Fast-track

Te Kāwanatanga o Aotearoa
New Zealand Government

Forest & Bird comment on the Maitahi Village application

Please include all the contact details listed below with your comments and indicate whether you can receive further communications from us by email to substantive@fasttrack.govt.nz

1. Contact Details			
Please ensure that you have authority to comment on the application on behalf of those named on this form.			
Organisation name (if relevant)	Royal Forest and Bird Protection Society of New Zealand Inc.		
First name	Scott		
Last name	Burnett		
Postal address	PO Box 899, Nelson 7040		
Home phone / Mobile phone	[redacted]	**Work phone**	[redacted]
Email ***(a valid email address enables us to communicate efficiently with you)***	s.burnett@forestandbird.org.nz		

2. We will email you draft conditions of consent for your comment			
□√	I can receive emails and my email address is correct	□	I cannot receive emails and my postal address is correct

1. Introduction

1.1. Thank you for the opportunity to provide comments on the Fast-Track Approvals application for the Maitahi Village project at 7 Ralphine Way, Nelson. Forest & Bird is New Zealand's oldest and largest non-profit organisation dedicated to protecting and restoring Aotearoa New Zealand's unique indigenous biodiversity and natural habitats. In its advocacy for nature Forest & Bird has a significant interest in ensuring that large-scale developments such as this proceed in a manner that upholds the principles of sound environmental stewardship, the

precautionary approach, and the avoidance of adverse effects, particularly on our irreplaceable natural heritage.

1.2. We understand that expert consenting panels have the option to invite further persons to comment under s53(3) of the FTAA, and we appreciate the opportunity extended by this panel to Forest & Bird.

1.3. We have also aimed to provide these comments ahead of the deadline for comments to provide opportunity for the applicant's consideration in updating consent conditions, which we understand they will be providing the expert consenting Panel by 2 July.

1.4. Having now considered the substantive application we are able to provide comment on sediment and erosion risks, contaminated land risks, the incorporation of nature-based solutions, and the overall robustness of proposed consent conditions, to assist the panel in its decision making.

2. Comments on substantive application

2.1. Forest & Bird's comments are to assist the decision making by the panel and to support development of improved consent conditions to address adverse effects of concern. At present the proposal currently defers many details until after grant of consent, and the draft conditions lack specificity and rigor to manage the risks associated with this uncertainty.

2.2. Issues/Matters addressed:

a. Sediment

b. Contaminated land

c. Nature based solutions

d. Conditions

3. Erosion and Sediment Risks

3.1. The Maitahi Village project involves extensive earthworks, stated in the Erosion and Sediment Control Assessment Report (ESCAR) as approximately 67 hectares, with cut and fill volumes each exceeding 600,000 m^3 (Application, pg 35-36). These activities, including the realignment of the lower Kākā Stream and reclamation of a tributary, are proposed in a sensitive environment. The Kākā Stream flows through the site and into the Maitahi River at Dennes Hole, a popular recreational area, before the Maitahi River discharges into the Nelson Haven, an ecologically significant estuary already under pressure from sediment. The Kākā Stream catchment itself has existing erosion issues and has been significantly impacted by past flood events, such as in August 2022.

3.2. Scale and Sensitivity of Receiving Environment: The large scale of earthworks (67 ha) in a catchment known for existing erosion issues and draining to highly valued downstream environments (Dennes Hole, Maitai River, Nelson Haven) remain a significant concern. The

assertion of "temporary and minor" effects needs to be critically evaluated in light of the receiving environment's sensitivity to fine sediment.

3.3. Uncertainty in Sediment Yield Predictions (USLE):

a. The SSE ESCAR (Erosion and Sediment Control, pg 29) acknowledges that USLE calculations to establish a baseline of sediment can significantly overestimate sediment yield in areas of hard rock geology like Nelson compared to the softer North American soils for which it was originally developed. It also notes a discrepancy between its USLE-based estimate of existing sediment load from Kākā Stream and a much lower NIWA (2017) CSSI-based estimate (41.7 t/y).

b. While the ESCAR argues that the relative comparison between pre-construction and during-construction USLE estimates is what matters, relying on a potentially inflated baseline of sediment to calculate a percentage increase could underrepresent the actual volume and impact of discharged sediment if the true baseline is lower. The actual tonnage discharged is critical for the receiving environment (Erosion and Sediment Control, pg30).

c. Given these uncertainties, the claim of only a 1.12% increase in sediment load during the worst-case earthworks phase needs careful independent scrutiny (Erosion and Sediment Control, pg30).

