

# **Proposed Private Plan Change 28 (PPC 28) – Maitahi Bayview by CCKV Dev Co LP & Bayview Nelson Limited to the Operative Nelson Resource Management Plan**

## **Recommendations from the Independent Hearing Panel following the hearing of PPC 28 under the Resource Management Act 1991 –**

**Proposal - Request to rezone approximately 287 hectares of  
land located within Kākā Valley, along Botanical Hill and  
Malvern Hill to a range of urban and rural zonings, along  
with associated plan provisions.**

**Date 9 September 2022**

|      |                                                                                             |    |
|------|---------------------------------------------------------------------------------------------|----|
| 1    | Overall Recommendation .....                                                                | 7  |
| 2    | Details .....                                                                               | 7  |
| 3    | Executive Summary.....                                                                      | 8  |
| 4    | Introduction .....                                                                          | 15 |
| 5    | The Plan Change Proposal as Notified .....                                                  | 15 |
| 6    | Plan Change as modified – as presented in the Applicant’s Reply .....                       | 19 |
| 7    | Plan Change Site and Context Description.....                                               | 20 |
| 8    | PPC 28 Acceptance, Further Information, Notification and Submission Process .....           | 21 |
| 9    | Consultation undertaken .....                                                               | 21 |
| 10   | Procedural Matters .....                                                                    | 22 |
| 11   | Expert Conferencing and the Addendum s42A report .....                                      | 22 |
| 12   | Statutory Framework .....                                                                   | 24 |
| 12.1 | Overview .....                                                                              | 24 |
| 12.2 | RMA – Part 2 .....                                                                          | 25 |
| 12.3 | Resource Management (Enabling Housing Supply and Other Matters) Amendment Act<br>2021 ..... | 25 |
| 12.4 | Resource Management Amendment Act 2020 – climate change .....                               | 26 |

|         |                                                                                                                             |    |
|---------|-----------------------------------------------------------------------------------------------------------------------------|----|
| 13      | Statutory Policy Framework.....                                                                                             | 26 |
| 13.1    | Te Tau Ihu Statutory Acknowledgements 2014.....                                                                             | 27 |
| 13.2    | National Policy Statement on Urban Development 2020 (NPS-UD) .....                                                          | 28 |
| 13.3    | National Policy Statement for Freshwater Management 2020.....                                                               | 29 |
| 13.4    | National Environmental Standard for Freshwater 2020 (NES-F).....                                                            | 30 |
| 13.5    | New Zealand Coastal Policy Statement 2010 .....                                                                             | 31 |
| 13.6    | National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NES-CS) ..... | 31 |
| 13.7    | National Environmental Standard for Air Quality 2004 (NES-AQ).....                                                          | 31 |
| 13.8    | Nelson Regional Policy Statement 1997 (RPS).....                                                                            | 32 |
| 13.9    | Nelson Resource Management Plan (NRMP) .....                                                                                | 32 |
| 13.10   | Nelson Air Quality Plan 2008 (NAQP) .....                                                                                   | 33 |
| 13.11   | Iwi Management Plans (IMPs) .....                                                                                           | 33 |
| 14      | Our Findings on the plan change request and the issues raised by the submitters and the Council's experts .....             | 34 |
| 14.1    | Approach to addressing the issues in PPC 28 as raised by the Section 42A experts and the submissions .....                  | 34 |
| 14.2    | Section 32AA evaluation .....                                                                                               | 35 |
| 14.3    | Key issues/outcomes sought by submitters, as well as the Council's experts .....                                            | 35 |
| 14.4    | Whether PPC 28 gives effect to the NPS-UD and the NRPS in relation to urban growth management.....                          | 36 |
| 14.4.1  | Introduction /Overview .....                                                                                                | 36 |
| 14.4.2  | A well-functioning urban environment .....                                                                                  | 39 |
| 14.5    | Future Development Strategy 2019 and Intensification Action Plan .....                                                      | 43 |
| 14.6    | The Nelson City Council Housing and Business Capacity Assessment Report (HBA) ....                                          | 45 |
| 14.7    | The Future Development Strategy 2022 .....                                                                                  | 46 |
| 14.8    | Nelson Regional Policy Statement 1997 .....                                                                                 | 46 |
| 14.9    | Need for additional greenfield land for growth .....                                                                        | 47 |
| 14.9.1  | Introduction .....                                                                                                          | 47 |
| 14.9.2  | Statutory and planning provisions.....                                                                                      | 47 |
| 14.9.3  | Matters raised.....                                                                                                         | 47 |
| 14.9.4  | Outcome of expert conferencing.....                                                                                         | 49 |
| 14.9.5  | Evaluation .....                                                                                                            | 50 |
| 14.9.6  | Recommendation .....                                                                                                        | 52 |
| 14.10   | Housing affordability .....                                                                                                 | 52 |
| 14.10.1 | Introduction .....                                                                                                          | 52 |
| 14.10.2 | Statutory and planning provisions.....                                                                                      | 53 |

|         |                                                       |     |
|---------|-------------------------------------------------------|-----|
| 14.10.3 | Matters raised.....                                   | 53  |
| 14.10.4 | Outcome of expert conferencing.....                   | 55  |
| 14.10.5 | Evaluation .....                                      | 55  |
| 14.10.6 | Recommendation .....                                  | 56  |
| 14.11   | Community Opposition - Overall decline.....           | 57  |
| 14.11.1 | Introduction .....                                    | 57  |
| 14.11.2 | Matters raised.....                                   | 57  |
| 14.11.3 | Evaluation .....                                      | 58  |
| 14.11.4 | Recommendation .....                                  | 61  |
| 14.12   | Support for PPC 28.....                               | 61  |
| 14.12.1 | Introduction .....                                    | 61  |
| 14.12.2 | Matters raised.....                                   | 61  |
| 14.12.3 | Evaluation .....                                      | 62  |
| 14.12.4 | Recommendation .....                                  | 64  |
| 14.13   | Adequacy of information (or lack of).....             | 65  |
| 14.13.1 | Introduction .....                                    | 65  |
| 14.13.2 | Matters raised.....                                   | 65  |
| 14.13.3 | Outcome of expert conferencing.....                   | 66  |
| 14.13.4 | Evaluation .....                                      | 66  |
| 14.13.5 | Recommendation .....                                  | 66  |
| 14.14   | Māori Cultural values.....                            | 66  |
| 14.14.1 | Introduction .....                                    | 66  |
| 14.14.2 | Statutory and policy provisions .....                 | 67  |
| 14.14.3 | Matters raised.....                                   | 68  |
| 14.14.4 | Evaluation .....                                      | 70  |
| 14.14.5 | Recommendation .....                                  | 75  |
| 14.15   | Landscape, visual amenity and natural character ..... | 76  |
| 14.15.1 | Introduction .....                                    | 76  |
| 14.15.2 | Statutory and policy provisions .....                 | 76  |
| 14.15.3 | Matters raised.....                                   | 78  |
| 14.15.4 | Outcome of expert conferencing.....                   | 84  |
| 14.15.5 | Evaluation .....                                      | 85  |
| 14.15.6 | Recommendation .....                                  | 100 |
| 14.16   | Urban Design .....                                    | 101 |
| 14.16.1 | Introduction .....                                    | 101 |
| 14.16.2 | Statutory and planning provisions.....                | 101 |

|         |                                                                                                   |     |
|---------|---------------------------------------------------------------------------------------------------|-----|
| 14.16.3 | Matters raised.....                                                                               | 102 |
| 14.16.4 | Outcome of expert conferencing.....                                                               | 104 |
| 14.16.5 | Evaluation .....                                                                                  | 105 |
| 14.16.6 | Recommendation .....                                                                              | 107 |
| 14.17   | Land suitability (Geotechnical, Land Contamination and Productive Soils) .....                    | 108 |
| 14.17.1 | Geotechnical.....                                                                                 | 108 |
| 14.17.2 | Land Contamination .....                                                                          | 111 |
| 14.17.3 | Productive Soils .....                                                                            | 111 |
| 14.18   | Water and Wastewater - Infrastructure Servicing and Funding.....                                  | 113 |
| 14.18.1 | Statutory and planning provisions.....                                                            | 113 |
| 14.18.2 | Water .....                                                                                       | 114 |
| 14.18.3 | Wastewater .....                                                                                  | 116 |
| 14.18.4 | Funding .....                                                                                     | 117 |
| 14.19   | Water quality, flooding, stormwater, water sensitive design and erosion and sediment control..... | 119 |
| 14.19.1 | Introduction.....                                                                                 | 119 |
| 14.19.2 | Statutory and policy provisions .....                                                             | 120 |
| 14.19.3 | Matters raised.....                                                                               | 121 |
| 14.19.4 | Outcome of expert conferencing.....                                                               | 129 |
| 14.19.5 | Evaluation .....                                                                                  | 130 |
| 14.19.6 | Recommendation .....                                                                              | 146 |
| 14.20   | Ecology.....                                                                                      | 146 |
| 14.20.1 | Introduction.....                                                                                 | 146 |
| 14.20.2 | Statutory and planning provisions.....                                                            | 147 |
| 14.20.3 | Matters raised.....                                                                               | 148 |
| 14.20.4 | Outcome of expert conferencing.....                                                               | 155 |
| 14.20.5 | Evaluation .....                                                                                  | 156 |
| 14.20.6 | Recommendation .....                                                                              | 160 |
| 14.21   | Transportation/Traffic Effects .....                                                              | 160 |
| 14.21.1 | Introduction.....                                                                                 | 160 |
| 14.21.2 | Statutory and planning provisions.....                                                            | 160 |
| 14.21.3 | Matters raised.....                                                                               | 161 |
| 14.21.4 | Outcome of expert conferencing.....                                                               | 174 |
| 14.21.5 | Evaluation .....                                                                                  | 175 |
| 14.21.6 | Recommendation .....                                                                              | 178 |
| 14.22   | Historic Heritage .....                                                                           | 179 |

|         |                                        |     |
|---------|----------------------------------------|-----|
| 14.22.1 | Introduction .....                     | 179 |
| 14.22.2 | Statutory and policy provisions .....  | 181 |
| 14.22.3 | Matters raised.....                    | 181 |
| 14.22.4 | Outcome of expert conferencing.....    | 182 |
| 14.22.5 | Evaluation .....                       | 182 |
| 14.22.6 | Recommendation .....                   | 184 |
| 14.23   | Open space and recreation.....         | 184 |
| 14.23.1 | Introduction .....                     | 184 |
| 14.23.2 | Statutory and policy provisions .....  | 184 |
| 14.23.3 | Matters raised.....                    | 185 |
| 14.23.4 | Outcome of expert conferencing.....    | 189 |
| 14.23.5 | Evaluation .....                       | 190 |
| 14.23.6 | Recommendation .....                   | 194 |
| 14.24   | Noise .....                            | 194 |
| 14.24.1 | Introduction .....                     | 194 |
| 14.24.2 | Statutory and policy provisions .....  | 194 |
| 14.24.3 | Matters raised.....                    | 194 |
| 14.24.4 | Outcome of expert conferencing.....    | 195 |
| 14.24.5 | Evaluation .....                       | 196 |
| 14.24.6 | Recommendation .....                   | 197 |
| 14.25   | Climate change .....                   | 197 |
| 14.25.1 | Introduction .....                     | 197 |
| 14.25.2 | Statutory and planning provisions..... | 197 |
| 14.25.3 | Matters raised.....                    | 198 |
| 14.25.4 | Outcome of expert conferencing.....    | 200 |
| 14.25.5 | Evaluation .....                       | 200 |
| 14.25.6 | Recommendation .....                   | 201 |
| 14.26   | Air quality.....                       | 201 |
| 14.26.1 | Introduction .....                     | 201 |
| 14.26.2 | Statutory and planning provisions..... | 201 |
| 14.26.3 | Matters raised.....                    | 202 |
| 14.26.4 | Outcome of expert conferencing.....    | 203 |
| 14.26.5 | Evaluation .....                       | 203 |
| 14.26.6 | Recommendation .....                   | 203 |
| 14.27   | Housing Design .....                   | 203 |
| 14.27.1 | Introduction.....                      | 203 |

|         |                                        |     |
|---------|----------------------------------------|-----|
| 14.27.2 | Statutory and planning provisions..... | 204 |
| 14.27.3 | Matters raised.....                    | 204 |
| 14.27.4 | Outcome of expert conferencing.....    | 206 |
| 14.27.5 | Evaluation .....                       | 206 |
| 14.27.6 | Recommendation .....                   | 206 |
| 14.28   | Health and safety.....                 | 207 |
| 14.28.1 | Introduction.....                      | 207 |
| 14.28.2 | Matters raised.....                    | 207 |
| 14.28.3 | Outcome of expert conferencing.....    | 207 |
| 14.28.4 | Evaluation .....                       | 207 |
| 14.28.5 | Recommendation .....                   | 207 |
| 14.29   | Construction effects.....              | 208 |
| 14.29.1 | Introduction.....                      | 208 |
| 14.29.2 | Statutory and planning provisions..... | 208 |
| 14.29.3 | Matters raised.....                    | 208 |
| 14.29.4 | Evaluation .....                       | 208 |
| 14.29.5 | Recommendation .....                   | 208 |
| 14.30   | Education Facilities .....             | 209 |
| 14.30.1 | Introduction.....                      | 209 |
| 14.30.2 | Statutory and planning provisions..... | 209 |
| 14.30.3 | Matters raised.....                    | 209 |
| 14.30.4 | Outcome of expert conferencing.....    | 209 |
| 14.30.5 | Evaluation .....                       | 210 |
| 14.30.6 | Recommendation .....                   | 211 |
| 14.31   | Non-notification clauses .....         | 211 |
| 14.31.1 | Introduction.....                      | 211 |
| 14.31.2 | Statutory and planning provisions..... | 212 |
| 14.31.3 | Matters raised.....                    | 212 |
| 14.31.4 | Outcome of expert conferencing.....    | 213 |
| 14.31.5 | Evaluation .....                       | 213 |
| 14.31.6 | Recommendation .....                   | 215 |
| 14.32   | Consultation undertaken.....           | 215 |
| 14.32.1 | Introduction.....                      | 215 |
| 14.32.2 | Matters raised.....                    | 215 |
| 14.32.3 | Evaluation .....                       | 216 |
| 14.32.4 | Recommendation .....                   | 216 |

|         |                                                          |     |
|---------|----------------------------------------------------------|-----|
| 14.33   | Other .....                                              | 216 |
| 14.33.1 | Introduction .....                                       | 216 |
| 14.33.2 | Matters raised in submissions .....                      | 216 |
| 14.33.3 | Outcome of expert conferencing.....                      | 217 |
| 14.33.4 | Evaluation .....                                         | 217 |
| 14.33.5 | Recommendation .....                                     | 218 |
| 15      | Part 2 Matters .....                                     | 218 |
| 16      | Overall Finding and Recommendation .....                 | 220 |
|         | Appendix A – Parties .....                               | 221 |
|         | Appendix B – PPC 28 Provisions.....                      | 225 |
|         | Appendix C – Structure Plan .....                        | 253 |
|         | Appendix D – Zoning Maps .....                           | 254 |
|         | Appendix E – Landscape Overlay .....                     | 260 |
|         | Appendix F – Vegetation Overlay.....                     | 261 |
|         | Appendix G – Services Overlay (B3) .....                 | 262 |
|         | Appendix H – Roading Hierarchy .....                     | 263 |
|         | Appendix I – Indicative Dennes Hole Interface Plan ..... | 264 |
|         | Appendix J – Acronyms .....                              | 265 |

## 1 Overall Recommendation

That Private Plan Change 28 be **APPROVED** with modifications to that notified. An Executive Summary and the full reasons for recommending the **APPROVAL** of the plan change are set out below.

## 2 Details

|                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Private Plan Change number:</b>          | 28                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Applicant:</b>                           | CCKV Development Co LP and Bayview Nelson Limited (Bayview)                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Site locality and legal description:</b> | 7 Ralphine Way, Maitai Valley <ul style="list-style-type: none"> <li>Part Sec 11 District of Brook Street &amp; Maitai and Part Sec 8 Square 23, described within Record of Title NL11A/1012: Bayview Road Lot 4 Deposited Plan 551852 and Sections 26-27 Square 23 and Part Section 29 Square 23 and Part Section 58 Suburban North District and Part Section 59-60, 62-64 Suburban North District and Lot 2 DP340064, described within Record of Title 956280.</li> </ul> |
| <b>Hearings</b>                             | Commenced 13 July 2022 and was adjourned on 21 July 2022.                                                                                                                                                                                                                                                                                                                                                                                                                   |

|                       |                                                                                |
|-----------------------|--------------------------------------------------------------------------------|
| <b>Hearing panel:</b> | Greg Hill (Chairperson)<br>Sheena Tepania<br>Gillian Wratt<br>Nigel Mark-Brown |
| <b>Parties</b>        | <b>See Appendix A</b>                                                          |

### 3 Executive Summary

#### Overview

1. The Executive Summary provides an overview of the key matters related to PPC 28 and to provide 'context' when reading the substantive part of this report.
2. We have recommended the approval of the PPC 28. The reasons for this are fully addressed in the substantive part of this report. Overall, we have found that:
  - PPC 28 meets the purpose and principles of the RMA (Part 2) having evaluated it under sections 32 and 32AA of the RMA.
  - PPC 28 gives effect to the National Policy Statement on Urban Development 2020 (updated in May 2022) (NPS-UD), the National Policy Statement for Freshwater Management 2020 (NPS-FM) (to the extent it can as a land use plan change to the Nelson Resource Management Plan (NRMP) and not of itself a Freshwater Planning Instrument), the Nelson Regional Policy Statement (NRPS), and other statutory planning documents set out in the report.
  - PPC 28 is consistent with the NRMP, but adds a number of 'bespoke' provisions to it relating to the PPC 28 area. This is to ensure it gives effect to the NPS-UD, NPS-FM and the NRPS, and meets the purpose of the RMA.
3. We have set out which submissions we have accepted, accepted in part, or rejected, with some neutral submissions being noted<sup>1</sup>. These are set out in this report under the headings identified in the table of contents.
4. In brief, PPC 28 sought to:
  - Rezone approximately 287 hectares of land located within Kākā Valley, along Botanical Hill and Malvern Hills from Rural and Rural-Higher Density Small Holdings Area to:
    - Residential (Higher, Standard and Lower Density Areas);
    - Open Space - Recreation;
    - Suburban Commercial;
    - Higher Density – Small Holding Area; and
    - Retention of land as rural zoning.
  - Introduce a new Schedule X to the NRMP with an accompanying Structure Plan. Particular aspects of the Schedule included:

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<sup>1</sup> We have relied on the detailed identification of submissions set out in the Council's s42A report.

- Comprehensive Housing Developments in the Residential Zone - Higher Density Area as a restricted discretionary activity;
  - Subdivision in the Residential Zone as a restricted discretionary activity;
  - Vesting of a 40m total width esplanade reserve along the Maitahi/Mahitahi River and Kākā Stream, in stages as subdivision progresses, which would provide for public access and ecological values;
  - Overlays addressing Landscape, Vegetation and Transport, with plan provisions addressing them;
  - Building in the Backdrop Area and Skyline Area as a controlled activity;
  - Buildings on specifically identified parts of the Kākā Hill Backdrop and Skyline Areas and within the Significant Natural Area being prohibited activities;
  - The requirement for a Cultural Impact Assessment with any resource consent application;
  - The application of ecological and freshwater best practice principles in the subdivision and development design process;
5. A number of changes were made to the PPC 28 Request, which we have accepted<sup>2</sup>. The more significant amendments to the Structure Plan and associated Overlays include:
- Removal of all Higher Density Small Holdings Zoning.
  - An increase in Rural Zoning.
  - An overall reduction in Residential Zoning (by approximately 26% - 37.98 hectares, to 107.85ha - approximately 38% of the total plan change area), and a consequential increase in Rural Zoning.
  - Consolidation of the two Commercial Zones into one area adjacent to the central recreation reserve and a reduction in zone area.
  - An adjustment of the boundary between Low Density and Standard Density Residential at the northeast end of the PPC 28 site on the Malvern Hills.
  - Refinement of the alignment of the indicative sub-collector road.
  - Addition of two secondary roads. The first indicates a potential connection with Walters Bluff and the second indicates a road connection into Kākā Valley.
  - Refinement in the alignment of the Open Space and Recreation zone, including the removal of it from along the northeast boundary on Kākā Hill.
  - Identifying and graphically showing the eastern spur of 'Botanical Hill' above Walters Bluff as a primary ridgeline.
  - Addition of 'Green Overlay Areas' that align with underlying geotechnically constrained land.
  - Some amendments to future walkway alignments and the addition of a mid-slope pedestrian/cycle connection between the Sir Stanley Whitehead track and Bayview.

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<sup>2</sup> As amended through the hearing process, and in-scope of that originally notified.

6. A number of changes were also made to the PPC 28 provisions (other than the Structure Plan and Overlay changes outlined above)<sup>3</sup>. Some of the more significant changes were:
- More stringent and comprehensive provisions relating to flooding, earthworks and sediment control, and stormwater (including the requirement to provide a Stormwater Management Plan (SMP) at the resource consent stage), as well as requiring an ecological assessment (via an Environmental Management Plan) at the resource consent stage;
  - The completion of certain transport upgrades (eg intersection of Nile Street and Maitai Road, Ralphine Way and Maitai Valley Road, link road from Bay View Road to Walters Bluff and/or Ralphine Way, and active mode connections from PPC 28 land to the city centre) before subdivision or development occurs;
  - That terrestrial and freshwater ecological values are restored, protected and enhanced.
  - While the PPC 28 Structure Plan shows a realigned Kākā stream in its lower reaches, the Applicant no longer sought direct policy support for that outcome;
  - Buildings within the Skyline Area (Malvern Hills and Botanical Hill) are a restricted discretionary activity (formerly a controlled activity); and
  - Buildings on Kākā Hill are a non-complying activity (formerly a prohibited activity).
7. PPC 28 would enable a substantial number of additional houses. This will assist Nelson in addressing the identified shortage of housing supply close to the Nelson CBD. The Council's Future Development Strategy (2019 and 2022) (FDS) identified that a range of intensification and greenfield areas were necessary to provide for Nelson's housing needs, while minimising the use of high-quality rural land (noting that the PPC 28 land is not high-quality rural land).
8. Both the 2019 and 2022 FDS identified the PPC 28 site as an expansion area suitable for consideration for urban development<sup>4</sup>. We note, as a matter of fact, that the FDS 2022, adopted by the Council on the 29 August 2022<sup>5</sup>, confirmed Maitahi/Bayview (Maitai Valley PPC 28) as a proposed greenfield expansion area.

### **Community opposition/Amenity Values/Landscape/Open Space-Recreation**

9. We acknowledge that the majority of the submitters sought that PPC 28 be declined. We also acknowledge that a considerable number of submitters in opposition, including Save the Maitai (STM - a not-for-profit organisation set up to oppose PPC 28), in the alternative sought that if PPC 28 wasn't declined residential development be limited to the Bayview side of the site along with a higher level of environmental management. There were a wide range of reasons why these submitters opposed PPC 28. We have addressed these in detail in this report.
10. Many opposing submitters, including STM, considered that as the "community" opposed PPC 28 (for the reasons they set out), it should therefore be declined. STM provided legal submissions and planning evidence on this – drawing on the NRPS Policy DH1.3.2:

*To have regard to community expectations when determining the extent and location of urban expansion.*

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<sup>3</sup> Some of these were made by the Applicant in response to submitters, the s42A experts and the Hearing Panel, and others by us as part of our recommendation to approve PPC 28

<sup>4</sup> We note there was contention about the FDS 2019 identifying Kākā Valley as an expansion area – we address this in more detail later in the report

<sup>5</sup> And takes effect from 19 September 2022

11. We accept if PPC 28 is approved and developed, it would result in a significant change to the current environment, and would have a range of impacts – both positive and potentially adverse. The issue we had to determine was whether PPC 28 would result in the promotion of sustainable management as required by s5 of the Resource Management Act 1991 (RMA), having evaluated it in terms of statutory RMA planning documents (which we address in some detail in the report). We have found that PPC 28 will, subject to the plan provisions we have recommended, meet the purpose of the RMA.
12. With respect to the statutory RMA planning documents, we have addressed the NPS-UD in some detail. It, in a nutshell, seeks to ensure well-functioning urban environments, and among other things, directs that more people are to be enabled to live and work close to city centres and employment, and where there is high demand for housing land. It also seeks that there be a provision for a variety of homes that meet the needs, in terms of type, price and location of different households, and enables Māori to express their cultural traditions and norms. It is our finding that this applies to PPC 28.
13. The NPS-UD also acknowledges that urbanisation can result in significant changes which will affect (detract from) some people's amenity values, but may improve others. The NPS-UD states that those changes that may detract from some people's amenity values, are not of themselves an adverse effect. Many of the opposing submitters considered that their amenity values would be adversely affected due to the urbanisation of this area, and the impact it would have on landscape, green/open space and recreational values. We address these aspects in detail in the sections on "Landscape, visual amenity and natural character" and "Open space and recreation".
14. From a 'landscape, visual amenity and natural character' perspective, we have found that in many respects these elements of the environment will be improved, but accept it will be different from that which currently exists. The PPC 28 land within Kākā Valley will enhance the landscape values of Kākā Stream and maintain those associated with the Maitahi/Mahitahi River. The landscape values of Kākā Hill will be maintained and enhanced by retaining its Rural zoning, through future revegetation and the stringent rules relating to any development. The Open Space Recreation Zone and the Residential Zone - Lower Density (Backdrop) Area on Botanical Hill will maintain the landscape values of Botanical Hill. In relation to the Malvern Hills, native vegetation will be enhanced and the associative values increased.
15. From an 'Open space and recreation' perspective, the Applicant acknowledged, and many submitters pointed out, that the Maitahi/Mahitahi Valley downstream of Kākā Valley contains a large number of popular reserve areas and recreational activities<sup>6</sup>. While current users may notice an increased use of the existing green spaces and recreational areas, there will be no reduction of access to them. There will, in fact, be an increase in publicly accessible green space as the Kākā Valley land is privately owned with no current formal public access to it. We find this to be entirely consistent with RMA sections 6(d), 7(c) and 7(f), and objective 1 and policy 1 of the NPS-UD requirement for well-functioning urban environments to *have good accessibility for all people between housing, jobs, community services, **natural spaces and open space**, including by way of public or active transport.*

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<sup>6</sup> These were identified in the Application as Branford Park, the Maitai Cricket Ground, Waahi Taakaro Reserve, Maitai camping ground, various swimming holes (such as Dennes Hole, Black Hole, Sunday Hole), the Waahi Takaro Golf Club, and mountain biking opportunities. Dennes Hole is the closest to the site as it is located on the right bank of the Maitai River immediately adjoining the site, and at the confluence of the Kākā Stream

16. We have had regard to community expectations as set out in the NRPS. This has particularly been in terms of ‘amenity values’, and the impact PPC 28 would have on them, given the existing environment would change. We have not agreed with many submitters, including STM, about “the community” and the amenity values held by it. The Nelson community, in our view, is not limited to those submitters opposing PPC 28 and those who signed the petition, as suggested by a range of submitters including STM. This ignores, at least, those submitters who supported PPC 28, Ngāti Koata and other iwi, as well as future residents who would choose to live in this area should it be re-zoned.

### **Ngāti Koata**

17. The special association of Ngāti Koata with the area is acknowledged through various Statutory Acknowledgments and Deeds of Recognition with a Statutory Acknowledgment of particular relevance in relation to the Maitahi/Mahitahi River and its tributaries. This is in recognition of the awa being an important source of food, water and connectivity to other important waterways.
18. Ngāti Koata, in supporting PPC 28, set out their interests and aspirations for this area. This included seeking to provide housing for tangata whenua within the Kākā Valley. Ngāti Koata provided evidence in its private capacity as an Applicant through Mr Toia and separately through its iwi representatives as a submitter and supporter of the application.
19. Mr Toia reiterated, in part, the vision Ngāti Koata and their Partners have for the Kākā Valley which was:<sup>7</sup>
- a vibrant community that connects with and enhances its natural environment and setting;
  - a vibrant community that connects with each other, people connecting with people;
  - a place families will call home;
  - a place where families will be able to buy their first home, their next home, their last home; and
  - a place where people will connect with tangata whenua – socially, culturally and environmentally.
20. We find that recommending the approval of PPC 28 would recognise and provide for Ngāti Koata’s relationship with their “*culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*” as mandated by s6(e) of the RMA; a matter of national importance. It would also give effect to those provisions in the national and regional policy documents.

### **Earthworks and Sediment Control**

21. Earthworks and sediment control was a significant issue in contention, especially with the Council’s s42A experts. We find that the Applicant has provided sufficient information (and evidence) to demonstrate that the erosion and sediment effects associated with earthworks required for construction of urban development can be appropriately managed. In this respect we accept, among other matters:
- The Applicant has identified the areas of higher risks being the steeper slopes and works

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<sup>7</sup> Mr Toia’s Closing Statement

in or adjacent to streams. The areas of higher risk have been addressed through the revised structure plan, including additional provisions that will ensure that an appropriate level of assessment and control is placed on the earthworks phase of development at the resource consent stage.

- The steepest parts of the site are to be avoided to the greatest extent practical. Where works are required on the steeper slopes the adoption of proven erosion and sediment control techniques will be applied. Also, the Higher Density Small Holding Area has been deleted (and retained its rural zoning with the addition of a revegetation overlay), therefore avoiding earthworks in, and enhancing this area.
  - The final Structure Plan included a focus on excluding areas with significant constraints where potential adverse effects could not be satisfactorily mitigated; having considered topographic and geotechnical constraints, construction materials (soil and rock) and short and long term impacts of earthworks on the environment.
22. We consider the proposed PPC 28 provisions we have recommended, along with those in the NRMP, are robust and sufficiently thorough to ensure that erosion and sediment associated with earthworks required to develop the land for urban purposes can be managed so that any adverse effects can be avoided, remedied or mitigated through resource consent processes.

