Resource Management Plan.
- 9.2 Deliberations must focus on whether or not to approve or reject Option 1: to sell Area A & B of Wakatu Square to WHL to facilitate the establishment of a retail store to house Farmers. However in making this decision Council can impose conditions on the sale and purchase agreement to provide more certainty. Council can also consider the NRMP framework under which any future resource consent application is required to be made.

Urban Design/Amenity

- 9.3 The development will trip rules specifically for 'Building in Montgomery, Buxton and Wakatu Squares' in addition to the standard subdivision, earthworks and NES on Contaminated Soils provisions. The overall activity status for the development will at best be a discretionary

activity. The development is not comparable to the Rebel Sports or Briscoes' developments which were permitted activities.

9.4 The matters over which Council (even if delegated to an independent Commissioner) has discretion are unrestricted. However, the assessment criteria for the rule on buildings within the carpark squares provides an indication of the matters that are to be considered:

- The size, design and location of the building within the square.
- Whether the building would enhance or detract from the amenity of the square.
- The effects on open space in the City Centre, and any uses of the square, including any proposals to compensate or mitigate those adverse effects
- The effects on parking within the City Centre, and traffic and pedestrian movements in the square.
- The effects on access of sunlight and daylight to the square, and therefore amenity.

9.5 In addition the policy framework that guides consideration of discretionary activities includes, amongst others, the following urban design objectives and policies specific to the proposal:

policy

DO13A.3.1 high quality public spaces

Subdivision and development of, or adjoining, urban public spaces should where appropriate provide for:

- a) landscape and streetscape design that is of high quality, is people rather than vehicle orientated and maintains or enhances social, cultural and amenity values.
- b) a sense of human scaled elements at the interfaces of buildings, infrastructure and urban public spaces.
- c) the public space to have a variety of distinctive spaces appropriate to the context that function well as places for a range of activities including meeting people, relaxing, playing and walking through them.
- d) a range of public open spaces and parks that cater for the different needs of people both in terms of ages and abilities, and levels of recreational and leisure use.

policy

DO13A.3.3 prominent and public buildings and spaces

Prominent spaces and places should be defined by the Council. Urban buildings and spaces located on prominent sites, or buildings and spaces that are intended for public use, should represent outstanding architectural and landscape design, and be socially, culturally and environmentally responsive. Design should consider the needs of present and future generations.

- 9.6 The developer, as applicant, would need to consider and incorporate the intent of the rule and policy framework of the NRMP in coming up with the final concept for which to pursue a successful resource consent(s) application.
- 9.7 Recognising that design issues are more easily resolved prior to the resource consent process, the Council, if it were of a mind to approve the proposal, could include a condition to encourage resolution of design issues via the Urban Design Panel process, as much as is able.

Car Parking

- 9.8 The issue of parking was raised by many submitters, the majority of which sought more carparking to be provided for, and some challenged the parking calculation in the SOP. The plans that formed part of the SOP are parking neutral, showing 164 public car parks currently in Wakatu Square/Achilles Avenue, and an identical number afterwards.
- 9.9 As report 1547583 to Council on 6 August noted the number of new car parks recreated can only be determined after a traffic assessment, detailed design is undertaken, and conditions of resource consent are known. The report considered there might be a loss of between 4-10 public carparks. The framework around numbers and design standards for the carparking can be imposed as a sale and purchase agreement condition.

Buses

- 9.10 The proposal does not change the location or width of the legal roads Wakatu Lane and Achilles Avenue. The proposal does not alter the access to legal roads by SBL Group Limited. SBL Group Limited has no legal rights to use land not part of legal road for access to their site.
- 9.11 SBL Group Limited raise in their submission an issue with the current NBus stops located on Wakatu Lane in the paved area. The proposal would mean that these bus stops are not able to be located on legal road as they currently are. A new location for these stops will need to be negotiated between SBL Group Ltd and Council if they are to be located on public land in the newly formed carpark if the proposal were approved.
- 9.12 The final layout of the carparking will be subject to the resource consent process and will need to include a traffic assessment as well as consideration of the discretionary activity assessment criteria 'the effects on parking within the City Centre, and traffic and pedestrian movements in the square'. Council could make the sale and purchase agreement subject to a condition that requires facilitation of x number of bus stops and manoeuvring routes within the new carpark, however Council would need to be mindful of the trade off this may have in terms of loss of car parking.

10. Finalising the Conditions of Sale and Purchase

- 10.1 Potential sale and purchase conditions can be drafted with Council’s legal advisers, should Council be of a mind to approve the Statement of Proposal for Option 1. The conditions could include matters that were included in the Statement of Proposal such as carparking requirements, as well as matters that address submitters concerns in relation to the future resource consent process and urban design and amenity.
- 10.2 The draft conditions could be subject to final approval by the RMA Procedures Committee before being negotiated as part of any sale and purchase agreement between Council and Windermere. While not fully meeting the Terms of Reference for the RMA Procedures Committee, it is a small group well versed in RMA matters to which Council could delegate this task.

11. Conclusion

- 11.1 Council needs to deliberate on submissions and make a decision on the statement of proposal to enable a final decision to be made on Option 1 at the Council meeting on 19 September 2013. Council can either:
- Accept Option 1, or
 - Accept Option 1subject to conditions, or
 - Reject Option 1.

Clare Hadley
Chief Executive

Attachments

- Attachment 1: Statement of Proposal [1572021](#)
 Attachment 2: Summary of Submissions [1585025](#)
 Attachment 3: FVM Legal Advice on Consultation process [1595196](#)
 Attachment 4: FVM legal advice on Public Works Act [1593146](#)

Supporting information follows.

Supporting Information

1. Fit with Purpose of Local Government

Consistent with the purpose as it assists with provision of local infrastructure and public services through facilitating this development, and protects the value of the substantial investment of public money that has occurred to enhance the vitality of the City Centre. Private provision is a cost effective option.

2. Fit with Community Outcomes and Council Priorities

Community Outcomes supported:

- People-friendly places.
- A strong economy.

Council priorities:

- A leading lifestyle. A strong City Centre provides and supports a range of opportunities – art, music, excellent facilities.
- Developing community hubs – “Council will lead the way ..providing hubs for neighbourhoods and the city.”

3. Fit with Strategic Documents

The proposal is consistent with the Heart of Nelson Strategy, item D.26.

It also supports the following Heart of Nelson objectives:

- To achieve an engaging, activity filled central city, with activities that encourage people into the central city and to spend more time once there.
- To reinforce the City Centre as the principal office location and commercial centre in the wider region.
- To position the City Centre as the quality shopping destination in the wider region.

Supports Nelson Urban Growth Strategy 2006 objective:

- A people friendly city centre which functions as the cultural and commercial heart of the Nelson-Tasman region.

4. Sustainability

Meets sustainability checklist outcomes of helping to build resilience in the local economy and support business growth.

5. Consistency with other Council policies

The Nelson Resource Management Plan. Policies:

IC1.7 Compactness/Consolidation “Infill development and consolidation within the City Centre will be encouraged, to provide an environment that is easily walked from one extent to the other.”

IC1.1 Strength of City Centre “Activities should not set up in locations, where singly or together with other activities, they are likely to have a significant adverse effect on the role of the City Centre as the focal point of the City.”

IC4.1 Range of Activities “Activities which enhance the vitality and

| |
|---|
| <p>vibrancy of the City Centre shall be encouraged.”</p> |
| <p>6. Long Term Plan/Annual Plan reference and financial impact N/A</p> |
| <p>7. Decision-making significance This is not a significant decision in terms of the Council’s Significance Policy, but the special consultative process was used nevertheless.</p> |
| <p>8. Consultation Public consultation on the concept of a retail development in Wakatu Square occurred as part of developing the Heart of Nelson Strategy. The special consultative procedure under section 87(1)(b) of the Local Government Act 2002 was used. A public meeting was held on 20 August in conjunction with Uniquely Nelson Ltd to help inform their members. All property owners within the City Centre were written to and advised of the SOP and where it could be viewed. All businesses owners in the block Trafalgar, Bridge, Rutherford and Halifax Streets were given a hand-delivered letter.</p> |
| <p>9. Inclusion of Māori in the decision making process Not in the decision making process; however there will be cultural interest in the site (eg old shoreline).</p> |
| <p>10. Delegation register reference Decision of Council.</p> |



STATEMENT OF PROPOSAL

Potential Sale of Land for Commercial Development

6 August 2013

**This document constitutes a
Statement of Proposal under Section 87 (1)(b) of the
Local Government Act 2002.**

1. Introduction

- 1.1 Nelson City Council (the Council) has been approached by Windermere Holdings Ltd which seeks to purchase part of Wakatu Square to enable it to construct a retail development.
- 1.2 The retail development is to house Farmers Trading Company, and will result in its relocation from two premises fronting Buxton Square Carpark to a purpose built retail building in Wakatu Square.
- 1.3 In the past the Council has purchased the land that forms the public carparking within Wakatu Square, and adjoining landholdings, for the purpose of carparking and for strategic purposes, such as a future large scale retail development for the central city.
- 1.4 This statement of proposal seeks to give public notice of the proposal to sell part of Wakatu Square to Windermere Holdings Ltd for the purpose of housing Farmers Trading Company; set out the consultation process that will be adopted; the period for submissions to be made on the proposal; and how the Council will hear submissions on the proposal.

2. Statement of Proposal

- 2.1 Council proposes to sell two parcels of land within Wakatu Square to Windermere Holdings Ltd (WHL) at a price negotiated between Council and WHL, for the purpose of developing a retail anchor store to house Farmers Trading Company (Farmers) and approximately 500m² of other retail activities, as shown on the concept plans in Attachment 1.
- 2.2 The land proposed to be sold is shown on the plan in Attachment 2 and comprises:
 - Area B of 2763m² (more or less) part of Lot 3 DP17892 (CT NL12A/408).
 - Area C of 293m² Part Lot 29 DP 132 (CT NL82/102)
- 2.3 As part of this proposal the existing public Wakatu Square carpark is to be extended to the west as shown on the Map in Attachment 1 by WHL at their cost. This extended carpark is the Council owned land shown on Attachment 2 as comprising:
 - Area D of 240m² Part Lot 28 DP 132 (CT NL73/29)
 - Area E of 351m² Part Section 226A City of Nelson DP 1746 (CT NL58/232)
 - Area F of 591m² Lot 27 DP 132 (CTNL33/277)
 - Area G of 591m² Lot 26 DP 132 (CT NL29/122)
- 2.4 The proposal also includes rearrangement of some parking spaces within Achilles Avenue.
- 2.5 Area A, of approximately 663m², is proposed to remain in Council ownership and is subject to an existing covenant ensuring that no structures are erected on it, and that the adjoining Fletcher Vautier Moore building is able to gain vehicle access from Area A.

- 2.6 The proposal seeks to be parking neutral. However, if the replacement carparks for any reason were fewer than the existing number of public parking spaces in Wakatu Square/Achilles Avenue, then it is proposed that WHL will pay Council financial compensation to fund replacement parking in close proximity within the City Centre. Any financial compensation for loss of carparks will be held by Council in the parking account and will only be used to provide replacement parking.
- 2.7 WHL will be responsible for obtaining all necessary building, subdivision and resource consents to enable the proposal to proceed and to undertake all construction works required. This will include the extension of the Wakatu Square carpark to the west into Areas C to G, and rearrangement of parking within Achilles Avenue to Council standards, as set out in the Nelson Resource Management Plan and the Nelson City Council Land Development Manual 2010.
- 2.8 If WHL for any reason fails to secure Farmers as a tenant, or the proposal fails to proceed as described, it is proposed that the sale would not proceed and the land would remain in Council ownership.
- 2.9 In accordance with section 87(3) of the Local Government Act 2002 (the Act) the Council is required to include in the Statement of Proposal the following:
- a) A statement of the reasons for the proposal; and
 - b) An analysis of the reasonably practicable options, including the proposal, identified under section 77(1) of the Act; and
 - c) Any other information that the local authority identifies as relevant.