3.4. Effectiveness of ESC Measures:

a. The project's Erosion and Sediment Control Assessment Report (ESCAR), refers to the controlled process of adding a chemical coagulant, in this case primarily Polyaluminium Chloride (PAC), to the sediment-laden (muddy) water running off the earthworks site. The fine silt and clay particles in the site's soil are so small that they stay suspended in water for a very long time, making it cloudy or turbid. Left untreated, this fine sediment would flow through the settlement ponds and into the Kākā Stream. The chemical coagulant works like a magnet, causing these tiny particles to clump together into larger, heavier groups called 'flocs'. These heavier flocs can then settle to the bottom of the Sediment Retention Ponds (SRPs) much more quickly, resulting in clearer water being discharged. The plan proposes to use automated dosing systems that are activated by rainfall. A small roof tray captures rain, which then displaces a measured amount of the PAC chemical from a reservoir into the dirty water channels before they enter the SRPs.

b. The assumed 95% effectiveness for chemically treated SRPs is a critical parameter in predicting sediment discharge (Erosion and Sediment Control, pg28). While PAC has shown good results in bench tests (ESCAR, Appendix A - CART report), consistent field performance at this level across variable storm conditions, diverse soil types encountered during bulk earthworks, and over a multi-year construction period requires exemplary site management and robust, adaptable chemical dosing. Without this you risk changing the pH downstream.

c. The ESCMP performance targets (clarity >100mm, pH 5.5-8.5) are indicators, not direct measures of overall sediment capture efficiency across all particle sizes (Erosion and Sediment Control, pg86). Fine clays, which can be particularly damaging ecologically, are often the hardest to capture. Additional requirements are needed to ensure that fine clays are captured and not released into down stream environments.

3.5. Chemical Treatment (Flocculation):

a. The use of PAC requires careful pH management to ensure discharges remain within the 5.5-8.5 range to avoid toxicity associated with aluminium mobilisation outside this range. The ChemTMP (ESCAR, Appendix A) and ESCMP (ESCAR, Appendix B) outline monitoring, but conditions must be efficient to manage this effectively and for the long duration of the project.

b. The ESCAR (ChemTMP, Appendix A) notes that initial bench testing was on three soil samples, with a fourth test on a combined sample from two tracks relevant to early stages. Ongoing testing as new areas and soil types are exposed is critical, as is the process for adjusting dose rates and verifying performance.

c. Stream Works: The realignment of Kākā Stream and reclamation of KHT2 are significant interventions. While the methodology aims to work "in the dry", any failure or mishap during diversion or tie-in phases could result in substantial direct sediment discharge. The SSESCPs for these works (e.g., ESCP-SW-001 for Kākā Stream Diversion) must be exceptionally detailed and rigorously implemented.

3.6. Cumulative Sediment Load: While the project aims to minimise its sediment contribution, any increase adds to the existing sediment load from the Kākā Stream and the wider Maitai River catchment, impacting the Nelson Haven. The cumulative impact needs to be considered and reflected in any eventual consent conditions.

4. Contaminated land Risks

4.1. It is not clear to us whether the Action Plan provided by the applicant is intended as a "management plan" for contaminated soils or whether those actions will be adequate to address the recommendations of the Ecological Recommendations for Contamination Management.[1]

4.2. For example, the Remediation Action Plan does not appear to have adopted the 99% level DGV for species protection to account for the bioaccumulating nature of toxicants.[2]

4.3. It is important that adequate information is provided on the extent of contaminated land requiring removal. If this is not available before grant of consent, then detailed conditions on

[1] Appendix 3.2-Ecological-Recommendations-for-Contaminated-Management.pdf and Appendix 8.1.-Remediation-Action-Plan_Redacted

[2] The Appendix 8.1 Remediation Action Plan refers to the recommendation for 95% DGV on page 13, but there appears to be no reference to the 99% DGV recommendation from Appendix 3.2 Ecological Recommendations for Contamination Management, in terms of actions that will be undertaken.

