

NOTICE OF DECISION

In the matter of: Resource Management Act 1991

AND

In the matter of: An application for Resource Consent for Land Use by Aleksandra Mark - 193 Milton Street, Nelson

Hearing Date: Wednesday 01 April 2009

Hearing Panel: Commissioner I Barker (Chairperson) and Commissioners R Reese and D Shaw

Hearing Venue: Nelson City Council Chamber, Civic House, Trafalgar Street, Nelson

Appearances: For the Applicant: John Fitchett (Counsel), Aleksandra Mark (Applicant), Jane Hilson (Resource Management Consultant), Peter Kortegast (Traffic Engineer)

For Nelson City Council: Susi Bernsdorf (Planner), Mandy Bishop (Manager Resource Consents) and Les Denia (Senior Engineering Officer)

Submitters: Sean Cooper, Barry McKay, Max Lash and Jill Blechynden, Kay Holder and Christine McKenzie

1. Application

The application sought Resource Consent for a range of uses within Fellworth House a Category 2 Historic Place under the Historic Places Act 1993, and the Applicant's place of residence.

These uses being:

- i) To lease 2 first floor rooms to Counselling or Health Professionals.
- ii) To install an overhead telecommunications line to the premises from Milton Street using existing pole supports.
- iii) To use the formal ballroom and formal living rooms on the ground floor of the house for training, meetings, exhibitions, seminars, conferences and events.
- iv) To provide short term accommodation for guests in the first floor bedrooms in conjunction with the aforementioned events.
- v) To place two signs in the Milton Street frontage of the application site – one at the Right of Way entrance and one at the pedestrian walkway, in the location of existing signs – each not exceeding 2 metres in height and 1 square metre in area and noting the name of the premises and range of businesses and activities occurring therein.

2. Preliminary Matters

2.1. Late Submission

The Panel's attention was drawn to the addendum to the Officers Report on page 1 of the agenda and the members were advised that the comments received from the New Zealand Historic Places Trust had been received out of time and the Panel needed to make a decision as to whether or not these should be received and considered.

The Reporting Officer advised that the Council had failed to notify the New Zealand Historic Places Trust of the Resource Consent application when it was publicly notified and that by the time the error had been discovered the submission period had closed. Notwithstanding this, the Reporting Officer had suggested to the Trust that it should still forward its comments on the matter.

Counsel for the Applicant advised that as the submission was in support of the application and the Trust did not wish to be heard, the Applicant had no objection to the Heritage Impact Assessment provided by the Trust being considered by the Panel.

None of the submitters present at the Hearing expressed any concerns regarding the receiving of the Assessment by the Panel.

The Panel after adjourning to consider the matter advised the parties that it would accept and consider the comments from the New Zealand Historic Places Trust as advice on the heritage aspects of the building, but not as a late submission.

2.2. Home Occupation – Dental Surgery

Another matter raised by the Planning Officer related to the fact that the recommended conditions of consent included conditions relating to the dental practice which was presently being undertaken on the site as a home occupation and it appeared that should consent be granted this use would exceed the parameters for such an activity.

Ms Hilson on behalf of the Applicant explained that an initial application had included reference to the dental practice as it had at that stage been intended to exceed the standards relating to home occupations, however that application had been withdrawn. She explained that the present application had not included reference to the dental practice as there was now no intention to increase the size of the practice and therefore it was the Applicant's contention that it still fell to be regarded as a home occupation and therefore not requiring of consent. The Panel discussed whether legally any consent which might be granted could extend the terms of the application to include the dental surgery bearing in mind that no extension had been applied for.

The Panel was advised both by the Applicant and the Reporting Officer that it was logical to presume that there was no other person who might be affected by the application other than those submitters who were now appearing before the Panel and they would have the opportunity to express their opinions on any increase which the Applicant might in her evidence propose.

It was acknowledged that the conditions suggested by the Reporting Officer merely reiterated the standards relating to home occupations and on this basis they could be considered to be unnecessary.

The Panel reserved its decision in respect of this matter pending presentation of the evidence.

3. Summary of the evidence heard by the Consent Authority

1. The Applicant

- (a) Mr John Fitchett (Counsel) for the Applicant in presenting the application endorsed the recommendation within the Section 42A report prepared by the reporting Officer (Susi Bernsdorf) and confined his submissions to comments on the conditions suggested within that report.