3. Reasons for the Proposal

- 3.1 The land that is the current Wakatu Square was purchased by Council in 1990 and 2008. The Square was constructed in 1997 and expanded to its current form in 2009.
- 3.2 Since 1993 the Council has publicly signalled at various times that the parking square could include a substantial built development, possibly of a retail nature and/or a parking building. Public statements to this effect were included in the Inner City Strategy 1995, the Long Term Council Community Plan 2006, through calling for Expressions of Interest for a development proposal in 2007, and through the Heart of Nelson Strategy 2009.
- 3.3 It is widely recognised that anchor stores such as Farmers attract people into the City Centre, adding to its economic and cultural vibrancy, and attracting customers and economic benefits to other businesses in the area. The Heart of Nelson Strategy 2009 highlighted the risk the City Centre faced of losing its last significant retail anchor store because of space constraints. Farmers is currently spread over two stores, neither of which is ideal for modern retail requirements.

- 3.4 The Heart of Nelson Strategy saw there was a *"significant opportunity to retain or attract key retailers in the City Centre, which could otherwise be forced to relocate due to a lack of available expansion space"*. The Strategy identified Wakatu Square as the preferred site for such a store. This was in support of the Heart of Nelson Vision that *"The central city will be a vibrant, attractive place in which people can live, work and play, and in which businesses can operate...The central city will remain – and thrive – as the commercial and cultural heart of the wider region"*.
- 3.5 Council's intention for multiple uses for the land in and adjoining the Wakatu Square carpark has been signalled since the mid 1990s. Council purchased the Wrightcars site in September 1990 to develop it as a parking square in conjunction with Wakatu Lane and Achilles Avenue. A loan of \$2,000,000 was raised for its purchase and \$244,000 has been spent on improvements.
- 3.6 In 2011 the Council purchased the remainder of land between Wakatu Square and Rutherford St, bounded by Achilles Avenue and Wakatu Lane. The purchase was for the land's 'strategic value'.
- 3.7 Since the mid 1990s there have been numerous proposals for the potential use and development of the site for street front development, multiple use buildings and parking. This includes a number of Council resolutions to seek expressions of interest for the development of the site, as well as development proposals that have been considered but have not gone ahead.
- 3.8 There have also been a number of Council strategies and formal planning documents that have signalled the development potential of the site and the need to provide the opportunity for large key anchor retailers to remain/establish in the City Centre.
- 3.9 Council has more recently purchased strategic land to the west of Wakatu Square carpark, including the site of the previous Hunting and Fishing store and that of Hunter Furniture. This has been in recognition of the strategic opportunities it provided.
- 3.10 Council has been advised that the main retailer of importance to the City Centre is Farmers. This is because it is the only large retailer in the City Centre and it attracts much of the fashion and other retail activities to the City Centre.
- 3.11 This proposal enables Council to achieve the goal of retaining a key large format retail activity within the City Centre while still maintaining public carparking.

4. Options

4.1 Council considered options in evaluating the current proposal for the sale of part of Wakatu Square to WHL to facilitate the establishment of a retail store to house Farmers. It is considered that there are four reasonably practicable options. They are:

- Option 1: The current proposal, as set out in section 2.
- Option 2: A call for expressions of interest for a similar development proposal.
- Option 3: A call for expressions of interest for an open development proposal.
- Option 4: Do nothing and retain in Council ownership.

4.2 Each of the options are assessed for their costs and benefits, their fit with community outcomes as set out in Council's Long Term Plan 2012-2022, and Council's statutory responsibilities.

| Option 1 :The current proposal to sell part of Wakatu Square to WHL to facilitate the establishment of a retail store to house Farmers as set out in section 2. | |
|--|--|
| Benefits and Costs | <p>The benefits are the retention of a key anchor retail activity within the City Centre, including its flow on benefits for other fashion and retail development. This has been identified as a Council objective since the Heart of Nelson Strategy in 2009. The financial risk for the Council is low.</p> <p>The costs are a potential loss of a small number of car parks in Wakatu Square, and receipt of compensation requiring Council to provide carparking elsewhere within the City Centre.</p> |
| Community Outcomes | <p>People friendly places and a strong economy can be achieved through Council control of the sale process. A strong City Centre supports a range of opportunities for Nelson and its community.</p> |
| Statutory Responsibilities | <p>While it is not considered that statutory responsibilities are at stake in a strict sense, the Council will be protecting the value of the substantial investment of public money that has occurred to enhance the vitality of the City Centre.</p> |

| Option 2 :A call for expressions of interest for a similar development proposal | |
|--|---|
| Benefits and Costs | <p>There is the potential for a higher purchase price to be obtained through a competitive sale and evaluation process.</p> <p>There is the potential for a new anchor retail activity to be attracted to the City Centre.</p> <p>There is greater uncertainty over costs, timing and an acceptable proposal being received. Previous calls for</p> |

| | |
|----------------------------|---|
| | <p>expressions of interest have not produced a viable proposal.</p> <p>The timeframe involved with this option is unlikely to suit Farmers whose lease expires in May 2015. There is a risk that Farmers will vacate its current premises and will not relocate within the City Centre, thereby adversely affecting other retail activities in the City Centre.</p> |
| Community Outcomes | <p>People friendly places and a strong economy can be achieved through Council control of the sale process. A strong City Centre supports a range of opportunities for Nelson and its community.</p> |
| Statutory Responsibilities | <p>While it is not considered that statutory responsibilities are at stake in a strict sense, the Council will be protecting the value of the substantial investment of public money that has occurred to enhance the vitality of the City Centre. However there is more uncertainty with this option.</p> |

| Option 3 : A call for expressions of interest for an open development proposal | |
|---|--|
| Benefits and Costs | <p>There is the opportunity for a new development proposal to be considered.</p> <p>There is the potential for a higher purchase price to be obtained through a competitive sale and evaluation process.</p> <p>There is no certainty that an acceptable proposal will be forthcoming. Previous calls for expressions of interest have not produced a viable proposal. There is greater uncertainty over costs and timing.</p> <p>The timeframe involved with this option is unlikely to suit Farmers whose lease expires in May 2015. There is a risk that Farmers will vacate its current premises and will not relocate within the City Centre, thereby adversely affecting other retail activities in the City Centre.</p> |
| Community Outcomes | <p>People friendly places and a strong economy can be achieved through Council control of the sale process. A strong City Centre supports a range of opportunities for Nelson and its community.</p> |
| Statutory Responsibilities | <p>While it is not considered that statutory responsibilities are at stake in a strict sense, there is the potential that this option could result in an activity that detracts from the substantial investment of public money that has occurred to enhance the vitality of the City Centre.</p> |

| Option 4 : Do nothing and retain in Council ownership. | |
|---|--|
| Benefits and Costs | <p>The Council retains ownership of all of its current landholdings in Wakatu Square. This preserves the availability of this land for a range of potential future activities.</p> <p>There is no loss of available carparking and no disruption to current vehicle use of Wakatu Square.</p> <p>Council will forego receipt of the purchase monies.</p> <p>Farmers may leave the City Centre thereby affecting the retail viability of the City Centre and negating the substantial investment of public money that has occurred to enhance the viability of the City Centre.</p> |
| Community Outcomes | <p>The risks of inaction identified above may detract from the viability of the City Centre and not assist Council in realising its desired community outcomes.</p> |
| Statutory Responsibilities | <p>While it is not considered that statutory responsibilities are at stake in a strict sense, there is the potential that this option would be counterproductive to the substantial investment of public money that has occurred to enhance the vitality of the City Centre.</p> |

5. Other Considerations

- 5.1 The Council can achieve a sought-after commercial development within Wakatu Square, where the costs and risks of development will be borne by the purchaser. Other development objectives for Wakatu Square will also be able to be achieved.

6. Submissions

- 6.1 Anyone can make a submission about any aspect of Council's proposal (outlined in section 2). We encourage you to give us your views. Council in making its decision will take account of all the submissions made. There will be a Council hearing on Thursday 12 September 2013 for those submitters who indicate they wish to speak in support of their submission.

- 6.2 Submissions are to be in writing and forwarded to:

Wakatu Square Proposal
 Nelson City Council
 PO Box 645
 Nelson 7040

Or emailed to submissions@ncc.govt.nz

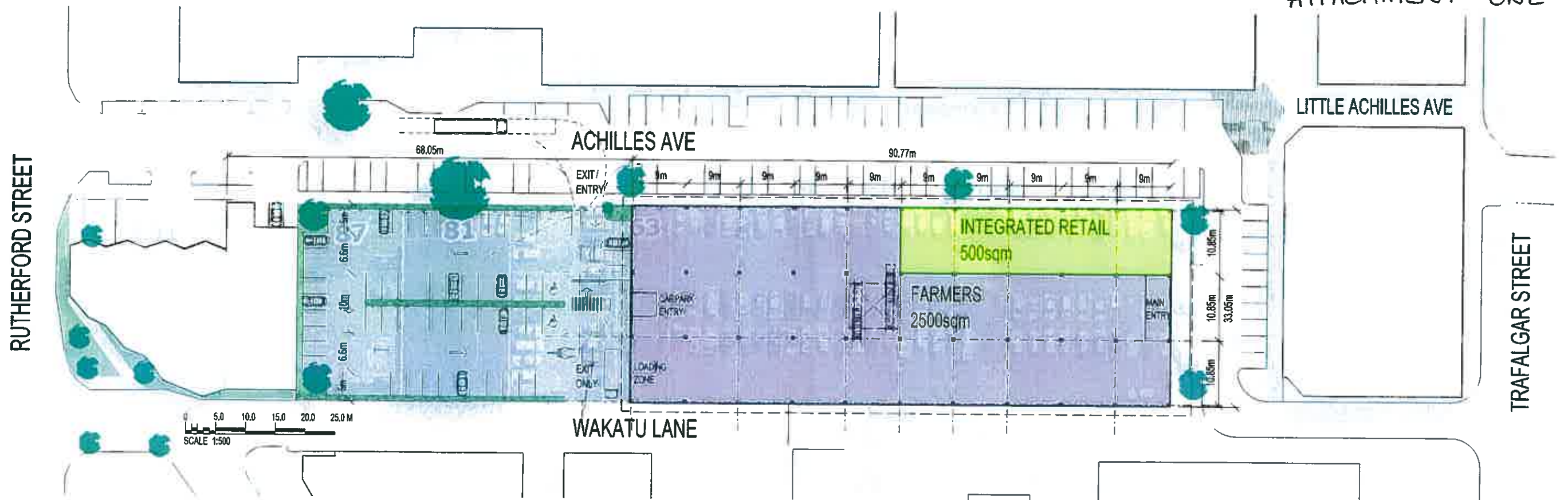
Submissions must be received no later than **4pm Monday 9 September 2013**.

All enquiries should be directed to David Jackson, Principal Adviser City Development on 546 0432 or email david.jackson@ncc.govt.nz.