### ***Flooding***

23. We acknowledge that potential flooding is a significant issue. Prior to recommending the approval of PPC 28 we were clear that we needed to be convinced that the site (particularly the lower portion) could be developed in a way to avoid flooding of future residential and commercial properties on the site and avoid any increase in flooding downstream.
24. Based on the evidence before us we are satisfied that sufficient modelling and assessment has been carried out to demonstrate there are feasible options available to address potential effects of the proposed development on flooding, and that the Stormwater Management Plan (SMP) addressed flooding at an appropriate level of detail for the whole catchment, including information on the proposed stormwater and flood risk for the Maitahi/Mahitahi River downstream of Kākā Stream. Schedule X13 of the plan change provisions requires a comprehensive catchment wide SMP, and further detailed work to show how flooding risks will be managed/avoided, at the resource consent stage.
25. We also acknowledge the severe flooding and land slips that occurred in Nelson in late August 2022 (after the hearing had been adjourned). Given that event we inquired from the Applicant whether or not its experts' opinions (flooding and geo-technical) remained the same or had changed since presenting their evidence. The Applicant's response from its legal counsel was<sup>8</sup>:

*Counsel can confirm on behalf of the Applicant that Mr Vellupillai<sup>9</sup> and Mr Foley's opinions have not changed.*

### ***The Kākā Stream, the Maitahi/Mahitahi River and Terrestrial Ecology***

26. We accept that there are potential adverse effects from sediment and contaminants on the Kākā Stream and the Maitahi/Mahitahi River downstream of Kākā Stream. We have addressed sediment and erosions above, as well as the need for a SMP (to address, among other things, contaminants). Moreover, the provisions of PPC 28 require the provisions of "water sensitive

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<sup>8</sup> Dated 31 August 2022

<sup>9</sup> Mr Vellupillai commented the August event confirmed his modelling

design” to, in part, protect the health and wellbeing of Kākā Stream, and hence the receiving environments of the Maitahi/Mahitahi River and the coastal environment. The provisions also require significant riparian buffers.

27. The PPC 28 request sought a policy direction to realign the Kākā Stream. This was ‘hotly’ debated by submitters and the Council’s s42A experts. In the Reply legal submissions, the Applicant sought to remove any policy direction to realign Kākā Stream, and supported a policy direction to restore and enhance the degraded lower portion of Kākā Stream. We have agreed with the Applicant’s position on this, and this is reflected in the recommended PPC 28 provisions.
28. In addition, any resource consent application to realign the Kākā Stream (or any application dealing with freshwater issues) will (in addition to those of the NRMP and PPC 28) be considered in terms of the requirements of the NPS-FM, with Council obliged to set and monitor water quality, ecosystem and human health attribute states.
29. From a terrestrial ecology perspective, PPC 28 provides for a significant increase in indigenous plantings through residential green and rural revegetation overlays (much of which is currently in rough pasture), riparian buffers and Schedule X provisions on planting of appropriate indigenous species.

#### ***Transportation/Traffic***

30. The increase in traffic that would be generated by PPC 28 (construction and urban development) was a significant matter raised by submitters. While many submitters questioned if the road network could cope with the increased traffic, there was a high level of agreement between the traffic experts, including Mr James for STM, in relation to the capacity of the roading network. We accept the outcome of the expert conferencing sessions and their evidence.
31. The only required vehicle infrastructure improvements are at the intersection of Nile Street East/Maitai Road, the intersection of Ralphine Way and Matai Valley Road, and the link road from Bay View Road to Walters Bluff and/or Ralphine Way. All of the other identified improvements are for encouraging/increasing active mode transport (which is consistent with reducing emissions which Mr James was concerned about). These upgrades are to be completed and operational prior to subdivision and development occurring.
32. In terms of public transport, we consider this is a matter best addressed at the time of subdivision of the site. However, we accept that the layout will provide the opportunity for public transport to be provided, and that there is adequate scope provided through the subdivision phase to ensure that public transport can be accommodated.
33. Overall, we find that PPC 28 (and the recommended provisions), coupled with the NRMP and the NLTDM, will ensure that the traffic impacts on the wider network are appropriately managed, and the internal layout is appropriate in terms of its location, connections and gradient. The resource consent process will enable a full assessment of these matters including the internal layout, the provisions for walk and cycle paths and connections with the wider network. These paths will, in our view, provide wider benefits beyond the site and allow areas that have been previously only accessed by the public through the goodwill of the landowner.

## 4 Introduction

34. The private plan change request was made under Clause 21 of Schedule 1 to the Resource Management Act 1991 (“RMA”) and was accepted by Nelson City Council (“the Council”) under clause 25(2)(b) of Schedule 1 to the RMA on 23 September 2021.
35. The Hearing Panel, Greg Hill (Chair), Sheena Tepania, Gillian Wratt and Nigel Mark-Brown appointed and acting under delegated authority under sections 34 and 34A of the RMA, has been delegated the authority by the Council to make a recommendation on Private Plan Change 28 (“PPC 28”) to the Operative Nelson Resource Management Plan (NRMP).
36. We have recommended approving the Plan Change for all the reasons that follow (and as set out in the Executive Summary above).
37. In making our recommendations we have considered all of the material put before us, including: the application (and all the related technical and other reports), all of the submissions, the section 32 and 32AA evaluations, the s42A report and the Addendum s42A report prepared by Ms Sweetman (Consultant Planner) with assistance from a range of other Council appointed experts, the Joint Witness Statements of Experts following expert conferencing, legal submissions, expert and lay evidence, tabled material and closing Reply evidence and legal submissions.
38. The recommended plan provisions to be included in the NRMP are attached as Appendix B.

## 5 The Plan Change Proposal as Notified

39. The site and its environment are described in section 3.0 of the PPC Request. The PPC Request, including a section 32 evaluation report was provided as part of the application material. Having undertaken a comprehensive site visit we agree and adopt the site and surrounds description and do not repeat it other than to provide a high-level overview.
40. PPC 28 relates to the site shown in the aerial photograph<sup>10</sup> Figure 1 below:

**Figure 1: Aerial photograph showing the site**

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<sup>10</sup> Figure 8: from the Plan Change Request



41. As is shown in section 3.1 of the PPC, the site comprises three separate but adjoining records of title. The site adjoins Ralphine Way to the south, Botanical Hill and Brooklands to the west, and rural land to the north and east.
42. In brief, the PPC sought to:
  - Rezone approximately 287 hectares of land located within Kākā Valley, along Botanical Hill and Malvern Hills from Rural and Rural-Higher Density Small Holdings Area to:
    - a. Residential (Higher, Standard and Lower Density Areas);
    - b. Rural-Higher Density Small Holdings Area;
    - c. Open Space Recreation;
    - d. Suburban Commercial; and
    - e. The retention of land as rural zoning.
  - Introduce a new Schedule X to the NRMP with an accompanying Structure Plan. Particular aspects of the Schedule included:
    - a. Comprehensive Housing Developments in the Residential Zone - Higher Density Area as a non-notified restricted discretionary activity.
    - b. Subdivision in the Residential Zone as a non-notified restricted discretionary activity.
    - c. Vesting of a 40m total width esplanade reserve along the Kākā Stream, in stages as subdivision progresses.
    - d. Building in the Backdrop Area and Skyline Area as a controlled activity, subject to conditions.
    - e. Buildings on specifically identified parts of the Kākā Hill backdrop and skyline area and within the Significant Natural Area being prohibited activities meaning they cannot occur.

- f. The requirement for a Cultural Impact Assessment with any resource consent application.
  - g. The application of ecological and freshwater best practice principles in the subdivision and development design process.
  - Amendments to Chapter 7 – Residential Zone to:
    - a. Refer to the Schedule in the Introduction and Issues.
    - b. Add to Policy RE3.9 and its methods.
    - c. Introduce new Objective RE6 and Policy RE6.1 (Maitahi Bayview Area), Policy RE6.2 (Cultural Values) and Policy RE6.3 (Sensitive Environmental Design).
    - d. Introduce new rule RE2.106D – Maitahi Bayview Structure Plan (Schedule X).
    - e. Add to REr109.5 (Landscape Overlays – Subdivision).
  - Amendments to Chapter 9 – Suburban Commercial Zone to:
    - a. Refer to the Kākā Valley in the Introduction and Issues.
    - b. Reference the Schedule X.
    - c. Introduce new Rule SCr.69C – Maitahi Bayview Structure Plan (Schedule X).
    - d. Add to SCr71.2 to refer to the Schedule and Structure Plan.
  - Amendments to Chapter 12 – Rural Zone to:
    - a. Reference the Schedule in the Introduction and Issues.
    - b. Introduce new Rule RUr.77C– Maitahi Bayview Structure Plan (Schedule X).
  - The potential realignment of the lower Kākā Stream tributary is proposed but would be the subject of a separate and subsequent resource consent process.
  - Amendments to the Road Hierarchy Planning Maps to include a Proposed Sub Collector Road from the end of Bayview Road and Frenchay Drive, through the site and following the alignment of the proposed indicative road, through Ralphine Way and down the Maitai Valley Road as far as Nile Street East.
  - Amendments to the Planning Overlay Maps to apply the Services Overlay to the land.
43. Table 1 below<sup>11</sup> sets out the proposed zoning, minimum lot size and area proposed through PPC 28:

| <b>Table 1: Land Areas and Zonings</b> |                                |                                  |                      |
|----------------------------------------|--------------------------------|----------------------------------|----------------------|
| <b>Zone Type</b>                       | <b>Planned Density</b>         | <b>Minimum Lot Size</b>          | <b>Area Proposed</b> |
| Residential                            | High                           | 300m <sup>2</sup>                | 19.22ha              |
| Residential                            | Standard                       | 400m <sup>2</sup>                | 28.93ha              |
| Residential                            | Low Density                    | 800m <sup>2</sup>                | 60.61ha              |
| Residential                            | Low Density<br>(Backdrop Area) | 1500m <sup>2</sup>               | 36.44ha              |
| Rural – Small Holdings Area            | High Density                   | 5000m <sup>2</sup> , 1ha average | 35.4ha               |

<sup>11</sup> Table 1 from the s32 Evaluation – Maitahi Bayview

|                                 |          |                   |                 |
|---------------------------------|----------|-------------------|-----------------|
| Suburban Commercial             | --       | No minimum        | 00.37ha         |
| Open Space & Recreation         | --       | N.A.              | 41.33ha         |
|                                 |          | <b>Subtotal</b>   | <b>222.30</b>   |
| <b>Current zoning to remain</b> |          |                   |                 |
| Rural                           | --       | 15ha              | 63.85ha         |
| Residential                     | Standard | 400m <sup>2</sup> | 00.63           |
|                                 |          | <b>TOTAL</b>      | <b>286.78ha</b> |

44. PPC 28 does not seek to amend any of the existing regional planning provisions in the NRMP.
45. The Applicant provided the following information within the PPC request.
- The Plan Change Request document itself.<sup>12</sup>
  - The Structure Plan.<sup>13</sup>
  - Amendments to the NRMP Planning Maps.
  - Technical assessment documents as follows:
    - Iwi engagement summary.
    - Historical and archaeological assessment.
    - Productive values report.
    - Geotechnical report.
    - Ecological opportunities and constraints assessment report.
    - Environmental review, covering stormwater management and ecological effects management. The report also identified and assessed waterways across the site.
    - Infrastructure report, covering wastewater, water supply, dry services<sup>14</sup>, flooding and stormwater, including an addendum.
    - Transportation impact report, including an addendum.
    - Landscape visual assessment and urban design assessment report, including an addendum.
    - Preliminary landscape design document.
    - Economic cost and benefit assessment report.
  - Consultation feedback undertaken by the Applicant.
  - A section 32 evaluation report.
  - A response to the further information request including updated provisions.
46. Following the close of submissions, through the expert conferencing process, and evidence exchange, the Applicant has also provided the following information. These were appended to relevant Joint Witness Statements of evidence:
- Maitahi Development Dennes Hole Interface Plan.
  - Supplementary Terrestrial Ecological Values Assessment.

<sup>12</sup> As updated in response to the further information request

<sup>13</sup> As updated in response to the further information request

<sup>14</sup> Power, communication and data

- Maitahi Valley Farm Buildings, 7 Ralphine Way, Maitai Valley Nelson.
  - Investigations into selected heritage structures – timber woolshed/barn, concrete chimney, and concrete/stone wall remnants.
  - A stormwater management plan.
47. A proposed Structure Plan was provided as part of the Application. The final version of the Structure Plan, provided as part of the Applicant's Reply documents is attached as Appendix C.

## **6 Plan Change as modified – as presented in the Applicant's Reply**

48. A number of changes were made to the request, and were presented as evidence to the Hearing Panel. Other than a major refinement to the plan provisions, which we have modified further, the more major changes, all which we found were in-scope included:
- Amendments to the Structure Plan and associated Overlay Plans including:
    - Removal of all Higher Density Small Holdings Zoning;
    - An increase in Rural Zoning;
    - An overall reduction in Residential Zoning (by approximately 26% - 37.98 hectares, to 107.85ha - approximately 38% of the total plan change area) - and a resulting increase in Rural Zoning.
    - Consolidation of the two Commercial Zones into one area adjacent to the central recreation reserve and a reduction in zone area.
    - An adjustment of the boundary between Low Density and Standard Density Residential at the northeast end of the PPC 28 site on the Malvern Hills.
    - Refinement of the alignment of the indicative sub-collector road.
    - Addition of two secondary roads. The first indicates a potential connection with Walters Bluff and the second indicates a road connection into Kākā Valley.
    - Refinement in the alignment of the Open Space and Recreation zone, including the removal of it from along the northeast boundary on Kākā Hill.
    - Identifying and graphically showing the eastern spur of 'Botanical Hill' above Walters Bluff as a primary ridgeline.
    - Addition of 'Green Overlay Areas' that align with underlying geotechnically constrained land.
    - Some amendments to future walkway alignments and the addition of a mid-slope pedestrian/cycle connection between the Sir Stanley Whitehead track and Bayview.
49. Some of the more significant changes to the plan change provisions, other than the Structure Plan changes outlined above, include:
- More stringent and comprehensive provisions relating to flooding, earthworks and sediment control, stormwater (including the requirement to provide a Stormwater Management Plan (SMP) at the resource consent stage, as well

as requiring an ecological assessment (via an Environmental Management Plan), at the resource consent stage;

- The completion of certain transport upgrades (eg intersection of Nile Street and Maitai Road, Ralphine Way and Maitai Valley Road, link road from Bay View Road to Walters Bluff and/or Ralphine Way, and active mode connections from PPC 28 land to the city centre) before subdivision or development occurs;
- That terrestrial and freshwater ecological values are restored, protected and enhanced.
- While the PPC 28 Structure Plan shows a realigned stream in its lower reaches, the Applicant no longer sought direct support for that outcome;
- Buildings within the Skyline Area (Malvern Hills and Botanical Hill) are a restricted discretionary activity (formerly a controlled activity); and
- Buildings on Kākā Hill are a non-complying activity; formerly a prohibited activity.

50. Mr Lile set out in some detail the changes the Applicant has made to the plan provisions in his Reply Evidence.

## **7 Plan Change Site and Context Description**

51. The characteristics and context of the site were comprehensively described in section 3.3 of the request application. We have not repeated it here. Section 3.2 of the Landscape, Visual Amenity and Urban Design assessment<sup>15</sup> (LVAUDA) also provides a useful description of the site's context in Nelson.

52. In summary, the application site is located to the north-east of Nelson, approximately 2.6km from the Nelson Cathedral/Pikimai in the City Centre. The majority of the site is within the Kākā Valley, which forms part of the wider Maitahi/Mahitahi Valley. It is enclosed by Botanical, Malvern, Kākā and Sharland Hills. Botanical and Malvern Hills separate the site from the Nelson Haven to the east. The remainder of the site is on the upper slopes of Brooklands and the new development area of Bayview, on the western facing slopes of Malvern Hills. These face out over Nelson Haven and Tasman Bay.

53. The LVAUDA describes the five different largescale landscape features of the site and its receiving environment as being:

- Kākā Valley and Kākā Stream.
- Kākā Hill's east facing slopes.
- The northern part of Botanical Hill's east and west facing slopes, including the ridgeline north of the Centre of New Zealand Monument's public reserve.
- Malvern Hills north-west and south-west facing slopes including the ridgeline.
- A very small portion of the Maitahi/Mahitahi River, where the eastern corner of the horseshoe bend wraps around the Maitai Cricket Ground.

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<sup>15</sup> Appendix C9a of the PPC

54. The site is currently largely pastoral in nature, with a dwelling and associated farm buildings accessed from Ralphine Way. There is some regenerating bush on the site, but it is generally limited, with the majority of vegetation comprising pasture, exotic scrub vegetation and pine trees. Towards the top of Kākā Hill is an area of ecological significance.
55. The relevant zonings and overlays for the site were fully set out in the request document, discussed in the JWSs and evidence. The final versions, with which we agree, were provided as part of the Applicant's Reply documents, and are attached as Appendices D to G.

## **8 PPC 28 Acceptance, Further Information, Notification and Submission Process**

56. PPC 28 was lodged with the Council on 16 April 2021. A request for further information under clause 23 of Part 2 of Schedule 1 of the RMA was issued by the Council on 3 August 2021. The further information request was responded to on 24 August 2021.
57. PPC 28 was accepted for public notification at Council's meeting held on 23 September 2021 (under Clause 25(2)(b)). It was subsequently publicly notified 28 October 2021, with the submission period closing on 8 December 2021.
58. A total of 715 submissions were received<sup>16</sup>. There were two late submissions and we address the acceptance of these under the heading Procedural Matters below.
59. The summary of submissions was publicly notified for further submissions on 8 February 2022 with the period for further submissions closing on 25 February 2022. Nine further submissions were received by that date.
60. Six hundred and twenty-eight of the submissions opposed the plan change in its entirety. Some submissions opposed the plan change in its entirety but sought amendments should it be approved. Of the 628 in opposition, 376 were "proforma" submissions, being in opposition with 11 standard reasons (set out below), 114 were proforma submissions but included additional reasons, and 138 were unique (while noting some did include some of the proforma reasons).
61. Submissions were also received in support (45), or support in part subject to amendments (12). Seven submissions were neutral.

## **9 Consultation undertaken**

62. Attachment C11 of the request set out the consultation undertaken by the Applicant in preparing the request. Attachment C1 provided a summary of Iwi Engagement.
63. As set out in the Applicant's legal submissions, with respect to mana whenua engagement Mr Maassen stated<sup>17</sup>:

*Aneika Young (formerly from Te Aranga Environment Consultancy) along with Mark Lile and Ngāti Koata facilitated early iwi consultation/engagement and prepared an iwi engagement summary to establish compliance with RMA, Schedule 1, clause 1A, clause 26A (concerning Mana Whakahono ā Rohe) and clause 3B.*

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<sup>16</sup> Two submissions were received and subsequently withdrawn and were not included in the 715 total

<sup>17</sup> Paragraphs 20 – 22 of the Applicant's Opening Legal submissions

*The Applicant has fully engaged with eight Te Tau Ihu iwi in the plan development process and PPC 28 enjoys the support in the form of submission of five of these iwi who participated in the consultation process.*

*The Panel has a recent letter of 18 March 2022 from Te Ātiawa o Te Waka-a-Māui Trust to Hemi Toia confirming Te Ātiawa supports PPC 28.*

64. We accept the Applicant has undertaken the necessary and appropriate consultation, and address this matter later in this report.

## **10 Procedural Matters**

65. Two late submissions were received. They were from Jessie O’Sullivan [S324] and Linley Taylor [S326], and were received on 11 December 2021 (when the closing date for submissions was the 8<sup>th</sup> December 2021). We accepted these submissions on 13 July 2022 (at the opening of the hearing). This was on the basis that the Applicant did not oppose their acceptance and the matters in section 37 and 37A of the RMA were satisfied.
66. Mr Bladon [S4880], via Mr Taylor, sought to introduce, what the Hearing Panel determined to be, expert acoustic evidence. Mr Bladon set out that he held the position of Principal Acoustic Consultant at Bladon Bronka Acoustic Ltd, but was to present the evidence in his private capacity. As we understand, Mr Bladon was abroad at the time of the hearing and Mr Taylor was to present his evidence.
67. The Hearing Panel’s Direction 1 required all expert evidence to be filed by midday on 27 June 2022. This was to enable all parties to know what expert evidence was to be called, to determine if they also wanted to call ‘matching’ expert evidence; and that expert conferencing (see next section) could be undertaken.
68. Mr Bladon’s evidence was dated 8 July 2022, and was proffered at the hearing by Mr Taylor on 15 July 2022. The Hearing Panel declined to accept Mr Bladon’s evidence given it was provided late, and there had been no opportunity for the Applicant, the Council or other submitters, to address or rebut the evidence.
69. As Mr Bladon was not at the hearing, the Hearing Panel allowed Mr Taylor to state that Mr Bladon was concerned about the increased noise that would be generated if the land was urbanised, as this had been raised in Mr Bladon’s evidence.
70. The Hearing Panel, having read the application (and all associated material), the Joint Witness Statements from expert conferencing, the s42A and 42A Addendum report, the expert evidence of the Applicant and submitters, excused a number of the experts from either being at the hearing or presenting their evidence, as there were essentially no matters in contention between them, or we had no questions. They were Mr Heath and Mr Lees (economics), Mr Foley<sup>18</sup> and Mr Horrey (Geotechnical), and Mr Bennison (Productive Land Values).

## **11 Expert Conferencing and the Addendum s42A report**

71. In accordance with the Hearing Panel’s direction of 10 March 2022, expert conferencing between the Applicant’s, Council’s and submitters’ experts occurred between 20 April and 26 May 2022.

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<sup>18</sup> Noting that Mr Foley did present rebuttal evidence and attended the hearing and answered questions from the Hearing Panel

72. We record that we had the benefit of a number of JWSs to assist us in making our recommendations. These included the following topics:
- Economics;
  - Geotechnical;
  - Infrastructure<sup>19</sup>;
  - Transport;
  - Landscape;
  - Urban Design;
  - Flooding and Stormwater;
  - Recreation;
  - Ecology;
  - Heritage; and
  - Planning.
73. At the time of the initial s42A report, conferencing was on-going and the Applicant had committed to providing further information, comprising:
- a Stormwater Management Plan;
  - an updated Structure Plan;
  - updated provisions in Schedule X to reflect matters addressed through expert conferencing; and
  - updated planning maps.
74. The initial s42A report therefore represented a point in time in the assessment of PPC 28 and was incomplete; and Ms Sweetman's position at this time was that a number of matters remained outstanding and therefore she was not in a position to make a recommendation to us, whether in her opinion PPC 28 should be recommended for approval or decline.
75. Following further expert conferencing, an Addendum s42A report<sup>20</sup> was provided, which addressed those matters that had not been addressed in the s42A report due to the continuance of expert conferencing. These included: water quality; water sensitive design; landscape, visual amenity and natural character; urban design; ecology; historic heritage; earthworks, erosion and sediment control; stormwater and flood risk; and transport. Ms Sweetman also addressed the workability and appropriateness of what was sought by PPC 28, and in particular the PPC 28 provisions.
76. Ms Sweetman set out in the Addendum s42A report<sup>21</sup>:

*Given the amount of new information provided with the evidence and the extent of changes made to the Structure Plan, planning maps, NRMP provisions and proposed Schedule X, I have not had the time to prepare a full update of my s42A, with updated recommendations. I intend to provide updated recommendations at the hearing.*

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<sup>19</sup> We note that there were two JWSs - water supply and wastewater

<sup>20</sup> Dated 24 July 2022

<sup>21</sup> At paragraph 3

77. At the hearing Ms Sweetman recommended that, notwithstanding the concerns raised by some of the s42A experts, she was satisfied PPC 28 could be approved with the right planning framework.
78. We found that the outcome of expert conferencing was extremely constructive in both narrowing and resolving issues. We have, to a large extent, relied on the outcome of those JWSs (and the subsequent evidence we received) to address and agree a range of issues raised in submissions and establish the plan provisions that we have recommended.<sup>22</sup>

## 12 Statutory Framework

### 12.1 Overview

79. We briefly set out here the statutory framework relevant to evaluating and determining the appropriateness of PPC 28, noting that the RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements were set out in the Request, the s42A Report and legal submissions. We do not need to repeat them in detail.
80. The Applicant, in its private plan change request, provided an evaluation pursuant to section 32, and the additional information (Clause 23) requested by the Council, as we have set out earlier. We accept the appropriate requirements for the formulation of a plan change have been comprehensively addressed in the material before us. However, in its evidence and at the hearing, we note that the Applicant proposed changes to the plan change in response to concerns raised by the Council and submitters.
81. We also note that the section 32 Assessment Report clarifies that analysis of efficiency and effectiveness of the plan change is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. Having considered the application and the evidence, we are satisfied that PPC 28 has been developed in accordance with the relevant statutory requirements.
82. Clauses 10 and 29 of Schedule 1 require that this recommendation (and decision by the Council) must include the reasons for accepting or rejecting submissions. We address these matters below, as well as setting out our reasons for accepting or rejecting the submissions. There were a number of neutral submissions, which we have noted.
83. Section 32AA of the RMA requires a further evaluation for any changes that are proposed to the notified plan change after the section 32 evaluation was carried out.<sup>23</sup> This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes.<sup>24</sup> In our view this decision, which among other things, addresses the modifications we have made to the provisions of PPC 28, satisfies our section 32AA obligations.

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<sup>22</sup> We thank all of the participants who took part in expert conferencing, which in our view made the hearing process and Plan Change hearing process and outcome much more efficient and effective. We are grateful to and thank Ms Oliver, Independent Facilitator, for being able to 'bring the parties together' as much as possible given that a number of the matters were highly contested by the parties.

<sup>23</sup> RMA, section 32AA(1)(a)

<sup>24</sup> RMA, section 32AA(1)(c)

## 12.2 RMA – Part 2

84. Part 2 of the RMA set out the Act's Purpose and Principles. We set out here those parts of sections 6, 7 and 8 that are (potentially) engaged by PPC 28. We then address those matters more specifically in the relevant sections of this report, and also address the extent to which PPC 28 satisfies Part 2 (and in particular section 5) at the end of this report.
85. Section 5 sets out the sustainable management purpose of the RMA, which is to – "...promote the sustainable management of natural and physical resources".
86. Section 6 sets out the Matters of national importance. Those (potentially) relevant to PPC 28 include:
- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
  - (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
  - (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
  - (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
  - (e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
  - (f) the protection of historic heritage from inappropriate subdivision, use, and development:*
  - (g) the protection of protected customary rights:*
  - (h) the management of significant risks from natural hazards.*
87. Section 7 sets out a range of Other matters that we are to have particular regard to. Those relevant to PPC 28 include:
- (a) kaitiakitanga:*
  - (aa) the ethic of stewardship:*
  - (b) the efficient use and development of natural and physical resources:*
  - (c) the maintenance and enhancement of amenity values:*
  - (d) intrinsic values of ecosystems:*
  - (e) maintenance and enhancement of the quality of the environment:*
  - (g) any finite characteristics of natural and physical resources:*
  - (h) the protection of the habitat of trout and salmon:*
  - (i) the effects of climate change:*
88. Section 8 sets out that in relation to managing the use, development, and protection of natural and physical resources, we are to take into account the principles of the [Treaty of Waitangi](#) (Te Tiriti o Waitangi).

## 12.3 Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021

89. The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act (the Amendment Act) was passed on 20 December 2021. Amongst other matters the Amendment

Act seeks to increase housing supply through directing Tier 1 Councils<sup>25</sup> or Tier 2 or 3 Councils to which regulations have been made under section 80I or 80K, to update their District Plans to provide for medium density housing across relevant urban environments and to give effect to Policy 3 or 5 of the National Policy Statement on Urban Development 2020 (May 2022).

90. Nelson City is a Tier 2 Council and no regulations have been made under section 80I or 80K. Therefore, Nelson City Council is not subject to this amendment to the RMA.

#### **12.4 Resource Management Amendment Act 2020 – climate change**

91. As noted in the JWS Planning (2),

*At this time the Resource Management (Energy and Climate Change) Amendment Act 2004 section 3(b) requires Councils not to consider the effects on climate change of discharges into air of greenhouse gases. This preclusion will no longer be in place after 30 November 2022 at the latest, when the Resource Management Amendment Act 2020 comes into effect.*

92. The following was set out in the s42A report – and was not contested by any party at the hearing.

*Cabinet approved a delay in the enactment of climate change amendments to the RMA from 31 December 2021 to 30 November 2022, by Order in Council.*

*What is not recorded is that from that same date, section 74(2)(c) will be amended by the Resource Management Amendment Act 2020 to require that the following documents are matters to be had regard to:*

- (d) any emissions reduction plan made in accordance with section 5Z1 of the Climate Change Response Act 2002; and*
- (e) any national adaptation plan made in accordance with section 5ZS of the Climate Change Response Act 2002.*

*Therefore, at this point in time, there is no legal duty to have regard to the Draft National Adaptation Plan released in April 2022 [noting the final Plan was published on 3 August 2022] or the Emissions Reduction Plan released in May 2022. Notwithstanding this, we have addressed submitters concerns about climate change vis-à-vis this plan change request later in this report.*

### **13 Statutory Policy Framework**

93. We provide an overview of the statutory policy framework under which we have considered PPC 28. We also address consistency with the policy framework in subsequent sections of this report as it has been raised by the s42A team and some submitters.
94. As noted earlier, the NRMP (including as amended by any plan change) must give effect to any national policy statement (s75(3)(a)), any New Zealand coastal policy statement (s73(3)(b)), a national planning standard (s75(3)(ba)) and any regional policy statement (s75(3)(c)); have regard to any management plan or strategy prepared under other Acts (s74(2)(b)(i)); take into account any relevant planning document recognised by an iwi authority and lodged with the local authority, to the extent that its content has a bearing on the resource management issues

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<sup>25</sup> As identified in the National Policy Statement on Urban Development 2020

of the district (s74(2A)); and must not be inconsistent with any water conservation order or regional plan (s75(4)(b))<sup>26</sup>.

95. We address these documents, as they relate to PPC 28, further below in this report.
96. In the JWS Planning (2), the planners agreed on a list of relevant planning documents. We agree those were the relevant planning documents.
97. The Applicant addressed the National Planning Standards 2019 in the application. Under 17 - Implementation Standard, the Council has until 2029 to be compliant with the National Planning Standards. Given PPC 28 is a change to the NRMP and the Council has yet to amend it to give effect to the National Planning Standards, we have not considered s75(3)(ba) further as to do so would make PPC 28 inconsistent with the NRMP. We find it is more appropriate to undertake such an 'update' in an integrated manner when the full plan is reviewed.
98. While the following are not RMA statutory documents, they have been promulgated in terms of the NPS-UDC<sup>27</sup> and NPS-UD and are in our view relevant, but not determinative. They provide strategic context to the PPC 28 request:
  - The Nelson-Tasman Future Development Strategy 2019 (FDS 2019) and Intensification Action Plan 2020 (IAP) which were developed under the National Policy Statement on Urban Development Capacity 2017 (NPS-UDC).
  - The Housing and Business Capacity Assessment Report 2021 (HBA).
99. We note that the Council adopted the Nelson Tasman 2022-2052 Future Development Strategy (FDS 2022) on the 29 August 2022, after the hearing was adjourned. We address this below, but record, as a matter of fact, that the FDS 2022 confirmed the Maitahi/Bayview (Maitai Valley PPC 28) as a proposed greenfield expansion area.
100. We have not addressed the Draft Whakamahere Whakatū Nelson Plan (WWNP), as suggested we should by some submitters; it has no status. As confirmed by Ms Day<sup>28</sup> the WWNP, anticipated to be publicly notified in 2022, has been 'paused' by Council resolution (November 2021), primarily due to the risk that anticipated new legislation will require significant changes to resource management plans in local government. As reported, the WWNP has been paused until the release of the new legislation (anticipated in late 2022), at which time Council will consider how best to progress a new plan, relating to housing, freshwater, coastal inundation and lower Maitai flooding, and air quality.