In this regard Mr Fitchett advised that with minor wording amendments to the suggested conditions 2, 5, 8, 12, 15, 17, 21, 24, 28, and 35, which Ms Hilson would address in her evidence, the Applicant accepted the recommendations of the report.

Mr Fitchett also explained the legal situation regarding the Applicant's use of the Right of Way exiting on to Milton Street between numbers 173 and 183.

He advised that Ms Mark had an acknowledged right to carry out work on this Right of Way notwithstanding that she was only a dominant owner, provided that the work which she undertook did not affect the ability of the other owners of the Right of Way to use it for the purpose for which it had been set aside. Thus, any condition which might be imposed requiring widening or other treatment of the Right of Way could lawfully be imposed against the Applicant, as conditions capable of being complied with.

- (b) The Applicant tabled and read written evidence outlining her history as a dentist in Nelson and her purchase of Fellworth House and the ideas which she had to enable the building to be used and thereby retained in its historic albeit refurbished condition.

Ms Mark expressed concern that her proposal had raised issues with some of the neighbours and explained that she believed that the noise from functions which seemed to be the main concern would be kept to a minimum as she would personally be on site at every evening function as Fellworth House was her residence. She also acknowledged that if problems arose from the operation of the functions the Council had the power to review the conditions under which they were allowed.

- (c) Jane Hilson on behalf of the Applicant tabled and read planning evidence relating to the proposed activity, explaining that Ms Mark intended to remain the only dental surgeon in her practice. She also explained that the Applicant wished to remain living in the house while at the same time recognising its value as a public venue which would encourage efficient use of the property managed in a way that would be compatible with the residential amenity of the neighbourhood.

Ms Hilson outlined the rules within the Nelson Resource Management Plan which were pertinent to the proposal acknowledging that both individually and collectively the proposed uses were discretionary activities.

Ms Hilson outlined the concerns raised by the submitters, expressing the opinion that the potential cumulative effects of the use of Fellworth House as an events and meeting venue in conjunction with other commercial uses existing or proposed for the site must take into account the variable operating hours of each

activity as not all activities would occur at once and events or functions would be intermittent.

She expressed the opinion that the volunteered operating conditions would appropriately manage or mitigate any adverse effects on the residential amenity of the locality.

She also advised that she considered the effects of the new phone line, given that it was intended to follow the same route and use the same support pole as the existing overhead wire, to be de minimus.

She also drew the Panel's attention to the report from Mr Kortegast which addressed the potential cumulative effects of on site parking and the use of the Right of Way on the environment and roading network.

Ms Hilson undertook an assessment of the proposal in relation to the actual or potential effects on the environment concluding that from a professional planning perspective and with knowledge of Mr Kortegast's evidence any adverse effects on the environment arising from the proposal could within the scope of the application and conditions of consent be appropriately avoided, remedied or mitigated so as to be no more than minor.

Ms Hilson also undertook an assessment of the proposal in light of the objectives and policies within the Nelson Resource Management Plan and in particular those relating to non-residential activities, community dislocation and community benefit. She concluded that the proposal was not contrary to policy RE2.6 relating to non-residential activities and in relation to community dislocation the proposal was in line with the policies and objectives of the Plan as it would consolidate non-residential activities on a site which had a history and was currently part used for business purposes, while confining those activities in one building which was itself dispersed from other non-residential activities.

Ms Hilson advised that in her opinion there would be no precedent effects from granting consent to the application as the circumstances giving rise to this proposal distinguished it from others that the Council might in the future be asked to consider.

She also expressed the opinion that consent to the application would not challenge the integrity or consistent administration of the Nelson Resource Management Plan and would provide for heritage protection in a manner that would not unreasonably detract from the amenity of the particular neighbourhood.

Ms Hilson also suggested some amendments to the conditions proposed by the Reporting Officer to overcome what she saw as minor ambiguities or to assist consistency with the provisions of the Nelson Resource Management Plan.

- (d) Mr Peter Kortegast, Traffic Engineer, tabled and read written evidence relating to the surfacing of the lower car park, the provision of speed humps on the Right of Way access from Milton Street and the safety of the drive from the Right of Way to Fellworth House.

Mr Kortegast expressed the opinion that the condition suggested by the reporting officer requiring Gobi Block surfacing of the lower car park should not be applied as in his experience such surfacing would not be successful in the long run and it

would be better to rely on the review condition to require remedial action to be undertaken should his suggested grass formation not prove to be appropriate.