ATTACHMENTS

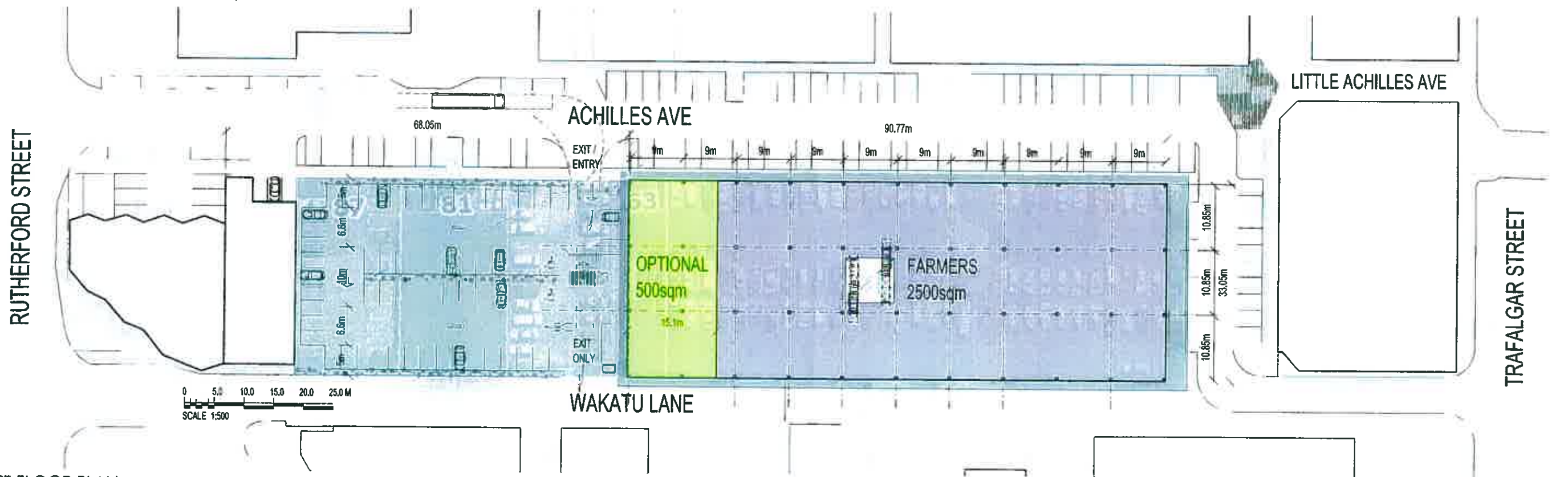
Attachment 1: Concept Proposal by Windermere Holdings Ltd [1567272](#)

Attachment 2: Map of land to be sold in Wakatu Square and land to be used for new carparking [1565355](#)



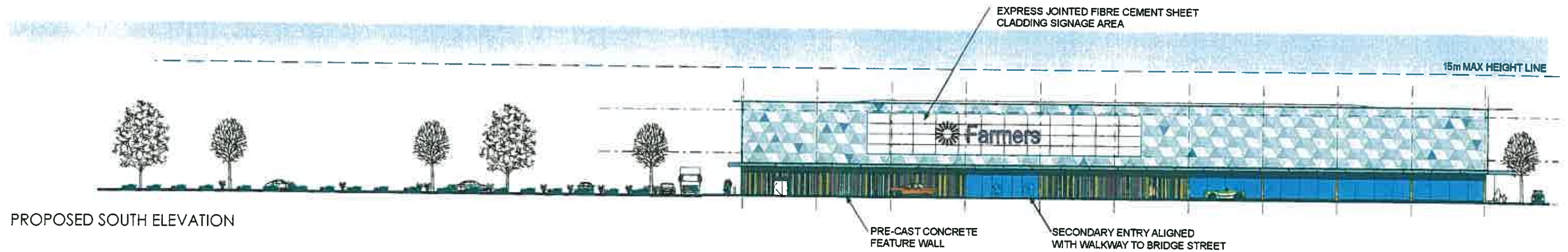
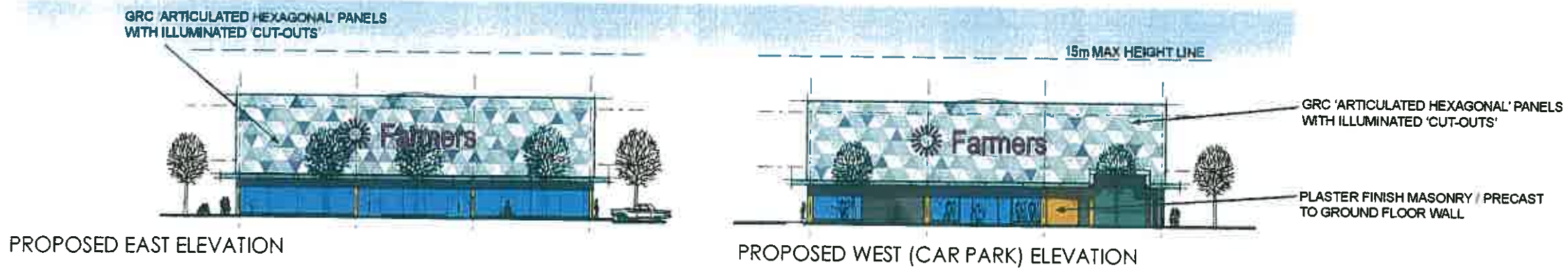
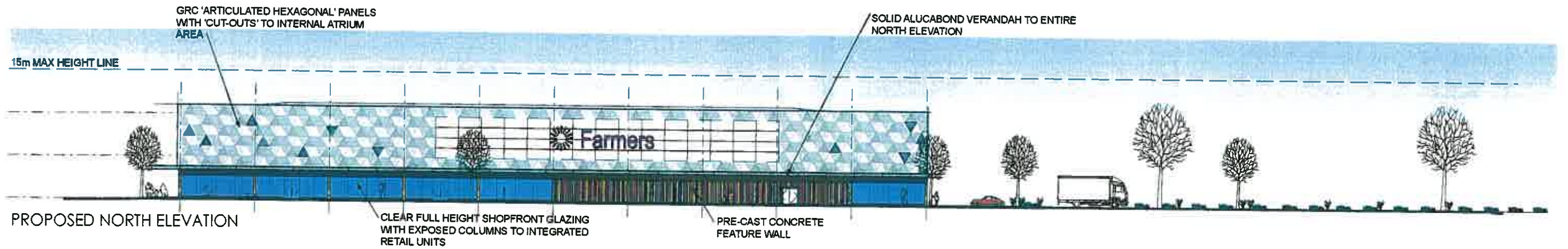
GROUND FLOOR PLAN

| | |
|--------------------------|---------|
| TOTAL EXISTING CAR PARKS | 164 |
| TOTAL PROPOSED CAR PARKS | 164 |
| FTC FLOOR AREA | 2500sqm |
| OTHER | 500sqm |



FIRST FLOOR PLAN

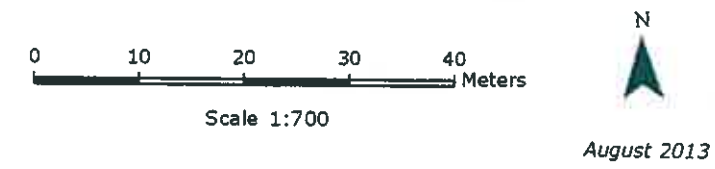
| | | |
|----------------------|-----|----------------------------|
| TOTAL FTC FLOOR AREA | 1st | 3000sqm (2500sqm + 500sqm) |
|----------------------|-----|----------------------------|







Potential Sale of Land for Commercial Development



August 2013

The map is an approximate representation only and must not be used to determine the location or size of items shown, or to identify legal boundaries. To the extent permitted by law, the Nelson City Council, their employees, agents and contractors will not be liable for any costs, damages or loss suffered as a result of the data or plan, and no warranty of any kind is given as to the accuracy or completeness of the information represented. Nelson City Council information is licensed under a Creative Commons Attribution-NonCommercial 3.0 New Zealand License. Nelson City Council data must not be sold without prior written consent. For more information please contact us. Cadastral information derived from the Land Information New Zealand. CROWN COPYRIGHT RESERVED.

Attachment 2**Summary of submissions on Statement of Proposal:
Potential Sale of Land for Commercial Development.****11 September 2013**

Note: this is a summary of the written submissions lodged on the SOP. It does not include information from oral presentations or tabled at the hearing.



| | | | | | | |
|----|--------|----|------------|---|-------|----|
| 25 | OPPOSE | 33 | NOT STATED | 7 | TOTAL | 65 |
|----|--------|----|------------|---|-------|----|

| Sub # | Submitter | Support/ Oppose | Summary of Submission |
|-------|-----------------------------------|--------------------|--|
| 1 | Vanessa Griffin | Oppose | <p>Extra multiple chain stores will force out independent retailer like me.</p> <p>Retailing already hard with Fashion Is, online shopping, rates increases.</p> <p>Carpark would bring more people to town, especially if first 2h free with shopping docket.</p> |
| 2 | Rosie-Anne Pinney | Oppose | <p>Losing Farmers from Trafalgar St is bad.</p> <p>Two storey building – shaded and windy. Prefer 1 storey or 2 with roof gardens/cafes.</p> <p>Urban design – don't like hexagonal panels, Use materials which speak of Nelson.</p> <p>Needs to be landscaped, with seating areas, sculpture, play equipment, lingering places.</p> |
| 3 | John Handforth, Amcal Hardy St | Support | <p>Ageing building stock – new development needed.</p> <p>Parking neutral may not be enough given traffic it will generate. Incentivise developer to put in sub-level or rooftop parking, pending results of Council parking study.</p> |
| 4 | Kate Bradley, Remax | Support | <p>Very happy with proposal. Good addition to the area and city as a whole</p> <p>Carparking an issue, but OK if around the number provided now.</p> <p>Hunters building may detract from modern vibrant addition.</p> |
| 5 | Ngati Koata Trust | Oppose | <p>Strongly oppose. Support option 3 'expressions of interest for an open development proposal'.</p> <p>Contrary to Nelson 2060:</p> <ul style="list-style-type: none"> • Goal One outcome 'Strong partnerships' should be regional ownership • 'Maori leadership in sustainability is recognised & Maori cultural knowledge is valued and used' Options 1 & 2 offer little opportunity for this. • 'Developing leadership across the community' Option 1 does not use local investors or developers. • Goal Two had 'strong sense of ownership with their community' as outcome. Option 1 doesn't support this. 'All cultures are valued'. Ditto • 'Treaty of Waitangi taken into account in planning and decision making' How? • Ngati Koata have made contribution to Nelson community through effects of infrastructure on wahi tapu and traditional resources. Option 1 does not offer equitable consideration of Ngati Koata's contributions to the community. |

| Sub# | Submitter | Support/ Oppose | Summary of Submission |
|------|------------------------------|--------------------|--|
| 6 | Graeme Thomas | Oppose | <p>Essential to have anchor store centrally located and not on the fringe.</p> <p>CBD is 'boutique retailing'. Council has responsibility to be viable.</p> <p>Relocation of Farmers will have wide reaching implications – affect foot traffic, profitability of small retailers, and impact RVs.</p> <p>Has landlord & tenant looked at redeveloping existing site? Every effort must be made to retain them as city's anchor store.</p> <p>Was Wakatu Sq purchased for retail development?</p> <p>What was reason to acquiring Hunting&Fishing etc. Unique block of land – carefully consider all options / future uses.</p> <p>Isn't about Farmers – it's about viable retail sector and effects on all retailers.</p> |
| 7 | Ian Williams Vic Brew Bar | Support | <p>Will enhance CBD and attract shoppers into Nelson.</p> <p>Work to ensure existing Farmers buildings are redeveloped and re-tenanted ASAP.</p> <p>Upper Trafalgar needs to remain centre for events.</p> |
| 8 | Anton Hyman | Oppose | <p>Cheapskate tin horns selling city's heritage.</p> <p>Look at Harvey Norman as example of 'spend, spend, spend' obsession, even by those where it should be 'save, save, save'.</p> <p>15 years ago this was mooted as site for Performing Arts Centre – but now it's more shops and more spending.</p> |
| 9 | Lou Kolff | Oppose | <p>Not to be sold under any circumstances – except maybe for a town hall (more reason not to sell).</p> <p>Remain as carparking or open space.</p> |
| 10 | Hugh Briggs | Support | <p>Full support sale and basic concept of development as proposed.</p> <p>Essential provide as many carparks as possible as square going more demand.</p> <p>Shame doesn't include parking building. Needs more consideration. Future proof for this option.</p> <p>If shortfall of spaces, create more as close as possible.</p> <p>Urban design – need design guidelines in sale documents to avoid further poor examples like Nood & Briscoes.</p> <p>NRMP lacks design guidelines for such sites, which is why Rebel Sports/Briscoes had to be approved without design modifications.</p> <p>Therefore, only realistic option is to include design controls in sale agreement.</p> |
| 11 | Linley Taylor | Support | <p>Represents an upgrade of retail choices and will keep retail in the heart of the city.</p> <p>It will attract visitors.</p> <p>Will provide competition which will result in, among other things, lowered overheads for other retailers.</p> <p>Bulk of resistance seems to be from local businesses threatened by competition.</p> <p>Competition promotes growth and is good for all of us.</p> |
| 12 | Scott Miller | Oppose | <p>Detailed submission, but essence is:</p> <p>Oppose Option 1:</p> <ul style="list-style-type: none"> • Doesn't allow other companies to bid • Seems like just trying to reduce debt |