what is required to determine this area are required. This should be supported by further information on how the spread of contamination during excavation, realignment of the stream, and remediation within that area will be managed. These measures must then be set out in conditions of consent. As far as possible conditions should include specific measures/actions to be undertaken by the applicant, which provides greater certainty than relying on a future management plan. We note that a number of recommendations and actions[3] have already been identified in reports commissioned by the applicant, which could be written into conditions of consent to provide greater certainty in this respect. A "generally in accordance with" condition does not provide adequate certainty on the management of adverse effects sufficient to address identified adverse impacts.

4.4. We remain concerned that the extent of highly contaminated area has not been determined. The effectiveness of removal in ensuring the remediated site safe for human and ecological health appears uncertain with consent conditions lacking detail on monitoring requirements and response.

4.5. On-site Encapsulation Cell:

a. The disposal locations have not been confirmed and there remains uncertainty as to what level of contaminated soils will be disposed of and where. The proposed location for the encapsulation cell is "approximately 40 m from Kākā Hill tributary at its closest point" (RAP, pg 15). The RAP also states the cell will be "at least 25 m from all watercourses" (RAP, pg 24). This proximity is a concern, and the buffer distance needs to be robustly justified and potentially increased.

b. The long-term integrity, monitoring, and management of the proposed on-site encapsulation cell are critical. While conceptually described with liners and cap, the detailed engineering design, final location confirmation, and specific performance standards are yet to be developed. HAIL Environmental rightly points out uncertainties regarding design constraints like stability and drainage.

c. The responsibility for perpetual monitoring and maintenance of this cell needs to be unequivocally established and funded. Envirolink states this will be with the landowner/developer for an "agreed time", which is insufficient; it must be in perpetuity.

4.6. Management of Highly Contaminated Soils (Dieldrin >50 mg/kg):

a. The highest reported dieldrin concentration (620 mg/kg) significantly exceeds the proposed EPA 'low POP content' threshold of 50 mg/kg. HAIL Environmental notes this could trigger HSNO Act restrictions preventing its legal disposal in New Zealand currently.

[3] Appendix 3.2-Ecological-Recommendations-for-Contaminated-Management.pdf and Appendix 8.1.-Remediation-Action-Plan_Redacted

b. The applicant's proposal to store this highly contaminated soil (30–40m3) in sealed shipping containers on-site pending treatability trial results or offshore disposal is a temporary measure for a persistent and hazardous waste. There needs to be a clear, consented, and funded final disposal pathway for this material.

c. HAIL Environmental also raised concerns about the lack of specific handling controls and labelling instructions for these hazardous soils, given dieldrin's dermal toxicity. Envirolink's response points to a future task-specific H&S plan, which should be a mandatory and reviewable part of the consent.

4.7. Groundwater Contamination:

a. The RAP (Version 3) has omitted groundwater remedial criteria, stating the methodology is not yet defined and source removal is likely sufficient. However, HAIL Environmental notes that arsenic and dieldrin are strongly bound to soils and will continue to leach into groundwater for a very long time, even after source removal.

b. The reliance on natural attenuation post-excavation needs a robust, scientifically defensible basis and a clear contingency plan if monitoring shows ongoing unacceptable discharge to surface water. The "initial estimate" of low dilution potential (1.67 times ANZECC WQG) from Robertson Environmental is a concern if significant leaching continues.

c. The potential role of the old stream channel beneath the woolshed as a preferential pathway for contaminant migration needs investigation, as recommended by HAIL and acknowledged by Envirolink for further investigation.

4.8. Reuse of Soils:

a. The RAP proposes reusing some remediated soil (meeting ecological criteria but potentially above background) in recreational reserves or an "upstream excess soil area". The precise standards for this reuse and the management of the "excess soil area" need to be clearly defined and conditioned to prevent unintended environmental effects or human health risks.

b. Clarity on defining and applying "local background concentrations" for the Maitai/Kākā Valley area is needed for decisions on soil reuse and validation.