The Panel discussed the number of persons who might be accommodated as part of the Bed and Breakfast activity. Members noted that as a permitted activity the Applicant could provide such accommodation for a maximum of four persons, and that this could double to a maximum of 8 when a function was being held.

2. The submitters

(i) Jill Blechynden and Max Lash

The submitters explained that they resided at 179 Milton Street, a property which shared the Right of Way with Fellworth House, and while they generally supported the proposal they did have concerns regarding the safety of the access drive to their property particularly having regard to the speed that some vehicles, notably courier vans, traversed the straight length from Milton Street.

They advised that in their opinion an additional speed hump at the point where the drive started curving to climb the hill to the house beyond their property would be appropriate to ensure that vehicles travelling up and down the drive slowed appropriately as they passed their entrance.

They advised that they were not concerned at the possibility of any additional noise from the speed hump and they were happy for the Right of Way to be widened.

The submitters also expressed concern regarding the effect which vehicles parked on Milton Street had on the visibility for drivers exiting the Right of Way.

(ii) Sean Cooper

Mr Cooper tabled his assessment of the likely number of vehicles using the driveway which in his opinion indicated that the potential number could be almost twice as many as assessed by Mr Kortegast.

Mr Cooper explained that his main concern related to the safety of persons using the Right of Way and in particular for motorists or cyclists waiting to exit the Right of Way when vehicles were turning into the access from Milton Street.

He explained that he was not convinced that the widening of the Right of Way would be effective or ensure that vehicles could pass each other at the entrance and while he supported the provision of an additional speed hump at the end of the Right of Way he reiterated his concern regarding the overall volume of traffic likely to be passing his entrance.

Another concern raised by Mr Cooper related to possible noise nuisance from events. He explained that the balcony on Fellworth house was apparently presently being used by backpackers or other guests and the noise from this area was highly audible to his family in their house which was at a lower level. In conclusion, Mr Cooper advised that he supported the use of Fellworth House to ensure its retention and for this reason tolerated the dental surgery but he could not support the extension of the commercial use which was proposed to a level that he never envisaged would be permitted.

Mr Kortegast, in explanation of the assessed traffic volumes advised that he stood by his assessment of the potential number of vehicles likely to use the Right of Way to Fellworth House

(iii) Kay Holder

Mrs Holder explained that she was very concerned at the aspect of safety in relation to vehicles using the Right of Way and considered that a crash would be inevitable particularly at the entry point.

The Panel noted that Mrs Holder also had concerns relating to possible noise from functions and the additional pressure which there could be for parking on Milton Street.

(iv) Barry McKay

Mr McKay explained that his major concern related to the likely noise from the lower car park which abutted his property. He considered that persons attending night time activities should park on the street and use the walkway which ran between numbers 189 and 199 Milton Street.

Mr McKay explained that he had no concerns regarding the businesses operating in the house during business hours however use of the house for functions outside business hours would give rise to noise nuisance for the neighbours.

Mr McKay also explained that he was concerned at the suitability of the lower site for a car park due to land and storm water conditions.

(v) Christine McKenzie

Ms McKenzie explained that she was concerned at the likely volume of traffic using the Right of Way and the proliferation of signs which already mark the entrance to Fellworth House.

3. Reporting Officer

Susi Bernsdorf advised the Panel that she stood by her recommendation that the application be granted.

She drew the Panel's attention to the suggestion by Counsel for the Applicant to add a proviso to condition 27 to the effect that if the servient owners of the Right of Way did not want any of the upgrading suggested by condition 27 of the Officers Report to be undertaken then that condition would be of no effect.

Ms Bernsdorf advised that she could not support the addition of this proviso as the work on the Right of Way was a vital element in mitigating any traffic effects on the other users of this access.

Mr Denia spoke to some of the engineering issues which had been raised, explaining that the spill over of car parking onto the street would be of concern and he saw that the increase of the lower car park to accommodate 18 car parks went some way to alleviate these concerns.

He also advised the Panel that while the overall width of the Right of Way was not ideal he felt that with three speed humps and a line to mark the centre of the Right of Way at the entrance point it would be wide enough to be safe for two cars to pass albeit a little tight for two larger vehicles.

He also explained that the tobies for the water supplies serving the properties along the Right of Way, which were located within the carriageway, would need to be upgraded to metal type to allow for vehicles to run over them.