| Sub # | Submitter | Support/ Oppose | Summary of Submission |
|-------|---|--------------------|--|
| | | | <ul style="list-style-type: none"> • Not solve problem between Nelson & Richmond • Loss of parking revenue during construction • Cost of shifting staff parking should fall to Windermere Recommend open tender process (option 3) Current process handled badly – appears Council is closed to private sector in Nelson. Need to create truly good building to encourage shoppers back to Nelson CBD. |
| 13 | Nelson-Tasman Kindergartens (Wendy Logan) | | Support proposal and innovative business venture, but the following concerns need addressing: <ul style="list-style-type: none"> • Adequate, safe accommodation for pedestrians, including pushchairs – kerb-defined area safer for children than shares spaces; concerned about more icy footpaths (already icy outside Kathmandu) • Safe & obvious pedestrian connections to Anzac Pk, Bridge, Rutherford and Halifax Sts • That bus depot is not compromised and has scope for expansion, & good access by parents with young children. |
| 14 | Hunting and Fishing (Chris Scully) | | Want the effects on existing businesses and customers considered: <ul style="list-style-type: none"> • There should be no reduction in car parks, and a further 100 needed to satisfy demand from new development. • Keep cost of metered car parks same or cheaper, for same time limit • Will be loss of leased spaces – and more will be needed with further employees • All car parks need to be completed and available prior to building construction commencing. • 2/3 of annual turnover occurs Oct-Apr. Loss of short-term parking would affect. |
| 15 | Mark Dalrymple | | CBD is unique, with vibrant café culture - jewel of Nelson Bays area. Some areas need tidying up, and WHL must create synergy for positive outcome. Opportunity to enhance vacated mid city site. Should have roof-top parking Move development east to join with FVM building and get direct access from Trafalgar St. |
| 16 | Ken Beckett | Oppose | Proposal should be abandoned. SOP doesn't comply with law: <ul style="list-style-type: none"> • Sale price and fact isn't based on valuation should be in there. • Saying Farmers will leave is incorrect – Farmers have said that's not so. To sell land without a valuation is extraordinary, as is to accept price because the purchasers said it would not pay more. Proper course of action is to abandon current proposal and start afresh. Nothing short of that will satisfy obligations under s101 LGA [financial management]. |
| 17 | Tim Harrington | | In favour. If Farmers were to locate elsewhere it would deprive the heart of Nelson of a substantial retail presence. Most of objectors in press reports seem to have obvious |

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| | | | vested interest and should therefore be discounted. |
| 18 | Dan McGuire | Oppose | <p>Bad idea. Agree with those with commercial skills who have submitted.</p> <p>Council has lost credibility. Four councillors have private business interest in council events.</p> |
| 19 | Institute of Landscape Architects | Support | <p>Support sale <u>if</u> development achieves quality urban design within the square and beyond.</p> <p>Do not support the <u>current proposal</u> [because of urban design issues]</p> <p>Sale process & process for selecting a developer needs to be robust.</p> <p>Current proposal <u>does not</u> provide good urban quality outcomes within square overall. Encourage space-making opportunities along lines proposed in submission.</p> <p>Want conditions on sale relating to urban space, buses, pedestrian and disabled access, connections to surrounding streets and Anzac Park, retention of established trees, vehicle loading, better articulation of the building, 'active' street (reduction in blank wall on both levels), consideration of residential living or parking on top, sustainability and future-proofing (foundations that preserve 4 level option, solar panels, recycled concrete, roof garden etc).</p> |
| 20 | Raj Singh, Director Colliers International | Support | <p>Proposed Farmers store will have several important benefits:</p> <ul style="list-style-type: none"> • Help keep shoppers in central city, benefiting local specialty retailers & contributing to vibrant central city. • CBRE report notes existing Farmers is dated and small for a city of 40,000. • Larger Farmers is likely to capture retail turnover which currently leaks out of city centre. • Captured turnover will be spread around other businesses in city centre. • Presence of new, large department store likely to encourage more regular visits to city centre. <p>If Farmers leaves to another location, other businesses will also leave to be close to Farmers, leaving large vacant retail area and struggling</p> |
| 21 | Grant Ruthven | Support | <p>Great idea for new Farmers.</p> <p>Existing store is cramped & divided into two.</p> <p>Would offer potential for revitalised & vibrant city centre, and draw more people than the current Farmers stores do.</p> <p>Would offer other retailers chance to grow their businesses through prime retail sites vacated.</p> <p>Support the parking proposal – there is no need to increase the parking numbers from the current number.</p> |
| 22 | Farmers Trading Company | Support | <p>Support.</p> <p>Operated in Nelson CBD for many years and are fully committed to remaining.</p> <p>Current stores far too small to offer range of brands & product choices we'd like.</p> <p>Operating out of two sites hinders possible synergies and efficiencies. Lease on Trafalgar St site expires 2015.</p> <p>Our modelling shows 5,000m² store is ideal for Nelson.</p> <p>Been actively looking at opportunities to expand in Nelson for a number of years. Not seen any proposals that meet all out operational and financial requirements.</p> |

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| | | | <p>Have had discussions over time with a number of developers, with some involving Wakatu Square.</p> <p>Windermere has put forward a proposal that meets our operational & financial requirements. This is the only proposal we currently have to consider.</p> <p>Should this option fall through, Farmers would need to consider its options, which include:</p> <ul style="list-style-type: none"> • In short term, remain in current locations. • In longer term, actively consider other opportunities. While our preference is to remain within CBD, we will consider all options presented to us that meet our requirements. Could include moving out of Nelson CBD if we were unable to find a suitable location within the CBD. |
| 23 | Nikki Cooper Cooper & Rouge/Vanilla Cafe |  | <p>Strongly object.</p> <p>Parking in CBD is valuable & proposed parking neutral plan will not be able to service existing retailers & new retail of 6000m².</p> <p>Part of HONS is about preserving what is unique about Nelson - i.e. individual owner-operated retail not massive retail chain stores.</p> <p>Business is harder than ever & many local stores have closed. More will if big developments such as Farmers are encouraged.</p> <p>Visitors often say they love our small boutique stores & have lost them in their home towns.</p> <p>Didn't oppose Fashion Is as building were designed tastefully. Unfortunately this is not the case with this big box development.</p> <p>Concept that shoppers will flow from Farmers is misguided. Many will remain in Farmers building for their allocated parking time - including having a coffee there.</p> <p>The vacated stores won't be quickly filled. Despite Mayor's claim, outside retailers are not lining up to open in Nelson, and several who have regretted it & not renewed their leases.</p> <p>With election looming decision should be deferred. Opt for Option 4 (do nothing).</p> |
| 24 | Penrose Property Management Ltd |  | <p>Support Option 1.</p> <p>Nelson-based property manager. Manage several in Nelson - in this case representing myself in relation to a property we own at 41 Bridge St.</p> <p>Farsighted and will result in more demand for retailers to want to be part of central Nelson retail & business area. At moment national retailers struggle with choice of central Nelson or Richmond. The proposal sends message to other national retailers that Nelson CBD is the heart of retail in the Tasman district.</p> <p>Land was purchased & held on behalf of people of Nelson for just this type of opportunity. At some point NCC needs to commit to one particular project - so far this seems the best one.</p> <p>Will change pedestrian and traffic patterns & that will provide many opportunities for existing property owners to redevelop.</p> <p>Sale of land will bring it back into the rating database.</p> |

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| | | | Prefer to see building pushed to west, with majority of parking to continue on B (existing carpark). Gives more opportunity for other buildings to open to Wakatu Sq, & fewer lost carparks during construction. |
| 25 | John Fitchett | | <p>Support any attempt to re-invigorate commercial life in the City Centre.</p> <p>Otherwise within a decade, the Centre will be effectively dead (or at least terminally ill) and commercial life will be focussed on Richmond.</p> <p>If that happened, NCC would no longer be able to subsidise residential ratepayers via the differential rating of commercial properties.</p> <p>Support – conditional on Farmers taking up the lease.</p> <p>Oppose – at the present price, unless:</p> <ul style="list-style-type: none"> • Current value be professionally identified, and • Sale has a condition that if Windermere sells within 10 years, it pays NCC the differential between 2013 sale price and 2013 actual value. |
| 26 | Alison Johnston | Oppose | Oppose sale without public scrutiny. |
| 27 | Ross Wylie | Oppose | <p>Object to methodology.</p> <p>If selling land, should advertise & call for proposals.</p> <p>At time of releasing SOP Council should have been aware of market value, or if leased, potential annual rental. Both sale price and rent could be negotiable depending on type of use.</p> <p>With major commercial buildings being erected in Richmond, will population of district be able to make additional Farmers retail space viable?</p> <p>Council needs to be squeaky clean in terms of openness & transparency as required by LGA.</p> <p>Options in SOP are reasonable but the evaluation lacks objectivity.</p> |
| 28 | Renata & Tom Schrader Unichem | | <p>Parking neutral is not enough – with 6000m² and 500,000 shoppers, need more parking.</p> <p>Also more workers in expanded Farmers and other new retail – need all day parking. Does Council have proposals on that front?</p> <p>Agree with keeping Farmer in heart of city, but:</p> <ul style="list-style-type: none"> • Proposed Farmers seems self-contained – nearby parking and bus depot. • Not clear how will connect to Trafalgar St – if take 'wait & see' approach CBD retailers could be negatively affected, then too late. Best to sort this out before there is a problem. • HONS is there to keep all of community happy, including retailers who have suffered significantly in recent years. Would like to see strategies put in place for connecting the area to rest of city and for all day parking. • Why not sell some of land in Buxton Sq to the developer to build there – would solve toilet and anti-social problems. <p>Sale price is 1/3 less than market value. Should be renegotiated. Council borrowed \$2m and then spent \$244,000 on improvements – now selling for just over \$2m.</p> <p>Do understand the benefits, but if got higher price could</p> |

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| | | | <p>reduce debt more / invest more in CBD.</p> <p>Postpone decision until new Council elected, as has long term consequences.</p> |
| 29 | Colin Robertson | Oppose | <p>Inappropriate development – will be detrimental to diversity of CBD. Contend will have net negative impact on jobs and the economy.</p> <p>The larger the retailer, the fewer the jobs and return to community.</p> <p>This, and development proposed next to Mitre 10 will not created additional demand – merely chop up the existing pie of consumption.</p> <p>Won't stop 15% retail leakage to Christchurch/Wgn as this is high end, and goods not available in Nelson.</p> <p>Real Estate sources say being sold for 50-65% of market value.</p> <p>Sale of assets of this value should trigger referendum.</p> <p>Shoppers who like big box stores are well catered for. Let's stop fighting Richmond and focus on what we are good at.</p> <p>CBD rentals are prohibitive for some small businesses.</p> <p>Investigate ways to decrease shop rents. Set development contributions and rates to encourage second story, including retail, accommodation, cafes and social/arts spaces.</p> <p>Turn into permanent garden space with locations for trading, art display cases, social spaces for film, music performance etc.</p> |
| 30 | Marina White | Oppose | <p>Loss of car parking.</p> <p>Lack of site plan publicised to the community.</p> <p>Price to be paid.</p> <p>Main concern is siting of proposed building:</p> <ul style="list-style-type: none"> • Should be at western end – better for buses and have a pleasant sunny square • Farmers say need access from Trafalgar St, but most customers won't be walking • High blank tilt slabs • Cutting off of sunlight |
| 31 | Errol Millar | Oppose | <p>Expected to accept 'fire sale' deal under hollow threat of major business leaving CBD.</p> <p>Claim is in SOB but has been refuted by the business concerned.</p> <p>Not having a valuation is unbelievable. Likely to be \$1m under valuation.</p> <p>No expressions of interest called for – just a 'deal' with one party.</p> <p>Mayor's late announcement that valuation would be obtained, that city may have to absorb any potential loss is ridiculous and may breach LGA.</p> <p>Need to either retain land or call for expressions of interest.</p> <p>A better alternative could be for council to be the developer and get revenue that will ease the burden on ratepayers who face every increasing rates due to frivolous spending on cosmetic monuments.</p> |
| 32 | Beth Thorpe, | | <p>Difficult economic times over recent years, Nelson city has</p> |