5. Incorporation of Nature based solutions

5.1. Forest & Bird strongly advocates for the use of nature-based solutions (‘NBS’) in land development to protect and enhance biodiversity, improve water quality, and build resilience. The Maitahi Village proposal incorporates several elements described as NBS and water sensitive design (‘WSD’), which we acknowledge as positive in intent. The success of these features hinges on their detailed design, robust implementation, long-term management, and demonstrable ecological outcomes.

5.2. Authenticity and Efficacy of Kākā Stream "Restoration":

a. While the design intent for the realigned Kākā Stream includes positive habitat features, creating a truly self-sustaining, ecologically functional stream from a highly modified baseline is a significant challenge. The success will depend on meticulous implementation of "natural channel design principles" and robust, long-term adaptive management outlined in the SRP/ERP.

b. The claimed "Net Gain" in stream habitat relies on ECR calculations and the quality of the created/enhanced habitat effectively offsetting the loss of KHT2 and the disturbance to KHT1, KHT3, and KHT4. The ECR ratios used (1.5:1 permanent, 1.2:1 intermittent) must be rigorously justified as adequate for the specific values being lost and the uncertainties in restoration success. It is necessary to see the detailed SEV assessments and the resulting ECR calculations before making a final decision on the consent. This will allow for proper scrutiny of the "Net Gain" claim and ensure any conditions set are based on complete information. However that detail does not appear to be available in the application information.

5.3. Performance of Stormwater Treatment Train:

a. The WSD approach (rain tanks, treatment wetlands, soakage areas) is commendable in principle. However, the long-term effectiveness of these systems in protecting Kākā Stream and the Maitai River from urban contaminants (heavy metals, hydrocarbons, nutrients, temperature changes) and altered flow regimes depends on appropriate sizing, construction quality, and, crucially, ongoing diligent maintenance.

b. The Morphum WSD Report notes the western sub-catchment wetland is "slightly undersized" and that part of Arvida B "will not meet the full requirements of Clause E of Schedule X 6.3" for hydrological mitigation, relying instead on proprietary filters and investigating soakage later. It is not clear why the applicant is not addressing this issue by increasing the wetland to at least 4% of the contributing impervious catchment as recommended to ensure stormwater capacity[4] and to provide increased ecological benefits.

5.4. Security and Timeline of Large-Scale Revegetation:

a. The proposed 120 ha of native forest restoration is a cornerstone of the project's hydrological mitigation and potential biodiversity enhancement. The commitment to legal protection (covenants) is vital.

b. The T+T SWAR acknowledges a 10-12 year timeframe for this vegetation to mature and provide its full hydrological benefits. This means that in the interim, if the development outpaces vegetation establishment, the Kākā Stream could be subject to increased peak flows (Scenario 1, Table 6.4 of T+T SWAR, showing a 0.2m3/s increase in the 1% and 10% AEP events for present-day rainfall with full development but 0% vegetation establishment). While the SWAR considers this increase to have negligible off-site flood

[4] Page 3, Maitahi Village-Stormwater Management: Water Sensitive Design Report, Appendix 5.2.

effects, potential instream erosion and ecological impacts during this interim period must be carefully considered and mitigated, and this must be included in conditions of consent.

5.5. Wetland Hydrology and Buffers:

a. The commitment to a Wetland Hydrology Assessment for Wetland 1 is critical. This assessment must occur *before* final design of adjacent earthworks, and its recommendations must be binding to prevent adverse hydrological changes.

b. The adequacy of riparian buffers for all wetlands and streams (EcIA suggests minimum 10m where practicable for streams; Morphum WSD Report mentions Schedule X requires a minimum 10m riparian buffer between treatment devices and the stream) must be ensured to protect their ecological and functional integrity.

c. True "Net Gain": The REL EcIA anticipates "significant Net Gain outcomes for local ecology in the medium to long term". Achieving genuine, measurable net gain requires more than just re-planting; it involves creating resilient, self-sustaining ecosystems with appropriate species composition, structure, and ecological processes. This needs to be embedded in the ERP with clear, science-based performance indicators and long-term monitoring.

6. Conditions of consent

6.1. These comments are based conditions provided by the applicant in Attachment 25 of the substantive application. We understand that the applicant intends to provide a completed set of proposed conditions to the panel by 2 July 2025.