In conclusion Mr Denia said he was satisfied that there were sufficient on-site car parks to cater for all the activities envisaged by the Applicant.

4. Right of Reply

Mr Fitchett, in his right of reply on behalf of the Applicant, stressed that it was the Applicant's wish to leave the lower car park in grass for the meantime. If anything, needed to be done in the future to ensure that it was usable this could be provided for by the review condition.

He also advised that the Applicant had no problem with providing an additional speed hump at the beginning of the curve as suggested by Ms Blechynden, nor the provision of a centre line on the Right of Way at the entrance to guide traffic entering and exiting the accessway.

At this stage Mr Kortegast admitted that he had made no allowance for the four persons who could be accommodated as of right within the Bed and Breakfast facility and in this regard his figures needed to be increased by two trips per day per room.

Mr Fitchett pointed out to the Panel that the submitters had provided no expert evidence to counter that provided by Mr Kortegast regarding traffic volumes and therefore that was the only credible evidence that the Panel had before it.

As far as the noise from the balcony was concerned Mr Fitchett pointed out that the functions centre would only be operating on the ground floor and would have no access to the balcony.

In conclusion Mr Fitchett explained that the decision made by the Applications Committee in respect of Warwick House in Brougham Street, which was a similar proposal to that envisaged by the Applicant, could be regarded as an example of what might occur with Fellworth House should the application be granted. He explained that as he understood it no objections had been received to that use so in his opinion that illustrated what could be expected from a similar use of Fellworth House as far as the residential neighbours were concerned.

He also advised the Panel that he accepted that the submitters would be consulted on any review of the conditions of consent.

The Hearing stood adjourned at 1.45pm.

The Panel undertook a site visit on Thursday 16 April and resumed the hearing to consider its decision. The hearing was then closed.

4. Decision

- 4.1. That in accordance with Section 104B and after consideration of the matters in Section 104 of the Resource Management Act 1991 consent be GRANTED to the application by Aleksandra Mark for consent to undertake non-residential activities within Fellworth House situated at 193 Milton Street, Nelson (Lots 2 and 4 DP395154). These activities being the lease of two rooms on the first floor as offices to counselling or health professionals, the use of the former ballroom and formal living rooms on the ground floor as functions and events venue and the provision of short term accommodation in conjunction with the aforementioned events, subject to the following conditions:**

General:

1. The activity shall be carried out in accordance with the application dated 2 September 2008, received by Nelson City Council (Council) on 2 December 2008, the further information received on 9 March 2009, the plans dated 23 March 2009 stamped Resource Consent copy and labelled Plan A, Plan B, Plan C, and the following conditions of consent. Where there is any apparent conflict between the information received with the application and the conditions of this consent, the conditions shall prevail.

Lease of Office Space:

2. No more than 2 offices shall be leased to persons not residing on the premises and these shall be on the first floor and restricted to counselling or health professionals.
3. The offices' hours of operations shall be between 9am and 5pm, Monday to Friday only.

Short Term Accommodation:

4. The maximum number of paying overnight guests on site at any one time shall not exceed 8 provided that when there is no function or event being held the maximum number shall not exceed 4.

Sign:

5. The two signs shall be located on the Milton Street road frontage of the site at the right of way entrance (subject to landowner approval), and at the walkway entrance.
6. The two signs shall each have a maximum height of 2m and maximum area of 1 square metre.
7. Any illumination of the signs shall be directed solely at the sign and shall be restricted to the duration of the functions/ events.

NOTE: The consent holder shall ensure that all legal requirements relating to the location of the signs are met.

Functions & Events:

8. The use of the former ballroom and formal living rooms for exhibitions, training and conferences shall occur on no more than three days in any week. Any exhibitions, training events and conferences shall occur between the hours of 10am and 6pm.
9. The use of the former ballroom and formal living rooms for meetings shall occur on no more than three days in any week. Any meetings shall occur between the hours of 10am and 9pm and on weekdays (Monday to Friday) only.

10. The use of the former ballroom and formal living rooms for formal events and celebration functions shall be limited to weddings, anniversaries or family reunions. The use of the former ballroom and formal living rooms for events/ functions and associated activities shall be within the following hours:

Monday – Friday (inclusive) 10am – 9pm

Saturday 10am – 11.30pm

Sunday 10am – 5pm

The functions held on a Saturday shall be limited to no more than two per month.