### **13.1 Te Tau Ihu Statutory Acknowledgements 2014**

101. The Te Tau Ihu Statutory Acknowledgements 2014 are attached to the RPS, NRMP and the NAQP. The eight iwi to the Statutory Acknowledgements are:
  - Ngāti Kuia
  - Rangitāne o Wairau
  - Ngāti Koata
  - Ngāti Rārua

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<sup>26</sup> There are no relevant water conservation orders, proposed regional policy statements or regional plans to consider

<sup>27</sup> Now repealed and replaced by the NPS-UD 2020

<sup>28</sup> Memorandum dated 27 June 2022 from Ms Day as part of the material circulated with the Addendum s42A report)

- Ngāti Tama ki Te Tau Ihu
  - Te Ātiawa o Te Waka-a-Māui
  - Ngāti Toa Rangatira
  - Ngāti Apa ki te Rā Tō
102. Statutory acknowledgements recognise the particular cultural, spiritual, historical and traditional association of an iwi with an identified site or area. They also require specific consideration within RMA processes, in respect of determining affected parties under s95E and the provision of summaries of any resource consent applications within, adjacent to, or directly affecting a statutory area.
103. The Te Tau Ihu Statutory Acknowledgements 2014 include Statements of Association for the eight Iwi within Te Tau Ihu. As the Applicant has identified, a Te Tau Ihu Map website has been established, showing the statutory acknowledgement areas and the relevant Iwi interests. All but Ngāti Apa have statutory acknowledgements over the Maitai / Maitahi / Mahitahi<sup>29</sup> and its tributaries.
104. As noted in the Māori cultural values section below, all eight iwi were consulted with about the Project and responded positively noting their support for provisions which would allow them to provide further cultural evaluation (should they determine it is required) in the consenting process. Submissions in support of PPC 28 were received from Ngāti Koata Trust[S303], Ngāti Kuia[S305], Ngāti Toa Ki Whakatū [S304] and subsequently Te Ātiawa Trust [S328] with Ngāti Rārua [S314] providing a supporting submission in part.

### 13.2 National Policy Statement on Urban Development 2020 (NPS-UD)

105. The NPS-UD was gazetted the on 20 July 2020, and came into force on 20 August 2020. The NPS-UD was in response to growth pressures being faced nationally.
106. The NPS-UD defines an ‘urban environment’ as being an area of land that is or is intended to be predominantly urban in character; and is or is intended to be part of a housing and labour market of at least 10,000 people (regardless of size, and irrespective of local authority or statistical boundaries).
107. In summary its purpose is to:
- Have well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future; and
  - Provide at least sufficient development capacity to meet the different needs of people and communities.
108. We address the NPS-UD in more detail later in this report, mainly in the section titled “Whether PPC 28 gives effect to the NPS-UD and the NRPS in relation to urban growth management”, “Need for additional greenfield land for growth”, “Housing affordability”, and “Māori cultural values”.

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<sup>29</sup> The area of concern is known as the Maitai, Maitahi and Mahitahi by different Iwi. Solely for the purpose of ease in this report, we refer to it interchangeably as the Maitai or Maitahi and in doing so, mean no disrespect to any Iwi.

### 13.3 National Policy Statement for Freshwater Management 2020

109. The NPS-FM came into force on 3<sup>rd</sup> September 2020. It contains one objective and 15 policies. The objective states:

- (1) *The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*
  - (a) *first, the health and well-being of water bodies and freshwater ecosystems*
  - (b) *second, the health needs of people (such as drinking water)*
  - (c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

110. The policies are listed below:

- Policy 1:** *Freshwater is managed in a way that gives effect to Te Mana o te Wai.*
- Policy 2:** *Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.*
- Policy 3:** *Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*
- Policy 4:** *Freshwater is managed as part of New Zealand's integrated response to climate change.*
- Policy 5:** *Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.*
- Policy 6:** *There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.*
- Policy 7:** *The loss of river extent and values is avoided to the extent practicable.*
- Policy 8:** *The significant values of outstanding water bodies are protected.*
- Policy 9:** *The habitats of indigenous freshwater species are protected.*
- Policy 10:** *The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.*
- Policy 11:** *Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.*
- Policy 12:** *The national target (as set out in Appendix 3) for water quality improvement is achieved.*

**Policy 13:** *The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.*

**Policy 14:** *Information (including monitoring data) about the state of water bodies and freshwater ecosystems, and the challenges to their health and well-being, is regularly reported on and published.*

**Policy 15:** *Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.*

111. The Council is required to give effect to the NPS-FM by way of preparing a freshwater planning instrument and publicly notifying it no later than 31<sup>st</sup> December 2024. Part 3 of the NPS-FM sets out how local authorities must implement it, and contains policies that regional councils are to include in regional plans, relating to:

3.22 Natural inland wetlands.

3.24 Rivers.

3.26 Fish passage.

112. We are required to “give effect” to the NPS-FM in terms of PPC 28. We also accept Ms Gepp’s legal submissions that we need to reconcile the NPS-FM and the NPS-UD.<sup>30</sup> However, we accept Mr Maassen’s legal submissions that PPC 28 is not a Freshwater Planning Instrument as set out in the NPS-FM.<sup>31</sup>

113. In 3.4 of JWS Planning (2), all planning experts agreed that all provisions, except policies 10 and 14 of the NPS-FM are relevant to some degree; and that the NPS needs to be read as a whole.

114. The Applicant has addressed the NPS-FM in the PPC request. No changes were sought to any of the rules that fall within the section 30 RMA functions of the Council (regional functions). In this regard, any regional activities or consent applications triggered by PPC 28 will need to comply with, or be assessed in terms of, the operative NRMP. Notwithstanding this, the NPS-FM will still need to be considered through any subsequent regional consenting process.

115. We address the relevant provisions of the NPS-FM later in this report. However, we find that with the evidence before us, and the provisions we have recommended, we have reconciled the NPS-UD and NPS-FM as submitted by Ms Gepp for Save the Maitai Inc (STM).<sup>32</sup>

### **13.4 National Environmental Standard for Freshwater 2020 (NES-F)**

116. The majority of the NES-F came into effect on 3<sup>rd</sup> September 2020. Those parts that did not come into effect at that time are not relevant to PPC 28. Regulation 5 of the NES-F is clear that it deals with the functions of regional councils under s30 of the Act and does not deal with the functions of territorial authorities under s31.

117. Of particular relevance to PPC 28 are the regulations contained in Part 3 – Standards for other activities that relate to freshwater. Regulations 38 to 56 in Subpart 1 – natural wetlands – includes permitted, restricted discretionary, discretionary, non-complying and prohibited

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<sup>30</sup> Paragraph 2.23 of Ms Gepp’s legal submissions

<sup>31</sup> Paragraphs 30 – 36 - Applicant’s legal analysis on the section 42A reports concerning the freshwater management topic

<sup>32</sup> Paragraph 2.23 of Ms Gepp’s legal submissions

activity rules relating to natural wetlands. These rules cover, in summary, vegetation clearance, earthworks or land disturbance and the taking, use, damming, diversion, or discharge of water within or within a specified setback from natural wetlands for a range of different activities.

118. Regulation 57 in Subpart 2 – Reclamation of Rivers, states that the reclamation of the bed of any river is a discretionary activity.
119. The NES-F works in tandem with the NPS-FM, particularly in that its regulations implement the policies required to be inserted under Clauses 3.22, 3.24 and 3.26.
120. Until such time as regional plans give effect to the NPS-FM, these Clauses are relevant considerations that must be had regard to for any resource consent pursuant to section 104(1)(b) of the Act.

### **13.5 New Zealand Coastal Policy Statement 2010**

121. The purpose of the NZCPS, as set out in its Preamble is to “...state policies in order to achieve the purpose of the Act [RMA] in relation to the coastal environment of New Zealand”. A key consideration therefore is the PPC 28 site within the Coastal Environment.
122. There was considerable debate, mainly between the landscape architects and planners, about the extent to which, and if in fact, the site formed part of the Coastal Environment. We address this matter in the sections addressing landscape, visual amenity and natural character and erosion and sediment control. However, it is our view that the site is not within the Coastal Environment, and therefore the provisions of the NZCPS do not apply.
123. Notwithstanding our findings above, we did ‘turn our minds to’ the implications for PPC 28 had all, or part, of the site been within the Coastal Environment. It is our view that this would not have affected our recommendation to approve PPC 28 or to recommend additional provisions. The reasons are those set out later in this report, but in summary they are: that the site and its immediate surrounding area are not outstanding from a landscape or natural character perspective; there is already significant urban development immediately adjoining the site; and that the plan provisions we have recommended mean any adverse effects would be able to be avoided or mitigated in a manner consistent with the relevant provisions of the NZCPS, such that subdivision, use or development would not be inappropriate.

### **13.6 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NES-CS)**

124. As this is a request for a zone change, and not to determine the actual use of the site, the NES-CS does not strictly apply. The requirements of the NES-CS will have to be appropriately addressed at any subsequent subdivision or building consent stage and, depending on the nature of any future activity, may either satisfy the permitted activity requirements or require resource consent under the NES-CS.

### **13.7 National Environmental Standard for Air Quality 2004 (NES-AQ)**

125. The NES-AQ came into effect on 8th October 2004 and was updated in 2011. It is made up of 14 separate but interlinked standards, including:
  - Seven standards banning activities that discharge significant quantities of dioxins and other toxins into the air.
  - Five standards for ambient outdoor air quality.

- A design standard for new wood burners installed in urban areas.
  - A requirement for landfills with over 1 million tonnes of refuse to collect greenhouse gas emissions.
126. PPC 28 does not seek to change any matters relating to air quality, and would be subject to the NES-AQ.

### **13.8 Nelson Regional Policy Statement 1997 (RPS)**

127. PPC 28 is required to “give effect” to the RPS.<sup>33</sup> The RPS was made operative in 1997 and we understand has not been amended since. While it is acknowledged that it is somewhat out of date and has, in many respects been ‘over-taken’ by more recent NPSs (as set out above), there are still provisions relevant to the PPC.
128. The Applicant provided extensive coverage of the RPS in section 7.6 of the request. We agree with its findings, and address the key issues below, and also later under the specific topic headings.

### **13.9 Nelson Resource Management Plan (NRMP)**

129. The NRMP was publicly notified in 1996 with the district and most of the regional plan components becoming operative in 2004. The Regional Coastal Plan became operative in 2006. The Freshwater Plan became operative in July 2007.
130. Since the Plan was made operative, there have been 23 Council-led and private plan changes to the NRMP. The most recent relevant plan change was PC 27 which effectively replaced the Nelson Land Development Manual 2010 with the Nelson Tasman Land Development Manual 2019 (NTLDM). The most recent growth-related plan changes were:<sup>34</sup>
- Plan Change 18 (Council) – Nelson South, operative 2015;
  - Plan Change 17 (Council) – Enner Glynn and Upper Brook Valley Re-zoning and Structure Plan, operative 2013; and
  - Plan Change 13 (Council) – Marsden Valley Rezoning and Structure Plan Project, operative 2011.
131. The Council has withdrawn minimum parking requirements from the NRMP in accordance with NPS-UD Policy 11 and Subpart 8 – Car parking.
132. The Applicant has provided extensive coverage of the NRMP in section 7.8 of the request, which we do not repeat. However, we note that PPC 28 seeks to include a Structure Plan and Schedule (with provisions to enable the development and protection of the land within PPC 28). This is consistent with how other ‘growth areas’ have been incorporated into the NRMP. PPC 28 does not seek to change any of the provisions of the NRMP that apply across the region; but incorporates those relevant such as those relating to the NTLDM. This will ensure consistency (where necessary) in terms of rule interpretation and resource consent processing.
133. In summary, we do not find any inconsistency between PPC 28 vis-à-vis the NRMP.

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<sup>33</sup> Section 75 (3) (c) of the RMA

<sup>34</sup> As set out in the section 42A report.

### 13.10 Nelson Air Quality Plan 2008 (NAQP)

134. The NAQP was made operative in 2008.
135. Section 3.13 of JWS Planning (2) sets out the relevant provisions of the NAQP. It also records agreement that the relevant NAQP provisions will appropriately address air quality matters arising from PPC 28. This means that should PPC 28 be approved, any subsequent development would need to comply with AQr.25A, as well as the general conditions in AQr.22.
136. For completeness, Chapter A6 of the NAQP contains the rules, and of particular relevance to PPC 28 are:
- AQr.21 – Prohibited activities – prohibits the installation of open fires and solid fuel appliances in new buildings after the date the NAQP was notified (23 Aug 2003), except as otherwise specified in the rule table.
  - AQr.22 – General conditions applying to all discharges.
  - AQr.26 - Pellet burning appliances (Urban Area) - permits the installation of small-scale pellet burners in new buildings in the Urban Area, provided they comply with Appendix AQ2A 'Emission Requirements' and AQ4 'Stack Requirements' (amongst other conditions). There is no limit on the number of compliant pellet burners that may be installed.
  - AQr.26A - Ultra-low emission burning appliances (ULEBs) - permits the installation of ULEBs in new buildings in the Urban Area, provided they comply with Appendix AQ2B (amongst other conditions).
  - Appendix AQ2B.3 requires a Burner Allocation Certificate (BAC) to be approved by Council prior to installation of a new ULEB in Airshed C.
  - Appendix AQ2B.3.2(d)(ii) limits the quantity of ULEBs that may hold a BAC in Airshed C to no more than 599 appliances. ULEBs that replace an existing authorised solid fuel burner within Airshed C do not count towards the 599 cap (AQ2B.3.2(d)(iii)-(iv)).
137. PPC 28 does not seek to change any matters relating to air quality, and would be subject to the provisions of this plan.
138. We note that the Applicant has stated in section 6.19 of the request that they plan to impose restrictive covenants prohibiting the installation of solid fuel burning devices on properties within the Kākā Valley catchment. Restrictive covenants are a mechanism that developers regularly use to control aspects of their developments, and are applied at the discretion of the developer. They do not form part of the NRMP, and do not form part of our consideration in terms of section 32 of the RMA on this plan change.

### 13.11 Iwi Management Plans (IMPs)

139. Under s74(2A) of the RMA, the Council, in considering PPC 28, must take into account any IMP that has been lodged with the Council.
140. There are six IMPs that have been lodged with the Council, as set out in the following table.

**Table 3: List of Iwi Management Plans**

| Name of Plan | Iwi |
|--------------|-----|
|--------------|-----|

|                                                                      |                                                                      |
|----------------------------------------------------------------------|----------------------------------------------------------------------|
| Pakohe Management Plan 2015                                          | Ngāti Kuia                                                           |
| Ngā Taonga Tuku Iho Ki Whakatū Management Plan 2004                  | Ngāti Rārua, Ngāti Toa Rangatira, Te Ātiawa, Ngāti Koata, Ngāti Tama |
| Ngāti Koata No Rangitoto Ki Te Tonga Trust Iwi Management Plan 2002  | Ngāti Koata                                                          |
| Te Tau Ihu Mahi Tuna (Eel Management Plan) 2000                      | All Te Tau Ihi iwi                                                   |
| Ngāti Tama ki Te Waipounamu Trust Environmental Management Plan 2018 | Ngāti Tama                                                           |
| Poipoia Te Ao Tūroa Ngāti Rarua Environmental Strategy 2021          | Ngāti Rārua                                                          |

141. Ms Sweetman set out at Appendix S of the s42A report what she considered were the relevant provisions from the IMPs in respect of PPC 28. We agree. We record here that we have addressed matters relating to Māori (including iwi) throughout this report and more specifically in the section “Māori Cultural Values”.

## 14 Our Findings on the plan change request and the issues raised by the submitters and the Council’s experts

142. This section of our report provides an evaluation of:

- the request made by the Applicant and its legal submissions and evidence, both in terms of the statutory and policy framework and the potential impact (in section 32 terms) of the request;
- The legal submissions and evidence, both in terms of the statutory and policy framework and the potential impact (in section 32 terms) of the request from the Council in terms of its s42A role;
- The legal submissions and evidence, both in terms of the statutory and policy framework and the potential impact (in section 32 terms) of the request from the submitters; and
- The submissions and further submissions received.

143. It also outlines the outcomes recorded in the JWSs.

144. We have grouped these matters into topics, with each topic covering both the assessment of the request and the submissions. For efficiency reasons we have largely adopted the headings as set out in the s42A report (with some modifications).

### 14.1 Approach to addressing the issues in PPC 28 as raised by the Section 42A experts and the submissions

145. We are required, as is the Council when making a decision on our recommendations, to give a recommendation on the provisions of PPC 28, and the matters raised in submissions.<sup>35</sup> We

<sup>35</sup> Clause 10 (1) of the 1<sup>st</sup> Schedule of the RMA

must also include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to the provisions of the proposed statement or plan to which they relate, or the matters to which they relate.<sup>36</sup> Clause 10(3), Schedule 1, RMA states – *“to avoid doubt, the local authority is not required to give a decision that addresses each submission individually”*. As set out below we have grouped the submissions into topics.

146. Due to the number of submission points, this evaluation does not contain specific recommendations on each submission point, but instead discusses the issues more broadly. This approach is consistent with Clause 10(2)(a), Schedule 1, RMA.
147. With respect to further submissions, they can only support or oppose an initial submission. Our recommendations on the further submissions reflects our recommendations on those initial submissions, unless we have stated otherwise, having regard, of course, to any relevant new material provided in that further submission.
148. We have also addressed the matters raised by the s42A experts engaged by the Council.

#### **14.2 Section 32AA evaluation**

149. We must also include a further evaluation of the proposed plan and its provisions - undertaken in accordance with section 32AA.<sup>37</sup> As already set out above, we record that this report, and our findings in it, is our “further evaluation” under section 32AA.

#### **14.3 Key issues/outcomes sought by submitters, as well as the Council’s experts**

150. The key outcomes and/or issues raised are listed below and addressed in turn. However, we firstly address whether PPC 28 gives effect to the NPS-UD and the NRPS in relation to urban growth management, as this ‘frames’ the rest of the evaluation we have undertaken.
  - Need for additional greenfield land for growth;
  - Housing affordability;
  - Community Opposition - Overall decline PPC 28;
  - Support PPC 28 - Overall accept PPC 28;
  - Adequacy of information (or lack of);
  - Māori cultural values;
  - Landscape and visual amenity;
  - Urban Design, including Structure Plan, Zoning, Urban Form, Density, Shading;
  - Land Suitability (Geotechnical, Land Contamination and Productive Soils);
  - Infrastructure Servicing and Funding (Water and Wastewater);
  - Water quality, stormwater and flood risk, water sensitive design and erosion and sediment control;
  - Ecology;

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<sup>36</sup> Clause 10 (2) (a) of the 1<sup>st</sup> Schedule of the RMA

<sup>37</sup> Clause 10 (2) (ab) of the 1<sup>st</sup> Schedule of the RMA

- Transportation/Traffic;
- Historic Heritage;
- Open space and recreation;
- Noise
- Climate change;
- Air quality;
- Housing Design;
- Health and safety;
- Construction effects;
- School capacity;
- Non-notification clauses;
- Consultation undertaken; and
- Other.

#### **14.4 Whether PPC 28 gives effect to the NPS-UD and the NRPS in relation to urban growth management**

##### **14.4.1 Introduction /Overview**

151. The Applicant's opening<sup>38</sup> and reply submissions<sup>39</sup> and Ms Gepp's submissions addressed the NPS-UD in some detail. Mr Lile's and Ms McCabe's evidence, Ms Sweetman's s42A report, as well as in the Planners' JWS (2) and (3) also addressed it in some detail. The Applicant's legal submissions and evidence and the s42A report essentially said that PPC 28 would (or could in reference to Ms Sweetman if the plan provisions were appropriate and workable) give effect to the NPS-UD. STM's position was that the proposal would not give effect to the NPS-UD.
152. The issue of the extent to which the NPS-UD was relevant to PPC 28 was addressed by the Applicant, STM and Ms Sweetman. This was in reference to the Eden-Epsom Residential Protection Society case.<sup>40</sup> Mr Maassen addressed this decision and its implications in his Opening Legal submissions.<sup>41</sup> Overall, it was his submission that we are required to "give effect" to the NPS-UD, and we are not limited in this respect by the Eden-Epsom Residential Protection Society decision.
153. Ms Gepp in her Legal Submissions also addressed the Eden Epsom decision at paragraphs 2.19 to 2.22. She stated:

*However, in May 2022 the definition of planning decision in the NPSUD was amended to include a reference to "a change to a plan requested under Part 2 of Schedule 1 of the*

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<sup>38</sup> Section 7–National Policy Statement –Urban Development 2020

<sup>39</sup> Mainly concerning the importance of addressing the housing needs of Māori – which we address in the Māori cultural values" section

<sup>40</sup> *Eden-Epsom Residential Protection Society Inc v Auckland Council* [2021] NZEnvC 082

<sup>41</sup> At paragraphs 72 to 80

*Act” in the definition of planning decision. As the change was made without public notification, it is not well-known ..... Accordingly:*

*a. The first legal issue relating to the application of the NPSUD to private plan changes identified in the Eden-Epsom decision falls away. The second issue has limited relevance to a non-Tier 1 local authority.*

*b. The Panel should apply the version of the NPSUD called the “National Policy Statement on Urban Development 2020, updated May 2022”.<sup>43</sup>*

154. In the JWS (Planning 2)<sup>42</sup> the planning experts addressed, “*What are the relevant objectives and policies of the NPS-UD? Nelson City Council is classified as Tier 2, therefore any provisions in the NPS-UD specifically relating to Tier 1 urban environments are not relevant*”. In that JWS, all planning experts considered that the NPS-UD should be read as a whole.

155. The planners’ positions on this matter were again set out in the JWS (Planning 3) dated 19 and 20 May 2022. Ms Sweetman, Ms O’Sullivan and Mr Lile considered that the Eden-Epsom case “*was not directly comparable to this PPC 28 proposal and are not satisfied that the relevant provisions of the NPS-UD are limited to those identified in the Eden-Epsom case*”<sup>43</sup>. However, Ms McCabe had subsequently formed a different view, considering only Objectives 2, 5 and 7 and Policies 1 and 6 of the NPS-UD are relevant to considering PPC 28.<sup>44</sup>

156. It appears to us the parties accept that we are not limited in our assessment of the NPS-UD to that set out in the Eden-Epsom decision. This is important as we are required to “give effect” to any National Policy Statement (and the Regional Policy Statement pursuant to section 75 (3) of the RMA). However, to avoid any doubt, it is our view that we need to consider the NPS-UD as a whole, and not limited to a few sections. To not do so would, in our view, be somewhat artificial, especially in the context of Greenfield development. For example, it is not possible in our view to “give effect” to Policy 1 which contains the words “planning decision” without consideration of Objective 1 which does not have those words.

157. In terms of the NPS-UD it was Mr Lile’s opinion:<sup>45</sup>

*“PPC 28 provides a significant opportunity on a large piece of land in close proximity to Nelson City, to contribute to a well-functioning urban environment and achieve the purpose and principles of Part 2 of the RMA. This proposal will:*

*(a) provide for a diverse range of housing needs; and*

*(b) provide significant development capacity, and so support a competitive housing market; and*

*(c) provide for substantive economic benefits; and*

*(d) provide for a multi-modal transport network; and*

*(e) provide for housing in a location resilient from the risk of sea level rise; and*

*(f) provide the opportunity for Māori to express their cultural traditions; and*

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<sup>42</sup> Dated 26 April 2022

<sup>43</sup> Section 3.20 of the JWS (Planning 3) date 19 and 20 May 2022

<sup>44</sup> At the hearing Ms McCabe said she was no longer pursuing this issue given Ms Gepp’s legal submissions

<sup>45</sup> Paragraphs 17 and 18 of Mr Lile’s evidence-in-chief

*(g) provide enhanced recreational opportunities and positive biodiversity outcomes; and*

*(h) provide for the restoration and enhancement of freshwater values in line with the principles of Te Mana o Te Wai.*

*I consider PPC 28 gives effect to the NPS-UD, NPS-FM and the NRPS, particularly in terms of the provisions of Chapter DH1 'Development and Hazards' (NRPS). The NPS-UD also requires that planning decisions be responsive to plan changes, including privately initiated plan changes. Doing otherwise would, I consider, be contrary to the very purpose of the NPS-UD".*

158. STM had a different view. Ms Gepp's legal submissions set out:<sup>46</sup>

*PPC 28 does not give effect to the National Policy Statement on Urban Development 2020 ("NPSUD"), the National Policy Statement for Freshwater Management 2020 ("NPSFM"), or the Nelson Regional Policy Statement ("NRPS"). It also fails to implement the existing objectives and is inconsistent with the existing policies of the NRMP. These are things PPC 28 must do to be confirmed. PPC 28 cannot be confirmed as efficient and effective under s 32 RMA if its provisions are unlawful.*

159. Ms McCabe, in her evidence, opined that PPC 28 did not give effect to the NPS-UD. She addressed this in some detail in her evidence. Her executive summary was:<sup>47</sup>

*The applicant has heavily relied on Policy 8 of the NPS-UD and the need for Council to be responsive to unanticipated plan changes. ... I also do not consider PPC 28 to contribute to a well functioning urban environment, as it does not-currently meet the minimum requirements set out in the NPS-UD, particularly around transport connectivity matters and stormwater management.*<sup>48</sup>

*In addition to the above, I consider that the full scope of wider transport network deficiencies have not been identified through an evaluative Integrated Transport Assessment ("ITA"), and as a result PPC 28 does not coordinate urban growth with the delivery of transport infrastructure. This does not align with the NPS-UD directives in this regard.*

160. At this point, we need to address Ms McCabe's planning evidence. Ms McCabe holds a Bachelor of Science from the University of Auckland (2006). She is not, and has not sought to be, a member of the New Zealand Planning Institute (planners' professional body). She admitted she did not hold a recognised planning qualification, but had "...over 13 years of experience as an environmental planner".<sup>49</sup>

161. Ms McCabe stated that she was, "*involved in plan change areas, and in that capacity, I was also part of a team that was involved in the implementation of plan changes (i.e., the subsequent consenting stages specific to plan change areas)*".<sup>50</sup> In questioning Ms McCabe, it was clear she did not have any experience in plan change formulation and process, but did have some resource consent experience.

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<sup>46</sup> Paragraph 1.5 e of Ms Gepp's legal submissions

<sup>47</sup> Paragraph 3 of Ms McCabe's evidence

<sup>48</sup> We address Transport and Stormwater Management in some detail later in this report

<sup>49</sup> Paragraph 5 of Ms McCabe's evidence

<sup>50</sup> Paragraph 6 of Ms McCabe's evidence

162. We have some reservations about Ms McCabe’s planning opinions. While she refers to herself as a planner, and has some experience, she is not, and accepts she is not, a qualified planner. Notwithstanding this, she was giving expert evidence for STM. As well as indicating throughout this report where we do not accept her opinions on their merits, we also record that as she is not qualified, we have placed less weight on her opinions than we have on Mr Lile’s and Ms Sweetman’s – both of whom are qualified planners and members of the New Zealand Planning Institute.
163. With respect to the NPS-UD, we record here that we agree with the Applicant’s position (legal submissions and evidence) and those of Ms Sweetman. We set out our reasoning below, and focus on a number of the key provisions in the NPS-UD and NRPS in this section, while others are addressed in other sections of this report.

#### **14.4.2 A well-functioning urban environment**

164. Objective 1 of the NPS-UD is:

*New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.*

165. Policy 1 of the NPS-UD sets out what constitutes a ‘well-functioning urban environment’ and requires that planning decisions contribute to such environments.

*Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

*(a) have or enable a variety of homes that:*

- i. meet the needs, in terms of type, price, and location, of different households; and*
- ii. enable Māori to express their cultural traditions and norms; and*

*(b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*

*(c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*

*(d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*

*(e) support reductions in greenhouse gas emissions; and*

*(f) are resilient to the likely current and future effects of climate change.*

166. We agree with Mr Lile’s evidence that PPC 28 will contribute to Nelson being a “well-functioning urban environment”. In this respect we find that PPC 28 would give effect to all of the Policy 1 sub-clauses.
167. Despite Ms McCabe’s written evidence having a contrary view to Mr Lile, in response to the Hearing Panel’s questions Ms McCabe agreed all of the Policy 1 clauses could be satisfied. Nevertheless, she maintained her reservations about the ‘need’ for the development, in light of anticipated supply in the draft FDS 2022 despite the JWS by the economists (which we

address below). In this respect we agree with Mr Maassen's Reply Submissions where he stated:<sup>51</sup>

*Ms McCabe did not seem to appreciate that the thrust of the NPS-UD is to increase supply. Particularly where it makes a significant contribution to housing capacity because it is economics 101 that supply enhancement is a key aspect of achieving housing affordability and price stability.*

*It is not the function of planners to control the timing of land release based on projections of the Council that cannot be achieved under the current plan provisions. Nor did Ms McCabe have the expertise to make such a judgment.*

168. Objective 2 of the NPS is:

*Planning decisions improve housing affordability by supporting competitive land and development markets*

169. We address this in more detail in the section titled - Housing Affordability. However, we record that we find PPC 28 would give effect to this objective.

170. Objective 3 of the NPS is:

*"Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:*

*a) the area is in or near a centre zone or other area with many employment opportunities;*

*b) the area is well serviced by existing or planned public transport;*

*c) there is high demand for housing and or for business land in the area, relative to other areas within the urban environment."*

171. We find, based on the Applicant's evidence that PPC 28 does or can satisfy all of the Objective 3 clauses, noting that only one needs to be 'met' to satisfy the Objective. The PPC 28 land is close to the Nelson CBD and employment opportunities; it can be serviced by public transport, and the evidence we had from the Applicant, Ngāti Koata (Mr Toia) and some submitters – notably Mr McKee of Bayleys Real estate, who all set out that there is a high demand for housing and or for business land in the area (relative to other areas within the urban environment).

172. Objective 4 (and policy 6) of the NPS-UD which addresses amenity values, sets out that urban environments, including their amenity values, develop and change over time "in response to the diverse and changing needs of people, communities, and future generations". We address

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<sup>51</sup> Paragraphs 41 and 42 of Mr Maassen's Reply Submissions

this in more detail in the section titled - Community Opposition - Overall decline PPC 28. However, we record that we find PPC 28 would give effect to the objective and policy.

173. Objective 5 (and policy 9) of the NPS-UD address the Treaty of Waitangi (Te Tiriti o Waitangi). We address this in more detail in the section titled - Māori cultural values, and other sections of this report (including the section on Part 2). However, we record that we find PPC 28 would give effect to the objective and policy.