6.2. The current conditions of the application includes multiple sets of draft conditions for different activities and stages of the development. This structure has resulted in repetition of conditions on the same matters but often with differences in detail of what is required. For simplicity and to ensure that unintended differences are not missed, it would be helpful to include “General Conditions” which apply across all consents sought. It may also be helpful to identify separately conditions which apply to construction phase from those which would only apply post construction phase.

Management plan conditions

6.3. It is important that if a management plan is to be provided through a condition of consent, that a draft management plan with sufficient detail to rely on is provided before grant of consent. Additionally, the consent conditions themselves must include outcomes that must be achieved, in sufficient detail so as to be clear and enforceable. The conditions must also include the purpose of the management plans – which must link to the measurable and clear outcomes set out in the conditions. The conditions must ensure that the requirements will be sufficient to address identified adverse impacts and provide confidence for decision making prior to the grant of consent.

6.4. The conditions regarding certification of management plans must state that works cannot commence until certification is received. For example, the certification provisions which would

allow the applicant to undertake activities without a certified management plan are contrary to the findings of the Environment Court.[5]

6.5. The certification approach for the CEMP[6] appears to align with Court's findings. However, there is no one clear certification approach in the applicant's conditions. The Erosion and Sediment Control Plan (ESCP) conditions[7] are conflicting, with one stating that works cannot commence until certification, and another stating that works may be undertaken prior to certification. Further uncertainty is created by wording in preceding conditions which refer to approval by a Geo-professional and submission of the ESCP to council without any certification requirements (condition 6, H Land Use (s9) Landfill consent). Condition 9 for the Contaminated Land Management Plan (under M NES-CS Remediation of contaminated land consent) as drafted requires approval of the Councils' Monitoring Officer, rather than taking a certification approach.

6.6. The management plan conditions generally lack clear objectives or outcomes in their purpose, making it difficult to ascertain on what basis the management plan would be certified and the condition(s) enforced.

6.7. The relationship between the ESCP and the Contaminated Land Management Plan is not clear. For example, it is not clear whether or how the ESCP would deal with exaction and sediment in and around the contaminated land area on the site.

Uncertainty in conditions

6.8. There is subjective or uncertain terminology used in conditions, such that the outcomes of complying with those conditions could be quite different depending on interpretation. For example:

a. Condition 38 (B. Land use (s9) Earthworks and Vegetation Clearance), relies on the "opinion of the monitoring officer". This wording could inappropriately imply an approval after the grant of consent. The wording of the condition should be certain on what is required of the consent holder and clear so that enforcement on this condition could be undertaken. In addition, to be effective as a consent condition the "zone of reasonable mixing" needs to be determined prior to grant of consent.

b. Condition 41 (B. Land use (s9) Earthworks and Vegetation Clearance), refers to "all reasonable endeavours" and "construction area" but it is not clear what this could entail or to what area. It may be more helpful for the condition to require that during construction all vehicles and machinery will be free of pest plants and plant seeds before entering the site. The methods to achieve this condition can then be included in the CEMP.

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[5] For example, in New Zealand Transport Agency [2024] NZEnvC 133, pargraphs 124-129, 139, 297-289.
[6] For example: Conditions 3 to 7, Construction & Environmental Management Plan, A Land Use (s9) Comprehensive Housing Development. Appendix 25 Volunteered Consent Conditions.
[7] For example: Conditions 5 and 6, M NES-CS Remediation of contaminated land consent. Appendix 25 Volunteered Consent Conditions.

c. Condition 11 (H Land use (s9) Landfill) uses the words “appropriately protect” which is open to interpretation, this creates further uncertainty on whether mitigation will be adequate or able to provide appropriate protection. It is also unclear whether the condition is intended to respond to construction and/or operational effects of the landfill.

d. Condition 11 (H Land use (s9) Landfill) refers to “those effects not already provided for under conditions”. Without qualifying what those effects are it is unclear how this condition would be implemented by the applicant.

e. Condition 29 (B. Land use (s9) Earthworks and Vegetation Clearance), includes direction to “minimise adverse effects on aquatic life at the commencement of works” which then relies on review of a report to identify methods and to interpret what is considered “minimise” in this context. This condition lacks precision creates uncertainty and would likely lead to the condition being unworkable or enforceable.