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| | Dames, 47 Bridge St | | <p>become less vibrant.</p> <p>Parking is major drawback – shoppers cannot find a park or looking at their watches to make sure not risking a ticket. Free-parking Tuesdays welcome relief for us.</p> <p>If proposal goes ahead, parking will become more of a problem – where will considerable number of staff park? Also, will contain several other shops – by time looked around, time will have elapsed.</p> <p>If Farmers moves, will leave big gap in Trafalgar St. H&J Smiths was hard to fill.</p> <p>Unique factor for Nelson is number of owner/operated stores and choice of specialty shops – often have been lost in other cities.</p> <p>In 25 years never seen a councillor – feel very unsupported. Gap is illustrated by range of things that work against retail [examples given].</p> <p>Farmers in Wakatu Sq – at odds with HONS. Interested to know where local retail figure in this strategy and what Council has in place to support us.</p> |
| 33 | Gail McLean, Marshalls Fashions | Oppose | <p>Against, as worried about impact of empty buildings and who will fill them.</p> <p>I remember how awful it was when H&Js left Nelson and had that empty shop next door for a couple of years.</p> <p>Business has been very difficult – we need more foot traffic to support local owned shops.</p> <p>We cannot compete with discount retailing of chain stores.</p> |
| 34 | Roger Gibbons | Oppose | <p>See full submission.</p> <p>SOP doesn't comply with requirements of the LGA, and Council's actions do not meet provisions and principles of LGA.</p> <p>Sale price is below market value (1/3rd).</p> <p>Will lose substantial number of carparks – no indication of where they will be replaced.</p> <p>Farmers has said they are not leaving town (Nelson Mail 10 Aug) so rationale for choosing option 1 and rejecting other options disappears.</p> <p>Council not obliged to use Special Consultative Process, but once decide to use, has to follow properly. Hasn't consulted as set out by Courts.</p> <p>Council has not provided, or failed to adequately provide, information sought under the Local Government Official Information & Meetings Act [examples cited].</p> |
| 35 | Michael Talley, Rutherford Hotel/Rutherford Holdings | Oppose | <p>Council has turned Millers Acre into a half acre with its own retail development.</p> <p>Such a large development consent would require new carpark areas.</p> <p>Existing retail area in CBD is sufficient.</p> <p>Local people shop in areas closest to home e.g. Richmond. CBDs better suited to commercial business, restaurants, etc with limited retail.</p> <p>No Council warranty as to fate of Montgomery Sq.</p> <p>Rutherford's new conference centre would be short of parks if Wakatu spaces fall over into Montgomery.</p> <p>Council would be conflicted to hear resource consent.</p> |
| 36 | Trevor Brown, Bed, Bath & | | <p>Strong support and encouragement for this development. Nelson's CBD can only benefit from new investment.</p> |

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| | Beyond | | <p>As retailer in over 50 locations through NZ we are very aware of disastrous impact lack of suitable sites can have on anchor retailers. Often they move to edge or neighbouring town with serious impacts.</p> <p>Nelson CBD is under serious threat from Richmond's new Kmart and Warehouse, as well as Nelson Junction (Mitre 10 site).</p> <p>Specialty retail needs anchor tenants to maintain customer frequency, and promotion of area.</p> |
| 37 | Paul Smith, Windermere Holdings Ltd | | <p>WHL was approached by Farmers regarding new premises. After extensive work on economics, in position to complete transaction with Council.</p> <p>Detailed negotiations followed regarding car parking, creation of new car parks, traffic engineering and urban design. Got to proposal in SOP.</p> <p>Price reached is function of number of elements including:</p> <ul style="list-style-type: none"> • Economics of the proposal • Additional funds applied to create new car parks, landscaping etc to be vested in Council • Purpose – i.e. Farmers, not high rise or apartment block • Flow on benefits in terms of growth and development, rates generated, growth in revenue from carparks • Overall positive, and necessary, economic influence on CBD. <p>Urban design – will go to Urban Design Panel to review exterior appearance of building. However any changes recommended would have to meet Farmers' approval and must not increase construction costs.</p> <p>CBD faces significant threats from Kmart and Warehouse in Richmond, and Nelson Junction. CBD needs new investment. CBDs which have suffered from tenants such as Farmers relocating and major bulk retail on city boundaries are Hamilton and Palmerston Nth.</p> <p>If Farmers cannot resolve their requirements within the CBD, they have no choice but to look elsewhere – most likely beneficiary being Nelson Junction. No doubt they would be offered a substantial incentive package to take premise there.</p> <p>Since going public, WHL have had several unsolicited approaches from specialty tenants who'd like to be part of complex.</p> <p>WHL has strong support from owners of [FVM] building on Trafalgar St and is working with them to create strong connectivity between proposed Farmers and their building and Trafalgar St.</p> <p>Should Council ratify sale, the development will be subject to:</p> <ul style="list-style-type: none"> • Resource consent outcomes being acceptable to WHL & Farmers • Concluding all matters with Farmers on commercial terms • Being satisfied with final overall costs and contingent risks for the project. |
| 38 | Lighting Plus | | <p>Support in principle.</p> <p>But, do not support:</p> <ul style="list-style-type: none"> • Proposed location of building – shift to west end • Apparent reduction in parking, together with increased |

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| | | | <p>demand.</p> <ul style="list-style-type: none"> Increased trucking down Achilles Ave Loss of amenity fronting Wakatu Sq – attractive retail with good sunlight and streetscape Building’s layout – conflict and safety with trucking, carpark and pedestrian entry at buildings west end. <p>Believe the development should contribute to its own carparking demand – perhaps a multi-storey building. Or using additional council-owned land at Rutherford St end.</p> |
| 39 | Furama Investments Ltd (Hannah and Lyttle Family Trusts) | Oppose | <p>Strongly oppose in the proposed format.</p> <p>Proposal has:</p> <ul style="list-style-type: none"> favoured the developer discounted development potential of property on the south side of Wakatu Square. reduced the value of property held by us (31-35 Bridge St). destined Wakatu Lane to become a shady cold service lane. insufficient carparking. <p>Proposal is inconsistent with the Heart of Nelson Strategy and Council priorities to support people-friendly spaces.</p> <p>Seek changes to proposal to move Farmers building 80 m to the west or providing a 20m gap between the building as proposed and the properties fronting Wakatu Lane.</p> |
| 40 | Civics Education Action Group Nelson (Sharyn Black) | Support | <p>Support with the inclusion of the following conditions:</p> <ul style="list-style-type: none"> that there be a carless, green, business-free truly social space that surrounds the retail development such as that currently proposed by Windermere. that one of the existing Farmers buildings be converted into a central city multi storey carpark with a street front feature in keeping with the niche courtesies. <p>The submission is accompanied by a petition for the above signed by 130 people.</p> |
| 41 | Adrienne Mathews | Oppose | <ul style="list-style-type: none"> Proposal is short sighted and lacking in long term vision. Idea that the proposal is parking neutral is flawed. Should be sufficient parking for all activities in the central city. Would be fair if Windermere replaced metered carparking one for one. Farmers is an important anchor tenant but precisely where it is in Trafalgar Street, moving it will move custom. Big box stores represent old fashioned and out dated city planning. City should be place where people can live and work where cultural heritage of region is reflected, not ugly boxes. Urge Councillors to reread the Heart of Nelson Strategy document and consider the proposal in light of the overall vision the document puts forward. |
| 42 | Seddon Marshall | Oppose | <p>Involved as Councillor in creation of Buxton, Montgomery & Wakatu Squares.</p> <p>Appalled at proposed sale.</p> <p>Need to consider big picture & not rush to plug perceived gap.</p> |

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| | | | <p>Wakatu Sq vital component in future of city.</p> <p>Should turn land D-G into parking, with view to building a future complex above ground parking and, as future may dictate, mix of commercial, entertainment, recreational or even residential.</p> <p>When Woolworths was proposed on that site, for every carpark lost, they had to provide 2 in a parking building.</p> <p>Would you sell your own private house at discount of 30-40%?</p> <p>Business location decisions have been made taking into account a host of things, including trust element of Council reliability.</p> <p>Benefit of council vehicles close by.</p> <p>Replacement land for parking is only 58% the area of B and C - provide fewer parks.</p> <p>With a massive shopping complex parking will be mighty problem, for tenants of building but other users of parking.</p> |
| 43 | Colin Ratcliffe | Oppose | <p>Not enough carparks in the city at present and will need more in future.</p> <p>Using Hunting & Fishing site for parking would only be temporary measure.</p> <p>Council paid \$3.16m for sites to be used for parking.</p> <p>How about a land swap of Farmers Bridge St site for land adjoining the Trafalgar St site?</p> <p>Support Option 4.</p> |
| 44 | Sandra Ware | Support | <p>Support idea presented by Civic Education Action Group, below.</p> <p>People's Park with built up grassed bays, functioning as seating where workers could eat lunch, people socialise, performance.</p> <p>Chinese exercise machines, dance floor, jukebox, Lights Nelson could use, lockable display cabinets for art & community notices.</p> <p>Use one of buildings vacated by Farmers as multistorey carpark for downtown workers. Building could be leased by Farmers.</p> |
| 45 | Rob Stephenson, Achilles Properties Ltd | Support | <p>Support overall concept of Farmers being relocated to or near Wakatu Sq, qualified as follows:</p> <ul style="list-style-type: none"> • Current negotiations with WHL should be stopped, and the property/project put out to tender. • Achilles Properties has put a lot of time, effort and intellectual property into earlier proposals for the square [see full submission p1-2]. Duty of care on council to see if Achilles were interested. • Selling for \$2m with no valuation is surprise. Selling cheaply is effectively subsidising an out-of-town developer at expense of Nelson domiciled companies who are actively developing/supporting Nelson. <p>Building should be moved to the west [see appendix 1 of submission] onto Hunting & Fishing and Hunters sites. If building were 3 storey would need only 2000m² with more carparking space. Better amenity for existing businesses. Better profile from Rutherford St and room for small park. Farmers is big drawcard and doesn't need to be close to Trafalgar St. Bus access would be better.</p> <p>Building as proposed in SOP would affect amenity of properties on Wakatu Lane including footpath, servicing,</p> |

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| | | | <p>existing carparking infrastructure would stay (we understand \$1m been spent). Parking on Achilles Ave appears very tight.</p> <p>Parking strategy in Nelson not working. Highjacked by council staff and councillors. City becoming less attractive. Farmers will bring 500,000 shoppers pa (Farmers figures), yet Council is loading more cars into an already overloaded system.</p> <p>If Farmers goes ahead, imperative that all parks are 2h maximum, with 1h parking remaining to encourage turnover.</p> <p>Don't support pocket park. Do see option for Trafalgar St to be one-way from Selwyn Pl to Bridge, with meandering narrow lane and child-friendly/pedestrian green space.</p> |
| 46 | Achilles Properties & Frivin Ltd 50 & 60 Achilles Ave | | <p>Submission as owners of 50 & 60 Achilles Ave (Nood, Lighting Plus, Kathmandu & Hunting and Fishing).</p> <p>Support in principle relocation of Farmers to Wakatu Sq and its contribution to commercial vitality of CBD.</p> <p>But, do not support:</p> <ul style="list-style-type: none"> • Process Council has followed, and purchase price negotiated • Location of building – should be to the west. • Any reduction in carparking – need to increase given demands of such a store. • Leaving issues of amenity, parking & other effects to the resource consent stage. These are matters that should be taken into account in deciding form and location of any sale of land. <p>HONS, which included large format option for square, was completed in 2009, before remainder of land to west of the square was purchased. That land's development potential was not accessed, including option that might provide alternative/better options to selling Wakatu Sq.</p> <p>Should have a design study, independent of or part of HONS review, should look at the entire area owned by Council from Trafalgar St to Rutherford to ensure get best design and linkages to Trafalgar/CBD and transition areas in St Vincent/Vanguard.</p> <p>Various other issues relating to Wakatu Lane status and access, and footpath, open space qualities of squares, development potential of north-facing sites fronting Wakatu Lane.</p> <p>Proposal will not be parking neutral. Providing parks elsewhere not as convenient for businesses. Farmers will increase parking demand. Parking spaces to be provided on Achilles Ave could be provided now, and shouldn't be counted as new.</p> <p>Having building at western end more efficient and less amenity impact.</p> <p>HONS does not have legal effect.</p> <p>Concerned sale to WHL will unfairly influence and pre-empt resource consent process.</p> <p>Urban design – prior to any sale decision, proposal should be put to the Urban Design Panel.</p> <p>Seek that Council not proceed with sale as proposed, but instead consider an Option 5 – sale of other land between Wakatu Sq and Rutherford St for a store.</p> |
| 47 | Maureen Harris, | Oppose | Object strongly. Will be huge impacts on all north-facing properties – loss of sun, boxed in with approx 7m to concrete |