174. Objective 6 of the NPS-UD is a key provision in contention between the Applicant and STM.

*Local authority decisions on urban development that affect urban environments are:*

- a) integrated with infrastructure planning and funding decisions; and*
- b) strategic over the medium term and long term; and*
- c) responsive, particularly in relation to proposals that would supply significant development capacity.”*

175. Objective 6 is implemented (in part) by Policy 2, which requires that “at least” sufficient development capacity is provided within the district to meet the expected demand for housing, in the short, medium and long terms (we address this below). The term “at least” is significant and does not require Councils (or us in making the recommendations we have) to address ‘need’ - or matching supply and demand for additional land. It requires Nelson City Council (in this case) to provide “at least” sufficient development capacity is provided within the district.

176. A number of the submitters raised the issues of need – mainly that there was no need to enable PPC 28 land to be urbanised. This was on the basis of other greenfield land being more suitable (eg in Richmond and Stoke), and that intensification in Nelson should be preferred rather than urban expansion (we also address this further below). With respect to those submitters, as we have set out above the thrust of the NPS-UD is to increase land supply so as to support the competitive operation of the land and development markets;<sup>52</sup> a key aspect of achieving housing affordability.

177. With respect to Objective 6, we address a) in the infrastructure funding section later. In terms of b) we address the identified need for more housing below, with reference to the Council’s policy documents. With reference to c) – we accept PPC 28 will supply significant development capacity and address this further below.

178. In terms of the NPS-UD Policies, we have addressed Policy 1 above. Also of particular importance is Policy 8: - *Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:*

- a) unanticipated by RMA planning documents; or*
- b) out of sequence with planned land release.*

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<sup>52</sup> Policy 1 (d) of the NPS-UD

179. In short, Policy 8 enables or supports the consideration of private plan changes for land not identified for urban development in the Regional Policy Statement or the NRMP - i.e. they are “unanticipated by a RMA planning document”. This applies to the subject site. It also enables the opportunity to consider whether development of the site to different densities or zones would produce a better overall outcome or a ‘well-functioning urban environment’.
180. Further direction in terms of the application of Policy 8 is found within the NPS-UD itself. Subpart 2 – Responsive Planning, Clause 3.8 ‘Unanticipated or out of sequence developments’ sets out that:
- (2) Every local authority must have particular regard to the development capacity provided by the plan change if that development capacity:*
- a) would contribute to a well-functioning urban environment; and*
- b) is well-connected along transport corridors; and*
- c) meets the criteria set under subclause (3).*
181. PPC 28 is unanticipated by the NRPS and NRMP. This is hardly surprising given that those documents were made operative many years ago. And, as we understand it, the NRPS has not been changed since 1997. In order to be considered under Policy 8 it therefore first needs to be capable of delivering ‘significant development capacity’.
182. The NPS-UD defines development capacity as follows:
- means the capacity of land to be developed for housing or for business use, based on:*
- a) the zoning, objectives, policies, rules, and overlays that apply in the relevant proposed and operative RMA planning documents; and*
- b) the provision of adequate development infrastructure to support the development of land for housing or business use*
183. The definition of development infrastructure includes water, wastewater and stormwater as well as land transport infrastructure. Therefore, if a proposal cannot be adequately serviced by the necessary infrastructure it cannot be said to contribute to development capacity. We set out in other sections of this report that we have found the site can be adequately serviced.
184. Furthermore, we accept that PPC 28 will provide significant development capacity (Sub-clause c)). This was accepted by the economists in their JWS – which stated<sup>53</sup>:
- “Both economic experts agree that in terms of the UPS-UD the proposed development would meet the “significant development capacity” test to invoke a plan change under policy 8. The development would promote competitiveness across housing markets in the region. This meets objective 2 of the NPS-UD to promote competitive land and development markets.*
185. It is our finding that PPC 28 satisfies Policy 8; namely that the plan change would add significantly to development capacity and that it would contribute to a well-functioning urban environment.
186. We set out here, for completeness Policy 5 of the NPS-UD:

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<sup>53</sup> Paragraph 3.3 of the JWS

*Regional policy statements and district plans applying to tier 2<sup>54</sup> and 3 urban environments enable heights and density of urban form commensurate with the greater of:*

*(a) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or*

*(b) relative demand for housing and business use in that location.*

187. For all of the reasons set out in this and other sections of this report, we find the PPC 28 would “enable a density of urban form commensurate” with this Policy.

#### **14.5 Future Development Strategy 2019 and Intensification Action Plan**

188. The Council’s FDS 2019 sets out how Nelson City and Tasman District Councils will provide sufficient development capacity over the next 30 years to meet the needs of their growing communities. While the FDS supports the intensification of current urban settlements, it sets out that this alone is unlikely to provide sufficient housing capacity or housing choices. The FDS identifies that a range of intensification and greenfield areas are necessary, while minimising the use of high-quality rural land (underlining is our emphasis).

189. Under this FDS, expansion in the Nelson Urban Area was identified in the Kākā Valley, Saxton and Richmond South. Kākā Valley, which is the area that this PPC relates to, is identified as an expansion area that may be made available in decade 2 (2028-2038). The FDS estimated a yield of 614 households from Kākā Valley (underlining is our emphasis).

190. Ms Gepp and Ms McCabe questioned the extent to which the FDS 2019 could be relied upon to ‘indicate’ that the Kākā Valley was an area identified as a potential area for urban development given the Ombudsman’s decision in relation to the FDS (consultation) process<sup>55</sup>.

191. Ms Gepp submitted<sup>56</sup>:

*STM submits that the Panel:*

*a. Is not required by the NPSUD to have regard to the FDS 2019.*

*b. Is not prevented from having regard to the FDS 2019, as it can take it into account under s 74(2)(b)(i) as a management plan or strategy prepared under another Act (the LGA); but*

*c. Should place no weight on the FDS 2019 on the basis of the consultation deficiencies relating specifically to the PPC 28 site. At the very least, the FDS 2019 cannot be relied upon as representing the community’s expectations.*

192. Ms McCabe set out in her evidence<sup>57</sup>:

*Prior to the FDS, the outcome directed by NCC’s Urban Growth Strategy was “Do not provide for any future residential zoning in this area [Maitai Valley]”. Accordingly, the FDS represented a significant change in direction for Maitai Valley, which was of concern to Save the Maitai Inc because residents and others with an interest in the Maitai Valley were not aware of the potential for the FDS to result in urban development in the Maitai*

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<sup>54</sup> NCC is a tier 2 authority

<sup>55</sup> A copy of this decision was attached to Ms McCabe’s evidence

<sup>56</sup> Paragraph 3.15 of Ms Gepp’s Legal Submissions

<sup>57</sup> Paragraphs 41 and 42 of Ms McCabe’s evidence

*Valley due to deficiencies in the consultation process. A complaint was lodged with the Ombudsman regarding the preparation of the 2019 FDS. A decision has recently been released, in which the Ombudsman partially upholds the complaint. The Ombudsman found that overall the consultation process was not unreasonable. However, the complaint was partially upheld, with the decision concluding 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.’ I have appended a copy of the decision to my evidence.*

*Based on that decision, I place no weight on the 2019 FDS and the inclusion of the Kākā Valley as an identified expansion area. (Underlining is our emphasis)*

193. In the Council’s legal submissions to us, it was stated<sup>58</sup>:

*In her evidence, Ms McCabe for Save the Maitai Inc refers to an opinion by the Ombudsman regarding consultation on the FDS 2019 and she refers to part of the Ombudsman’s conclusions in that opinion.*

*It is submitted that given there was no finding that the FDS was unreasonable, contrary to law, or contrary to the principles specified in the Council’s Significance and Engagement Policy, the FDS 2019 remains a valid document, which should be considered by the decision makers (unless overtaken by the FDS 2022) and given such weight as the Panel considers appropriate.*

194. It was Mr Maassen’s submissions that:<sup>59</sup>

*In the eighth bullet point Ms McCabe discounts the Future Development Strategy (2019) on the weak basis that the Ombudsman noted that the FDS when notified referred to the Kākā Valley which may have confused people. However, the Ombudsman did not seek to declare the strategy invalid and noted that the NPS-UDC had overtaken matters showing the important need of housing. To disregard that document relying on the Ombudsman’s letter is misconceived.*

195. We agree with the positions of the Council and the Applicant – the FDS 2019 remains a valid document and can be given such weight as the Panel considers appropriate. We set out our position on this below after considering the Intensification Action Plan 2020 (the IAP).

196. The IAP was developed to support the intensification outcomes of the FDS 2019. The IAP states that “at least 60% of future housing growth is to be accommodated by intensification (the building up of housing) within the Nelson Urban Area<sup>60</sup>”. Based on the figures in the FDS, this would be approximately 3,352 new dwellings within Nelson’s existing urban area, leaving a surplus of 2,234 dwellings to be accommodated by greenfield development. Figure 7 of the IAP includes development in the Maitahi/Mahitahi Valley (noting the footnote “Referred to as Kākā Valley in the Nelson Tasman Future Development Strategy”) as contributing to household capacity contributions.

197. A number of submitters referenced the IAP to demonstrate, in their view, why intensification should be pursued and to not zone PPC 28 land urban. The obvious point here is that while the IAP envisages at least 60% of future housing growth is to be accommodated by intensification,

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<sup>58</sup> Paragraphs 22 and 24 of Council’s Counsel Legal Submissions

<sup>59</sup> Paragraph 224 of Mr Maassen’s Legal Submissions

<sup>60</sup> Page 4 of the Intensification Action Plan

it does not require intensification as the only option and clearly anticipates some mix of greenfields development. Moreover, we have addressed the NPS-UD above, and it does not express a requirement for intensification over greenfields development.

198. We also note Mr McKee's evidence in relation to the cost and market preference for intensification. He told us that construction costs for apartments (that would be required for intensification as an alternative) are approximately \$4,000 per m<sup>2</sup>, more than a standard 600m<sup>2</sup> section with a stand-alone dwelling. He also provided insight into the Nelsonians' preference for houses and sections rather than higher density living in and around the CBD (apartments and town-houses).
199. It is our view that the PPC 28 area has, at a strategic level, been identified in the FDS 2019 and the IAP as an area for consideration for future urban development. However, as we have set out earlier its identification is not determinative in respect of our recommendation. Our evaluation of PPC 28 against the NPS-UD is far more determinative.
200. Notwithstanding our position above, we have next considered the Nelson City Council Housing and Business Capacity Assessment Report 2021 (the HBA), and [what was] the Draft FDS 2022<sup>61</sup>.

#### 14.6 The Nelson City Council Housing and Business Capacity Assessment Report (HBA)

201. The Council adopted the HBA on 12<sup>th</sup> August 2021. Table 1 of that report (Table below), sets out projected demand for housing by household for each of the short, medium, and long term periods in comparison to the City's capacity to provide for future dwellings in Nelson to 2051.

**Table: Housing demand and capacity to 2051**

| Period                      | Demand (household)<br>per period | Sufficient capacity<br>(dwellings) for period | Difference for period  |
|-----------------------------|----------------------------------|-----------------------------------------------|------------------------|
| Short-term (1-3<br>years)   | 521                              | 1,876                                         | 1,355                  |
| Medium-term (4-10<br>years) | 2,554                            | 1,894                                         | -660                   |
| Long-term (11-30<br>years)  | 4,950                            | 3,391                                         | -1,559                 |
| <b>Total</b>                | <b>8,025</b>                     | <b>7,161</b>                                  | <b>Deficit of -864</b> |

202. We note that the Executive Summary of the report explains that there is sufficient housing capacity in Nelson in the short term. In the medium term, while there is a projected shortfall of 660 dwellings, this is accommodated by a surplus of capacity in the short term. In the long term, there is a projected shortfall of 864 dwellings, taking surplus and deficits of the previous periods into account.
203. The summary also notes that should PPC 28 be approved, demand is expected to exceed supply in around 2043, instead of 2039 (based on PPC 28 supplying an additional 300 dwellings rather than more). Although 2039 has been identified as the pinch point where demand will start to exceed supply the demand-supply margin becomes constrained some years earlier.
204. However, as we have already set out the thrust of the NPS-UD is to increase land supply so as to support the competitive operation of the land and development markets. It does not seek to enable sufficient land (i.e. matching supply and demand) but "at least" sufficient land.

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<sup>61</sup> Now adopted by the Council on the 29 August 2022.

## 14.7 The Future Development Strategy 2022

205. The Nelson Tasman 2022 – 2052 Draft FDS was consulted on between 14<sup>th</sup> March and 14<sup>th</sup> April 2022. Hearings occurred in May and June 2022.
206. The Draft FDS followed on from the HBA addressed above. As a matter of fact, the Draft FDS included Maitahi/Bayview (Maitai Valley PPC 28) as a proposed greenfield expansion area, with an estimated yield of 900 dwellings. Section 8, Core Part of the Proposal – Urban Growth Areas, contained the following text about the PPC 28 area:

*Greenfield sites are identified in Maitai Valley (both Maitahi/Bayview (PPC 28) and Orchard Flats) recognising their close proximity to Nelson City Centre and ability to provide for a new community of approximately 1,100 homes at the north-eastern edge of the city. Investment in transport and three waters infrastructure, and new and improved open spaces and community facilities will be needed over time to cater for growing neighbourhoods within and close to Nelson’s City Centre. Te Ara ō Whakatū – the Nelson City Centre Spatial Plan will provide a clear framework for investment in public realm improvements in the urban core to support a growing residential population.*

207. The Draft FDS stated that 65% of growth in Nelson is expected to be through intensification, and the remaining 35% through greenfield.<sup>62</sup>
208. The Council adopted the FDS 2022 on the 29<sup>th</sup> August 2022. As part of that document the Maitahi/Bayview (Maitai Valley PPC 28) as a proposed greenfield expansion area was retained. We state this as a fact, rather than it providing any justification for our recommendation.

## 14.8 Nelson Regional Policy Statement 1997

209. PPC 28 is required to “give effect” to the RPS.<sup>63</sup> The RPS was made operative in 1997 and we understand has not been amended since. While it is acknowledged that it is somewhat out of date and has, in many respects been ‘over-taken’ by more recent NPSs (as set out above), there are still provisions relevant to the PPC.
210. In terms of urban growth, Chapter 6, Development and Hazards, of the RPS sets out the relevant objective and policies relating to urban expansion. Objective DH1.2.1 states:

*To avoid, remedy, or mitigate any adverse effects of urban expansion on the sustainable management of natural and physical resources including rural land uses.*

211. Policies DH1.3.1 to DH1.3.4, provide more direction and guidance on how to achieve the objective. In summary, these require:
- *the identification of features and values of significance and ensure that these are appropriately protected;*
  - *that community expectations are had regard to when determining the extent and location of urban expansion;*
  - *that when expansion is determined to have greater net benefit than intensification, that the most appropriate form of urban expansions is provided for, taking into account a list of 17 different matters; and*

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<sup>62</sup> Page 11 of the Draft FDS

<sup>63</sup> Section 75 (3) (c) of the RMA

- *that any proposals have adequate and appropriate provision for infrastructure.*
212. With respect to urban growth, it is clear that the RPS anticipates urban expansion which will require plan changes to rezone land for urban development, subject to particular matters being considered as set out in the objective and policies. However, we also note that the NPS-UD (and the NPS-FM addressed elsewhere) are more up-to-date and relevant. We have set out in some detail the relevant provisions of the NPS-UD. That said there are a number of common themes in the NPS-UD and the NRPS – such as Māori cultural values, environmental quality (particularly fresh water), the provision of infrastructure, and landscape, visual amenity and natural character. These matters are addressed in this report.
213. We discuss *“Community expectations are had regard to when determining the extent and location of urban expansion”* below in the section titled *“Community Opposition – Overall Decline”*.
214. Overall, we find for the reasons set out above, and those that follow, PPC 28 gives effect to the NPS-UD and to the relevant provisions of the NRPS.

## **14.9 Need for additional greenfield land for growth**

### **14.9.1 Introduction**

215. Section 6.3 of the PPC 28 request addressed urban land supply. The request was also accompanied by an economic cost and benefit assessment prepared by Property Economics.
216. We address this matter largely in the context of the NPS-UD and the NRPS, which we have addressed in some detail earlier. We also address the FDS 2019 and 2022 in the context of the Council’s approach to assessing the need for additional greenfield land to provide (at least) sufficient land for urban growth.

### **14.9.2 Statutory and planning provisions**

217. A range of national, regional and local planning provisions are relevant to the issue of urban growth.
- NPS-UD 2020 (and the FDS 2019 and 2022).
  - IAP 2020 – see section 9.2.
  - HBA 2021 – see section 9.4.
  - NRPS 1997 – see section 9.11.
218. In addition, the NRMP has the following provisions:
- DO15 Peripheral urban expansion (chapter 5, pp.77-78)
    - Objective 15.1 Urban form.
    - Policy 15.1.1 Encouragement of infill.
    - Policy 15.1.2 Limiting the effects of urban expansion.
    - Policy DO15.1.3 Rural greenbelt (including Maitai Valley)

### **14.9.3 Matters raised**

219. Submissions that sought that PPC 28 be declined included the following reasons:
- PPC 28 is inconsistent with Government’s policy direction for encouraging intensification.

- PPC 28 does not give effect to objectives 1 or 3 of the NPS-UD.
- PPC 28 is inconsistent with Council policies which prioritise intensification (e.g. the FDS 2019 and the Nelson Urban Growth Strategy 2006 (NUGS)).<sup>64</sup>
- Opportunities for intensification of existing built areas should be exhausted before any more urban sprawl is allowed. There is sufficient land for housing in the Nelson region without this site [standard reason #3].
- Large scale high density greenfields subdivisions should have no further part in Nelson's development. Two to three storied affordable housing blocks /townhouses /apartments within the current city footprint should be more actively encouraged [S194.001, S309.001].
- The RPS and intensification Action Plan both prioritise compact urban form.
- PPC 28 is inconsistent with the RPS – DH1 Urban Expansion.
- Public consultation on proposed suburban development in the Kākā Valley in the 2006 Nelson Urban Growth Strategy showed that the Nelson public were against this type of development. This has not changed [S20.001, S73.001, S118.001, S169.001, S176.001, S211.001, S220.001, S225.001, S301.001, S331.001, S358.001, S360.001, S365.001, S371.001].
- Nelson public could not have been aware of the potential for the FDS 2019 to result in urban development in the Maitai Valley, as the consultation documents did not clearly identify it [S154.001, S171.001, S211.001, S220.001, S225.001, S331.001, S358.001, S360.001, S676.001].
- The FDS 2019 is flawed and has little buy-in. The Bayview portion is not within the FDS.
- The Council's Housing and Business Capacity Report 2021 is based on an inherently flawed methodology for population projection and doesn't meet requirements of the NPSUD Guide on Evidence and Monitoring [S292.006, S312.006, S350.006, S367.006, S153.006].
- PPC 28 should not be considered while the new FDS is under consideration [S171.001, S320.003].
- The City needs spatial planning to have occurred first, before PPC 28 is considered.
- The development will create a precedent, making further urbanisation of the valley much more likely to occur in future [standard reason #2].
- PPC 28 will not solve Nelson's housing shortage. NCC is overstating the demand for the type of housing this development would provide. Rather than expensive homes, low cost rentals and conversions in town, social and pensioner housing and apartments is what's needed [S5.001, S21.001].
- The Council has contributed to the housing shortage and rising prices by actively discouraging developers from redeveloping prime brownfield areas, including through its climate change modelling [S210.001].

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<sup>64</sup> The following submission points are relevant to the first three points: S18.001, S20.001, S21.001, S37.001, S70.001, S73.001, S80.001, S103.001, S121.001, S153.001, S154.001, S164.002, S169.001, S173.001, S181.001, S211.001, S212.001, S220.001, S225.001, S257.001, S263.001, S278.001, S287.001, S288.001, S292.001, S292.019, S294.001, S297.001, S307.001, S308.001, S312.001, S312.019, S318.001, S320.003, S350.001, S350.019, S358.001, S360.001, S367.001, S391.001, S392.001, S403.001, S406.001, S410.001, S430.001, S435.001, S448.001, S454.001, S491.001

- PPC 28 should be declined. The Council should proceed with their own delayed housing work with some speed and commitment. This work should include investigating why currently zoned residential land is not developed and removing barriers to development [S164.003].

220. Submissions that sought that PPC 28 be approved included the following reasons:

- There is a need for more housing [S7.001, S11.001, S15.001, S24.001, S39.001, S85.001, S128.001, S155.001, S172.001, S180.001, S256.001, S285.001, S295.001, S313.001, S317.001, S321.001, S359.001 S422.001, S450.001].
- There is a lack of supply of land for housing close to Nelson city [S15.001, S24.001, S85.001, S172.001, S180.001, S256.001, S285.001, S313.001, S317.001, S321.001, S422.001].
- The proximity to the city and the poor quality of the land makes it a very suitable housing area [S39.001, S128.001, S152.001, S155.001, S256.001, S313.001].
- PPC 28 is in line with the NPS-UD and in particular Policy 2 re ensuring sufficient development capacity [S85.001].
- The assertion that there is about two decades of time before residential land is utilised pivots on the assumption of 60% of housing supply being met by intensification. There is a current and growing deficit in housing supply. There are very lengthy lead times for residential subdivision development within Nelson City [S422.001].
- It is better for PPC 28 to proceed rather than expand over rural land in Tasman [S7.001, S172.001].
- Nelson needs to think outside of concrete inner-city high-rise [S24.001].
- This is a significant opportunity for this community being so close to Nelson City, with excellent linkages, away from the future risks of sea level rise, and with positive recreational, biodiversity, and social outcomes [S7.001, S85.001, S155.001, S289.001, S455.001].

221. Submission points seeking amendments to PPC 28 included:

- If PPC 28 is approved, accurate, best practice demographic projections should be insisted upon before the plan change could proceed [S153.006, S292.006, S312.006, S350.006, S367.006].
- Further assessment of the demand/requirement for greenfield development of this scale and how staging of the development can integrate with infill / intensification of existing urban areas and infrastructure, either via the FDS review process, or by the applicant undertaking their own assessment using FDS data [S320.003].

#### **14.9.4 Outcome of expert conferencing**

222. Section 3.2 of the JWS Economics dated 27 April 2022, records the economist's agreement "*that from an economic perspective the development of the plan change area would result in significant benefits to Nelson and the region*". The experts acknowledged the need for additional housing in Nelson and the region and believe the PPC 28 area is an appropriate location for urban residential development from an economic perspective, including its location close to Nelson's CBD.

223. While the experts disagreed over the magnitude of benefits to the region that would arise from the construction phase, both experts agreed that the benefits of the construction phase would

be substantial. Both experts further agreed *“that there are substantive benefits (additional to the construction phase) to result from the provision of additional housing to the region from urban residential development in this location”*.

224. Both economic experts also agreed *“that the growth projections used in the FDS 2019 and draft FDS 2022 are reasonable. There is nothing to suggest that this undermines the validity of the Councils’ assessment of demand”*.
225. With regard to the NPS-UD, both economic experts agree that PPC 28 would meet the ‘significant development capacity’ test under Policy 8, as well as satisfying Objective 2 to promote competitive land and development markets. Further, the NPS-UD (2022) has removed references to sequencing of development and therefore removed any suggestion that intensification should be prioritised over greenfield development. Both economic experts consider *“that this further supports their assessment of the appropriateness of urban development of the PPC 28 area”*.
226. We have addressed the Planning (2) (3) JWSs earlier in this report and their consideration of the relevant objectives and policies of the NPS-UD under the heading *“Whether PPC 28 gives effect to the NPS-UD and the NRPS in relation to urban growth management”*. They are equally relevant to this section and are not repeated here.
227. However, in addition the Planning (3) JWS recorded:<sup>65</sup>

*Does the NPS-UD require that the Council prioritise intensification over greenfield development?*

*All planning experts agree that the NPS-UD does not prioritise intensification over greenfield development. All planning experts agree with paragraph 2 of point 3.3 of the Economics JWS dated 27 April 2022 with respect to sequencing of development.*

#### **14.9.5 Evaluation**

228. We have already addressed the Council policy documents which set out the Council’s ‘strategy’ with respect to intensification and additional greenfield development. These include the FDS and HBA set out in the section *“Whether PPC 28 gives effect to the NPS-UD and the NRPS in relation to urban growth management”*. We do not repeat our considerations here, but those documents clearly envisage some additional greenfield development, as well as intensification.
229. We also agree with the JWS; that the NPS-UD does not prioritise intensification over greenfield development. We also refer to the Economist’s JWS (and evidence of Mr Heath and the s42A report from Mr Lees) and the evidence of Mr McKee from Bayleys Real Estate that we have addressed earlier.
230. We agree with Mr Heath, the Applicant’s economist, where he states:<sup>66</sup>

*Nelson’s updated HBA, which outlines Nelsons’ residential capacity, has determined that the anticipated residential capacity in Nelson will fall short of its projected demand by 2038, and furthermore will result in a net deficit of 864 homes over the 30-year period. This would therefore restrict the potential for above medium growth over the long term. This insufficient Nelson Housing and Business Capacity Assessment supply of homes will*

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<sup>65</sup> Section 3.22

<sup>66</sup> Paragraphs 11 and 16 of Mr Heath’s evidence

*likely result in the Richmond / Tasman area capturing growth instead given the vast quantities of greenfield land they have allocated....*

*The Nelson HBA has shown that additional residential land is required to service the anticipated population and associated household growth over the 30-year long-term period, and that additional capacity is expected to be required by 2038 to accommodate the Council's projected household growth.*

231. Also, the Economist's JWS set out the following, with which we agree:<sup>67</sup>

*The economic experts agree that from an economic perspective the development of the plan change area would result in significant benefits to Nelson and the region. There is a need for additional housing in Nelson and the region and the PPC 28 area is a good geo-spatial location close to the Nelson CBD. Overall, the economic experts agree that it is an appropriate location for urban residential development from an economic perspective. (Underlining is our emphasis)*

232. Furthermore, the JWS stated under the "NPS-UD":<sup>68</sup>

*Many submissions wanted to prioritise intensification of existing urban areas before new "greenfield" areas were rezoned. The current NPS-UD (2022) has removed references to sequencing of development (as stated in NPS-UDC) and therefore removed any suggestion that priority in terms of timing should be given to intensification over greenfield development. This promotes competition, thus helping Councils meet objective 2 of the NPS-UD. Both economic experts consider this further supports their assessment of the appropriateness of urban development of the PPC 28 area.*

233. We agree with the JWS.

234. STM had a different view. Their primary reasons for their opposition to PPC 28 (relevant to this section of the report) were<sup>69</sup>:

- a. *The Maitai Valley is fundamentally the wrong place for urban-type development.*
- c. *Preferencing intensification over urban expansion is a legitimate option that is supported by national and regional policy, particularly where there is no shortfall in short to medium term housing capacity and the ability to meet demand until 2051 and beyond if intensification proposals are implemented.*

235. Ms McCabe supported this position in her evidence, and deals at some length with these matters. It appears (to us) that she opines that there is 'no need' for additional greenfield land, and certainly not the PPC 28 land.<sup>70</sup> She states:<sup>71</sup>

*The draft WWNP district plan provisions incorporate residential zones: - a General Residential Zone and a Medium Density Residential Zone, with proposed allotment sizes of 300m<sup>2</sup> and 200m<sup>2</sup> respectively. The proposed change in intensification is a shift from the current zoning under the NRMP, which includes allotment sizes ranging from 300m<sup>2</sup> to 1500m<sup>2</sup> for residential zones. While currently bearing no statutory weighting, I have considered this in relation to the HBA forecasts, which have identified potential capacity*

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<sup>67</sup> Paragraph 3.2 of the Economist's JWS

<sup>68</sup> Paragraph 3.3 of the Economist's JWS

<sup>69</sup> Paragraph 1.5 of Ms Gepp's Legal Submissions

<sup>70</sup> Paragraphs 31- 48 – Strategic Context, Ms McCabe's evidence

<sup>71</sup> Paragraph 36 of Ms McCabe's evidence

*that may be enabled through the WWNP. I consider this ability to meet capacity through intensification is particularly relevant given the outcome proposed through PPC 28 is greenspace development in a sensitive receiving environment.*

236. We have already set out that we have not considered (or placed any weight on) the draft WWNP district plan - as Ms McCabe acknowledges it has “no statutory weighting”. While Ms McCabe accepts the draft WWNP district plan has no statutory weighting, she nonetheless relies on it to meet the required capacity through intensification given PPC 28 is greenspace development in a “sensitive receiving environment”. We do not accept Ms McCabe’s opinion.

237. Ms McCabe further opined that:<sup>72</sup>

*In my view, there is no compelling information that suggests that the supply of housing is ‘critical’ at this point in time, with adequate urban zoned land in the NRMP for at least the next 10 years (and additional capacity for the next 29 years anticipated in the future district plan provisions) to service residential demand for the short and medium term.*

238. Again, Ms McCabe seeks to rely on capacity that may be enabled “in the future district plan provisions” – and that there is ‘no need’ for land for supply of housing “at this point in time”. We have already addressed the concept of “need” earlier. Policy 2 of the NPS-UD requires that Tier 1, 2 and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and business land over the short term, medium term, and long term. Again, we do not accept Ms McCabe’s opinion.

239. We note that the NPS-UD does not require that intensification is prioritised over greenfield development. The FDS 2019, Council’s HBA reporting (and FDS 2022) identify that there is a need for additional residential dwellings and for additional greenfield land.

240. In our view PPC 28 would assist to achieve the requirements of the NPS-UD and the Council’s functions under the RMA to ensure that there is sufficient land provided for housing in Nelson. In short, we accept there is a need for additional greenfield land, and for the reasons set out in other sections of this report the PPC land is appropriate for urbanisation.

#### **14.9.6 Recommendation**

241. We recommend that the submissions that seek that PPC 28 be declined or amended in respect of the need for additional greenfield land for urban growth as set out above under “Matters Raised” be **rejected** as set out in Appendix B.

242. We recommend that the submissions that seek that PPC 28 be approved in respect of the need for additional greenfield land for urban growth as set out above under “Matters Raised” be **accepted**.

### **14.10 Housing affordability**

#### **14.10.1 Introduction**

243. The Applicant addressed housing affordability in section 7.4 of the request. Further, the cost and benefit assessment provided with the request concluded that the addition of circa 750 homes to the market via the proposed PPCR could have a sizable impact in alleviating housing price pressures in the Nelson market over the coming years.<sup>73</sup>

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<sup>72</sup> Paragraph 38 of Ms McCabe’s evidence

<sup>73</sup> Page 27

### 14.10.2 Statutory and planning provisions

244. The NPS-UD is the most relevant document in respect of housing affordability. Objective 2 states *“Planning decisions improve housing affordability by supporting competitive land and development markets”*.
245. Clause 3.9 monitoring requirements, requires that councils monitor housing affordability on a quarterly basis. Clause 3.23 requires that any HBA includes an analysis on how planning decisions and infrastructure provision affect affordability.
246. The FDS 2019 also recorded that house prices in Nelson and Tasman were some of the least affordable nationwide.
247. There are no relevant provisions in the NRPS or NRMP.