6.9. Using these subjective or qualifying terms results in uncertain conditions when there are no standards, limits, thresholds or other outcomes specified for the assessment of environmental or other matter which the condition addresses. The context for identification and assessment of these matters must be included in the condition where a subjective term is used. Ideally however, more certain terms need to be used in the condition to begin with.

6.10. In some cases, matters to be set out assessed and determined in the future should be able to be identified now and set out as specific conditions of consent. For example:

a. The scope of acceptable contamination and limits or methodology to be applied, should monitoring identify any residual contaminated land/water. It is not currently clear under draft condition 11 (M NES-CS Remediation of contaminated land) what monitoring would be undertaken or for how long monitoring should continue, in order to identify any residual confirmation. We also question whether Soil Contaminant Standards (SCS) for industrial land use are appropriate to land use on the site or adequate for identifying potential adverse effects on ecological values as recognised in the Appendix 3.2 Ecological Recommendations for Contamination Management.

b. It is not clear why the DNA testing of streams necessary to determine native species has not already occurred. Undertaking this prior to grant of consent would enable clearer conditions with respect to potential downstream impacts. This would provide greater certainty to decision making than relying on a future determination on measures to ensure that species are “appropriately protected” as would be the case under draft Ecological testing conditions 10 and 11 (H Land Use (s9) Landfill)

Ecological conditions

6.11. Specific ecological conditions appear spread across a number (but not all of the consents sought). This includes:

a. Ecology conditions 28 to 41 (B Land Use (s9) Earthworks and vegetation clearance).

b. Ecological testing conditions 10 to 15 (H Land Use (s9) Landfill).

c. Ecology conditions 22 to 35 (J Land Use (s13) Disturbance and deposition of material in the bed of Kākā Stream and its tributaries, including reclamation).

d. Ecology conditions 3 to 10 (K Water Permit (s14) Dam and divert water for construction purposes).

6.12. While the ecological condition for B Land use (s9) and J Land use (s13) consents appear the same, a number of those which relate to streams and fresh water are not included with the ecological conditions for K Water permit (s14). The ecological testing conditions for H Land use (s9) Landfill, do not appear to include conditions for ongoing ecological testing of the landfill. Some further comment on specific conditions is included above with respect to uncertainty of conditions.

6.13. The ecology conditions rely heavily on ecological advice which would only be received after the grant of consent. For example;

a. condition 31 leaves the assessment of native fish and determination of whether captured and transferred should occur to an ecologist post grant of consent;

b. condition 29 suggests that the applicant's Ecologist will set out methods that must be employed by contractors; and

c. condition 36 is for fish passage reinstatement and rehabilitation of working areas and stream bed to the satisfaction of the Ecologist.

6.14. There should be sufficient information in the application on ecological values, such as native fish, and the effects of the proposal to assess whether effects management achieves desired outcomes prior to grant of consent. These conditions would be improved by setting out what the applicant is required to do/achieve, and where there may be more than one method to achieve those requirements, consider providing for methods to achieve those conditions in a management plan.

6.15. In some cases, the conditions imply that the ecologist is responsible for implementing conditions. For example, condition 35 where the Ecologist is to ensure sediment controls, coffer dams and temporary fish passage is functioning properly. While it is helpful to understand that applicant will have an ecologist undertaking this function for them, our understanding is that consent conditions must be solely between the consent holder and the consent authority. Again, these conditions would be improved by setting out what the applicant is required to do/achieve and including details on methodology to achieve them within a management plan.

6.16. We note that the applicant's 2024 Ecological Impact Assessment[8] has recommended an Ecological Management Plan as well as a number of specific measures to address adverse

[8] 6.3, Appendix 22.12.F, Ecological Impact Assessment, December 2024

effects. The 2025 Ecological Impact Assessment[9] includes recommendations for a number of management plans as well as specific measures to avoid, remedy or mitigate adverse effects. The conditions would be greatly improved by including conditions to achieve these mitigation measures, restoration initiatives, and implementation and monitoring recommendations. For example:

a. On the timing of works, the report recommends avoiding sensitive seasons for native fish, such as spawning and migration periods. However, the wording of draft condition 30 is uncertain, with an exception to "no works" based on a future determination of the ecologist, but is not guided by principles or methodology of a certified management plan. It is also uncertain as to the area where the works could be restricted as the wording only applies within spawning areas, which are not identified as part of the condition. Nor does condition 30 appear to address migration periods as recommended by the AEE.