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| | Topz Shoe Repairs | | wall, Wakatu Lane will become service lane with no parking close to existing retailers. Selling below valuation. Proposal is being rushed. Should be held back until new Council is in place. |
| 48 | Don Harris, Topz Shoe Repairs | Oppose | As above - submission #47 |
| 49 | National Council of Women, Queenie Balance | Support | Support because: <ul style="list-style-type: none"> Financial benefit to Council and low financial risk. Potential to increase pedestrian traffic in Square through to Trafalgar St Car parking adjacent to retail complex. Good for visitors and elderly not to have to walk between stores to shop at Farmers. However, need to take into account: <ul style="list-style-type: none"> Impacts of proposed developments at Tahunanui, Mitre 10 site and Richmond. Cannot all be viable. Loss of sun. Consultation with Trafalgar St shops should occur earlier rather than later, so everyone is happy. If proposal is vetoed, will Farmers shut up shop? Filling the space vacated in Trafalgar St. |
| 50 | Scott Harris, Topz Shoe Repairs | Oppose | Will have huge impact on retailers. Loss of car parking close to Trafalgar St. Foot traffic largely denied on Wakatu Lane. Wakatu Lane treated largely as service access. Maintain open square concept - move proposed building to old Hunting and Fishing site. Lack of consultation with existing land owners. Poorly thought-out and have been rushed through for benefit of a very small group of people, but impacts on big group. |
| 51 | Charm Schweder, Sprog Hog Kidz | Oppose | Shop will be hidden - loss of sun and business. Already icy. Safety concerns with narrower footpath - prams and kids. Bus manoeuvring and reserving add to danger. Fumes and noise from vehicles. Put building at western end of car park - will affect retailers less and give better visibility to Farmers from cars entering that part of town. |
| 52 | Tony Cummings, SBL Group | Completely Oppose | Oppose sale of areas B & C for following reasons: Concept plans do not provide for necessary turning circle for buses that come up Wakatu Lane from Rutherford St. Concept plans do not provided for NBus stops. Under the NBus contract NCC has to provide stops in Wakatu Sq. Nor is NBus access provided for. This cannot be left to resource consent. Public toilet need will increase - already issue with using SBL's. Need traffic management plan and in early consultation with SBL. SBL needs continuity of service during construction. Seek: <ol style="list-style-type: none"> 1) Areas B & C to be sold to be moved 5m north, to permit turning circles and retention of NBus stops |

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| | | | <p>and other infrastructure.</p> <p>2) Any contract with WHL contain specific condition that the 3 stakeholders (WHL, SBL and Council) all approve building concept, urban design layout, and traffic management plan <u>prior</u> to application for resource consent.</p> <p>If this occurs then proposal could go to resource consent with SBL support. Key factors being:</p> <p>Greater width in Wakatu Lane for bus stops and turning, ability for buses to travel around the complex, and provision of public toilets.</p> |
| 53 | Tony Cummings, Nelson SBL Holdings Ltd | Oppose | <p>Owner of land on which bus terminal is located. Object to <u>current plans</u> for following reasons:</p> <p>Wakatu Lane is narrowed. Amenity effects – dark, shading, removal of paving, concrete wall, surface water impacts, contrary to HONS B6 – landscaping improvements Wakatu Lane.</p> <p>Traffic management issues (see sub 52)</p> <p>Pedestrian access will increase via private property (SBL land). Need to address.</p> <p>Public toilets (see sub 52).</p> <p>Inadequate parking. Council should take this opportunity to achieve extra parking.</p> <p>Risk to cars exiting car park to Wakatu Lane with bus movements.</p> <p>Seek:</p> <ol style="list-style-type: none"> 1) As in sub 52, relief 1). 2) Require developer to undertake multi-storey development with retail as in HONS. 3) Council approach owner of vacant numbers 53-55 Bridge St to develop pocket park and pedestrian access. |
| 54 | Gaire Thompson | Oppose | <ul style="list-style-type: none"> • Proposal is different to that in Heart of Nelson Strategy • A lot of ratepayer money has been spent on the car park to date. • Most people believe building should go where Hunter Furniture and ex Hunting and Fishing buildings are. • It's impossible to fit the same number of car parks lost on the western end of Wakatu Square. • Should have been a valuation done prior to accepting developers proposal. • Traffic engineering report should have been available prior to seeking submissions. • Should be delayed until carparking study is completed. • Two thirds of the land to be used for parking is already used for NC private parking. • Council report clearly state land use purchased in 1990 for a parking square. • Why is land value reduced to sell to out of town developer? • Aldo has never spoken with me, nor have staff despite our companies having substantial interest in future well being of CBD. • Rushing just before an election is not good timing. |

| Sub # | Submitter | Support/ Oppose | Summary of Submission |
|-------|---|--------------------|---|
| | | | <ul style="list-style-type: none"> Where will the bus stop in Wakatu Lane be relocated to? Councillors should go and see for themselves the effect on Wakatu Lane and the effects of the size of the building on it. My opposition is not driven by the prospect of losing Farmers as a tenant. |
| 55 | Strategic Property Group Ltd (Granville Dunstan and Steven Baigent) | | <ul style="list-style-type: none"> Believe Farmers must be retained within the CBD with a strong link to Trafalgar Str. We have contacted the developer and have come to the conclusion that a pocket park (such as that adjoining the Post Office) paved right through to Trafalgar Street is the best option. Support the proposal and consider that a pocket park concept linking Farmers with 126 Trafalgar Street should be part of the design brief. |
| 56 | Thompson, Daly & Co (Barry Thompson) | Oppose | <p>Farmers have stated in the Nelson Mail that they do not intend to leave their current property; the reason for the sale is therefore invalid.</p> <p>The property has never been placed on the local market, it appears selling to outsiders because they sound better than locals appeals to NCC.</p> <p>The situation of the proposed building is incredibly bad. It should be the western end that is sold off, leaving the parking square in centre.</p> <p>Erection of a building for commercial use on a carpark area is detrimental to long term parking, as is evidenced by the Millers Acre development.</p> <p>The proposal will disrupt the traffic flows in and out of SBL Depot, which conveniently uses access ways in and out of the carpark for its buses.</p> <p>The price suggested is ridiculously low, prices in the vicinity have been \$1000 per m².</p> <p>The proposal has been negotiated by staff and Councillors who are not experienced in this type of activity. Demand for retail shops is slack at the moment.</p> <p>Council would be well advised to:</p> <ul style="list-style-type: none"> Develop Buxton Square with Farmers, possibly a carpark upstairs. Organise parking meters and parking, it is a shambles and has been for years. Coordinate with landowners in the city centre to have retail more centrally located and stop flow to Vanguard and Tahuna. A change in the rating system could help here with outer properties such as the warehouse paying the 25% differential. Rationalise the inner city parking (long and short term users). |
| 57 | Zachary Domike | Oppose | <p>Option 3 call for Expressions of Interest for an open development proposal is supported.</p> <p>Future of Nelson retailing is in boutique and unique shopping environments. Internet sales of identical products to Farmers can be had at any time, overseas experience shows failure is barely delayed by building new and bigger stores.</p> <p>The shape of the building should take advantage of some of Nelson's world famous creativity.</p> <p>This construction project will benefit future generations only if designed for sea level rise.</p> |

| Sub# | Submitter | Support/ Oppose | Summary of Submission |
|------|----------------------------|--------------------|---|
| 58 | Allen Chambers | | <p>History has proven real, free enterprise is superior to government central planning. Why is the government in the private property business? Why is the government speculating with other people's money? Why is Council considering selling the property at a \$800K discount? Why is there no discussion of Farmers pulling out of their development in Blenheim? What is the urgency, Farmers say they will stay where they are?</p> <p>A central issue with Nelson is parking. The free market competition in Richmond provides for no fines, no WOF or rego requirements. Council concludes it is smarter than the free market. The current Council is a clear danger to people pocketbooks.</p> |
| 59 | NZ Institute of Architects | | <p>As part of the Heart of Nelson Project Steering Group a key component of this development was parking on the upper level. To negate this from the proposal would further erode Nelsons ability to be a destination for retail therapy. Nelson has suffered enough thorough parking charges and urban planning issues. To be allowed to dispense with the parking is of benefit to the developer only. Parking could be seen as a draw card with it being provided free upon provision of receipt of purchase. The parking level could future proof itself by providing a battery charging station for electric cars.</p> |
| 60 | Michelle Ahnfeldt | | <p>Concerned that:</p> <ul style="list-style-type: none"> • Council is negotiating the sale of land to the developer and stopping a fair market price from being proven. • There has been little effort to canvas people's opinions and communicate the far reaching effects. • Little though appears to have been given to a cohesive plan for what the city will look like in 50 years time. • Has there be any research done on the impact imposed on small businesses from the shift in foot traffic? • Shifting such a large retail development from the centre of the city will affect values of properties and therefore the income of rates to Council. Will there be compensation for the loss of value to commercial properties? • Sale price is below the value of the property – it is normal practice to obtain 3 valuations and take a median price. • The developer should be required to provide more car parking on the roof or under the building. |
| 61 | Doug McKee | | <p>The reported sale price of the land is not a fair open market value.</p> <p>The council did not obtain a registered valuation of the land prior to preparing the Statement of Proposal dated 6 August 2013.</p> <p>The threat of losing Farmers to the City Centre has been over stated.</p> <p>Since February 2011 Nelson City Council has not called for 'expressions of interest' or development proposals for Wakatu Square.</p> <p>No additional car parks are provided for in this proposal.</p> <p>The Statement of Proposal contains misleading and inaccurate comments.</p> <p>Why was the option not put in the Proposal for the building</p> |

| Sub# | Submitter | Support/ Oppose | Summary of Submission |
|------|--|--------------------|---|
| | | | development to go on the areas of the Clifford land and leave the existing car park. I support option 3. |
| 62 | Nelson Tasman Chamber of Commerce (Dot Kettle) | | In general the Chamber members support appropriate development in our region, and present the following issues: <ul style="list-style-type: none"> • There are a number of specific questions and issues for NCC and/or for the resource consent phase. These relate to specific and detailed issues such as the provision of adequate parking and access for buses, the contribution being made by Windermere etc. • There are also a number of significant issues for NCC and the business and wider community, including how we support existing retailers in the CBD, how we ensure our main streets remain busy with foot traffic and are not over whelmed by empty shop fronts, and how we develop the inner city. |
| 63 | Nita Knight | | It is not clear how Council would deliver and balance future car parking needs of Central Nelson City. I have concerns if there is a loss of all day parking at Wakatu Square as this would seriously impact on the Nelson Market stallholders. The Market runs from 8am to 1pm, stallholders cannot be leaving their stalls unattended to find another carpark. |
| 64 | Ben Trathen (Trathen Properties Ltd) | | I do not believe the Wakatu carpark to be an appropriate position for the development because: <ul style="list-style-type: none"> • It creates dislocation from the central CBD causing fragmentation and creating negative impact on small local retailers. • Although we have been assured there will not be a reduction in carparking there is a potential to reduce carparking. • It takes away the option of a potential site for future carparking. • Council is being reactionary instead of having a big picture view • There has been a lack of consultation with affected parties and little credit to the value of input from community business people and developers. • I would like to meet with Council to present an alternative option which I believe would be more beneficial to the business centre of Nelson. |
| 65 | Ali Morton | | <ul style="list-style-type: none"> • I strongly advocate for local contractors to work on any buildings. • I would like some locally owned boutiques/gift shops to go in. • Pedestrians, cyclists and public transport users need to be provided for, this means good walkways and bike parking not just maximising carparks. • Can Council view all matters with a long term vision, not just focus on debt reduction right now. • When I think of thriving cities, I think of benches, waterfalls, old people sitting around chatting, families with kids playing safely, buying things and spending money from small vendors, not big car parks a with chain stores. Can we have both please? • Nelson has made great changes to the bus system, how will this proposal affect it? I wouldn't want to see them suffering because of this proposal. |

| <i>Sub#</i> | <i>Submitter</i> | <i>Support/ Oppose</i> | <i>Summary of Submission</i> |
|-------------|------------------|----------------------------|---|
| | | | <ul style="list-style-type: none"> • The city centre is already covered in carparks – if a few parking spaces go, cant we keep working to make public transport more attractive? A vibrant city is not one covered in carparks. • It doesn't seem very community focused to tear down the Hub and replace it with a smaller facility and turn it into more parking. |



Attachment 3

FLETCHER VAUTIER MOORE
LAWYERS

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Nelson

| | |
|---------------|---------------------|
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| Email | jironside@fvm.co.nz |
| Matter No | 455315\17 |

12 September 2013

Attention: David Jackson

Dear David

WAKATU SQUARE

Instructions

1. You have asked us to review the submissions made by Mr Beckett and Mr McFadden (on behalf of Roger Gibbons) on the Wakatu Square statement of proposal, and to advise whether there is any legal impediment to the Council now proceeding to hear and consider the submissions, and to decide whether to adopt the proposal.