### 14.10.3 Matters raised

248. Submissions that sought that PPC 28 be declined included the following reasons:
- Nelson has an affordable housing problem, not a housing problem [S2.001].
  - The housing will not be affordable and will not solve Nelson’s housing shortage [S5.001, S21.001, S80.001, S112.001, S117.001, S125.001, S133.001, S153.001, S154.001, S173.001, S178.001, S194.001, S211.001, S218.001, S227.001, S228.001, S286.001, S291.001, S319.001, S342.001, S344.001, S363.001, S379.001, S391.001, S392.001, S398.001, S425.001, S465.001].
  - This location was not chosen in any way to benefit low-income families [S133.001].
  - Recognition of the urgency of NZ’s housing crisis, but in Nelson there are a range of other options which would much better fill the need for more housing in Nelson [S327.001].
  - The demand/supply situation in Nelson is tight, however Interest rates and availability of credit are the key drivers of house prices [S294.001].
  - The shortfall in community housing is more important and will be provided for without the proposed development (includes references to recent developments) [S294.001].
  - This development would only provide 100 affordable houses, compared to the 2 projects they reference involving 215 affordable homes on less than 1 hectare of land [S294.001].
  - The developers’ commitment to affordable housing is questionable, as they have stated that if they do not receive the Infrastructure Acceleration Funding, they would not be able to build affordable houses [S365.001, S371.001].
  - There are no guarantees that these will be affordable houses [S413.001].
249. Submissions that sought that PPC 28 be approved included the following reasons:
- Homes on the whenua are going to have a proportion that are affordable and first homes [S172.001].
  - This development will provide around 350 good house sites close to Nelson city and at least 100 of these will be “affordable” [S254.001].
  - The only way to make housing more affordable is to build more housing; it is scarcity of land that is pushing up prices [S7.001].

- Nelson needs more land made available for housing close to the city. The land has a provision to supply a number of houses which could be described as at the lower cost end, something young families in Nelson are desperate for (S15.001).
- Nelson needs to grow and low/medium cost housing is essential [S24.001].
- Continual growth in the Nelson Region is of importance. Without it, the city housing affordability will increase making our city unaffordable for our future generations [S180.001].
- Nelson is in dire need of housing, especially affordable housing for families who would be first home buyers. Many of the submitter's tūpuna are those who gave land for the establishment of Nelson. For so many of their descendants who live as ahi kā (the submitter included), it is a struggle to find suitable and affordable housing in the current housing market - as either buyers or renters [S295.001].
- This will make affordable housing available to the submitter's whānau to own their own homes and live on ancestral lands [S351.001, S355.001, S356.001].
- There are opportunities for whānau Māori to develop skills that will assist them in working towards affordable homeownership. Therefore, changes to development plans would allow Ngāti Koata graduates to achieve goals on land the iwi owns, and help to alleviate the present housing issues [S411.001].
- That there is some social housing and affordable housing there. The example of what Tasman Housing Trust has done on the old OK-Coral site up the Brook is a good example (S311.008, S276.006).
- PPC 28 will provide a range of housing densities which will meet the needs of a wider variety of community members – not just the wealthy – and will enable more affordable housing stock to be built (S303.002).
- The provision of high density and affordable housing close to the urban amenities of central Nelson [S305.002].
- Nelson needs more land made available for housing close to the city. The land has a provision to supply a number of houses which could be described as at the lower cost end, something young families in Nelson are desperate for (S15.001).
- PPC 28 responds to the inequalities created by the overheated housing market [S359.001].

250. Neutral submission points:

- Nelson region's housing market is consistently one of the least affordable in the country, which impacts on lower and fixed-income households, with Māori and Pacific families being disproportionately affected. Housing affordability also has an impact on the ability of local businesses to recruit staff from outside the region [S300.003].

251. Submission points seeking amendments to PPC 28:

- That there is some social housing and affordable housing there. The example of what Tasman Housing Trust has done on the old OK-Corral site up the Brook is a good example (S311.008, S276.006).
- Create a range of housing options in the development for a wide range of needs, including affordable housing and low-income housing [S229.010].

- All housing new builds should be price pointed to ensure there is housing affordability to those on different income levels, not just to increase aggregate housing supply. Also, consideration of a shared ownership model may assist affordability as well as reducing isolation and increasing social connection [S300.003].
- Adopt inclusionary zoning into PPC 28 to expand access to affordable housing and to encourage economic opportunity by reducing the proportion of family income spent on rent. Incentives can be used, such as fast-tracked consenting, density bonuses, zoning variances, reduced mandatory fees (S300.004).

#### 14.10.4 Outcome of expert conferencing

252. The Economic (1) JWS dated 27 April 2022 recorded the following at 3.2:

*The economic experts agree that from an economic perspective the development of the plan change area would result in significant benefits to Nelson and the region. There is a need for additional housing in Nelson and the region and the PPC 28 area is a good geospatial location close to the Nelson CBD.*

*Both economic experts agree that there are substantive benefits (additional to the construction phase) to result from the provision of additional housing to the region from urban residential development in this location.*

And at 3.2:

*The development would promote competitiveness across housing markets in the region. This meets objective 2 of the NPS-UD to promote competitive land and development markets.*

#### 14.10.5 Evaluation

253. Objective 2 of the NPS-UD states:

*Planning decisions improve housing affordability by supporting competitive land and development markets.*

254. We have set out above, and elsewhere in this report, the outcome of the Economists' JWS. They agree PPC 28 would assist in increasing the supply of residentially zoned land thereby increasing land supply and assist in supporting competitive land and development markets.

255. Mr Lile considered housing affordability in his evidence and considered that greenfield land provides a more affordable option than a townhouse or apartment, to the majority of the housing sector.<sup>74</sup> This was confirmed by Mr McKee (Bayleys) who advised us that construction costs for apartments (that would be required for intensification as an alternative) are approximately \$4,000 per m<sup>2</sup>, more than a standard site with a stand-alone dwelling.

256. Mr Lile opined that:<sup>75</sup>

*In my opinion, the key to addressing the affordability problem is only through supply, and at a rate that "at least" exceeds demands (as directed by Policy 3 of the NPS-UD 2020). PPC 28 seeks to provide supply at a more meaningful rate than the likely speed of intensification projects in Nelson City.*

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<sup>74</sup> Paragraph 191 of Mr Lile's evidence-in-chief

<sup>75</sup> Paragraph 192 *ibid*

257. Ms McCabe had a different opinion. It was her opinion that:<sup>76</sup>

*I do question housing affordability with respect to PPC 28, and recognise it as being an area that is outside of my area of expertise as a planner. My evidence here is more akin to a high level question, rather than any assessment or view as such. Simply put, I am unsure whether beneficial competitive effects would be increased in the wider Nelson context, when this particular site will require substantial infrastructure upgrades to support development (including wastewater, water supply and transport infrastructure). Furthermore, the topographical challenges of the site will likely require substantial earthworks with geotechnically engineered elements, in order to facilitate the future development. These will be costly works, and will be factored into the final housing price.*

*It is also challenging to ascertain whether beneficial competitive effects would be increased in the wider Nelson context, compared to housing through existing (or future) urban zoned but undeveloped land.*

*Broadly, I do agree that a key to addressing the affordability problem is through increasing supply, but the investment necessary to develop this PPC 28 site would impact on housing prices.*

258. Despite Ms McCabe acknowledging housing affordability “as being an area that is outside of my area of expertise as a planner”, she went on to offer an opinion as set out above. When questioned at the hearing about the evidence on which she was basing her opinion, she conceded it was simply her own observation from experience.

259. Ms McCabe, again in response to questions, acknowledged the economists’ JWS and Mr Heath’s evidence which considered that PPC 28 would assist in housing affordability (and competitive land markets) through increasing the supply of residential land.

260. We do not agree with Ms McCabe, other than her own acknowledgment that this issue was an area outside of her expertise.

261. We agree with Mr Heath’s evidence that the provision of additional housing within the region should assist in terms of providing additional supply and not exacerbating housing unaffordability. We consider that PPC 28 will assist to achieve objective 2 of the NPS-UD insofar as supporting a competitive land and development markets by providing additional supply. It will increase the supply of urban zoned land for residential and other activities, thus likely to reduce upward pressure on prices.

262. We also agree with the submissions in support which identify that the zoning proposed would provide for a range of housing typologies and sizes. This will assist in meeting housing demands.

#### **14.10.6 Recommendation**

263. We recommend that the submissions that seek that PPC 28 be declined or amended in respect of housing affordability as set out above under “Matters Raised” be **rejected**.

264. We recommend that the submissions that seek that PPC 28 be approved in respect of in respect of housing affordability as set out above under “Matters Raised” be **accepted**.

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<sup>76</sup> Paragraphs 54 - 56 of Ms McCabe’s evidence

## 14.11 Community Opposition - Overall decline

### 14.11.1 Introduction

265. The majority of the submitters sought that PPC 28 be refused. As outlined earlier, there were 628 submissions received in opposition to PPC 28. The majority of these were proforma submissions with a single relief; that PPC 28 be declined. There were a number of other submitters who sought PPC 28 be refused for a variety of reasons.
266. STM sought that PPC 28 be refused. Its position was set out both in the STM submission and in Ms Gepp's legal submissions. We address this in summary below in the Matters Raised section.

### 14.11.2 Matters raised

267. The proforma submissions set out the reasons and the basis for the relief they sought, as reiterated in the Table below. Those reasons encapsulate, in the main, the presentations made to us by the majority of submitters who presented at the hearing.

| Number | Reason                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | The Maitai Valley's rural character and amenity should be protected and preserved for the benefit of current and future generations. Suburban sprawl will change the nature of this valley forever. The proposed urban development would result in loss of open space in the city's greenbelt, and conflict with recreational values. Undeveloped green spaces like the Maitai Valley are essential for people's health and wellbeing. |
| 2      | The development will create a precedent, making further urbanisation of the valley much more likely to occur in future.                                                                                                                                                                                                                                                                                                                |
| 3      | Opportunities for intensification of existing built areas should be exhausted before any more urban sprawl is allowed. There is sufficient land for housing in the Nelson region without this site.                                                                                                                                                                                                                                    |
| 4      | Engineered changes to the Maitahi/Mahitahi River floodplains and Kākā Stream realignment will create a flood risk for downstream residents and impact on the mana, habitat value and natural character of these waterbodies.                                                                                                                                                                                                           |
| 5      | Ongoing sedimentation of the river from site works over 30 – 40 years, plus hydrological changes and pollutants from increased stormwater runoff from the new suburb will cause long-term degradation of the Maitahi/Mahitahi River. This will adversely affect the many highly valued swimming holes nearby (including Dennes Hole, Black Hole and Girlies Hole) and Nelson Haven                                                     |
| 6      | The development is contrary to the strategy of ecological restoration of the Maitai tributaries and taonga species. The value of the site as habitat (including for pekapeka/native bats) has not been adequately investigated and urbanisation of this habitat could have significant adverse impacts.                                                                                                                                |
| 7      | There will be significant safety, noise, air pollution and climate impacts from construction traffic and new resident's vehicles, plus through traffic if this becomes a temporary or long-term alternative to SH6. Traffic assessments are incomplete and underestimate likely traffic volume                                                                                                                                         |
| 8      | There are no existing public transport routes, meaning transport will be predominantly private cars. The development's transport and buildings are not consistent with the decarbonisation pathways required to achieve net zero carbon.                                                                                                                                                                                               |
| 9      | The development requires significant modification of landforms over decades, and ridge-top buildings will have an adverse visual impact on the city's skyline                                                                                                                                                                                                                                                                          |

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10 | The financial cost to the community of infrastructure to support the development is unreasonable and inequitable                                                                                                                                                                                                                                                                                                                                                      |
| 11 | If the Plan Change goes ahead, all future subdivision and buildings within Kāka Valley/Bayview would be processed without notification to the public or affected parties, despite critical aspects of the development not being specified or supported by technical information at this stage (including air quality, geotechnical and downstream flooding assessments). That approach unfairly excludes people from being involved in decisions that may affect them |

268. A number of other submissions also raised similar reasons for their opposition to PPC 28.

269. The STM rationale for seeking refusal (in terms of ‘community opposition’), was set out in summary in Ms Gepp’s legal submissions:

- The Maitai Valley is fundamentally the wrong place for urban-type development. STM witnesses described the importance of the valley for peaceful recreation and open space and that the character of the Valley would be inevitably changed if residential development at an urban scale is introduced. They, and other submitters, described the adverse changes to their amenity from: the introduction of houses and built development into a currently undeveloped open space; this built development being visible from the swimming holes and walking tracks; the presence and noise of vehicles; increased stormwater discharges and changes to catchment hydrology; noise from day-to-day living in a high-density development, and discharges to air from construction and from day-to-day living.
- Nelson is a city with a strong sense of its own character. Community expectations are important, and are required to be considered when determining the extent and location of urban expansion. The clear community expectation since as early as 1914 has been that the Maitai will be retained as a place for open space and recreation, and that urban development will not be provided for. PPC 28 has aroused unprecedented public opposition in Nelson (addressed in this section).
- Preferencing intensification over urban expansion is a legitimate option that is supported by national and regional policy, particularly where there is no shortfall in short to medium term housing capacity and the ability to meet demand until 2051 and beyond if intensification proposals are implemented (addressed in the section on “Need for additional greenfield land for growth”).
- The Applicant has failed to demonstrate that these outcomes will be achieved with respect to effects on landscape and visual amenity, management of stormwater and catchment hydrology to protect waterbodies, and climate. As a result, the Applicant has not demonstrated that the site covered by PPC 28 is appropriate for urban development (addressed in various sections).
- PPC 28 does not give effect to the National Policy Statement on Urban Development 2020, the National Policy Statement for Freshwater Management 2020 or the Nelson Regional Policy Statement. It also fails to implement the existing objectives and is inconsistent with the existing policies of the NRMP (addressed in various sections).

#### 14.11.3 Evaluation

270. We have focused this section on the over-arching issue of ‘community opposition’ in terms of many submitter’s views about the extent and location of urban expansion. It was clear that the

majority of submitters opposed PPC 28 for a variety of reasons, including that the Maitai Valley was fundamentally the wrong place for urban-type development given its value as green-space, and the “*clear community expectation since as early as 1914 has been that the Maitai will be retained as a place for open space and recreation, and that urban development will not be provided for*” as set out by Ms Gepp.

271. We have addressed elsewhere in this report the statutory considerations and documents (eg NPS-UD, the NRPS, the FDS 2019 and 2020 and the HBA) and their applicability. However, it was put to us by many of the submitters, including STM (Legal Counsel, experts – namely Ms McCabe in this context, and lay members), that the strong ‘community’ opposition required considerable recognition, and that PPC 28 should therefore not be recommended for approval. We address this element here.

272. We set out again some relevant sections of the statutory planning documents, noting that those in the NPS-UD are directive. Objective 3 states:

*Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:*

*(a) the area is in or near a centre zone or other area with many employment opportunities*

*(b) the area is well-serviced by existing or planned public transport*

*(c) there is high demand for housing or for business land in the area, relative to other areas within the urban environment.*

273. Policy 6 states:

*When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*

*(a) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement*

*(b) That the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:*

*(i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and*

*(ii) are not, of themselves, an adverse effect. (Underlining is our emphasis)*

274. The NPS-UD directs that more people are to be enabled to live and work close to city centres and employment, and where there is high demand for housing land. It is our finding that this applies to PPC 28. The NPS-UD also acknowledges that urbanisation can result in significant changes which will affect (detract from) some people’s amenity values, but may improve others. Notwithstanding this, Policy 6 states that detracting from some people’s amenity values, is not of itself an adverse effect.

275. We accept if PPC 28 is approved, and then developed, this would result in a significant change to the current environment. However, the question is not if the change is adverse, but whether it is an appropriate outcome in terms of the RMA – namely Part 2, having evaluated the change in terms of section 32 and 3AA of the RMA and the relevant provisions of the NPS-UD and the NRPS.

276. The NPS-UD is clearly the most recent statutory planning document. Its provisions are directive. We have addressed the NPS-UD in some detail in this report. We have also addressed the relevant provisions of the NRPS. With respect to the NRPS, Ms Gepp submitted that:<sup>77</sup>

*Community expectations are required to be considered when determining the extent and location of urban expansion: NRPS Policy DH1.3.2...*

277. NRPS Policy DH1.3.2 is:

*To have regard to community expectations when determining the extent and location of urban expansion.*

278. We have had regard to community expectations, and we address this below. In this respect, a key issue is what or who is ‘the community’ and, that we are to have regard to it, but note the requirement ‘*To have regard to*’ does not dictate that that matter must be definitive, nor is it the only matter to be considered and must be considered alongside all the other relevant policy provisions, notably those of the NPS-UD.

279. We accept there have been a substantial number of submitters who have opposed PPC 28. However, there are also a number of submitters supporting it. Ngāti Koata through its commercial arm Koata Limited, and others, are the applicant. Ngāti Koata as mana whenua and four other local iwi are supporting submitters.

280. Ms McCabe, addresses community expectation in her evidence. She stated:<sup>78</sup>

*A total of 715 submissions were received during the notification of the PPC 28 request. The s42a report prepared by Ms Sweetman states that 628 of these submissions oppose the plan change in its entirety. Additionally, over 13,000 people have signed a petition opposing the future development that will be enabled through PPC 28, if authorised. This is indicative of community expectations with respect to urban expansion into this area.*

*In my view, the community has resoundingly indicated that they oppose this plan change and if authorised, the urban expansion to the PPC 28 does not have “regard to community expectations”.*

281. Ms McCabe appears to suggest ‘the community’ is those people who have submitted in opposition and those who have signed the petition. She also opines that if PPC 28 is authorised this would mean that regard was not given to community expectations – thereby implying a ‘veto’ right. NRPS Policy DH1.3.2 is not directive, and does not exist alone. In this respect we agree with Mr Maassen’s Reply submissions where he stated:<sup>79</sup>

*It is also important to note that the policy direction in DH1.3.2 is to have regard to community expectations. The weight to be attached to these matters is contextual and a matter of assessment based on the evidence.*

282. The fact that we have recommended approval of PPC 28 does not mean we have not had regard to community expectation. We have, and we heard from STM and a number of other submitters opposed to PPC 28 for ‘community expectation’ and other reasons. However, for the reasons set out in this report, we are not convinced that those submissions in opposition to PPC 28, and the evidence we heard justify, in RMA/section 32 terms, refusal of it.

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<sup>77</sup> Paragraph 3.8 of Ms Gepp’s legal submissions

<sup>78</sup> Paragraphs 195 and 196 of Ms McCabe’s evidence

<sup>79</sup> Paragraph 50 of Mr Maassen’s Reply Submissions

283. We also do not accept Ms McCabe’s implications that ‘the community’ is limited to those submitters and those who have signed the petition. With respect to the petition, we note Mr Spittal’s evidence re - Petition Review Findings – that many of those who signed it are not Nelsonians (noting a number of submitters advised us of the vagaries of on-line processes/recordings and incorrect addresses). Irrespective of this, the petition carries very little weight in RMA terms, and it is often stated that RMA processes ‘are not a numbers game’.
284. The Nelson community, in our view, must include all people and groups. In this respect Ms McCabe ignores those who have supported PPC 28, ignores Ngāti Koata’s views and has no regard to the future residents who would choose to live in this area (as identified by Council policy documents and the evidence of Mr McKee).
285. As alluded to above, Ms McCabe does not address Ngāti Koata’s views and aspirations at all in her evidence; this is despite Part 2 - section 6 (e) requiring the recognition of and provision for:
- the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*<sup>80</sup>
286. Ms McCabe did address Part 2 matters in her evidence, but identified section 6 (a) relating to *the preservation of the natural character of the coastal environment* as being particularly important, but not section 6(e). Ngāti Koata is clearly part of the Nelson community. We are disappointed by Ms McCabe’s selective, and in our view inadequate, identification of ‘the community’ and the community’s expectations.
287. Overall, it is our finding that having had regard to the community’s expectation, we accept that elements of the community do not support PPC 28, while other elements do. For all of the reasons set out in this report we do not find justification from those opposing PPC 28 that the plan change should be refused.

#### **14.11.4 Recommendation**

288. We recommend that all of those submissions that sought the PPC 28 be declined for the reasons set out above be **rejected**.
289. We note that in addition to the reasons set out above, we further address these submitters concerns in more detail in the relevant sections that follow.

### **14.12 Support for PPC 28**

#### **14.12.1 Introduction**

290. There were 45 submissions received in support of PPC 28. We address these below.

#### **14.12.2 Matters raised**

291. The following submitters, overall, supported PPC 28 and sought its approval.
- S7.001, S11.001, S39.001, S85.001, S101.001, S155.001, S180.001, S254.001, S256.001, S295.001, S305.002, S313.001, S316.001, S317.001, S321.001, S351.001, S355.001, S356.001, S359.001, S411.001, S417.001, S422.001, S450.001, S455.001, S483.001, S15.001, S23.001, S24.001, S128.001, S152.001, S172.001, S285.001, S285.001, S289.001, S303.009, S304.002.

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<sup>80</sup> We address this in more detail in the section “Māori cultural values”

### 14.12.3 Evaluation

292. We have not provided a detailed evaluation of the supporting submissions within this section, but have considered those reasons for the support within the other relevant sections that follow.

293. We note that the reasons for this support include (taken from the s42A report):

- The need for more housing.
- There is a major lack of land supply close to Nelson City.
- Homes on the land are going to have a proportion that are affordable and first homes.
- The assertion that there is about two decades of time before residential land is utilised pivots on the assumption of 60% of housing supply being met by intensification. There is a current and growing deficit in housing supply. There are very lengthy lead times for residential subdivision development within Nelson City.
- This will make affordable housing available to the submitter's whanau to own their own homes and live on ancestral lands near their ancestral river. The loss of lands and opportunities was not adequately addressed in the breaches of the Crown in Waitangi Tribunal Settlements, as less than 3% of assets were returned to iwi. This Plan change is going to give in some sense a degree of social justice for Māori.
- It is better for PPC 28 to proceed rather than expand over rural land in Tasman.
- Climate change means we should build higher on the hills.
- It is better for the environment as it is close to town, meaning fewer cars on the road for shorter periods.
- There is excellent roading, it is close to Nelson City and its services and there is a school within a cycling route.
- Assuming the lateral road link through Walters Bluff is built, the Bayview / Malvern Hills area will be closer than Kākā Valley to the city centre.
- PC28 contemplates an extensive link road from Frenchay Drive / Dodson Valley across the Atawhai Malvern Hill ridgeline to Kākā Valley. That is a substantial infrastructure connection for Nelson City, the costs of which can be supported by a relatively intensive residential section development.
- There are ample existing recreational opportunities in the area.
- The Bus could be extended a short way to service it.
- Close housing to the centre would reduce vehicle usage, increase walking and cycling and be of benefit to the Council Transport Strategy.
- Nile Street has a wide road reserve with grassed margins amenable to more intensive traffic engineering.
- It will provide ongoing local employment and local revenue.
- It will generate additional rates.
- Nelson needs to think outside of concrete inner-city high-rise.

- The land proposed to be rezoned is not productive and much of it is only growing gorse.
- The proximity to the city and the poor quality of the land makes it a very suitable housing area.
- It would be a wonderful place for families to live.
- The only way to make housing more affordable is to build more housing; it is scarcity of land that is pushing up prices.
- The Maitai will still be there, it is not being taken away.
- That the development will not cause environmental damage; rather it could improve it and reduce pollution (including undesirable agricultural discharges) entering the Maitahi/Mahitahi River.
- It will improve water quality and ecosystem functions compared to the current use.
- There will be reduced run off and land erosion, including from an increase in tree cover.
- It will include an attractive wetland area.
- It is not the only tributary valley to the Maitahi/Mahitahi River system, there are others such as Sharlands Valley.
- There will be preserved and enhanced amenity values, through the setbacks, planting and reserve requirements.
- The Kākā flat land cannot be seen from Maitai Road or cricket ground, and there will be no or limited visual impact.
- The Maitahi/Mahitahi River and its adjacent recreational areas will not be affected; and conditions can be imposed that preserve the riverbank facilities.
- The Kākā Valley is private land with no current public access.
- The Iwi partnership will give a cultural diversity to a very European, middle age, middle class problem of fearing development.
- Should be supportive to iwi progressing plans for the greater good of their people.
- It is in line with the NPS-UD and in particular 2 of ensuring sufficient development capacity.
- Its proximity to town will enable a variety of transport modes, and reduce carbon emissions, being consistent with Objective 9 and policy 1 of the NPS-UD.
- Further development of the Richmond Plains would only exacerbate the City's current traffic congestion.
- It delivers the outcomes sought by the NPS-FM.
- It achieves Part 2 of the RMA.
- It will have amazing large recreational areas and regeneration of natives surrounding the proposed housing.
- It will be an asset to Nelson.
- It will allow community friendly residences with garden plots set in streets.

- There is already housing development in Raphine Way that is at odds with the rural character suggested by some opponents, and with sympathetic riparian planting - a buffer could be created between any residential development and the Maitai Valley to maintain the natural character of the valley.
- It would enable an additional roading link over the Atawhai Hills to the City, that would alleviate dependence on SH6 for accessing north of the City, and provide an alternative route in the event of emergency should for any reason SH6 be blocked improving the City's resilience.
- More of the Kākā Valley and the Atawhai Hills will be opened for recreation than ever before.
- PC28's Malvern Hill area will eventually connect Kākā Valley through to Dodson Valley, providing attractive walking and cycle way amenities.
- The Bayview owned areas will contribute further residential sections in what has become Nelson's premier subdivision.
- The proposed changes to the NRMP will ensure the best practice principles are followed in the subdivision and development processes, administered through obtaining the various resource consents, all as a part of sound resource management.
- The applicants have a proven track record of delivering residential sections in a variety of densities and typologies to the Nelson and Tasman communities.
- This is a significant opportunity for this community being so close to Nelson City, with excellent linkages, away from the future risks of sea level rise, and with positive recreational, biodiversity, and social outcomes.
- There will be improved access to a significant cultural site.
- There is potential for Cultural values to be recognised in the subdivision stage.
- It would allow Ngāti Koata members to practice kaitiakitanga over a small remainder of their traditional tribal lands.
- Rather than taking the purest planning dogma about the desirability of complete skyline and backdrop protection, supports residential development in cluster areas, including use of skyline areas that are otherwise suitable for residential subdivision. This is valuable land, which will be needed for residential housing. There is an opportunity to advance the cause of native reforestation in respect of the areas that cannot be used because of their physical and geotechnical constraints. This approach should support the halo effect over time for native bird life, based on the Brook Waimārama Sanctuary.

#### 14.12.4 Recommendation

294. We recommend that all of those submissions seeking that PPC 28 be approved be **accepted** or **accepted in part** (given we have recommended approval but modified the plan provisions provided by the Applicant).

## **14.13 Adequacy of information (or lack of)**

### **14.13.1 Introduction**

295. The adequacy of information provided by the Applicant was raised as a concern by the Council experts and by a number of submitters.

### **14.13.2 Matters raised**

296. There were a number of submissions received that sought that further information be provided, including:

- Whether schools will cope, whether there are enough medical facilities, whether there are enough jobs, where the extra water is coming from, where the storm and waste water is going, and problems about extra traffic and recreational facilities [S10.001].
- Full air quality impacts, including from traffic from the subdivision and Atawhai [S153.002, S292.002, S312.004, S350.002, S367.002].
- Comprehensive flood risk modelling [S153.003, S292.003, S312.003, S350.003, S367.003].
- A detailed geotechnical assessment of areas of high geotechnical risks [S153.004, S292.004, S312.003, S350.004, S367.004].
- A more fulsome survey of indigenous biodiversity on the site, including pekapeka, pūtangitangi, powelliphanta snails, Maitai gecko, wetlands, significant vegetation and habitats [S153.005, S292.005, S292.013, S310.002, S312.005, S312.013, S350.005, S367.005, S367.018].
- Accurate, best practice demographic projections [S153.006, S292.006, S312.006, S350.006, S367.006].
- Full road crash data [S367.008].
- A mode shift plan and transport emissions impact assessment of how it would achieve lower emissions and how walk/cycle/public transport would be the preferred transport mode [S292.001, S312.001, S350.001].
- An evaluation of expected walk/cycle/public transport from all parts of the development [S292.001, S312.001, S350.001].
- How public transport would be provided and funded [S292.001, S312.001, S350.001].
- An assessment of increased traffic noise, vibration, pollution at Branford Park, the Maitai Cricket Ground, Waahi Taakaro Reserve, various swimming holes and walking and cycling tracks [S292.001, S312.001, S350.001].
- A comprehensive assessment of the current vehicular and active transport network safety and capacity deficiencies from the PPCR to central Nelson, noting the Transportation Infrastructure report, March 2020 by Traffic Concepts is not included in the PPCR [S292.001, S312.001, S350.001].
- A detailed schedule of required improvements for roading, active transport and public transport facilities as proposed by the Council and as proposed by the developer [S292.001, S312.001, S350.001].
- What dispensations to the Nelson Tasman Land Development Manual have been agreed and what further dispensations would be requested [S292.001, S312.001, S350.001].

- The 19 July 21 to 13 Aug 21 traffic count should advise where the count was located, the number and type of dwellings within the catchment included, and an assessment of how typical the demographics of the residents are in relation to those expected within the PPCR [S292.001, S312.001, S350.001].
- An assessment of existing summer traffic, parking and active mode use in the Maitai Valley [S292.001, S312.001, S350.001].
- Information to support the statement that there would be an increase in future movements up the Valley [S292.001, S312.001, S350.001].
- A robust analysis of the impact on the Gibbs Bridge and Raphine Way intersection [S292.001, S312.001, S350.001].
- Evidence of any specific community engagement relating to any proposed on-street parking loss as a result [S292.001, S312.001, S350.001].
- Assessment of the impacts of Kākā-Maitai Valley becoming a temporary or permanent transport route [S292.001, S312.001, S350.001].
- Noise impacts [S292.001, S312.001, S350.001, S367.001].

#### 14.13.3 Outcome of expert conferencing

297. There was no specific expert conferencing on this matter. However, the need for specific further assessments and information were traversed in the majority of the expert conferencing sessions. These have been addressed in the relevant topic areas.

#### 14.13.4 Evaluation

298. It is our finding, having directed expert conferencing, received expert evidence-in-chief, rebuttal and reply evidence (including a Stormwater Management Plan (SMP)), as well as an addendum s42A report (in response to expert conferencing) and additional statements from the s42A 'team' – we are satisfied we have sufficient information to be able to make the recommendations we have in terms of PPC 28.

299. We addressed this matter further in the other topic areas.

#### 14.13.5 Recommendation

300. We recommend that the submissions which sought that PPC 28 be declined on the basis of a lack of information, be **rejected**.