b. There do not appear to be any conditions requiring removal of native woody trees and large shrubs should be carried out outside of the peak bird breeding season (August to February inclusive).

c. There do not appear to be any pest management conditions.

d. There are no conditions requiring locally sources plans for riparian restoration or conditions to support habitat connectivity.

e. There do not appear to be any implementation and monitoring conditions of the nature recommended in the AEE.

Improving Conditions

6.17. The following matters should be considered:

a. Structure and terminology used in conditions should be clear for both the consent holder and council/authority responsible for administering the consent, as well as to anyone else reading the consent, as to what is to be expected.

b. Clarifying ecological conditions that apply prior or during construction from those which apply to the operational phase phase/post construction.

c. Whether there should be conditions post construction to ensure any future land disturbance, for example associated with maintenance of the ecological corridor area, is managed appropriately, for example to avoid any disturbance or spread of contaminated soils within or near the contaminated land site remediation and disposal sites.

[9] 6.1, 6.2 and 6.3 Appendix 3.1 Ecological Impact Assessment, January 2025

d. Conditions to manage unnecessary lighting or light spill (i.e. not required for safety reasons) within the ecological corridor, so as to protect habitat values.

e. Attaching/referencing a clear plan showing any areas (including setbacks) that are to be protected from vegetation removal or excavation to relevant consent conditions.

f. Mandate the appointment of suitably qualified and independent experts (e.g., CPESC for sediment control, SQEP for contaminated land, restoration ecologist for NBS) for critical design review, monitoring, auditing, and certification roles. These experts should report concurrently to the consent holder and Nelson City Council, with reports made publicly accessible.

6.18. The Environment Court Practice Note 2023 also includes guidance on condition drafting, of particular relevance to the matters raise above, this includes that:

a. Conditions should be drafted to apply specifically to the elements or aspects of an activity which require resource consent and should not simply list all documents presented with an application for resource consent.

b. Performance standards must be set out in the conditions of consent and not be left to be determined later.

c. Conditions must not purport to delegate arbitral or judicial functions to officers of or consultants to a consent authority.

d. Conditions which require expert certification or oversight of an activity must include clear parameters and specified standards.

7. Conclusion

7.1. The Maitahi Village proposal is a large and complex development with the potential for significant environmental effects, both adverse (particularly during construction and in relation to contaminated land) and potentially positive (if ecological restoration and nature-based solutions are successfully and genuinely implemented to achieve net gain). Forest & Bird's primary concern is to ensure the effects of this project are managed in accordance with robust environmental scrutiny and outcomes.

7.2. The applicant has identified many of the key risks and proposed a range of mitigation and enhancement measures. The detailed reports for erosion and sediment control, contaminated land remediation, and the incorporation of water-sensitive design and ecological restoration principles represent a significant undertaking.

7.3. However, the effectiveness of these measures and the realisation of claimed environmental benefits, will require some further investigations to inform decisions. The peer review of the Remediation Action Plan (Attachment 8.2) has highlighted significant uncertainties that must be addressed. Similarly, the success of ambitious ecological restoration and stormwater management initiatives requires more than good intentions; it demands scientifically sound plans, adequate resourcing, and binding commitments to long-term performance.

7.4. We urge the Expert Consenting Panel to apply a precautionary approach when considering potential effects of contaminated land on ecological values and human health. The volunteered consent conditions provide a starting point, but as highlighted throughout these comments, there are numerous areas where conditions need to be improved to ensure that the development effectively avoids, remedies, or mitigates adverse effects and delivers positive outcomes for Nelson's environment and community. This is essential to the requirement to take into account the purpose and principles in Part 2 of the Resource Management Act 1991, relevant provisions of National Policy Statements and plans, and the expectations of the New Zealand public for the protection and enhancement of our natural and physical resources.

Thank you for receiving these comments.
Scott Burnett
Regional Conservation Manager – Top of the South