For the purposes of this condition the term “associated activity” shall include cleaning and servicing of the exhibition, meeting, event or function, and may commence before 10.00am but no earlier than 8.00am.

11. There shall be a total of no more than three events of any kind held in any one week.
12. The number of persons on site participating in an event or function shall be limited to 75 at any one time.
13. No event or functions of any type shall be held on the property on any Good Friday, Easter Sunday or Christmas Day.
14. A register of all exhibitions, training events, conferences, meetings, events and functions held shall be kept by the consent holder and be made available to the Council upon request. The register shall contain the date of the event, the number of attendees/ guests and/or visitors and any complaints received.
15. There shall be no sale of liquor from the premises and any serving of liquor shall cease at least 30min prior to the exhibition, training event, conference, meeting, event or function closing.
16. The consent holder shall reside on the site and either she or her nominees(s) shall be present on the property during any event or functions after 6pm. At all other times, if such persons are unable to be present on site, a contact number at which they can be contacted shall be affixed to the door of the premises. The consent holder shall also make available to the owners and occupiers of the following properties 173, 175, 179, 181 and 183 Milton Street, 110 and 112A Halifax Street East, her home and cell phone numbers and that of a single nominee.

Noise:

17. Any live music shall be restricted to the ballroom and shall be un-amplified.
18. No live amplified music or amplified recorded music shall be permitted at any time.
19. Prior to consent being given effect to the consent holder shall provide a noise management plan to the Council’s Monitoring Officer that addresses the steps to be taken to mitigate noise emissions from the activity on the site. This plan shall include, but not be limited to: operating hours, restrictions to live music, limitation to un-amplified music.
20. A copy of this plan together with an explanation of the behaviour expected of users of the facility to meet the plan shall be provided to all users of the function rooms and made available to neighbouring property owners.

21. The consent holder shall advise Council's Monitoring Officer in writing at least 5 working days prior to each of the first 3 functions/ events occurring, so monitoring of these can be carried out.

Traffic & Car-parking:

22. Prior to the consent being given effect to, the consent holder shall undertake the following works as indicated on the plan labelled "Attachment 1" attached to this consent:
- (a) Installation of three speed humps on the shared ROW to reduce vehicle speeds adjacent to the vehicle access points, in the positions indicated on the plan labelled "Attachment 1".
 - (b) Installation of a fourth speed hump approximately 5m from the road boundary with Milton Street to reduce vehicle speeds adjacent to the access from Milton Street.
 - (c) Widening and sealing the ROW to its full legal width (4.57m) to allow two cars to pass slowly.
 - (d) Provision of a painted centre line for the length of the sealed ROW.
 - (e) Installation of a mirror on the corner in the driveway to improve visibility at this bend and reduce vehicle conflicts.
 - (f) Installation of a courtesy sign at the top of the driveway advising exiting vehicles/ pedestrians to use the driveway safely and quietly, especially at night.

Advice Note: Conditions (a) and (c) have been volunteered by the Applicant. It is the responsibility of the Applicant to ensure that any legal requirements, including any obligations to registered proprietors of the land and any property owners who have rights under the Easement certificate, are met.

23. Prior to events and functions commencing, the consent holder shall carry out the following works on the ROW:
- (a) Installation of low level pedestrian lights up the driveway to assist in pedestrian visibility for evening events.
 - (b) Formation of a pedestrian path from the lower carpark area to the passing bay to avoid the need for pedestrians to walk around the limited visibility corner of the driveway generally as shown on the plan labelled "Attachment 1"
24. For any event or function, which necessitates the use of the lower carpark, a Parking Marshal shall be stationed at the entrance to that carpark. The Marshal shall direct cars to park in the lower carpark and restrict access to the main house carpark to mobility impaired persons, taxis and clients/users of the dental practice and offices.
25. The lower carpark shall remain in grass surface and be marked out using small permanent ground markers so as to accommodate 18 cars.
26. The entrance to the lower carpark shall be permanently surfaced for a distance of 3m from the northern edge of the ROW.
27. The works detailed in Conditions 22 and 26 shall be undertaken in accordance with Council's Engineering Standards 2003 to the satisfaction of the Council's Transport

Manager, at the consent holder's expense and plans shall be provided to the satisfaction of the Council's Transport Manager prior to the works commencing.

