

Our ref 546977 (Complaint ground: 550985)  
Contact Nick Wright  
16 June 2022



Dr Aaron Stallard  
By email: [aaron.stallard@xtra.co.nz](mailto:aaron.stallard@xtra.co.nz)

Dear Dr Stallard

**Final opinion on your complaint**  
**Nelson City Council's decisions in relation to Maitai Valley**

Thank you for your 22 March 2022 letter which responded to my provisional opinion, and your supplementary comments provided on 3 June 2022. I note your views on the public consultation which occurred prior to the Council adopting *Future Development Strategy 2019* (FDS).

I have decided to partially uphold your complaint, subject to the limitations outlined below. My assessment is that a member of the public reviewing the FDS 2019 consultation brochure would not have clearly understood that the Council proposed development should occur in areas of the Maitai Valley because:

- there is no acknowledgement or indication that Kaka Valley or the Orchard Flats are located within the Maitai Valley. Their respective locations are not described in written text.
- the graphical map is large scale, depicts the entire Nelson-Tasman region and displays all 64 proposed development areas. There are no annotations to assist the reader with orientation.
- I am not satisfied that Nelsonians were sufficiently familiar with the names 'Kaka Valley' and 'Orchard Flats' for the absence of a location descriptor or annotated map to be inconsequential.

It is my final opinion that the consultation brochure was not sufficiently clear and therefore the Council's administration of this particular aspect of the consultation process was unreasonable.

Whilst in my opinion the consultation brochure was not sufficiently clear, I do not consider that the shortcomings were enough to undermine the overall consultation process. This is because whilst few people commented on the proposed development of the Kaka Valley, a definite causal relationship between the consultation document and total submissions has not been established. Your contention that a lack of clarity in the consultation document resulted in few submissions is an unverifiable proposition. The same applies to whether the wording of the survey questions prejudiced feedback.

As such, I am not upholding your secondary complaint that the Council's overall approach to consultation was unreasonable, contrary to law, or contrary to the principles specified in the Council's Significance and Engagement Policy.

## **Your comments**

Below I have responded to some of your comments where I consider it appropriate.

### **Standing of FDS 2019**

You ask that I find *'little or no weight should be given to the 2019 FDS in terms of the identification of development areas in the Maitai Valley'*. This is something I will not, and cannot do.

The letter you received on 1 February 2022 explained that the focus of my investigation was on the Council's administration of the consultation process, not the decision to adopt FDS 2019, or its content.

The decision to adopt the *Future Development Strategy 2019* was made by a *'committee of the whole'*. As prescribed by [section 13\(1\)](#) of the Ombudsmen Act 1975 I do not have jurisdiction to investigate full council decisions. As such, I am precluded from forming an opinion on whether the decision to identify the Kaka Valley and Orchard Flats as expansion areas was *'right'* or *'unreasonable'*.

### **Plan change application**

Contrary to your comments, I am satisfied with the Council's explanation that the FDS 2019 is not determinative of upcoming Plan Change application (due to be heard in July 2022 under the Resource Management Act). The two are independent of each other. FDS 2019 is a non-statutory document, and whilst the Plan Change applicant can cite its content, it is not determinative, the commissioners must review the rezoning application on its merits.

### **Significance and engagement policy**

My jurisdiction under the Ombudsmen Act is not to form an opinion about whether I agree with a decision. Instead, my statutory role is to form an opinion about whether Nelson City Council could reasonably have made the decision it did.

I am satisfied with the analysis I presented in my provisional opinion regarding the Council's opinion that adopting FDS 2019 was a decision of 'low to moderate' significance. I am not commenting on whether I agree, but rather that the decision was open for the Council to make.

### **Concluding remarks and recommendation**

I consider that the public consultation which occurred in 2019 has been superseded by current events. The National Policy Statement on Urban Development 2020 gave updated instructions to local government and consequently Nelson City Council is currently developing a new Future Development Strategy.

The Council is currently consulting on FDS 2022 and I understand that you have made submissions. In your comments you note that the consultation process has been clearer. I am satisfied that this represents an adequate remedy to your complaint and therefore I do not intend to make any recommendations.

I expect and understand that you will be disappointed by the outcome of my investigation. Whilst I was persuaded by elements of your complaint, I cannot conclude that the overall consultation process was unreasonable.

I have now completed my investigation. Thank you for bringing this matter to my attention.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Boshier'.

Peter Boshier  
Chief Ombudsman