### 14.14 Māori Cultural values

#### 14.14.1 Introduction

301. In his closing statement, Chief Executive of Koata Limited<sup>81</sup>, Mr Toia, provided what the Hearing Panel considered was a strong response to the presentations given by many opposing submitters throughout the hearing. This included:

- that those submitters opposing PPC 28 would deny Ngāti Koata the right and opportunity to connect with its ancestral land, and to be involved in a housing development for Ngāti Koata families on its land to enable them to have warm, dry, safe, secure and affordable homes;

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<sup>81</sup> Koata Limited were part of the consortium that were the Applicants of PPC 28

- that many submitters proclaimed the Maitai Valley and Kākā Valley as “my park.” Mr Toia set out that NCC owns sports fields and access to swimming holes in what has been referred to as the lower Maitai Valley. All of these valuable community amenities will continue to be available, and PPC 28 would not change that. He stated - *“What submitters conveniently forget or ignore is that the rest of the Maitai Valley, hundreds of hectares of land used for recreational purposes by walkers, runners and bikers – think Codgers/Maitai, Fringed Hill, Maitai Face, Sharlands – is land that is all owned by Ngāti Koata, land that Ngāti Koata currently allow public use and enjoyment of. ...Kākā Valley however, is privately owned land and is not accessible for recreational purposes – this Private Plan Change could change that”.*

302. The Hearing Panel concurs with Ngāti Koata and supports the comments by Mr Toia.
303. Mr Toia also highlighted the inappropriate use of te reo Māori, waiata and cultural practices by a number of submitters, as cultural appropriation and highly offensive to Ngāti Koata.
304. We acknowledge that, in achieving the purpose of the RMA we are, in relation to managing the use, development, and protection of natural and physical resources, to “recognise and provide for” (among other matters) as matters of national importance, the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.
305. Furthermore, we are also required to “give effect” to national and regional policy documents, and these include those provisions relating to Māori. We have identified those documents earlier in this report.
306. The PPC 28 request addressed ‘Cultural Values’ at section 6.5 and an Iwi Engagement Summary was also appended to the request (as attachment C1).
307. It is within the context set out above that we have addressed Māori cultural values in terms of PPC 28.

#### **14.14.2 Statutory and policy provisions**

308. Section 6(e) of the RMA requires that “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga” be recognised and provided for as a matter of national importance.
309. RMA s7(a) requires that particular regard is had to kaitiakitanga.
310. Section 8 of the RMA requires the principles of Te Tiriti o Waitangi to be taken into account.
311. Relevant NPS-UD provisions include:
- Objectives 1 and 5
  - Policies 1 and 9
  - All relevant provisions identified earlier in this report
312. Relevant NRPS provisions include:
- TW1 Tangata whenua interests
    - Objectives TW1.4.1 - TW1.4.4
    - Policies TW1.5.1 – TW1.5.5, TW1.5.7 and TW1.5.11

- NA1 Amenity and conservation values - identification and protection of cultural sites (p.57-61)
  - Objective NA1.2.1
  - Policies NA1.3.1 – NA1.3.6

313. Relevant NRMP provisions include:

- DO1 Tangata whenua (chapter 5, pp.1-4A)
  - Objective DO1.1 Māori and resources
  - Policies DO1.1.1 - DO1.1.6

#### 14.14.3 Matters raised

314. The s 42A report provided a comprehensive summary of the submissions relating to cultural effects. Submissions in support of PPC 28 were received from Ngāti Koata Trust [S303], Ngāti Kuia [S305] and Ngāti Toa Ki Whakatū [S304] with Ngāti Rārua [S314] providing a supporting submission in part.

315. An original submission was received by Te Ātiawa Trust [S328] expressing the view that the NRMP is outdated and PPC 28 should be put on hold until the proposed Whakamahere Whakatū Nelson Plan is publicly notified. Alternatively, the plan change could look at applying the provisions assembled in the draft Whakamahere Whakatū / Nelson Plan [S328.003]. However, the Applicant provided a letter from Te Ātiawa Trust, updating their original submission, confirming Te Ātiawa support for PPC 28 and acknowledging the comprehensive and responsible approach taken in the design.<sup>82</sup> Importantly, Te Ātiawa Trust clarified aspects of their original submission and identified actions they support, including stormwater management and monitoring, and concluded by stating, *“It is crucial that appropriate planning and management ensures that the development does not result in degradation of the state of the ecology and, preferably, concludes with a significant health gain for the mauri o te Taiao me ngā uri o Ngāti Koata”*.

316. Submission points seeking that PPC 28 be declined identified the following reasons:

- There is a Ngāti Kuia burial ground on Kākā Hill, and Iwi have historical links with the area. There should not be residential development [S292.001, 312.001, S350.001, S367.001].
- When decisions are made iwi to iwi without the membership of both iwi being involved in those decisions then our options are limited. These issues should also go back to hui-a-iwi when it affects those who live in the region. The tuku marriages between some families of both Ngāti Kuia and Ngāti Koata doesn’t extend to making unethical business arrangements at the cost of our historical cultural connection to these lands [S368.001].
- We need to be Kaitiaki of our whenua and our awa. We also need to show manaakitanga of our tamariki. We need to put these things first. PPC 28 does not do that. It does not put the children or the environment first [S425.001].

317. Submission points seeking that PPC 28 be approved included the following:

- The Iwi partnership will give a cultural diversity to a very European, middle age, middle class problem of fearing development [S285.001].

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<sup>82</sup> Letter of 18 March 2022 from Te Ātiawa o Te Waka- a-Māui Trust to Hemi Toia

- Should be supportive to iwi progressing plans for the greater good of their people [S15.001].
- Ngāti Koata Trust support enabling greenfield subdivision in the Kākā Valley. It will provide an opportunity for Koata whānau to live near their ancestral river and will provide better access for them to use and reconnect with their neighbouring whenua (Hira Forest, including Codgers) [S303.002].
- Ngāti Koata Trust supports the inclusion of Objective RE6 (b), Policies RE6.1& RE6.2 and Schedule X.8, and considers that these provisions will provide protection of cultural values [S303.004].
- Due to early consultation with iwi, cultural values are embedded in the plan change request and Ngāti Koata Trust is satisfied that cultural values will be protected and that adequate ongoing consultation will occur to ensure continued protection as development details are finalised and consents are applied for [s303.004].
- The urupā of Te Whiro, a Ngāti Kuia chief, will be protected and CIA reports will be commissioned as the development progresses [s303.004].
- Ngāti Rārua strongly supports proposed provisions providing for tangata whenua involvement in subdivision and development processes applying to the Maitahi/Bayview development area. This recognises the interests of tangata whenua as Treaty partners and supports the protection and enhancement of the kaitiaki role of ngā iwi o Te Taihū [S314.014].
- The loss of lands and opportunities was not adequately addressed in the breach of the Crown in Waitangi Tribunal Settlements, as less than 3% of assets were returned to iwi. This Plan change is going to give in some sense a degree of social justice for Māori [S356.001].
- Development is a partnership with tangata whenua and the development plans respond to kaitiaki responsibility to te taiao [S359.001].
- Tangata Whenua have not been treated equitably in all areas. PPC 28 provides an opportunity to address that and potentially change the path forward for many of our people - either through job opportunities or home ownership [S417.001].
- The submitter supports the inclusion of Objective RE5 (a), (e), (f), Policy RE6.1 and Schedule X.2, X.3 [S417.001].
- As members of Ngāti Koata, PPC 28 would allow us to practice Kaitiakitanga over a small remainder of our traditional tribal lands [S455.001].

318. Submission points seeking amendments to PPC 28 included:

- When the word 'Kākā' is used with the Plan, that the spelling includes tohūtō (macrons), so that the spelling reflects the correct Reo spelling for the name [S303.009].
- When the Plan refers to the 'Maitahi River', that this is amended to read 'Maitahi/Mahitahi River', so that the dialects of all Te Taihū Iwi are represented [S303.009].
- Ngāti Rārua seek separating the two parts of proposed Objective RE6(b), to make it clear that tangata whenua involvement is not restricted to giving effect to Te Mana o te Wai [S314.002].

- Ngāti Rārua supports the intent of Policy - RE6.2 Cultural values, but seeks a number of amendments to wording [S314.004].
- Any recommendations made in the Cultural Impact Assessment required at X.8 should be added as a matter of restricted discretion to align rules X.2 'Comprehensive Housing Development' and X.3 'Subdivision – General' with the intention of Objective RE6 and Policy RE6.2 in respect to the ongoing involvement of tangata whenua in the subdivision and development of this site [S314.006, S314.007].
- Ngāti Rārua supports Rule X.8 'Cultural Values' but seeks that it be strengthened to require that resource consent applicants must demonstrate how any recommendations in the CIA have been incorporated into the application [S314.012].

#### 14.14.4 Evaluation

##### *Consultation and engagement*

319. The PPC 28 request addressed 'Cultural Values' at section 6.5. An Iwi Engagement Summary was also appended to the request<sup>83</sup> identifying Te Tau Ihu o te Waka a Māui iwi who were consulted with about the Project namely: Ngāti Koata, Ngāti Rārua, Te Ātiawa, Ngāti Kuia, Ngāti Tama, Ngāti Apa ki te Rā Tō, Ngāti Toa Rangatira and Rangitane.
320. A Cultural Impact Assessment of the PPC 28 area was not provided and Mr Toia confirmed in response to questions from the Hearing Panel that Whakatū Mana Whenua supported provisions which would allow them to provide further cultural evaluation (should they determine it is required) in the consenting process. Minutes attached to the Iwi Engagement Summary reflect that general consensus.
321. The Applicant facilitated early iwi consultation/engagement with Mr Toia commenting on the positive response from iwi and the Applicant's commitment to keeping iwi involved throughout the design and construction processes. In their original submission Ngāti Koata recognised that as a result of early consultation with iwi, cultural values had been embedded in the plan change request. Ngāti Koata Trust confirmed it is satisfied that cultural values will be protected and that adequate ongoing consultation will occur.
322. The Applicant noted that the actual and potential effects of the proposed rezoning would come about at the time that subdivision and development occur. However, the Applicant has further embedded the role of iwi into the new provisions for the development of this site and that it is through these processes, and with continued partnership with iwi, that the potential adverse effects of this proposal would be appropriately managed. It was also through these provisions that the Applicants sought to provide for and achieve the cultural wellbeing of local iwi in this important location.<sup>84</sup> We agree and support this.

##### *Relationship of Ngāti Koata and their aspirations for the Site*

323. The special association of Ngāti Koata with the area is acknowledged through various Statutory Acknowledgments and Deeds of Recognition with a Statutory Acknowledgment of particular relevance in relation to the Maitahi/Mahitahi River and its tributaries in recognition of the awa being an important source of food, water and connectivity to other important waterways.
324. The interests and aspirations of Ngāti Koata in seeking to provide housing for tangata whenua within the Kākā Valley, are directly relevant to the Kākā Valley component of PPC 28. It is also

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<sup>83</sup> Attachment C1, PPC 28 request

<sup>84</sup> Section 6.5 of the PPC 28 request

consistent with the NPS–UD (policy 1). As noted by Mr Maassen, Ngāti Koata provided evidence in its private capacity as an Applicant through Mr Toia and separately through its iwi representatives as a submitter and supporter of the application. The separate submitter role underscored Ngāti Koata’s status as tangata whenua, thus always having distinct obligations inherited from ancestors.<sup>85</sup>

325. In their evidence, Mr Hippolite<sup>86</sup> and Mr Toia<sup>87</sup> emphasised Ngāti Koata’s mana whenua status regarding the site, noting that Ngāti Koata, who takes its name from the ancestress Koata born c. 1617, had maintained customary and mana whenua interests in the Top of the South Island, a region often referred to as Te Taihū.
326. Mr Hippolite explained the history of Ngāti Koata migration and dispossession both in their North Island base at Kawhia harbour and later in Te Tau Ihu post-European settlement. He referred the Hearing Panel to the Deed of Settlement signed with the Crown on 21 December 2012 and set out in his evidence the Crown apology:<sup>88</sup>

*The Crown regrets and apologises for its failure to properly respect the rangatiratanga of Ngāti Kōata. Crown actions, moreover, left Ngāti Kōata virtually landless in Te Tau Ihu and alienated them from many of their most sacred sites. For this too the Crown apologises. Their disconnection from their lands, marginalised Ngāti Kōata in the economic development of Te Tau Ihu, and had devastating consequences for the social, cultural, and spiritual wellbeing of Ngāti Kōata. Those consequences continue to be felt today.*

327. Mr Maassen submitted that Mr Hippolite’s korero on the dispossession of Whakatū iwi since European settlement relied on the oral transmission of iwi stories and that these matters are also fully addressed in historical records. Mr Maassen referred the Hearing Panel to the Supreme Court’s judgment in *Proprietors of Wakatū v. Attorney-General*<sup>89</sup> and submitted this leading case as a helpful legal resource to understand the history of native land dispossession in Whakatū and the Crown’s failure to meet its fiduciary duties owed to Whakatū iwi as trustees of certain land.
328. Mr Maassen further submitted that that decision provides an instructive assessment by New Zealand’s highest court of the grievous breaches by the Crown in preserving Māori tenths reserves.<sup>90</sup> We consider Ngāti Koata’s history of landlessness, dispossession and marginalisation provides an important historical context which must be taken into account when considering their aspirations for the site and PPC 28.
329. Mr Hippolite noted that Ngāti Koata Trust’s Taiao strategic intent is to maintain, strengthen and develop their kaitiakitanga and relationship with their environment. He went on to say that due to the significant past alienation of Ngāti Koata whānau from their ancestral land and areas of significance (which the Crown has acknowledged), Ngāti Koata wish to pursue opportunities that will improve the wellbeing of its whānau by creating pathways to affordable home ownership in areas where they have significant connection.<sup>91</sup>

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<sup>85</sup> Paragraph 12, Mr Maassen’s Reply Submissions

<sup>86</sup> Statement of Evidence of Mr Hippolite on behalf of Ngāti Koata Trust

<sup>87</sup> Section 2.0, Statement of Evidence of Mr Toia

<sup>88</sup> Statement of Evidence of Mr Hippolite on behalf of Ngāti Koata Trust

<sup>89</sup> *Proprietors of Wakatū v. Attorney-General* [2017] NZSC 17

<sup>90</sup> Paragraphs 14-16, Mr Maassen’s Reply Submissions

<sup>91</sup> Statement of Evidence of Mr Hippolite on behalf of Ngāti Koata Trust

330. Ms Melanie McGregor, Chairperson of Ngāti Koata, emphasised the importance of the Kākā Valley housing development as part of Ngāti Koata's strategic vision to support their iwi members and others into safe, warm and affordable housing. She stated: *"These are our responsibilities as a Trust. This development provides us with possibilities only dreamt of by few of our iwi and out of reach for others."*<sup>92</sup>

331. Mr Hippolite referenced the benefits of the site and the ability for Ngāti Koata to exercise their kaitiaki and manaakitanga obligations through direct engagement and participation and with close proximity to Ngāti Koata whānau, enabling regular access and connectivity. He noted the enhancement of personal wellbeing through engagement in the restoration actions, restored biodiversity and native planting. In concluding he stated:

*Our lost taonga (treasures) have been enjoyed by all and have greatly benefited the development of Nelson City and its residents. We ask that the community recognise these significant contributions and the impact that has had on the wellbeing of our whanau. Our people need to be able to thrive alongside those that currently enjoy these benefits. They need to be able to re-establish their connections to place and purpose and they need warm and safe homes to nurture their whanau, so they teach the next generations about their responsibilities.*

#### *Ngāti Koata response to community expectations*

332. In his evidence Mr Toia explained the numerous ways in which Ngāti Koata have already sacrificed much for the wider 'community good' including:

- access to significant parcels of Ngāti Koata owned whenua in the Maitai Valley is already extensively used by the wider community for many recreational purposes, including walking, running and biking;
- access to Ngāti Koata owned land for important telecommunications infrastructure for the benefit of the wider community has been made available;
- under the inauspicious threat of applying the Public Works Act 1981 to acquire land that was part of the very recent Treaty Settlement negotiations, land was exchanged with the City of Nelson for a water treatment plant for the benefit of the wider community of Nelson; and
- it is also anticipated that the wider community will have and enjoy access to the environmental and recreational value of Kākā Hill when this development and Kākā Hill restoration are completed.

333. In the context of the Crown's apology to Ngāti Koata, Mr Toia provided his response to two themes he considered had emerged through the hearing:

- The Maitai Valley as a Recreational Treasure.
- Housing via New Development or Intensification.

334. Ngāti Koata agreed the Maitai Valley is a treasure and Mr Toia pointed out that the community amenities owned by NCC would continue to be available:<sup>93</sup>

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<sup>92</sup> Paragraph 5.2, Statement of Evidence of Ms Melanie McGregor on behalf of Ngāti Koata Trust

<sup>93</sup> Mr Toia's Closing Statement

*What submitters conveniently forget or ignore is that the rest of the Maitai Valley, hundreds of hectares of land used for recreational purposes by walkers, runners and bikers – think Codgers/Maitai, Fringed Hill, Maitai Face, Sharlands – is land that is all owned by Ngāti Koata, land that Ngāti Koata currently allow public use and enjoyment of. Community Expectation fulfilled by Ngāti Koata generosity.*

*Kākā Valley however, is privately owned land and is not accessible for recreational purposes – this Private Plan Change could change that. I have heard submitters proclaim a distorted view that the Maitai Valley and Kākā Valley is “my park.” Let me clarify the truth, just like your piece of land, your beautiful green backyard is not “my park”, Kākā Valley is not “your park”. Access to and use of what is correctly claimed as “your park” – land owned by NCC, will not change. Your children and your children’s children will continue to enjoy these treasured natural recreational facilities as will my children and my children’s children.*

*Ngāti Koata, as iwi, as tangata whenua, have an obligation and an inherited responsibility, inherited responsibility, to do the right and best thing by the environment we live in and are connected too.*

*I acknowledge that having a beautiful green area to recreate, to enjoy quiet and peaceful relaxation is good for one’s health and wellbeing, but I am of a stronger opinion that having a home to live in and an area to recreate and relax in is even more important for one’s health and wellbeing. Current and future children of Nelson need warm, healthy homes to live in, like, no doubt, most of those who have opposed PPC 28 already do.*

335. We heard from Ms Kimiora McGregor concerning the housing needs of young Māori families in Whakatū based on her experience of the housing market and in particular the competitiveness and bias that exists in the Nelson rental market. She emphasised:<sup>94</sup>

*The opportunity for my children and I to have a warm, dry, stable and secure home that we own, on ancestral land, in a community environment, would be an investment in our present and future, and would do the same for others like us.*

336. In terms of the second theme, Mr Toia pointed out Ngāti Koata’s view that both types of development are needed as part of normal growth and housing provision with both having their own unique challenges and opportunities. He reiterated that access to land is the key for Ngāti Koata’s housing strategy:<sup>95</sup>

*...remember the Crown apology: its failure to ensure Ngāti Koata retained sufficient land for their future needs – that future is now. Yes intensification is an option for increasing housing supply, but is not a solution for Ngāti Koata housing needs. This Private Plan Change creates an opportunity for Ngāti Koata who have the desire, the financial resources and partner expertise to deliver an outstanding housing development for Ngāti Koata and the community of Nelson. Ngāti Koata whanau, like Kimiora<sup>96</sup>, also dream of the ‘privilege’ of owning their own home.*

337. In concluding, Mr Toia reiterated, in part, the vision Ngāti Koata and their Partners have for the Kākā Valley:<sup>97</sup>

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<sup>94</sup> Statement of Evidence of Ms Kimiora McGregor on behalf of Ngāti Koata

<sup>95</sup> Mr Toia’s Closing Statement

<sup>96</sup> ‘Kimiora’ referring to Ms Kimiora McGregor, Statement of Evidence on behalf of Ngāti Koata

<sup>97</sup> Mr Toia’s Closing Statement

- a vibrant community that connects with and enhances its natural environment and setting;
- a vibrant community that connects with each other, people connecting with people;
- a place families will call home;
- a place where families will be able to buy their first home, their next home, their last home; and
- a place where people will connect with tangata whenua – socially, culturally and environmentally.

#### *Kākā Hill*

338. Both Mr Toia and Mr Hippolite spoke to the significance of Kākā Hill acknowledging its importance for the link between Ngāti Koata and Ngāti Kuia in relation to a *tuku* (ceding/gift of whenua) accepted by Te Putu of Ngāti Koata from paramount rangatira Tūtepourangi of Ngāti Kuia, Rangitāne, and Ngāti Apa.<sup>98</sup> We were advised the ancestor Te Whiro, a descendant of Ngāti Kuia, Rangitāne ki Wairau and Ngāti Apa ki te Rā Tō, is buried on what is known as “Kākā Hill” today. Te Whiro was a prominent Rangatira and a chief at Whakatū during his time and Mr Toia noted that it cannot be said with absolute accuracy whether Te Whiro is the only Rangatira buried there. Mr Toia stated:<sup>99</sup>

*The proposed gifting of Kākā Hill to Ngāti Koata by the PPC 28 Maitahi applicants is a positive outcome for this project and provides our people and especially Ngāti Kuia with more opportunity to undertake Kaitiakitanga specifically, in regards to Ngāti Kuia Wāhi Tapu and Urupa. Ngāti Koata have already commenced the process of engagement with Ngāti Kuia on this very important kaupapa and Ngāti Kuia are appreciative of this opportunity as both iwi seek to further enhance our peaceful relationship envisioned by the original *tuku*. Ngāti Koata acknowledge and thank our Maitahi partners for this generous and healing gift.*

#### *Non-Complying Activity for buildings Kākā Hill*

339. PPC 28, as notified, proposed a prohibited activity class to preserve the significant ecological (terrestrial) values (SNA) identified on Kākā Hill by NCC as a part of the draft Nelson Plan. It also provided a high level of protection for the landscape values (backdrop and skyline area) and also a significant cultural resource to Ngāti Kuia. However, Ngāti Koata considered that the prohibited activity class unduly restricts opportunities for structures on the lower slopes to enable cultural practices and ecological restoration facilities.
340. Several submissions from tangata whenua identified the significance of Kākā Hill. Ngāti Kuia through Te Rūnanga o Ngāti Kuia Trust identify Kākā Hill as significant for Ngāti Kuia Tupuna Te Whiro. Ngāti Kuia supported the protection of Kākā Hill proposed by PPC 28. However, they stated in their submission “*Potential for cultural values to be recognised at the subdivision stage; however, we are [at] wanting to have the opportunity to erect appropriate [you] and/or memorial for the tupuna, which may be at odds with the rules for a Conservation Zone<sup>100</sup>. We wish to have the ability to appropriately acknowledge the significance of tupuna here*”.

<sup>98</sup> Section 3, Statement of Evidence of Mr Toia

<sup>99</sup> Section 3.2, *ibid*

<sup>100</sup> We understand the reference to the Conservation Zone concerns Kākā Hill.

341. We accept making provision for structures, as a non-complying activity (as opposed to a prohibited activity) is a reasonable consequence of Ngāti Kuia's submission. Ms Sweetman and Mr Lile supported this outcome. We also support it.

*Other issues raised*

342. We accept the evidence of Mr Toia that this housing development and restoration of the biodiversity in the Kākā Valley would restore and strengthen ancestral ties to the awa and whenua, contribute to the kaitiakitanga of these taonga, enable more access to the taiao and its mātauranga, and therefore strengthen the cultural base and identity for Ngāti Koata whānau as well as the health of the whenua and awa.<sup>101</sup>
343. We consider that the relationship of Ngāti Koata in particular with their ancestral lands and waters is one that the Act requires protection of as a matter of national importance. It is a relationship that must be recognised and provided for while also taking into account the principles of te Tiriti o Waitangi and the importance of self-determination, active protection and equity.
344. We acknowledge the Applicant's intention that cultural values are embedded in the plan change request and, particularly in response to questions asked of both Mr Toia and Mr Lile at the hearing, we have made amendments to provisions to properly provide for the protection of cultural values in a way that does not diminish those values, their integrity or denote reliance on the part of a Council Officer to interpret them.
345. We agree with Ms Sweetman's evaluation that Te Tau Ihu Statutory Acknowledgements, the operative NRMP and proposed PPC 28 provisions (once amended) will ensure that tangata whenua interests will be appropriately considered in the subdivision and development stages, and iwi will have the opportunity for ongoing involvement through the resource consent process.
346. In regard to the urupā on Kākā Hill, Ms Sweetman concluded and we accept, that it is listed in NRMP Appendix 3 'Archaeological Sites' (MS57) and has statutory protection under the Heritage NZ Pouhere Taonga Act 2014. She also noted that Ngāti Kuia, whose tupuna is buried in the urupā, support the plan change and are working with the Applicant to ensure the site is accurately identified and appropriately protected (discussed further in the Historic Heritage section).

*Overall Finding*

347. We find that recommending the approval of PPC 28 would recognise and provide for Ngāti Koata's relationship with their "*culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*" as mandated by s6 (e) of the RMA. It would also give effect to those provisions in the national and regional policy documents that we have identified earlier in this report.

**14.14.5 Recommendation**

348. We recommend that the submissions that seek that PPC 28 be approved or amended in respect of Māori cultural values, as set out in "Matters Raised" above, be **accepted**.
349. We recommend that the submissions that seek that PPC 28 be declined in respect of Māori cultural values, as set out in "Matters Raised" above, be **rejected**.

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<sup>101</sup> Section 6, *ibid*

## **14.15 Landscape, visual amenity and natural character**

### **14.15.1 Introduction**

350. The evidence presented at the hearing responded to the issues and concerns identified in the s42A Report, the application itself and the submissions made on PPC 28. As well as a Joint Witness Statement<sup>102</sup>, we received extensive and considered landscape, visual amenity and natural character assessment and evidence from Mr Milne on behalf of the Applicant, Ms Steven on behalf of STM and Mr Girvan on behalf of Council.
351. In his evidence in reply Mr Milne provided<sup>103</sup> updated cross sections (specifically cross sections FF and GG). Mr Milne noted that following further discussion with Mr Girvan, these indicative cross sections had been updated to contain additional information showing indicative future land levels on the true left bank of the proposed realigned Kākā Stream. He also included an updated Structure Plan, updated overlay and zone plans, and maps and noted that these had been updated to reflect the following matters:
- a) Location of suburban commercial zone;
  - b) Alignment of indicative secondary road within Kākā Valley; and
  - c) An indicative Master Plan was provided, as referenced in Mr Milne's EIC, and contained as an attachment to Mr Nicholson's rebuttal urban design evidence.
352. In addition to the JWS, Mr Girvan provided a separate s42A report<sup>104</sup> which expanded on the matters both addressed and not addressed in the JWS, particularly in response to submissions. It included recommendations in respect of the Backdrop and Skyline Areas, natural character, the landscape character of the Maitahi/Mahitahi River, colour controls, night-time lighting and the provision of visualisations.<sup>105</sup>
353. Ms Sweetman agreed with Mr Girvan's recommendations and reasons and considered that these were matters the Applicant needed to address in providing the revised structure plan, planning maps and Schedule X. She noted that she had reflected some of these points in her review of the PPC 28 provisions (2 and 4) and considered no changes were required in respect to X.4 and X.5 in respect of colour controls.
354. At that time, given the extent of Mr Girvan's recommendations and the outstanding matters identified in the JWS, Ms Sweetman was not in a position to make any recommendations in respect of landscape, visual amenity and natural character, beyond:
- Amending X.5 to include the 20% planting provisions in X.4;
  - Amending X.5 to specify viewing locations from the town centre and State Highway 6; and
  - Amending X.6 so that the activity status is non-complying rather than prohibited. She noted she had also recommended some structural changes in this regard.

### **14.15.2 Statutory and policy provisions**

355. RMA section 6(a) requires "the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the

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<sup>102</sup> Expert Conferencing Joint Witness Statement – Landscape, 11 May 2022

<sup>103</sup> Appendix A, Applicant Reply Evidence, Mr Milne (Landscape), 29 July 2022

<sup>104</sup> Appendix P to the s 42A Report

<sup>105</sup> Paragraph 61, Mr Girvan, Appendix P to the s42A Report

protection of them from inappropriate subdivision, use, and development” to be recognised and provided for as a matter of national importance.

356. RMA section 6(c) requires “the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development” to be recognised and provided for as a matter of national importance.
357. RMA section 7(c) and (f) require that particular regard be had to the maintenance and enhancement of amenity values and the quality of the environment.
358. The following landscape and visual amenity provisions are contained in the NRPS:
- NA1 Amenity and conservation values (pp.57-61)
    - Objective NA1.2.1 Amenity and conservation Values
    - Policies NA1.3.1 - NA1.3.6
  - NA2 Landscape values and natural features (pp.61-65)
    - Objective NA2.2.1
    - Policies NA2.3.1-NA2.3.9
  - DA2 Noise (pp.116-118)
    - Objective DA2.2.1
    - Policy DA2.3.1
359. Chapter 7 Natural and Amenity Values of the NRPS is of particular relevance to PPC 28. There are six topics covered by this Chapter:
- NA1: amenity and conservation values
  - NA2: landscape values and natural features
  - NA3: significant indigenous vegetation and habitats of indigenous fauna
  - NA4: management of pests
  - NA5: riparian and coastal margins
  - NA6: beds of rivers and lakes
360. In relation to these matters, an assessment of the site was undertaken by the Applicant as a part of the structure planning process. This included existing identified values and new information from the assessments undertaken. While we address these later in this report, we find that NA2: landscape values and natural features is particularly significant given the acknowledged landscape context and values of the site – i.e. as a skyline and backdrop to the urban area of Nelson.
361. The particularly relevant RPS provisions include:

**NA2.2objective**

NA2.2.1 A landscape which preserves and enhances the character of the natural setting and in which significant natural features are protected

**NA2.3 policies**

- NA2.3.1 To preserve the natural landscape character and vegetation cover of the backdrop to Nelson City
- NA2.3.2 To avoid development which detracts from the amenity afforded by dominant ridgelines
- NA2.3.3 To avoid development which detracts from the landscape and amenity values afforded by viewshafts within the urban area and by gateways between urban and rural areas and between different landscape units.

362. The NRMP has the following relevant provisions:

- DO9 Landscape (chapter 5, pp.36-38)
  - Objective DO9.1
  - Policy DO9.1.1 Significant features
  - Policy DO9.1.2 Development
  - Policy DO9.1.3 Primary road routes
  - Policy DO9.1.4 Visual amenities
- Residential (chapter 7, pp.9-11)
  - Objective RE3 Streetscape, landscape, and natural features
  - Policy RE3.1 Landscape values
  - Policy RE3.2 View shafts and gateways
  - Policy RE3.3 Vegetation
  - Policy RE3.4 Indigenous vegetation
  - Policy RE3.5 Streetscape

#### **14.15.3 Matters raised**

363. Submission points seeking that PPC 28 be declined included the following reasons:

- The Maitai Valley's rural character and amenity should be protected and preserved for the benefit of current and future generations. Suburban sprawl will change the nature of this valley forever. The proposed urban development would result in loss of open space in the city's greenbelt, and conflict with recreational values. Undeveloped green spaces like the Maitai Valley are essential for people's health and wellbeing [standard reason #1, S47.001, S73.001, S106.001, S109.001, S156.001, S156.003, S173.001, S178.001, S188.001, S195.001, S198.001, S208.002, S209.001, S211.001, S231.001, S297.001, S319.005, S323.002, S343.001, S491.001].
- Artificially raising the flood plain and any modification of the river bank would ruin the visual amenity and natural character of the river, damage habitat, put pressure on the capacity of the river and probably exacerbate the risk of flooding downstream [S358.001, S360.001].
- PPC 28 underplays the landscape values of the subject site / does not give a realistic idea of the visual effect and scale of the proposed development and the infrastructure required to develop it [S164.001, S292.001, S358.001, S360.001, S367.001].