Landscaping & Screening:

28. A landscape plan shall be prepared by a qualified landscape architect, landscape designer, tertiary qualified horticulturist specialising in amenity horticulture or member of the Landscape Industries Association prior to the functions/ events activity commencing. The plan shall provide for planting along the western, northern, and north-eastern perimeters of the lower carpark to screen the carpark from adjoining properties being Lot 3 DP 7798 (175 Milton Street), Lot 1 DP8169 (110 Halifax Street East) and Lot 1 DP 17014 (112 A Halifax Street East). The plan shall incorporate an establishment and maintenance schedule including timing details of plantings to be undertaken. A copy of the plan shall be provided to the Council's Monitoring Officer.
29. The landscape plan required in Condition 28 above shall be implemented in accordance with the establishment and maintenance schedule, including timing details of plantings to be undertaken, provided that all plantings shall be established within 6 months of the functions/ events activity commencing.
30. Written confirmation from the qualified landscape specialist or horticulturist that the plan has been implemented shall be forwarded to the Council's Monitoring Officer within one month of the work being completed.
31. The landscaping established pursuant to Condition 29 above shall thereafter be maintained for the life of this consent including the replacement of any dead plants in the next available planting season.

Monitoring:

32. The consent holder shall advise the Council's Monitoring Officer in writing at least 5 working days prior to work commencing on site and on the completion of the work so that monitoring of the conditions of this consent can be undertaken. Please advise the consent number, RM085310.

Review of Consent:

33. For the purposes of, and pursuant to Section 128 of the Resource Management Act 1991, the Council reserves the right to review the conditions of this consent 6 and 12 months after the commencement of the activity, and annually thereafter, commencing from the date this consent is granted, for any of the following purposes:
 - i. To impose any additional, or to modify existing conditions of consent relating to the effects of the works on the environment.
 - ii. To require the consent holder to adopt the best practicable option to mitigate any adverse effect upon the environment, arising from the generated effects of the activity.
 - iii. If the Council deems that this is necessary to do so in order to deal with any adverse effect on the environment which may arise from the exercise of this consent, and which is appropriate to deal with at a later date, including matters of safety and any potential adverse effect outside or inside the site.
34. The condition relating to the surface of the lower car park (Condition 25) shall be reviewable at any time that it becomes apparent that the state of the carpark is such as to have adverse effects on the amenities of the Right of Way or on the other users of the Right of Way or the car park becomes unusable due to the condition of the grass surface.

Advice Notes:

1. Noise levels generated by the activity shall comply with the Residential Zone permitted activity standards set out in the Nelson Resource Management Plan or a new resource consent will be required.
2. This is not a building consent, and the Consent Holder shall meet the requirements of Council with regard to all Building and Health Bylaws, Regulations and Acts.
3. The Consent Holder should note that this resource consent does not override any registered interest on the property title.
4. Monitoring: A monitoring charge of \$500 has been included in your invoice, as conditions of consent requiring monitoring have been imposed. This charge covers the costs involved in monitoring compliance with the consent conditions. Where additional monitoring costs are required to determine that conditions have been met, these will be charged as per the Council's Fees and Charges policy in force at the time.

5. Reasons

1. The Consent Authority notes that Fellworth House in which the activities are to be carried out, is an historic building and that it has been the subject of substantial renovation and repair. The Authority considers that the extended use of the building will enable the owner to more easily maintain what has been restored and accordingly it considers that the proposal recognises and provides for the matter of National Importance within Section 6f of the Resource Management Act 1991 "The protection of historic heritage from inappropriate subdivision, use, and development".
2. The Consent Authority in considering the matters within Section 7 to which it should have regard and in particular Section 7(c) ("The maintenance and enhancement of amenity values"), and Section 7(f) ("Maintenance and enhancement of the quality of the environment"), gave particular consideration to those effects raised by the submitters namely noise, traffic and car parking, signage, on the residential character and amenity.
3. With respect to noise the Consent Authority notes that the Applicant acknowledged the relevant provisions of the Resource Management Plan relating to the residential zone, and that no application was made for consent to exceed these limits.

The Consent Authority also notes that the conditions imposed on the consent, which were volunteered by the Applicant impose reasonable time restrictions on the evening use of the function rooms and specific limits as to the music which might be played at those functions.

The Consent Authority is therefore satisfied that the noise effects from the proposal will be no more than minor and that while on those evenings that functions are permitted to be held on the premises the noise could be more than that which the neighbours currently experience, the Consent Authority considers that it will still be within the applicable limits.