Advice

2. Having reviewed those submissions, our advice is that there is no legal impediment to the Council now proceeding to hear and consider the submissions, and making a decision whether to accept or reject the proposal.

Beckett submission

3. At paragraph 3, Mr Beckett submits that the statement of proposal did not include the following information:
 - (i) the sale price
 - (ii) the fact that the sale price is not based on valuation advice 'but rather on how much the purchaser was willing to pay'.
4. At paragraph 4, Mr Beckett submits that compounding these omissions is 'the Council's refusal to make available details of the agreement with Windermere'.
5. At paragraph 5, Mr Beckett submits that the statement of proposal is incorrect in stating that Farmers will leave their current premises if the proposal does not

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proceed. Mr Beckett further submits that the Council has become aware that the statement of proposal is incorrect and should be withdrawn.

6. At paragraphs 7 and 8, Mr Beckett comments on the failure to obtain a valuation prior to agreeing a price with Windermere for sale of the land. Mr Beckett further submits that the proposal should be abandoned and that nothing short of that will satisfy the Council's obligations under section 101 of the Local Government Act 2002 (LGA).

Observations on Beckett submission

7. As to paragraphs 3, 7 and 8, the sale price has been disclosed during the period that the statement of proposal has been open for submissions¹. The Council will also have valuation advice available to it when it decides whether or not to accept the proposal. However, the proposal also includes the construction of new and additional car parking spaces on other Council-owned land. The proposal is not simply the sale of Council-owned land. The Council is required to consider the overall proposal and whether the full extent of what is proposed amounts to prudent financial management in a manner that promotes the current and future interests of the community, in accordance with section 101 of the LGA. The criticisms made by Mr Beckett at paragraphs 3, 7 and 8 do not in our view prevent the Council from making a decision on the statement of proposal. The obligation under section 101 is clearly a matter for the elected Council to weigh and consider, and Mr Beckett's criticisms do not disclose a reason that prevents them from doing so.
8. As to paragraph 4, details of the proposal are clearly set out at section 2 of the statement of proposal. This includes the statement at paragraph 2.8:

2.8 If WHL for any reason fails to secure Farmers as a tenant, or the proposal fails to proceed as described, it is proposed that the sale would not proceed and the land would remain in Council ownership.
9. As to paragraph 5, Mr Beckett is incorrect in asserting what the statement of proposal states. What is stated under options 2 and 3 is the following:

The timeframe involved with this option is unlikely to suit Farmers whose lease expires in May 2015. There is a risk that Farmers will vacate its current premises and will not relocate within the City Centre, thereby adversely affecting other retail activities in the City Centre.
10. And under option 4(do nothing):

Farmers may leave the City Centre thereby affecting the retail viability of the City Centre and negating the substantial investment of public money that has occurred to enhance the viability of the City Centre.
11. There is no statement in the proposal that:

'Farmers will leave where they are now if this proposal does not proceed'

¹ See for example paragraph 4 of the McFadden submission.

as Mr Beckett asserts. The proposal identifies this as a risk. We understand that further clarification of this matter has been provided in a submission by Farmers. The sale price has been disclosed subsequently. We do not agree that the statement of proposal, supplemented by the additional information as to the sale price, fails to set out the proposal in sufficient detail.

12. There is nothing in paragraph 5 of Mr Beckett's submission that prevents the Council from proceeding to hear submissions on the statement of proposal.

McFadden submission

13. The McFadden submission makes general statements that the statement of proposal does not comply with the requirements of the LGA (paragraph 1); and does not meet the provisions and principles of the LGA (paragraph 2). There is criticism of the sale price (paragraph 4); and that the statement of proposal is predicated on Farmers being lost to the City Centre (paragraph 5).
14. These matters are developed further at paragraphs 6 to 10. However, none of the matters raised sets out a sufficient basis for the Council not to proceed to consider the submissions that have now been made on the proposal, including Mr McFadden's submission.
15. The remaining paragraphs of the submission criticise the Council for failing to consult adequately over the proposal, and over the information provided by the Council, and concludes by submitting that Wakatu Square should not be used for any purpose other than car parking.
16. The criticism of the Council over consultation fails to appreciate that the special consultative procedure adopted by the Council (acting as a prudent Council, and not because it was required to do so) is the very essence of a consultation process. As was said in the *West Coast United Council v Prebble* case (which Mr McFadden quotes):

'Consulting involves the statement of a proposal not yet finally decided on, listening to what others have to say, considering their responses and then deciding what will be done'.
17. That is precisely the process the Council has embarked on and should continue with, notwithstanding Mr McFadden's submission.
18. Finally, we comment on paragraph 15 of Mr McFadden's submission. Mr McFadden submits:

Simply put there has been no "analysis" as required by the Act and in the context of the information available – the reason for the Statement of Proposal does not exist (by the confirmation of Farmers). Not only the Statement of Proposal but the process is flawed. If the Statement of Proposal is confirmed this matter will be the subject of High Court proceedings.'
19. We have already commented on this matter in relation to paragraph 5 of Mr Beckett's submission. As to the threat of legal proceedings, while Mr McFadden may make that submission, it would be wrong for the Council to be influenced in any way by it.

Whether a submitter seeks to challenge a Council decision on a statement of proposal is entirely a matter within the decision-making provenance of that submitter. It would be an irrelevant consideration for the Council to take into account in deciding whether to accept or reject the proposal. Otherwise the Council risks having consideration of a proposal, and its substantive decision, improperly influenced by a threat of future legal action.

20. Please advise if we can be of any further assistance in this matter.

Yours sincerely
Fletcher Vautier Moore



Julian Ironside
Partner



Attachment 4

FLETCHER VAUTIER MOORE
LAWYERS

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455315\17

9 September 2013

Attention: Clare Hadley

Dear Clare

WAKATU SQUARE DEVELOPMENT

Introduction

1. We have been asked to consider whether the offer back provisions in section 40 Public Works Act 1981 (**Act**) apply to land in Wakatu Square, Nelson that the Council proposes to sell to Windermere Holdings Limited for the development of a major retail store.
2. Section 40 of the Act provides in general that where land held for a public work is no longer required for public work purposes then the land must be offered back to the person from whom it was acquired for a public work, or to the successor of that person, unless any of the exceptions set out in section 40 (2) of the Act apply.
3. We have concluded that:
 - (a) The land the Council proposes to sell is held for a public work;
 - (b) If the Council decides to proceed with the sale of the land to Windermere Holdings Limited the land will no longer be required for a public work, therefore triggering the application of section 40 of the Act;
 - (c) There are grounds on which the Chief Executive can decide that the exceptions to offer back set out in section 40 (2) of the Public Works Act apply, and that the Council does not have to offer back the land to the former owners.

Description of the land the Council proposes to sell

4. In 1990, the Council purchased several properties bordered by Trafalgar Street, Wakatu Lane, and Achilles Avenue that were owned by WGM Goodwin, JC Griffin, RG Griffin, JJM Goodwin, RR Griffin, and NE Gray. There were a number of buildings on the properties, some of which were leased. One of the occupiers was

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Wrightcars Toyota. The legal description of the properties purchased by the Council was as follows:

- (a) Lots 2 and 3 and portion marked 'right of way' on DP 1270 – CT 50/135
 - (b) Lot 1 DP 1270 – CT 50/136
 - (c) Part section 224 City of Nelson – CT 77/76
 - (d) Lot 3 DP 2478 – CT 77/105
 - (e) Lots 1 and 2 DP 2478 – CT 108/184
 - (f) Lot 2 DP 2051 – CT 68/151
 - (g) Lot 1 DP 2051 – CT 68/150
 - (h) Part Section 226A City of Nelson DP 1590 – CT 55/96.
5. In 1996, the Council amalgamated the properties closest to Trafalgar Street (referred to in (a) and (b) and part of (c) above) into one title (CFR Identifier NL 12A/407), which it subsequently sold. The land currently has a retail and commercial building on it.
 6. The remaining properties (being part of (c), and all the land referred to in (d) to (h) above) were also amalgamated into one title. This is the land currently described as Lot 3 DP 17892 (CFR Identifier 12A/408). We will refer to this land as **the Goodwin land**. The Council proposes to sell part of this land to Windermere Holdings Limited, while retaining an area at the eastern end for access and car parking.
 7. The other property that the Council proposes to sell is described as part lot 29 DP 132 (CFR Identifier NL 82/102). This is a small property to the west of the Goodwin land, which the Council purchased from Apex Rental Cars Limited in 2008. We will refer to this land as **the Apex land**.
 8. When considering the application of section 40 the first issue to consider is whether the land is held for a public work. The second issue to consider is whether the land is no longer required for that public work or any other public work. These questions must be addressed separately for the Goodwin land and the Apex land.

Is the land held for a public work?

9. Whether land is held for a public work involves consideration of the circumstances of acquisition.
10. Although the Council does not have a property file relating to the purchase of the Goodwin land in 1990, it is apparent from the minutes, reports and newspaper clippings that we have seen that since 1988 the Council had been looking to acquire sites for off-street parking within the central city. In early 1990 the Goodwin land was put on the market for sale, which prompted the Council to urgently consider the acquisition of land for car parking in the Achilles Avenue / Wakatu Lane area.

11. On 18 April 1990 the Council's Chief Executive, Mr Rudhall, wrote a report to the Council's Property Committee (Report No 1673) which outlined options for off street carparking in the vicinity of the Central Business District. The report contained an evaluation of the cost of developing a car park in the Achilles Avenue / Wakatu Lane areas and two other areas within the central city. In relation to Achilles Avenue it was noted that 'the old Wrightcars / Cable Price site comprising 75% of the land required is currently on the market'. Mr Rudhall also said that 'the layout of buildings and sealed areas is such that carparking could be developed as required and the buildings retained for leasing until the area is required for parking'.
12. Mr Rudhall considered that the Council had the opportunity to develop a parking square in Achilles Avenue / Wakatu Lane similar to those which existed in Buxton Square and Montgomery Square. He identified three blocks of land that could form the Achilles Avenue / Wakatu Lane carpark, being the Goodwin land, land owned by BR Chapman (which later became the Apex land), and land owned by Bowater Properties Limited.
13. The Property Committee met on 30 April 1990. The minutes record that 'an opportunity existed to purchase land in the Achilles Avenue / Wakatu lane area and this needed urgent consideration'. The Committee agreed that it was important to open negotiations with the land owners urgently.
14. The Property Committee met to consider the matter so that the Works and Services Committee could consider the matter at a meeting the next day. The minutes of that meeting also mention that 75% of the land involved in the Achilles Avenue / Wakatu lane area was currently on the market.
15. Two weeks later, at a meeting of the Council on 15 May 1990, it was resolved in relation to the Achilles Avenue / Wakatu Lane carpark, and in accordance with the recommendation of the Property Committee:
 - (i) That a further 'parking square' be developed between Achilles Avenue and Wakatu Lane;
 - (ii) That Management negotiate for the purchase of the necessary land;
 - (iii) That the land purchase and development of the carpark be financed by a loan and be self-funding from within the parking account;
 - (iv) That the area be designated as car park in the District Scheme.
16. The Council also resolved:

That a Committee be set up to negotiate for the purchase of Achilles Avenue/Wakatu Lane comprising the Chief Executive and the Chairman of Finance, with the power to co-opt as necessary;

and that any agreement reached with the vendors has to be confirmed with Council within a certain time.
17. On that same day the Chief Executive wrote to Mr R Griffin and made an offer to purchase the properties 'in family and associated ownership' bounded by Trafalgar Street, Achilles Avenue and Wakatu Lane for \$2 million. The land would be acquired

subject to existing leases to Fletcher Trust and Investment Company Limited. Mr Rudhall ended his letter to Mr Griffin by stating 'In conclusion, I think it is worthwhile to respectfully remind you that there are certain advantages in dealing with the Council in this transaction'. This suggests that there may have been other purchasers interested in acquiring the land. The offer was verbally accepted the following day.

