



Simpson
Grierson

24 June 2009

Partner Reference
J G A Winchester - Wellington

The Chief Executive
Wellington City Council
P O Box 2199
WELLINGTON

Writer's Details
Direct Dial: +64-4-924 3431
Fax: +64-4-472 6986
E-mail:
matt.mcdermott@simpsongrierson.com

For: Gary Poole

Zoning error – 57 Tamworth Crescent, Newlands

1. We have been engaged by Graham and Rosalie Fagan with regard to longstanding issues concerning district plan zoning adjacent to their property in Newlands. This has been the subject of considerable correspondence between our clients and the Council dating back to early 1994.

57 Tamworth Crescent

2. Our clients own land abutting 57 Tamworth Crescent at 28 Sunhaven Drive, Newlands.
3. When the proposed City Plan was notified on or about 27 July 1994, the Council rezoned a small part of the parcel at 57 Tamworth Crescent (CFR 146829) to Outer Residential. The Outer Residential zoned land is currently undeveloped and forms part of a larger parcel of land that is zoned as Conservation Site 5I in the Wellington City Plan.
4. The Outer Residential zoning of part of this parcel appears to have simply been an error. It appears from our clients' correspondence with the Council that the mistakenly zoned land has never been developed (even though it is in private ownership) as the zoning was in error and the land was intended to be used for access purposes in relation to the Conservation Site.
5. The Council has subsequently and repeatedly acknowledged that the rezoning was an error, which would be corrected through formal plan change processes (see for example, correspondence dated 16 July 2004 as attached to our clients' correspondence to the Council dated 1 February 2009). The Council has, regrettably not undertaken any such plan change to date.

Plan Change 62

6. Jarden Properties requested a private plan change (Plan Change 62) to allow for further development in the surrounding (Woodridge) area. Our clients submitted on the Plan Change, again bringing the zoning error to the Council's attention.
7. Bellevue Lands Limited (now Jarden Properties), the owner of 57 Tamworth Crescent also applied in November 2007 to have the land subdivided in order to create a new lot on the land which had been mistakenly zoned Outer Residential. The Council

8374249_1.DOC

BARRISTERS AND SOLICITORS

AUCKLAND: Lumley Centre, 88 Shortland St, Private Bag 92518, Auckland 1141, New Zealand.
Tel: +64-9-358 2222. Fax: +64-9-307 0331. DX CX 10092.

WELLINGTON: HSBC Tower, 195 Lambton Quay, P O Box 2402, Wellington 6140, New Zealand.
Tel: +64-4-499 4599. Fax: +64-4-472 6986. DX SX 11174.

Website: www.simpsongrierson.com. E-mail: info@simpsongrierson.com



suspended the consideration of this application subject to the outcome of the Plan Change 62 hearing.

8. Louise Miles, a consultant to the Council, prepared the Officer's Report for the Plan Change. The Report agreed that the zoning error needed to be dealt with by the Council, although noting that it could not be rectified through Plan Change 62 as it was outside the scope of that particular plan change. The Report recommended that:

"The Committee request that the Director of Urban Development and Transport and the Director of City Services and Events investigate the issue of the zoning and the future use of 57 Tamworth Crescent as access in the Conservation Site 51..."

9. Upon assessment against the Council's own criteria for prioritising District Plan Changes, and in light of the application for resource consent for subdivision, the matter is one of some urgency. Considered against those criteria:
- (a) there is a significant resource management issue, in that the land was rezoned without undergoing the proper process or consideration;
 - (b) a plan change is necessary to rectify an error or omission in the District Plan; and
 - (c) the Council has repeatedly given undertakings that it will initiate a plan change.
10. The landowner has taken advantage of the Council's error by seeking to subdivide, which has created an opportunity to which they would not have been entitled. Furthermore, it appears that the effects of changing the zoning to Outer Residential rather than the intended Conservation Site zoning have never been properly assessed.
11. Our clients are understandably upset with the Council's inaction on this issue, where despite repeated acknowledgements that there is a problem that needs to be addressed, and undertakings that the Council would do something about it, the Council has allowed this problem to persist.
12. While the Council has indicated that the correction of the zoning could be undertaken as part of a "tidy-up" plan change, such a plan change has never occurred despite the passage of almost 15 years, and our clients consider that the rectification of this situation can no longer wait. Given this history, it is incumbent on the Council to investigate and initiate a plan change urgently.
13. No blame can be attributed to our clients, who have pursued this issue in good faith from the time it came to their attention, and who have been repeatedly assured that it would be resolved. This has resulted in a manifestly unfair state of affairs which disadvantages our clients, whilst a windfall has resulted for the landowner.
14. Our client therefore considers that the Council has a duty to take positive action to rectify the unintended advantage that the Council has given Jarden Properties, and the corresponding disadvantage to our client.
15. Our client considers that, given the delay, the most appropriate method to achieve an outcome that would be satisfactory for our client and the landowner would be for the

Council to seek to purchase the subject land in order to prevent inappropriate development and preserve access to the Conservation Site, and / or to immediately initiate a plan change providing the correct zoning for the land.

16. We look forward to your urgent advice as to what steps the Council will take to remedy this unfortunate situation.

Yours faithfully
SIMPSON GRIERSON



James Winchester / Matt McDermott
Partner / Associate

cc

Director of Urban Development and Transport

Director of ~~City~~ Services and Events

G and R Fagan
28 Sunhaven Drive
Newlands
WELLINGTON 6037