4. The Consent Authority particularly acknowledges the concerns expressed by the submitters in relation to traffic using the right of way which gives access to the premises from Milton Street, and the use of the land at the end of that right of way for car parking. However the Authority notes the expert evidence provided by the Applicant's Traffic Engineer regarding the use of the right of way and the mitigation measures proposed to avoid remedy or mitigate any adverse traffic related effects from the activity.

The Authority also considers that the condition requiring upgrade of the Right of Way and provision of the safety features detailed on Attachment 1 from the outset will

mitigate any effects which the increased commercial traffic might otherwise have on the amenities of the neighbours.

After having heard the evidence presented and the concerns and suggestions of the submitters, the Authority considers that the conditions imposed in respect of the right of way will ensure that there is no more than a minor effect on the amenities of the residential neighbourhood from the additional traffic.

5. The Consent Authority acknowledges that the use of the area of land at the bottom of the hill for a carpark for up to 18 cars will have an effect on the residential amenities of the neighbouring properties however it notes that the nearest property owner has not objected to the proposal. The Consent Authority also took into account the likely intermittent use of this area.

The Consent Authority also considers that by retaining the area in grass the noise produced by vehicles utilising the area will be reduced. While there are concerns that this could result in a less efficient use of the carpark or result in it becoming muddied and unsightly, the amenities of the neighbourhood would be better served by it remaining in its natural state, with any deterioration or problems arising from this being dealt with under a review of the condition.

6. The Consent Authority noted the concerns expressed regarding the proposed signage on the Milton Street frontage and the fact that there would be two of the maximum size permitted by the Resource Management Plan rather than one.

The Consent Authority is satisfied having regard to the distance between the two signs that there will be no cumulative effect on the amenities of the neighbourhood. It was also satisfied that the proposed signs would visually improve the existing situation in that it would enable the removal of a number of smaller signs which could be said to detract from the visual amenity of the area.

The Consent Authority considers that as the house is not on the street frontage in close proximity to the signs it is not necessary for the signs to have any heritage design characteristics.

The Authority is also satisfied that the effects which the additional phone line to the house might have on the amenities would be no more than minor.

7. The Consent Authority noted that the existing environment is dominated by established residential properties between the subject's property and Milton Street and that Fellworth House already dominates the area. Although the additional proposed activities could be said to be new to the area the Consent Authority is satisfied that they are activities which are contemplated by the Nelson Resource Management Plan as being appropriate within a residential zone and that therefore, in general terms, the proposal will have no more than minor effect on the existing residential amenities.

The Consent Authority is also satisfied that the existing nature of Fellworth House is such that it is very unlikely that similar circumstances exists anywhere else in the neighbourhood and thus the potential for future cumulative effects occurring is less than minor.

8. The Consent Authority noted the Policies and Objectives of the Nelson Resource Management Plan particularly relating to the retention and enhancement of heritage items that contribute to the character, heritage values or visual amenity of Nelson, the retention of an environment that is principally residential in character, and the limitation in respect of non-residential activities.

The Consent Authority considers that the conditions which have been imposed in respect of the consent will ensure that the effects of the non-residential activities proposed for the site will not have any effects significantly greater than normal residential use of the property. In addition as there are no other non-residential activities located in close proximity to the site the proposal will not have any effect on the coherence of the residential neighbourhood.

9. The Consent Authority was also cognisant of the fact that the Plan acknowledges that certain non-residential activities need to locate in the residential zone and it considers that the size of the existing historic building, its location on the fringe of the central city, and its historic character all serve to make this property an appropriate location for the type of non-residential activities i.e. short term accommodation, offices and small scale function centre, envisaged by the Applicant.
10. The Consent Authority considers that while the concerns of the submitters are genuine concerns it is satisfied that the conditions imposed in respect of the consent will ensure that the effects of the activity on the environment are no more than minor, and that the opportunity which exists to review the conditions and to strengthen or modify them to overcome any concerns which might arise in the future will provide the appropriate safeguards for the amenities of the neighbourhood.
11. The Consent Authority noted that the Applicant did not seek consent to any extension of the dental practice as she was satisfied that her operation was a home occupation.

On the evidence presented at the Hearing the Consent Authority was satisfied that the Applicant's practice was protected by those provisions of the Nelson Resource Management Plan and it saw no reason to impose any specific conditions on the Dental Surgery.