18. On 11 June 1990 the Nelson Evening Mail reported the purchase of the land for a ground level car park. Although the Council did not disclose what it had paid for the land, the newspaper noted that the Government Valuation was \$2,068,000. The land was transferred to the Council on 26 October 1990.
19. The term 'public work' is defined in section 2 Public Works Act 1981 as:

every Government work or local work that the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain, and every use of land for any Government work or local work which the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain by or under this or any other Act; and includes anything required directly or indirectly for any such Government work or local work or use.
20. The term 'local work' is defined as:

a work constructed or intended to be constructed by or under the control of a local authority, or for the time being under the control of a local authority.
21. At the time the Council purchased the Goodwin land section 591 of the Local Government Act 1974 gave the Council the power to provide car parking places and for that purpose to 'take, purchase or otherwise acquire any land or buildings or erect any buildings in or near to the district'. It also gave the Council the power to utilise any land or buildings that may lawfully be appropriated for the purpose and to take all steps the Council thinks necessary to adapt for use as a parking place any land or building that it acquired under that section.
22. We consider that that the minutes of Committee and Council meetings prior to the purchase clearly establish that the Council acquired the Goodwin land for the purpose of establishing a carpark on the land. A carpark is a local work for the purposes of the Public Works Act 1981 because it is work that the Council was authorised to construct pursuant to section 591 Local Government Act 1974. The Goodwin land continues to be used by the Council for a public car park. We therefore conclude that the Goodwin land is held for a public work.
23. We have also considered whether the Apex land is held for a public work. In a report from the Chief Executive to the Council, dated 21 May 1986 (Report 3296) Mr Rudhall stated that when the Wrightcars site [the Goodwin land] was purchased it was acknowledged that it would also be necessary to acquire the Chapman property [the Apex land] and part of Clifford Motor's land. The purchase of the Apex land and the Clifford Motors land would increase the number of carparks in Wakatu Square from 105 to 147. He noted that the Council had made and withdrawn an offer to buy the Apex land in 1995.

24. In a subsequent report to the Council dated 1 November 1996 (Report 3426) Mr Rudhall noted 'The Resource Management Plan designates this area for the proposed car park'.
25. On 16 May 2008 the Chief Executive, Mr Altmments, presented a report to the Council (Document 665068) regarding the purchase of the Apex land. Mr Altmments said that 'acquisition of the subject property [the Apex land] will allow Wakatu Square to be extended' and that 'Council has been trying to secure ownership of this property from the time that Wakatu Square was originally created'.
26. In the three years prior to Mr Altmments' report Council staff had been trying to get Apex Rental Cars Limited to agree to sell the Apex land, but Apex was reluctant to relocate until the Council had found a site for them to shift their business to. In 2005, and again in 2007, the Council and Apex had discussed possible sites. Apex had expressed a preference to own a site that had good visibility to the public and was close to the Visitor Information Centre. In 2007 the Council identified a property at 19 Halifax Street as a possible option, but the owners (Halifax Street Properties Limited) were only prepared to lease the land. Eventually, in 2008, the owners of the Halifax Street property agreed to sell, and the Council purchased the property at a price 15% above valuation.
27. In May 2008 Mr Altmments' report stated that the Council had purchased the property at Halifax Street, which was suitable to Apex, and that Apex had agreed to 'swap sites'. Apex would purchase the Halifax Street property for \$690,000 and the Council would purchase the Apex land for \$640,000. We note Mr Altmments' comment that the Council was paying \$180,000 in excess of valuation for the Apex land, which amounted to a 'considerable' premium of 39%.
28. Mr Altmments' report listed the advantages of purchasing the Apex land, which were the extension of Wakatu car park to create an additional 12 carparks as originally planned, the acquisition of 'a strategically located property' and enhancement of 'the potential for Wakatu Square to be further developed for a retail complex, car parking building or performing arts centre'.
29. When considering whether land is held for a public work the original purpose for which the land was acquired is relevant. Although the Chief Executive indicated that the Apex land could be a strategic purchase used for purposes other than parking, the reports we have referred to establish that the Council had been looking to acquire the Apex land for many years in order to extend the Wakatu car park. The Apex land was also subject to a car parking designation imposed by the Council.
30. We therefore conclude that the Council acquired the Apex land for the purposes of a car park. The Council subsequently demolished the building on the land and it is currently used for car parking. We consider the Apex land is held for a public work.

Is the land no longer required for a public work ?

31. The second issue to consider in relation to section 40 is whether land is no longer required for a public work or for any other public work. In *Attorney-General v Hull*, in 2000, the Court of Appeal held that land may no longer be required for a public work either by an affirmative decision to that effect by the Council, or by conduct on the

part of the Council from which an inference can reasonably be drawn that it no longer requires the land for the public work.

32. The Council has issued a statement of proposal to sell part of the Goodwin land and all of the Apex land to Windermere Holdings Limited, and has called for public submissions. We understand that the Council has not yet made a decision as to whether or not to sell part of the Goodwin land and all of the Apex land to Windermere Holdings Limited. Therefore, at the present time it cannot be said that the land is no longer required for the public work for which it is held, namely car parking, or any other public work.
33. If land held for a public work is no longer required for that public work or any other public work the Council is required by section 40 Public Works Act 1981 to offer back the land for sale to the person from whom it was acquired or their successor unless one of the exceptions in section 40(2) of the Act applies.
34. We conclude that at the present time the Council has not triggered the offer back provisions of section 40 of the Act. However, if the Council, after considering submissions, decides that it will sell part of the Goodwin land and all of the Apex land to Windermere Holdings Limited for a retail development then at that point the Council will become bound by section 40 of the Act. The Council will have to offer the land back to the former owners, or their successors, at current market value unless the Chief Executive considers that it is impracticable, unreasonable or unfair to offer the land back, or that there has been a significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired or held. These are the 'exceptions' to offer-back, which are set out in section 40 (2) of the Act.

Do the section 40(2) exceptions apply?

35. We have considered the factors that you could take into account in deciding whether or not the exceptions in section 40(2) of the Act apply.
36. In relation to the Goodwin land we consider the following matters are relevant to your decision:
 - (a) The Goodwin land was on the open market prior to the Council making an offer to purchase the land. The Council needed to decide quickly whether or not to purchase the land and make an offer to the owner. It appears that the Council may not have been the only entity interested in purchasing the land.
 - (b) The Council offered to purchase the Goodwin land (and the land to the east fronting Trafalgar Street) from the Goodwin and Griffin families at a purchase price that was close to the Government Valuation. The Council paid a significant amount, being \$2 million. There does not appear to have been any discussion of compensation that would be payable under the Public Works Act.
 - (c) There was no element of compulsion or taking in the purchase of the Goodwin land. There was not even the threat, or contemplation, of compulsion. The absence of compulsion is a relevant factor as to whether it is unreasonable to offer land back.

- (d) No compensation certificate was lodged against the title to the Goodwin land, which is often the case where land is acquired for a public work under the Act.
- (e) At the time the Council offered to purchase the Goodwin land it had not designated the land for car parking.
- (f) In *Port Gisborne Limited v Smiler*, a decision of the Court of Appeal in 1999, the Court questioned the justification for requiring an offer back to be made where land has been acquired for a commercial purpose on an arms length transaction, but years later is used for a short term for some form of public work. The Court said 'at the time of acquisition the vendor has no existing right which needs preservation'. Although Nelson City Council acquired the Goodwin land for a public work we consider the transaction was very similar to a purchase for a commercial purpose on an arms length transaction. The Council purchased the Goodwin land subject to existing leases and did not develop the land for car parking until several years after the purchase. In our view this is a significant factor that you may take into account in deciding whether it is unfair or unreasonable to offer back the Goodwin land.
- (g) It is also relevant that the Council still requires some of the Goodwin land for access and car parking, being the area between the land the Council proposes to sell and the commercial building that fronts onto Trafalgar Street.
- (h) For the reasons set out above we consider that it would be unreasonable or unfair for the Council to have to offer the Goodwin land back to the former owners.
- (i) The Chief Executive may also consider whether or not there has been a significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired. If the Chief Executive considers that this exception applies there is no requirement to offer the land back to the former owner. We consider that the 'significant change of character' exception applies to the Goodwin land. At the time the land was acquired by the Council it comprised a number of separate parcels of land and there were a number of buildings on the land. All of those buildings were demolished by the Council to make way for the car parks, and the six allotments making up the Goodwin land were amalgamated into one title. Where there were businesses and commercial premises, there are now sealed areas for car parking. In *Auckland City Council v Taubmans (New Zealand) Limited*, a decision of the High Court in 1993, the Court held that the demolition of buildings for car parking in that case amounted to a significant change in the character of the land for the purposes of the public work for which it was acquired. We consider that this exception also applies in this case.
- (j) We understand that it will be an essential condition of the proposed sale to Windermere Holdings Limited (WHL) that WHL agrees to demolish buildings on Council land to the east of the Goodwin land, and to form a new car park area at WHL's expense. This demonstrates the continued importance to the Council of off-street car parking in the Achilles Avenue / Wakatu Lane area. If the Council is only prepared to sell the Goodwin land to someone who is prepared to pay for the cost of demolishing buildings and establishing car

parks on nearby Council land then it would be unreasonable or unfair to have to offer that land to the former owners. That is because the Council could not require the former owners to undertake that car park development. The fact that the Council is only prepared to sell the land to an entity that would construct car parks on adjacent land also demonstrates the significant change in character of the Goodwin land as a public car park serving the retail and commercial developments around it.

37. In relation to the Apex land we consider the following factors are relevant to your decision:
- (a) As with the Goodwin land, the circumstances surrounding the acquisition of the Apex land are relevant to whether it is unreasonable or unfair to offer the land back to Apex Rental Cars Limited. Apex was a reluctant seller, but the land was not compulsorily acquired. The Council spent several years trying to find a suitable site for Apex to relocate its business. Only after the Council had purchased the Halifax Street property was the Council able to obtain Apex's agreement to exchange the Apex land for the land at Halifax Street.
 - (b) In addition to providing Apex with a site that it could relocate its business to, the Council paid a premium of \$180,000 in excess of valuation to buy the Apex land.
 - (c) In circumstances where the Council has gone to considerable effort to relocate a business, and then paid a premium to acquire the land, we consider it would be unreasonable or unfair to have to offer the land back to Apex, as the former owner, at current market value.
 - (d) We also consider that the 'significant change in character' exception applies to the Apex land for the same reasons that we have outlined in relation to the Goodwin land.
38. If the Council decides to proceed with the sale of part of the Goodwin land and all of the Apex land you will be required to consider whether any of the exceptions set out in section 40 (2) of the Act apply. For the reasons we have set out above we consider that there are grounds on which you could conclude that it would be unreasonable or unfair to offer the Goodwin land and the Apex land back to their former owners. We also consider that there are grounds on which you could decide that there has been a significant change in the character of the Goodwin land and the Apex land. If you were to reach that conclusion then the Council would not be required to offer the land back to the former owners.

Yours sincerely
Fletcher Vautier Moore



Stuart Ritchie
Partner