- PPC 28 will detract from/destroy an irreplaceable and much-loved landscape [S116.001, S164.001, S171.001, S192.001, S211.001, S232.001, S319.001, S331.001, S363.001, S401.001, S458.001].
- The Maitai Valley and Kākā Valley / Kākā Stream are a significant landscape that should be protected [S73.001, S108.001, S115.001, S116.001, S358.001, S360.001, S395.001].
- The rural character of the broader Maitai valley would be spoiled by building in the Kākā Valley [S127.001, S294.001].
- A smaller scale development in the lower levels of Kākā Valley would not have so great an impact [S298.002].
- It will generate light pollution, be negative on a Dark Sky environment [S116.001, S156.001, S156.007, S158.001, S211.001, S218.001, S229.003, S231.001, S293.001, S319.001, S358.001, S360.001, S404.001].
- It would adversely impact on views from the Centre of New Zealand, CBD and the Maitai Valley [S108.001, S118.001, S156.001, S156.003, S213.001, S281.001, S344.001, S358.001, S360.001, S367.001, S367.011, S401.001, S454.001].
- The landscape evaluation background paper does not give a realistic idea of the visual effect and scale of development and required infrastructure [S164.001].
- Clarity is required about landscape values [S292.001, S312.001, S350.001, S367.001].
- The development's cumulative adverse effects will negatively impact on the area's peaceful and easily accessible open space, landscape, recreational and amenity values [S292.001, S312.001, S350.001, S367.001, S367.009, S367.024].
- The proposal does not comply with the RMA, as it does not protect the Maitahi/Mahitahi River which is an outstanding natural feature and landscape s6(b), or sustain the potential of resources to meet the reasonably foreseeable needs of future generations (s5(2)(i) - use of the Maitai for recreation, its amenity) [S307.001, S308.001].
- Nelson Regional Policy Statement NA1 The objective relating to amenity in NA1 is specific and directive, amenity is to be preserved or enhanced.
- PPC 28 will not give effect to NRPS NA1 'Amenity', as the visual, noise, air quality and traffic effects will not preserve or enhance the amenity of the Valley [S292.001, S312.001, S318.001, S350.001, S367.001].
- PPC 28 will not give effect to NRPS NA2 'Landscape Values and Natural Features', as the general rural landscape values, landscape values of the wider area and the backdrop and skyline areas are not protected [S292.001, S312.001, S350.001, S367.001].
- PPC 28 will not implement the objectives and is not consistent with the policies of the NRMP, in particular (but not limited to) landscape objectives and policies and protection of a green belt between the Maitai Valley and Nelson's urban area (Policy DO15.1.3, DO17.1.3, DO18.4.1, and DO19.1.6ii) [S292.001, S312.001, S350.001, S367.001].
- The 2015 Council River Users Survey and its findings. Kākā Valley's current zoning enables development that would retain its rural and open space character [S367.009].
- The proposed development would be at odds with the local pattern and landform which would result in a reduction in landscape and visual amenity values [S367.001, S367.011].

### ***Ridgelines***

- The development requires significant modification of landforms over decades, and ridge-top buildings will have an adverse visual impact on the city's skyline [standard reason #9].
- The ridges are an integral part of the Nelson city skyline and the city's general landscape setting. Ridge-top buildings would have an adverse visual impact on the city's skyline [S16.003, S164.001, S171.001, S358.001, S360.001, S367.001, S367.011, S716.001].
- A range of landscape effects anticipated to result from the development are listed (high sensitivity to subdivision within community, would result in permanent changes to the landscape, current landscape is highly vulnerable to the type of change proposed, total loss of rural character would result) [S367.001, S367.011].
- A range of visual amenity effects anticipated to result from the development are listed (on popular recreation destinations, visibility of PPC area from both below and above, a high degree of contrast with existing landscape elements) [S367.001, S367.011].
- Disproportionate weight has been given to landscape values of Malvern Hills/Botanical Hills compared to the recreational, landscape and natural values and uses of the Maitai Valley. Many more houses could be accommodated on the Malvern Hills, with minimal additional impact from the baseline proposed in the PC and with far less impact than high density housing in the Kākā Valley and Maitai [S51.005].
- The Bayview / Malvern Hills ridgeline will be damaged by building houses [S127.001, S251.001].
- The ridgeline homes will benefit a very small handful of wealthy buyers at the cost of loss of amenity for others [S344.001].

364. Submission points seeking that PPC 28 be approved included the following reasons:

- There will be preserved and enhanced amenity values, through the setbacks, planting and reserve requirements [S256.001].
- The Kākā flat land cannot be seen from Maitai Road or cricket ground, and there will be no or limited visual impact.
- There is already housing development in Raphine Way that is at odds with the rural character suggested by some opponents, and with sympathetic riparian planting - a buffer could be created between any residential development and the Maitai Valley to maintain the natural character of the valley.
- Support the Malvern Hills assessment as being able to accommodate residential development at a range of densities, including the 800m2 'lower density area' [S107.003].
- The mapping in the B1.2 Landscape overlays is supported. In particular the identification of the SNA area, wetlands and mature indigenous tree and the river corridor and their related open space zoning as reserving these areas from development to protect ecological functioning, values and public access [S310.003].
- The rule prohibiting buildings on the Kākā Hill Skyline, Backdrop and SNA areas are supported particularly as this somewhat limits the further removal of indigenous vegetation in this part of the site and provides some protection for the identified SNA [S310.007].

- Ngāti Koata Trust supports the inclusion of Objective RE6 (h), Policy RE6.1 and Schedule X.4 to X.6. These provisions will enhance and protect landscape values associated with Kākā Hill, by protecting the Significant Natural Areas, retaining rural zoning and planting specific native tree species [S303.006].
- Kākā Hill can be seen from Nelson City and forms part of the green backdrop to the city as well as the Maitahi/Mahitahi Valley. It is important to Ngāti Koata Trust that landscape values associated with Kākā Hill are protected. Under the above provisions, [S303.006].
- Ngāti Rārua supports the protection of natural landscape values through the measures contained in this policy (X.4 Backdrop Area) [S314.008].
- Ngāti Rārua supports the protection of natural landscape values through the measures contained in this policy (S.5 Skyline Area) [S314.009].
- Ngāti Rārua supports the prohibition of buildings within the Kākā Hill backdrop and skyline area and the Significant Natural Area to protect the values of these areas (X.6 Prohibited Activities) [S314.010].
- Ngāti Rārua strongly supports proposed provisions which seek to protect, enhance or restore natural landscapes [S314.018].
- Rather than taking the purest planning dogma about the desirability of complete skyline and backdrop protection, this submission advances the more practical approach, supporting residential development in cluster areas, including use of skyline areas that are otherwise suitable for residential subdivision. This is valuable land, which will be needed for residential housing [S422.001].
- The submitter supports the inclusion of objective RE6(a), (e), (f) - housing needs, freshwater, cultural values, landscape, transport and biodiversity [S450.001].

365. Submission points seeking amendments to PPC 28 include:

- If PPC 28 is to be approved, apply residential zoning only to the Bayview land on the northern side of the Bayview ridgeline sloping towards Atawhai, to protect the amenity character, catchment water values, landscape and recreational values of the Kākā/Maitai Valley [S153.007, S292.007, S294.001, S312.007, S319.005, S350.007, S367.010].
- Allow rezoning and residential development on the north west side of the ridgeline facing Atawhai and Tasman Bay. Do not rezone land in the Kākā/Maitai Valleys [S294.001].
- Private plan change 28 should be declined where it relates to all the land area within Kākā Valley Stream watershed [S318.001].
- If PPC 28 is to be approved, then only permit the Northerly facing land on the Atawhai side of the ridgeline to be rezoned from rural to residential. Permit rezoning of the less fertile sloping rural land (above the floodplain terraces) on the Kākā/Maitai Valley side of the ridgeline to be rezoned rural - high density small holdings. Suggest: Minimum lot size - 1 hectare, Maximum no. of lots – 50 [S319.005].
- If PPC 28 is to be approved, avoid all adverse effects on existing rural character and amenity values in the Maitai Valley [S367.009].
- If PPC 28 is to be approved, the following changes are requested:
  - Enlarge minimum lot size to 1 ha average with a minimum of 5000 m<sup>2</sup> as per 'Controlled' activity in the Rural - Higher Density Small Holdings Zone [S367.024].

- Require covenant against further urban intensification in Kākā Valley / PPC 28 area [S292.019, S312.019, S319.006, S350.019, S367.024].
- Include a provision in the plan change specifying that no further urbanisation within the Maitai catchment is anticipated [S367.024].
- Amendments sought:
  - The Kākā Valley land shown on B1.1 as Residential high density be changed to Residential low density [S298.002].
  - The Kākā valley land shown on B1.1 as Residential standard and Residential Low Density, be changed to Residential low density backdrop or Small Holding Higher Density [S298.002].
- Some 15% or more of the subject site is proposed as Open Space. However, there are no rules in Schedule X pertaining to the Open Space/Recreation Zone to protect from any built form incursion. Change PPC 28 by inserting a reference to Schedule X in the Open Space/Recreation Zone, and specify buildings as a Prohibited Activity within the Open Space/Recreation Zone (X.6) [S107.002].
- Opposes this plan change overall. If it is granted, that the following amendments are made to mitigate adverse effects on amenity values: i) increase in open space zone; ii) reduction in area of High density residential zone and standard density residential zone and / or increase in minimum lot size within both zones [S156.003].
- Private Plan Change 28 is rejected unless:
  - The developers are required to take the necessary steps to protect and preserve the water quality, river ecology, and amenity value of the Maitahi/Mahitahi River and Maitai Valley [S179.001, S198.002, S209.001, S323.003].
  - The Nelson City Council is required to publicly commit to resource the monitoring and mitigation of all adverse impacts on the water quality, river ecology, the amenity value of the Maitahi/Mahitahi River and Maitai Valley, including the impact of traffic [S179.001, S198.003, S209.002, S323.012].
  - All necessary measures are detailed and published in a plan to protect water quality, river ecology and amenity value of swimming holes adjacent to and downstream from the subdivision. Stormwater and sewage being routed past Dennes Hole should not affect the amenity value of this area, including visual amenity [S198.008, S209.001, S323.008].
- PPC 28 be rejected unless there are measures to ensure the river (particularly the swimming holes) and the amenity value of the Maitai Valley is adequately monitored and protected [S49.001, S279.001].
- Preserve neighbourhoods adjacent to the development – ensuring social cohesion and positive outlook of those neighbourhoods [S229.007].
- Amend clause (b) X.6 'Prohibited Activities' to prohibit earthworks and vegetation clearance within the Significant Natural Area, and amend the explanation to make it clear that these rules are to protect both landscape values and provide protection for significant indigenous [S310.007].

***Light spill and reflectivity***

- The location of the sub-collector road along the ridgeline needs to be contoured to avoid light spill and any other adverse visual effects (e.g. signage) along the skyline [S107.006].
- Opposes the plan change overall, but if it is to be granted, the following amendments are made to mitigate adverse effects on amenity values: i) low or no light spill from street lighting [S156.007].
- Shrouded, low-lumen street lights and residence external lighting would be required for the entire development on the Maitai side, and on the ridgelines visible from the sea side [S229.003].
- That NCC supports PPC 28 SUBJECT to amendments of the PPCR and ancillary actions by NCC to ensure that the future subdivision in the Kākā Valley has 'dark sky' lighting requirements [S290.002].
- Opposes the plan change overall, but if it is to be granted, the following amendments are made to mitigate adverse effects on amenity values: i) low reflectivity required for all housing development in all zones to create an overall recessive feel so that the urbanisation of a rural landscape is not so much 'in your face' [S156.008].

#### ***Proposed residential density***

- Reject the Bayview Portion of the Plan Change. If the entire Plan Change is not rejected, then amend the Bayview portion to remove the Residential Lower Density Zone and replace it with Residential Standard Zoning (removing the 1500m<sup>2</sup> and 800m<sup>2</sup> minimum lot sizes from the relevant rules) [S51.005].
- Do not allow the Maitai Valley-facing area to be rezoned into:
  - Residential (Higher, Standard and Lower Density Areas);
  - Suburban Commercial [S109.001].

#### ***Development on the ridgelines***

- No development to be permitted on the Botanical and Malvern Hills ridgelines [S16.003].
- Approve PPC 28 as long as there are sufficient protections for the main ridgeline to prevent/hide buildings on it [S48.001].
- Require a more stringent control in Schedule X to ensure that buildings do not project above the ridgeline when viewed from Nelson City Centre and State Highway 6, as follows:
  - X.8 c) *The final height of any dwelling when viewed from Nelson City Centre and State Highway 6, shall sit below the primary ridgeline, as illustrated on the Maitahi Bayview Structure Plan (Sheet B1.2) [S107.003]; or*
  - *Any building which does not comply with Controlled Activity conditions a)-b) of this Rule shall be a Restricted Discretionary Activity; or [S107.003]*
  - *Any building which does not comply with Controlled Activity conditions c)-d) shall be a Non-Complying Activity [S107.003].*
- If PPC 28 is to be approved, the following changes are requested: i) no building on ridgeline/skyline, no protrusions into the skyline visible from any part of the valley recreation areas; and ii) no housing to be visible from the Centre of New Zealand lookout or walking tracks on hills [S367.011].

#### 14.15.4 Outcome of expert conferencing

366. The expert conferencing which occurred on 11 May 2022 considered the majority of the issues raised by submitters. 3.1 of the JWS Landscape notes the applicant's intent to update the Structure Plan, zoning maps and Schedule X.

367. There were limited areas of agreement recorded in the JWS. Areas that were agreed were:

- That the descriptions of the backdrop areas in the NRMP are the starting point, were refined through the Boffa Miskell 2016 evaluation and have been adopted in the PPC 28 application (3.3)
- The extent of the skyline area as mapped on PPC 28 (3.3)
- The Maitahi/Mahitahi River and its margins are a significant feature/landscape. (3.3)
- There are no outstanding natural features/landscapes within the PPC 28 area or surrounding areas (3.3)
- There are wetlands, rivers and their margins, which are subject to section 6(a) of the RMA (3.3)
- The landscape units as shown on the plan at Attachment B1.2 to the PPC 28 application request, subject to the inclusion of the line showing the separation of the Kākā Valley and the Maitai Valley (3.4)
- There is potential to enhance the natural character of riparian corridors, but further information is to be provided by the applicant (3.5)
- Support of X.7 and X.9, while noting Mr Girvan and Ms Steven sought additions (3.5)
- That the Skyline Area within the Botanical Hill landscape unit requires further consideration (3.6)
- That the workability of the skyline area provisions requires review (3.6)
- That the planners provide clarification whether the potential for structures being visible within the Backdrop and Skyline Area within the Botanical Hill Open Space Recreation Zone is a risk and can be controlled through PPC 28 (3.7)
- That they are concerned about the potential for adverse effects in the Skyline Area and Backdrop arising from road lighting and signage (3.8). Mr Lile was to provide advice on this matter.

368. Section 3.9 identifies further matters to be considered once the applicant has provided further information.

369. Areas of disagreement, concern or commitment to undertake further work covered:

- The delineation of the coastal environment and whether the NRMP could be relied upon, or the boundary adopted by Mr Milne and Mr Girvan for assessment of PPC 28
- The extent of the backdrop area on the eastern face of the Malvern Hills
- Whether the Kākā Valley is a significant landscape
- Identifying an additional ridgeline in respect of the Skyline Area above Walters Bluff within the Botanical Hill Overlay
- The adequacy of the principles in X.9

- The skyline area provisions and the appropriateness of a residential zoning applying.
370. Whether an assessment of effects on the rezoning of noise was considered in section 3.9 of the JWS Planning (3). There was no overall agreement reached between the planners.
371. The JWS Planning (3) also addressed the proposed use of a prohibited activity status apply to any buildings within the Backdrop area and Skyline area on Kākā Hill. Section 3.29 records that Mr Lile and Ms Sweetman agree that the prohibited activity rule is not justified through the s32 evaluation accompanying PPC 28, and that non-complying activity status is more appropriate.

#### 14.15.5 Evaluation

372. Mr Milne presented evidence that PPC 28, the proposed Structure Plan, Zoning Plans and Overlay Plans, along with the indicative Master Plan from a landscape perspective responded appropriately to the application site's attributes, sensitivity, and the surrounding environment. He noted that the landscape values of Kākā Valley, Kākā Hill, Botanical Hill, and Malvern Hills are varied, that the PPC 28 site and its setting is characterised by a working rural environment adjacent to the edge of the city, is considerably modified in places and does not contain any outstanding or significant landscape features. He acknowledged that the PPC 28 site nevertheless does possess a moderate to very high level of amenity due to its landform, inherent greenery, open space, existing vegetation, and the backdrop it forms to Nelson City.<sup>106</sup>
373. Mr Milne concluded that overall, even though PPC 28 would result in an increase in built form, the majority of the future development will appear logical in the context of Nelson City and would not unacceptably adversely affect the visual amenity experienced from the surrounding public places. Residential development on the mid and upper slopes of the Malvern Hills, would result in a reduction in open space and the green backdrop it currently affords. However, much of this future residential development would not visually appear to sprawl along these upper slopes. Therefore, the reduction in the sense of open space and greenness to these upper slopes would have very low to moderate degree of adverse visual effects when seen from these public places.<sup>107</sup>
374. Ms Steven assigned a Moderate value for associative values. She placed significant weight on the open rural character of the landscape, especially its skylines and ridgelines and its riparian areas with an overwhelming dominance of landform and vegetation as underlying the most important backdrop, greenbelt and gateway landscape values.
375. Ms Steven identified three key factors which, in her opinion, resulted in PPC 28 not being appropriate. These can be summarised as being that PPC 28 does not:
- a. Maintain the amenity values of the significant landscape of the Kākā Valley and Lower Maitai Valley and Malvern Hills Ridge;
  - b. Preserve the Natural Character of the Coastal Environment; or
  - c. Maintain or enhance the open rural landscape character of the ridgelines and skylines.
376. Mr Girvan's evidence was that in the context of the Maitai Valley, the key landscape values which must be addressed reflect the coherent and widely valued open space landscape of the Maitahi/Mahitahi River and its associated natural character as well as the prominent green backdrop of Kākā Hill. In the context of the Botanical and Malvern Hills he considered such landscape values reflect a need to protect the prominent and undeveloped green backdrop and

<sup>106</sup> Paragraphs 18 and 19 Statement of Evidence of Mr Milne, 15 June 2022

<sup>107</sup> Paragraph 27 Statement of Evidence of Mr Milne, 15 June 2022

skyline visible from the city and the coherent visual backdrop of the adjoining more developed aspect of the Malvern Hills which extends to the north-east and remains contained from key central city views.<sup>108</sup>

377. The key areas of disagreement between the experts are discussed under following headings:

- Natural Character Assessment
- Residential Green Overlays and Revegetation Overlays
- Skyline Effects
- Night-time lighting effects
- Extent of Coastal Environment
- Significant Landscape Categorisation.
- Extent of Visual Effects.
- Landscape Gateways

378. We note that the landscape experts agreed:<sup>109</sup>

- a) with the backdrop area values of Malvern Hills, Botanical Hill and Kaka Hill, as described in the Boffa Miskell Nelson Landscape report<sup>110</sup> and adopted within the PPC 28 application;
- b) with the extent of the Skyline Areas as mapped in PPC 28 on Malvern, Kaka and Botanical Hills;
- c) that the Maitahi/Mahitahi River and its margins are a significant feature/landscape and is reflected in the draft Nelson Plan which uses the Boffa Miskell Nelson Landscape Study – Landscape Evaluation (Nov 2016);
- d) that there are no Outstanding Natural Features/Landscapes within the PPC 28 area or surrounding areas;
- e) there are wetlands, rivers and their margins (within the PPC 28 area) where the preservation of natural character and the protection of them from inappropriate subdivision, use and development is a matter of national importance (section 6a) RMA);
- f) with the landscape units as shown on the plan at Attachment B1.2 to the PPC 28 application request, subject to the inclusion of the line showing the separation of the Kaka Valley and the Maitai Valley (as shown on the plan at Appendix 1 to Attachment C9a). These landscape units are agreed to for the purpose of assessing landscape effects as described in the Rough & Milne assessment supporting PPC 28;
- g) there is potential to enhance the natural character of the riparian corridors, particularly the lower Kaka Stream; and
- h) that the 20% planting provisions in the Backdrop area (X.4) should also apply to the Skyline Area (X.5).

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<sup>108</sup> Paragraph 21 s42A Summary Report of Mr Girvan, 21 July 2022

<sup>109</sup> Expert Conferencing Joint Witness Statement – Landscape, 11 May 2022

<sup>110</sup> Nelson Landscape Study – Visual Amenity Landscape Evaluation (Boffa Miskell, April 2016)

379. We note that Ms Steven subsequently changed her view in relation to (f) above regarding the landscape units to be used for the purpose of assessing landscape effects because she found a slightly finer framework to be more helpful to her assessment, “recognising the discrete landform units of the Site each with their own character.”<sup>111</sup>
380. We further note that matters relating to the natural character and landscape effects concerning Kākā Hill and the management of natural character effects relating to the co-location of Stormwater Management within the Riparian Corridor were satisfactorily addressed by Mr Milne and Mr Girvan. Except as discussed below, for the sake of brevity, we adopt that evidence and take those matters no further.

#### *Natural Character Assessment*

381. The preservation of the natural character of wetlands, and lakes and rivers and their margins is a matter of national importance under section 6(a) of the RMA and several submissions, including STM (the expert evidence of Ms Steven) raised natural character effects as a key concern.
382. Ms Steven considered it inevitable that the landscape character of the Site would change overall, from rural/rural living to one expressing a mix of urban and rural/open space character, and that the degree of change would be High.
383. Ms Steven did not agree with Mr Milne’s view that there would be a significant improvement to the natural character of the Site as a whole and considered it would inevitably be adversely impacted by the scale of urban development despite the gains made in some areas. Overall, she concluded that PPC 28 would significantly reduce the natural character of large parts of the Site while some parts would have enhanced natural character.<sup>112</sup>
384. She agreed that with regard to the water features of the Site there was significant potential for enhancement of natural character. However, with regard to the wider Site, she considered the likely outcome would be dichotomous. The natural character and natural function of Kākā Hill and parts of the upper Kākā catchment area would improve and could reach High levels however, the natural character of the remainder of the Site would drop markedly as urban development replaces open landscape dominated by vegetation and landform.<sup>113</sup>
385. In response Mr Milne noted his understanding from a statutory context, that the direction around the preservation or management of natural character within the NRPS is focused on areas within coastal and riparian margins, and this follows through to the NRMP. There are clearly areas of the site which will change from pasture to residential development, however these areas are not contained within the riparian margins (excluding the occasional crossing). Within the riparian margins, extensive native ecological enhancement is planned that will improve natural character values, and beyond the riparian margins a high-quality environment is being provided for.
386. Ms Gepp responded to the Applicant’s criticism of Ms Steven’s reference to natural character for areas outside the coast and river margins and submitted that natural character is relevant:
- a) to the margins of rivers and streams, which is set out in Te Tangi a Te Manu and in case law can be 20 – 50 m from the waterbody and sometimes more;

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<sup>111</sup> Paragraph 77 Evidence of Ms Steven, 28 June 2022

<sup>112</sup> Paragraph 184 Evidence of Ms Steven, 28 June 2022

<sup>113</sup> Paragraph 183 Evidence of Ms Steven, 28 June 2022

- b) to wetlands, which have not been fully identified across the site;
- c) to the coast; and
- d) as a key attribute or characteristic conferring high amenity value, and therefore relevant to s 7(c).

387. While the Hearing Panel does not disagree with Ms Gepp, we have found, relying on the evidence of Mr Milne and Mr Girvan, as well as the ecological evidence, that any impacts on natural character values have been appropriately assessed and would not be significant, or a scale to warrant PPC 28 being declined. We are also satisfied that the PPC 28 provisions we have recommended address the natural character issues.

388. The proposed enhancement of Kākā Stream and its alignment has been considered in the Ecology section of this decision. In terms of natural character Mr Milne noted that the Kākā Stream's alignment had been altered due to farming practices within the site and that PPC 28 proposed to reinstate Kākā Stream's general alignment of its lower reach (approximately 600 metres) to its pre-farming location. He considered that the proposed realignment of Kākā Stream will maximise the area within the Kākā Stream corridor available for integrating wetlands and associated landscape outcomes.<sup>114</sup> We note here that policy direction to realign Kākā Stream as sought initially by the Applicant has been removed:<sup>115</sup>

*PPC 28's Structure Plan shows a realigned stream in its lower reaches but the Applicant does not seek in the provisions of PPC 28 direct support for that outcome.*

389. Mr Girvan noted that from a landscape and natural character perspective, he accepted that there is no driver to retain or shift the alignment of this modified watercourse. To ensure potential adverse effects can be addressed and potential ecological enhancement will occur, he deferred to the expert ecology, erosion and sediment control and stormwater evidence. In terms of the natural character of Kākā Stream he considered the lower reach of the Kākā Stream along which the stream diversion is enabled, also retains a low-moderate level of natural character.<sup>116</sup>

390. Mr Milne considered his difference of opinion with Mr Girvan, in relation to the Lower Kākā Valley, simply a variation in professional judgement. Mr Milne stated that based on his site visit and the description of the Lower Kākā Stream, the ecological (flora and fauna) and experiential components of natural character are so compromised that it warrants the rating of 'Very Low'. He noted that the naturalness rating, being a component of natural character, is rated a step higher at 'Low'. Furthermore, the existing natural character rating of the Upper Kākā Stream and on-site wetlands are both identified as 'Low- Moderate'. He was certain that the Lower Kākā Stream had a lesser degree of natural character than these two other areas. Regarding levels of existing natural character in relation to the above, he noted that Ms Steven's assessment<sup>117</sup> was the same as his.

391. Mr Milne concluded that even if the existing natural character value was increased to 'Low' or 'Low-Moderate' as Mr Girvan suggested, he believed that both experts are in agreement that the effect of the proposal will be to improve the natural character value of the Lower Kākā Stream. We accept that conclusion.

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<sup>114</sup> Paragraphs 142 & 145 Statement of Evidence of Mr Milne, 15 June 2022

<sup>115</sup> Paragraph 60, Applicant's Reply Submission, 29 July 2022

<sup>116</sup> Paragraph 10 & 19 Appendix D – Peer Review Landscape Addendum, Mr Girvan, 28 June 2022

<sup>117</sup> Paragraph 181 Statement of Evidence of Ms Steven

392. In relation to the potential effects on both landscape character and natural character of the Maitahi/Mahitahi Valley and Maitahi/Mahitahi River, Mr Milne noted that when looking from the Maitahi/Mahitahi Valley into the PPC 28 site, the existing backdrop while undeveloped, had limited 'natural' appeal other than the dominant landform. He considered that changes to the site character will be seen in the context or proximity of an introduced residential setting and that the Rural zoning with the revegetation overlay, along with the proposed 'green overlays' in the proposed Residential zones, will result in areas of the Kākā Valley becoming heavily vegetated, ensuring that an improvement in natural character and landscape character values will be connected to the Maitahi/Mahitahi Valley context.<sup>118</sup>
393. He considered that the existing Kākā Valley provided a 'sense of open space' rather than actual open space (its currently inaccessible for public) and this is defined/conveyed partly by the enclosing ridge forms. The PPC 28 provision for vegetated areas of open space, which extend (in places) from the ridge down into the valley, will substantially preserve the 'sense of space' or the 'scale' of the space while also enhancing public appreciation of both the Kākā Valley and the adjacent Maitahi/Mahitahi Valley. Bearing in mind the current limitations for obtaining views into the valley will be eliminated through increased public access across the site.<sup>119</sup> We agree with Mr Milne.
394. Mr Milne recorded that the design of the Open Space and Recreation Zone would occur through a future resource consent process which will also follow the matters outlined in Schedule X.7 and X.9 (now X.12), which were discussed as being appropriate and further refined during the landscape expert conferencing.<sup>120</sup>
395. He concluded, and we accept, that the proposal would result in a significant improvement to the natural character value of the site, and subsequently also result in an improvement to its landscape character value. Specifically, there will be ecological enhancement adjacent to the Maitahi/Mahitahi River, as well as introducing wetland planting in locations which can support that habitat and improving the ecological corridor of the Kākā Stream. The majority of effects on natural character of the river, stream and wetlands are considered to be beneficial, and at most, a Very Low adverse effect. In regard to overall landscape character of the Kākā Valley and Maitahi/Mahitahi Valley, the majority of effects are considered at most to be moderate adverse effect, which relates to resulting mix of proposed development, outside of the identified s6a natural character areas (e.g., where residential development is proposed).

*Residential Green Overlays and Revegetation Overlays*

396. PPC 28 provisions relating to the 'Residential Green Overlay' and 'Revegetation Overlay' in the Rural Zone, sought to prevent development and require revegetation with the intent of both these areas to ensure 100% native vegetation cover will occur.
397. In his evidence Mr Milne recorded that a significant component of the PPC 28 is the proposed retention of 131 ha of land zoned Rural, essentially covering the majority of Kākā Hill within the PPC 28 site, as well as approximately 30% of the eastern face of the Malvern Hills. As shown on the updated Structure Plan a revegetation overlay of the entirety of Rural zoned land is also proposed which aims to restore the ecological biodiversity, health, and landscape values of the site to enhance the natural character and quality of the valley setting.