6. The relevant statutory provisions considered by the Consent Authority were:

Section 5, Section 6, Section 7, Section 104 and Section 104B of the Resource Management Act 1991.

7. The provisions of the relevant Statements/Plans considered by the Consent Authority were:

1. Nelson Resource Management Plan

- (a) (i) Objective DO8.1 – Signs – Outdoor signs which convey necessary information, while avoiding or mitigating any adverse effects in public safety, convenience and access, or on the visual amenity of the district.
- (ii) Policy DO8.1.1 – Minimising Signs – The number of signs and their adverse effect should be minimised while recognising the need to provide information and the special character of Nelson's urban and non-urban environment.
- (iii) Policy DO8.1.2 – Character and Amenity – The number, size, location and nature of outdoor signs in different areas of the district should take account of the character and amenity of those areas, paying particular regard to local visual amenity, significant landscapes, and heritage values, as well as daylight amenity where appropriate.
- (b) (i) Objective DO10.1 – Land Transport – A land transport system that is safe, efficient and sustainable, and which avoids, remedies or mitigates its adverse environmental effects.

- (ii) Policy DO10.1.4 – Traffic Effects of Activities - Activities should be located and designed to avoid, remedy or mitigate the effects of traffic generation on the road network.
 - (iii) Policy DO10.1.5 – Access to Sites - Every site should have access that provides safe entry and exit for vehicles from the site to a road, without compromising the safety or efficiency of the road network.
 - (iv) Policy DO10.1.6 – Parking, Loading, and Turning - Sites should provide onsite parking, loading, turning for vehicles or have access to those facilities sufficient to avoid any adverse effects on the safe and efficient operation of the roading network. Any use of off-site facilities shall not compromise pedestrian and vehicle safety, or the safe and efficient operation of the road network.
- (c) (i) Objective DO4.1 – Heritage Values – Retention and enhancement of heritage items that contribute to the character, heritage values, or visual amenity of Nelson, in a setting that enhances such items.
- (ii) Policy DO4.1.6 – Alterations and Adjoining Development - The heritage significance and integrity of any feature identified by a Heritage Overlay should not be unduly compromised by any alteration, addition or adjoining development, having regard to the category of protection afforded the listed item or place and the purpose of that protection. This policy recognises the need to be able to alter or extend heritage buildings to meet the needs of present and future generations, subject to those alterations being sympathetic to and not unduly detracting from the heritage values of the building.
- (d) (i) Objective - RE2 - Residential Character - An environment that is principally residential in character.
- (ii) Policy RE2.1 - Noise - Noise levels received at adjacent site boundaries should be consistent with a predominantly residential environment.
- (e) (i) Policy RE2.6 - Non-residential Activities - No activity should have effects significantly greater than the normal residential use of any property, unless they can be adequately avoided, remedied or mitigated.
- (f) (i) Policy RE2.7 - Community Dislocation - Activities should avoid breaking up community and neighbourhood coherence, having particular regard to the cumulative effects of activities.
- (g) (i) Policy RE2.8 – Community Benefit - It is recognised: i) that certain non-residential activities need to locate in the Residential Zone, and ii) that some existing non-residential activities may need to be explicitly provided for in the zone, and iii) that some non-residential activities may enhance the amenity and sense of community of residential areas.

8. The principal issues that were in contention were:

1. The increased traffic on the right of way and the use of the section half way up the drive for parking would give rise to issues of safety, noise and privacy in relation to the other properties served by the right of the way or adjacent to the parking area.
2. The noise from the functions would impact on the residential use of the properties to the west of and below Fellworth House.
3. The signage proposed for the activity was not compatible with the neighbourhood.

4. The use of the building for the activities sought would have a detrimental effect on the environment of the residential neighbourhood.

9. The main findings of fact by the Consent Authority were:

1. Fellworth House carries a Category 2 classification under the Historic Places Act and an 'A' classification under the Nelson Resource Management Plan.
2. The Applicant has been operating her dental surgery in rooms on the ground floor of Fellworth House for some months as a home occupation, and will continue to operate as a home occupation.
3. The Applicant had not sought consent to exceed the permitted noise levels pertaining to the residential zone.
4. The preservation of Fellworth House is in the community interest.

Commissioner I Barker
(Chairperson)
Nelson City Council
Hearings Panel

Date: _____