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<sup>118</sup> Paragraphs 149 & 150 Statement of Evidence of Mr Milne, 15 June 2022

<sup>119</sup> Paragraph 152 Statement of Evidence of Mr Milne, 15 June 2022

<sup>120</sup> Paragraph 154 Statement of Evidence of Mr Milne, 15 June 2022

398. The revegetation overlay encompasses areas of existing native vegetation, proposed areas of active revegetation and areas of natural recolonisation. Mr Milne added that, therefore, a key component of the proposal is the proposed revegetation of the Rural zoned land in combination with the Open Space zoned land, and this will be the realisation of the potential natural character (and landscape) value encapsulated within the PPC 28 site. Essentially PPC 28 will enable the restoration of the values (natural character, ecological diversity) of a currently degraded pastoral land use.<sup>121</sup>
399. Mr Girvan agreed such revegetation would assist with integrating development within potential backdrop areas, reducing the potential for adverse landscape and visual effects but to ensure such outcomes, he considered such intent and outcome of these overlays should be made more explicit and enforceable as part of the PPC 28 provisions.<sup>122</sup>
400. Mr Milne agreed with Mr Girvan<sup>123</sup> and noted that Ms Steven<sup>124</sup> had raised similar concerns. Accordingly, the Applicant made further proposed changes to Schedule X which Mr Milne considered sufficient to satisfy the concerns raised by both Mr Girvan and Ms Steven. This included:
- Addition of text that ensures the Green and Revegetation Overlays are ‘captured’ in the objective and policy framework of Schedule X.
401. We are satisfied that these changes appropriately address the concerns raised.
- Skyline Effects*
402. Mr Milne considered that “...the refinement of the Structure Plan and suite of controls which will regulate development near ridgeline/skylines is sufficient to maintain openness in key locations along the Malvern Hills/Botanical Hill ridgeline/skyline.”<sup>125</sup>
403. Ms Stevens noted her concerns regarding this area and ridgeline and skyline effects. She considered that no provision is made for controlling location of built form on prominent ridgelines and that the high degree of openness and moderate-high natural character and visual coherence would be reduced and there would potentially be skyline effects as the prominent knoll at the top east of the main ridge is not marked primary ridgeline. To that extent she considered the entire basin should be zoned as open space for recreation use and restoration of ecological values.<sup>126</sup>
404. In relation to Ms Steven’s concerns, Mr Milne noted in the context of ‘primary ridgelines’ and the photograph contained at page 42 of her evidence, the knoll Ms Steven identified has an Open Space zoning under PPC 28. He considered that protection enough, although he accepted it could be identified on the “Malvern Hills and Botanical Hill Ridgeline”<sup>127</sup>.
405. Mr Girvan considered the potential for skyline development above Walters Bluff should generally be avoided to minimise the potential for more significant adverse visual effects. While he supported consideration of views from Nelson City, SH6 and the Maitai Valley Road between

<sup>121</sup> Paragraphs 146 & 147 Statement of Evidence of Mr Milne, 15 June 2022

<sup>122</sup> Paragraph 9 Mr Girvan, Appendix P to the s 42A Report

<sup>123</sup> Paragraphs 11 and 12 Appendix D – Peer Review Landscape Addendum (s42A Addendum Report), Mr Girvan, 28 June 2022

<sup>124</sup> Paragraph 167 Evidence of Ms Steven, 28 June 2022

<sup>125</sup> Paragraph 24 Rebuttal Evidence of Mr Milne, 7 July 2022

<sup>126</sup> Paragraphs 161 and 218 Evidence of Ms Steven, 28 June 2022

<sup>127</sup> Plan B1.2, at Figure 8 of the GA-E to Mr Milne’s Evidence-in-Chief

Jickells and Sharland Bridge when considering such effects, it was his view that the mechanism through which such provisions will be implemented remained inadequate. He added that, based on the existing skyline areas as mapped in the Nelson Landscape Study, any development in this location will breach the skyline.<sup>128</sup>

406. Having considered the matters raised by Mr Girvan<sup>129</sup>, particularly in reference to Policies NA2.3.1 and NA2.3.2 of the NRPS and Policy DO9.i of the NRMP, Mr Milne accepted, regarding the sensitivity of the skyline above Walters Bluff from key viewing locations, greater discretion is required when determining the appropriateness of development in this area. Mr Milne noted that the crux of the matter is the Skyline has been mapped through an intensive process within the Boffa Miskell Landscape Study and therefore it is not a matter of determining where the skyline is, nor a matter of avoiding development in the Skyline Area, rather it is ensuring effects are appropriately managed in relation to the sensitivity of the skyline. He recommended that the best mechanism to achieve this would be to make any development within the skyline area a restricted discretionary activity and Schedule X5 was amended accordingly.<sup>130</sup>
407. The Hearing Panel is satisfied that these changes are sufficient to address the concerns raised and in particular the remaining shortfalls as identified by Mr Girvan<sup>131</sup>. We have recommended the activity status for buildings in this area be changed from a controlled activity to a restricted discretionary activity.

#### *Night-time lighting effects*

408. Several submitters referred to effects on the dark sky environment and seek that lighting should be designed in a way to minimise light spill upwards and outwards. Particular concerns were raised in relation to the character of the Kākā Valley and prominent lighting introduced along the ridgeline. This was also a topic of expert conferencing and extended to the consideration of road lighting structures and signage within the Skyline and Backdrop Areas.
409. The JWS recorded that all three landscape experts were concerned about the potential for adverse effects in the Skyline Area and Backdrop arising from road lighting structures and signage, and the potential for glare and light spill from the road lighting. Mr Lile was to undertake a review and address these concerns through the proposed PPC 28 provisions.<sup>132</sup>
410. Mr Milne agreed the impacts of lighting in Kākā Valley must also be considered in the context of the baseline which may otherwise occur and within which effects can be absorbed.<sup>133</sup> He noted that due to the current almost total absence of lighting in the Kākā Valley, the introduction of the level of lighting associated with the described baseline development would potentially have a high adverse effect as a permitted activity.<sup>134</sup>
411. Overall, he considered that the potential broader adverse night-time effects can be managed, and the coherence of the Backdrop and Skyline Areas can be maintained. He recorded his understanding that an additional Restricted Discretionary Criteria regarding lighting had been added within Schedule X.

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<sup>128</sup> Paragraph 13 Appendix D – Peer Review Landscape Addendum, Mr Girvan, 28 June 2022

<sup>129</sup> [Paragraphs 13 – 15 Appendix D – Peer Review Landscape Addendum, Mr Girvan, 28 June 2022

<sup>130</sup> Paragraphs 32 – 34 Reply Evidence – Mr Milne, 29 July 2022; Paragraph 17 Rebuttal Evidence of Mr Milne, 7 July 2022

<sup>131</sup> Paragraph 22 Appendix D – Peer Review Landscape Addendum, Mr Girvan, 28 June 2022

<sup>132</sup> Paragraph 3.8 Expert Conferencing Joint Witness Statement – Landscape, 11 May 2022

<sup>133</sup> Paragraph 21 Appendix D – Peer Review Landscape Addendum, Mr Girvan, 28 June 2022

<sup>134</sup> Paragraph 167 Statement of Evidence of Mr Milne, 15 June 2022

412. Mr Girvan also supported the inclusion of an additional requirement to address lighting effects along the Backdrop and Skyline Areas at the time of subdivision and agreed this would benefit from a P3 standard of lighting and adoption of Black Night technology to manage adverse effects.

413. We have accepted this inclusion in the subdivision rule in relation to road lighting and signage. We are satisfied this will address the concerns raised.

*Extent of Coastal Environment*

414. The question arose as to the extent of the Coastal Environment and in particular whether the Malvern/Botanical Hills are part of the it.

415. Both Mr Milne and Mr Girvan confirmed, as set out in the JWS, that they had adopted the Coastal Environment line as identified in the Nelson Coastal Study – Natural Character of the Coastal Environment (Boffa Miskell, 2016). This was identified in accordance with NZCPS Policy 1 and then adopted in parallel studies (the Nelson Landscape Study Landscape Characterisation (2014) and the Nelson Landscape Study Landscape Evaluation (2016)).<sup>135</sup>

416. Mr Milne stated that, *“As such the PPC28 site is not situated within the coastal environment and will not compromise the natural character values associated with nearby areas that are located within the coastal environment.”*<sup>136</sup> He did agree that the PPC 28 site up to the Malvern Hills ridgeline is appropriately defined in the Coastal Context area.

417. Mr Girvan confirmed that having adopted the Coastal Environment line as noted above, it was his understanding that the implication of this is limited to an area of about 2,500m<sup>2</sup>, which is legally part of the property at 4 Chamerion Way. It was recognised by Mr Girvan and confirmed by the Applicant in the hearing that that land is no longer under the ownership of the Applicant and therefore no longer forms part of the PPC 28, meaning effects in this area needed to be disregarded.<sup>137</sup>

418. On that basis, Mr Girvan considered the PPC 28 proposal will result in no material change to the existing low-moderate degree of coastal natural character currently recognised in this area of Nelson.<sup>138</sup> We accept this.

419. Ms Steven considered the mapped inland edge of the Coastal Environment in the NRMP and in the Boffa Miskell Nelson Coastal Study (2016) excluded the first main ridge from the active coast. In her view this ridge is part of the Coastal Environment under Policy 1 of the NZCPS, and preferred as the inland boundary as *“elements and features that contribute to the natural character, landscape, visual qualities or amenity values;”*<sup>139</sup>. She considered it “common practice” to take the first inland ridge as the Coastal Environment inland boundary and that more emphasis should be given to the landscape perception perspective, as well as biophysical criteria.<sup>140</sup>

420. Ms Steven recognised elements of the Site’s landscape as being part of the coastal environment, namely the western side of the Malvern Hills, north of the “bend”, which directly faces the sea, is less than 1 km away and likely to have supported vegetation communities subject to coastal

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<sup>135</sup> Paragraph 3.2 Expert Conferencing Joint Witness Statement – Landscape, 11 May 2022

<sup>136</sup> Paragraph 16 Reply Evidence – Mr Milne, 29 July 2022 & Paragraph 23 Rebuttal Evidence of Mr Milne, 7 July 2022

<sup>137</sup> Paragraph 16 Appendix D – Peer Review Landscape Addendum, Mr Girvan, 28 June 2022

<sup>138</sup> Paragraph 14 s42A Summary Report of Mr Girvan, 21 July 2022

<sup>139</sup> NZCPS Policy 1 (f)

<sup>140</sup> Paragraph 3.2 Expert Conferencing Joint Witness Statement – Landscape, 11 May 2022

influences. She considered the development enabled by PPC 28 would not preserve the natural character of the ridge and thus it would not be protected from inappropriate subdivision, use and development. She noted the proposed revegetation would restore a degree of natural character but within an urban environment such that overall natural character would not be preserved. In Ms Steven's view the urban expansion would constitute sprawl over the ridgeline when at present the open undeveloped ridgeline is a clear cap to upwards spread of urban development.<sup>141</sup>

421. Ms Gepp submitted that Ms Steven's conclusion on where the line should lie was "*reasonable, and orthodox*"<sup>142</sup> and "*consistent with NZILA guidelines and case law*"<sup>143</sup>. On this basis at least, the site was within the Coastal Environment and therefore the NZCPS applied.
422. In response to questions from the Hearing Panel about the practical significance arising from that view, Ms Steven responded that if the Hearing Panel accepted her assessment, then the consequence was a preservation ethic under the NZCPS 2010, irrespective of the strength of the natural character qualities. In Mr Maassen's submission that analysis was an incorrect interpretation of NZCPS 2010, Policy 13, which has graduated requirements for effects management depending on the nature and quality of the natural character.
423. In response to the submission and evidence of Ms Gepp and Ms Steven on this question, Mr Milne<sup>144</sup> referred to Te Tangi a te Manu Aotearoa New Zealand Landscape Assessment Guidelines.<sup>145</sup>

*"The leading ridgeline behind the coast has been used as a rule-of-thumb for the inland extent of the coastal environment. This may be sensible where there is an immediate relationship of ridge to coast but may not be relevant if the leading ridge is too far inland to define an environment in which coastal processes, influences or qualities are significant. In other places the inland boundary can be blurred, or indistinct, as coastal influence diminishes."*<sup>146</sup>

424. As Mr Maassen submitted<sup>147</sup>, it is not uncommon to use a primary inland ridgeline to denote the extent of a coastal environment but that is not a rule of thumb and the Practice Guidelines direct a case-by-case assessment.
425. In Mr Milne's opinion, the leading ridgeline in this instance does not define an environment where the coastal processes, influences or qualities are significant. He added that the Boffa Miskell Coastal Natural Character study had given a far more considered approach to delineation of the coastal environment boundary than a simple 'rule-of-thumb' and noted his understanding that Mr Girvan agreed with this.<sup>148</sup>
426. Mr Milne also confirmed that that position remained so even if the Hearing Panel determined that the Malvern Hills western face were within the Coastal Environment.<sup>149</sup>

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<sup>141</sup> Paragraph 34 Evidence of Ms Steven, 28 June 2022

<sup>142</sup> Paragraph 3.33 Submissions of Ms Gepp

<sup>143</sup> Paragraph 3.37 Submissions of Ms Gepp

<sup>144</sup> Note Ms Gepp made the same reference in her Legal Submissions [3.34]

<sup>145</sup> The Practice Guidelines for Landscape Architects, see [17] Applicant Reply Evidence – Mr Milne, 29 July 2022

<sup>146</sup> *Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines* – Section 9.19

<sup>147</sup> Paragraph 185 Applicant's legal submission

<sup>148</sup> Paragraph 18 Reply Evidence – Mr Milne, 29 July 2022

<sup>149</sup> Paragraph 19 Reply Evidence – Mr Milne, 29 July 2022

427. The Malvern/Botanical ridgelines are not mapped as part of the Coastal Environment in the NRMP or the NRPS. The NRPS is focused on coastal land riparian margins and this follows through into the NRMP. The more recent Boffa Miskell landscape study also does not include these landscape elements in the Coastal Environment.
428. In relation to the Coastal Environment extent (and any potential adverse effects), the Hearing Panel accepts the evidence of Mr Milne and Mr Girvan, and the submission of Mr Maassen. Accordingly, it is our finding that the site is not within the Coastal Environment, and therefore the provisions of the NZCPS do not apply.
429. However, had a part of the site been within the Coastal Environment as opined by Ms Steven and submitted by Ms Gepp, we do not think this would have affected our recommendation to approve PPC 28. The reasons are those already set out above; essentially that the site and its immediate surrounding area are not outstanding from a landscape or natural character perspective, there is already significant urban development immediately adjoining the site, and that the plan provisions we have recommended mean any adverse effects would be able to be avoided or mitigated, in a manner consistent with the relevant provisions of the NZCPS, such that subdivision, use or development would not be inappropriate.
430. Our final point on this matter is the STM's submission, and as set out in Ms Gepp's submissions which states<sup>150</sup>:

*STM's submission sought that PPC28 be declined. STM's submission identified alternative relief constraining residential development to the Bayview side of the site and seeking additional information and a higher level of environmental management.*

431. We find that the "alternative relief" sought by STM appears to us to be inconsistent with STM's position on the extent of the Coastal Environment and Ms Steven's opinion that development on the Bayview side (within the Coastal Environment as categorised by her) would not preserve the natural character of the ridge and thus it would not be protected from inappropriate subdivision, use and development.

#### *Significant Landscape Categorisation*

432. Several submissions considered that the Maitahi/Mahitahi River forms a Significant Landscape within the Maitahi/Mahitahi Valley. This includes STM, and the expert evidence of Ms Steven.
433. Ms Steven's preliminary position in expert conferencing was that Kākā Valley is a tributary valley of the Maitahi/Mahitahi River and may also deserve to be classified as significant landscape, primarily on the basis of amenity values, including non-visual amenity factors.<sup>151</sup>
434. In her evidence she considered the Kākā Stream Valley as a whole a Significant Landscape and Kākā Hill a Significant Natural Feature. She also observed the Significant Landscape of the Maitahi/Mahitahi River Valley is not mapped as an overlay on the Structure Plan as the Backdrop and Skyline areas are and there are no bespoke provisions for it. Her evidence was that it is inevitable that the development enabled by PPC 28 would not maintain or protect the core values of this landscape as they centre around open, green undeveloped (in an urban sense) rural landscape and rural peace and quiet.<sup>152</sup>

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<sup>150</sup> Paragraph 1.3 Legal Submissions of Ms Gepp

<sup>151</sup> 3.3 - Expert Conferencing Joint Witness Statement – Landscape, 11 May 2022

<sup>152</sup> Paragraph 6 and 32 of Ms Steven's evidence, 28 June 2022

435. In relation to the issue of Significant Landscape categorisation, Ms Steven observed that in the suite of Nelson Landscape studies undertaken by Boffa Miskell *“The Maitai Valley landscape qualified as a SL on account of its Very High associative values and High perceptual values. It was ranked Low to Moderate for biophysical values.”*<sup>153</sup>
436. However, Mr Milne considered this to be in an incorrect interpretation<sup>154</sup> of the Boffa Miskell Nelson Landscape Study and noted that it is actually the ‘Maitahi/Mahitahi River’ which is identified as a SL with its values set out<sup>155</sup> and that a review of these factors reinforces that it is the value of the river corridor which has been recognised, not the wider Maitahi/Mahitahi Valley character area.<sup>156</sup> Mr Girvan’s opinion was consistent with Mr Milne’s, adding also that the Maitahi/Mahitahi River within this broader landscape character area, had been evaluated as a significant landscape and subsequently mapped for the Draft Nelson Plan. In Mr Girvan’s view this landscape adjoins but is distinct from development areas proposed within the PPC 28 site.<sup>157</sup>
437. Both Mr Milne and Mr Girvan recorded in the JWS that other than the Maitahi/Mahitahi River and its margins (as previously noted) they did not consider that there are any other significant features/landscapes within the PPC 28 area.<sup>158</sup>
438. Mr Milne noted that his observations accord with the Boffa Miskell Landscape Study 2016, he reiterated his reasoning in his reply statement and confirmed that he was still of the opinion that the PPC 28 site does not contain any additional significant landscape or significant features, therefore further special landscape status beyond that identified in the suite of recent Nelson landscape studies undertaken is not required. He added further that the Kākā Valley Landscape Capacity Assessment Study also identified key landscape features and values of the Kākā Valley and confirmed his opinion that key landscape values relating to the PPC 28 site have been identified in these studies and accord with his own extensive site analysis.<sup>159</sup>
439. Mr Milne’s evidence was that Kākā Valley is not a significant landscape nor is Kākā Hill a significant landscape feature at a District wide scale, so not a Section 6(b) matter under the RMA 1991. Further to that, the updated Schedule X provisions and Structure Plan appropriately recognise these landscape values and manage future potential landscape and visual amenity effects in regard to these.<sup>160</sup>
440. Mr Maassen also referred to Mr Girvan’s confirmation that the significant landscape Boffa Miskell identified in the 2014-2015 study was the Maitahi/Mahitahi River corridor that excluded the site and further submitted: <sup>161</sup>

*“That also makes sense from an RMA, Part 2 perspective because RMA s 6(a) only seeks to preserve the natural character of rivers and their margins. There is little in RMA, Part 2, that would support a preservation or protection paradigm for values relating to the*

<sup>153</sup> Paragraph 92 of Ms Steven’s evidence, 28 June 2022

<sup>154</sup> Mr Milne noted at fnnt 1 of his Rebuttal Evidence: There appears to be a typo which incorrectly uses the term ‘Matai Valley’ within a bullet point list, rather than ‘Matai/Maitahi River’. The error is only apparent when comparing the other two significant landscape features that are identified in the same list, being Nelson Haven and Tahunanui Beach.

<sup>155</sup> Boffa Miskell – Nelson Landscape Study – Landscape Evaluation 2016 – pg28.

<sup>156</sup> [28] Mr Milne’s Rebuttal Evidence, 7 July 2022

<sup>157</sup> [29] *ibid* & [4] s42A Summary Report of Mr Girvan, 21 July 2022

<sup>158</sup> Paragraph 3.3 Expert Conferencing Joint Witness Statement – Landscape, 11 May 2022

<sup>159</sup> Paragraph s 9 – 15 Reply Evidence – Mr Milne, 29 July 2022

<sup>160</sup> Paragraph 15 Reply Evidence – Mr Milne, 29 July 2022

<sup>161</sup> Paragraph 38 Reply Submissions, 29 July 2022

*openness of rural areas. It is acknowledged that this might qualify as an amenity value for the purpose of RMA, s 7(c) but:*

*(a) That hardly overrides the powerful Part 2 and NPS-UD provisions engaged in this case; and*

*(b) The Panel must also consider the direction in NPS-UD Policy 6(b), which states:*

**Policy 6:** *When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*

*...*

*(b) that the planned urban built form in those RMA planning documents may involve significant changes to an area and those changes:*

*(i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and*

*(ii) are not, of themselves, an adverse effect....*

441. We accept Mr Massen's submissions and prefer the evidence of Mr Milne and Mr Girvan on this point. It is, accordingly, our finding that the Kākā Stream Valley as a whole is not a significant landscape.

#### *Extent of Visual Effects*

442. Ms Steven assessed the magnitude of visual change that would be enabled by PPC 28 as generally Moderate to High, compared to Mr Milne's Low to Moderate.
443. Overall, Ms Steven's opinion, was that Mr Milne's assessment had understated the degree of adverse effect on visual amenity, primarily because in her view, the assessment concluded that there would be no more than a Low to Moderate degree of adverse effect despite the large-scale transformation of open rural landscape to built-up urban landscape including in sensitive backdrop and skyline areas. She considered this view had been coloured by the assumption the Site has already been "tagged" for urban development and that the expansion would be considered logical and consistent with existing patterns of urban development. On that basis she considered that adverse effects on visual amenity would be Moderate to High in degree where there would be more open views of the development on the Site.<sup>162</sup>
444. It was also Ms Steven's evidence that Kākā Valley is visually and spatially integrated with the Maitahi/Mahitahi River corridor, and is looked down into from surrounding public elevated places such as Botanical Hill, Branford Park and Olive Hill, and Sharlands Hill.<sup>163</sup>
445. On this point Ms Gepp referred to the Applicant's legal submissions that "*there is a limit to which development on amenity landscapes should be restricted to prevent housing development. Such landscapes do not enjoy any specific recognition under RMA, Part 2*". She submitted that that is not correct. Amenity landscape values are a subset of "amenity values" under s 7(c) to which the Panel must have particular regard.<sup>164</sup> In this respect we have already acknowledged there will be significant change, and some people's amenity values will be affected. However, we refer to Policy 6 of the NPS-UD quoted above. We do not find that amenity value described to us from many of the submitters and Ms Steven in relation to the

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<sup>162</sup> Paragraph 24 Evidence of Ms Steven, 28 June 2022

<sup>163</sup> Paragraph 82 Evidence of Ms Steven, 28 June 2022

<sup>164</sup> Paragraph 3.31 Ms Gepps' Legal Submissions, 12 July 2022

Kākā Valley, as such that PPC 28 should not be approved. As said, some people's amenity values, including those of Ngāti Koata, will be enhanced.

446. In his reply evidence Mr Milne remained satisfied with his assessment that there would still be views into the Kākā Valley. However, for the most part these are in the context of a wider panoramic view that takes in Nelson City, Tasman Bay, and the wider landscape beyond. Further to that, from these tracks you also get 'snapshot' views of parts of Nelson City, and not Kākā Valley, therefore views need to be considered in this context.<sup>165</sup> He stated:

*"The extension of the city, enabled by PPC28 will be viewed as an extension of the existing character of the city, as it extends (as it does already) finger like into valleys and folds itself over the lower hills and ridgelines that back drop the city. An extension of the unique sense of place of Nelson City."*<sup>166</sup>

447. In terms of landscape context and the pressure for rural areas like Kākā Valley to accommodate urban expansion, Ms Steven's evidence was that the Maitahi/Mahitahi River corridor and wider valley context including Kākā Valley is highly valued for its open space and quiet rural character, and the numerous recreational opportunities in a rural setting of high visual amenity (linear parks, river trails, swimming holes and sports facilities) all in close proximity to central Nelson.<sup>167</sup>
448. In response to questions regarding the open space value Ms Steven attached to the Kākā Valley, she said that she was not referring to 'open space spatial character' given much of the area would remain undeveloped. Rather, Ms Steven said she was referring to the 'open space value'. Self-referentially, she said that the 'open space value' corresponded to the absence of residential development. These values translated, according to Ms Steven, into subjective community responses such as an *awareness* of a change from urban to the rural 'construct' of which the open fields were markers.<sup>168</sup>
449. We find Ms Steven's opinion on this somewhat unusual. Notwithstanding this, we prefer Mr Milne's and Mr Girvan's characterisation of the visual impacts. We also refer to Mr Toia's evidence that while the Kākā Valley is 'open-space' it is privately owned farmland, and the extent to which the "community" derive an amenity value from it and then use this as reason for seeking PPC 28 be declined, is misplaced. Ms Steven's opinion appears to support or perpetuate this notion.
450. However, Mr Milne concurred with Ms Steven when she suggested, *"The visibility and visual change caused by the development that would be enabled by PPC28 must be considered in a long timeframe, of more than a hundred years."*<sup>169</sup> He suggested if one was to adopt this long-term lens, then the proposal must be viewed favourably within its landscape setting.
451. Mr Milne noted that while in places, pasture-covered paddocks will inevitably change, through urban development, this does not necessarily mean that the resulting level of visual amenity will be lower than at present. A combination of factors such as the proposed pattern of development, lot size, zone rules and integrative planting will create a high amenity urban environment that is visually sympathetic to its surroundings.<sup>170</sup>

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<sup>165</sup> Paragraph 21 Reply Evidence – Mr Milne, 29 July 2022

<sup>166</sup> Paragraph 23 Reply Evidence – Mr Milne, 29 July 2022

<sup>167</sup> Paragraph 88 Evidence of Ms Steven, 28 June 2022

<sup>168</sup> Paragraph 32 Reply Submissions, 29 July 2022

<sup>169</sup> Paragraph 165 Evidence of Ms Steven, 28 June 2022

<sup>170</sup> Paragraph 21 Statement of Evidence of Mr Milne, 15 June 2022

452. Mr Girvan held a similar view. He accepted that development enabled by PPC 28 if approved would result in changes in views but that such views do not automatically result in significant adverse effects. In his opinion, what is important when managing the potential for adverse effects is ensuring such change responds well to the character of the landscape and reinforces its significant landscape values which also remain apparent.<sup>171</sup>

453. In concluding, regarding views and visual amenity effects, in relation to the picturesque setting, Mr Milne considered it “...worth noting the benefits of public access provided by PPC28. The proposed public access and connections to existing recreation trails will provide the opportunity for greater access to picturesque views, and appreciation of the overall setting.”<sup>172</sup>

#### *Landscape gateways*

454. There was disagreement between the experts as to what constituted a “gateway landscape”. Ms Steven’s view was that, “The lower Maitai Valley is a gateway landscape. The proposed urban expansion would detract from this landscape and undermine its function.”<sup>173</sup>

455. Her evidence was that Part NA2.3.3 of the NRPS refers to “gateways” between urban and rural areas and that the mouth of the Maitahi/Mahitahi River Valley between Botanical Hill/Branford Park and Sharlands Hill and the Kākā Stream Valley is considered to constitute a “gateway” landscape being the transition area from the urban area and the rural to more remote and natural interior.<sup>174</sup>

456. As submitted by Ms Gepp, “This site is critically important as a gateway and greenbelt between the urban area of Nelson City and the rural and recreational hinterland of the Valley. If PPC28 goes ahead that physical distinction will be lost. The rezoning will increase the likelihood of more intensive development in Kākā Valley, and the change of character will encourage further urbanisation of the wider Maitai Valley through subsequent plan changes.”<sup>175</sup>

457. Mr Maassen asserted that Ms Steven’s ‘gateway’ landscape concept reflected a singular interpretation of the NRPS and he submitted that the NRPS and NRMP use ‘gateways’ in a different sense, i.e., discrete viewsheds in urban areas to important regional features and that in any event, the NRPS does not direct the preservation of ‘gateways’.<sup>176</sup>

458. Mr Milne noted his understanding from a statutory context, that both the NRPS (Policy NA2.3.3) and the NRMP (Policies DO9.i, DO15.1.3), provide policy direction regarding the urban rural interface, seeking to reinforce the transition from rural to urban areas on the periphery of Nelson city. He added that this policy structure recognises the amenity values of the ‘rural areas’, especially the recreational and scenic value of areas relatively close to the urban area.<sup>177</sup>

459. Referring to examples of personal perception and experience<sup>178</sup>, Mr Milne turned his mind to the concept of a ‘gateway’ from a landscape perspective. He recognised that “A finger of recreation associated with Nelson city extends into the Maitahi/Mahitahi Valley. Residential development along Mill Street extends towards Denby Park on the true left bank of the Maitahi/Mahitahi River. A cluster of housing is located to the east of the Maitai Cricket Ground

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<sup>171</sup> Paragraph 20 S42A Summary Report of Mr Girvan, 21 July 2022

<sup>172</sup> Paragraph 43 Rebuttal Evidence of Mr Milne, 7 July 2022

<sup>173</sup> Paragraph 31 Evidence of Ms Steven, 28 June 2022. See also Paragraphs 225 and 226

<sup>174</sup> Paragraph 110 Evidence of Ms Steven, 28 June 2022

<sup>175</sup> Paragraph 1.5(a) Ms Gepp’s Legal Submissions, 12 July 2022

<sup>176</sup> Paragraph 33 Reply Submissions, 29 July 2022

<sup>177</sup> Paragraph 24 Rebuttal Evidence of Mr Milne, 7 July 2022

<sup>178</sup> Paragraphs 46 – 49 Rebuttal Evidence of Mr Milne, 7 July 2022

*and on Ralphine Way.” He described this as “a transitional landscape in that while the prevailing character is rural, there are elements within it that are associated with the city.” He added that while he understood the underlying zoning, in this location the edge of the city could be variously defined, and that unlike Ms Steven he was unsure if there was a clear gateway. He further noted that in some ways the current zoning of part of Kākā Valley for small holdings serves to dilute the edge of the city. We see merit in that reasoning.*

460. Mr Milne noted that with the considerable amount of vegetation growing along Maitai Valley Road and its associated recreation areas and deciduous trees in leaf (summer and shoulder seasons), Kākā Valley is almost totally hidden from view from the Road. He pointed to the fact that the valley is somewhat ‘tucked away’ with the bend in the Maitahi/Mahitahi River and cricket ground also serving to set the PPC 28 site back away from views. He also considered that the planting that could establish within the riparian enhancement area within the PPC 28 site, would also provide some screening over the longer term.

461. In Mr Milne’s opinion:<sup>179</sup>

*PPC28 would ‘reset’ the edge of the city in this location. The extent of urban form would reach Ralphine Way, and from a landscape perspective, would not have significant adverse effects on the arrival into, or departure from, the city and the Maitahi/Mahitahi Valley. In this regard and returning to the NRMP and policy DO15.1.35, I am of the opinion PPC28 is not discordant with the outcomes sought by this policy, the greenbelt function of the Maitai Valley remains, and accordingly the RPS is generally satisfied in this regard.*

*Likewise, for the reasons as set out in my EIC, I am of the opinion that development enabled by PPC28 on the Malvern Hills, will not degrade or detract from the arrival or departure experience on State Highway 6 north of Nelson city.*

462. Mr Girvan agreed that the plan change site occurs within the context of this existing ‘gateway’ and forms a periphery of this recognised transition from Nelson’s urban area into the Maitahi/Mahitahi Valley. He did not consider development enabled through PPC 28 would inherently detract from this gateway or result in its location being fundamentally changed. In the context of the Maitahi/Mahitahi Valley, he considered development within the Kākā Valley would remain beyond an established and reinforced open space buffer and adjoin an existing rural lifestyle edge at Ralphine Way which influences the key characteristics of this gateway experience.<sup>180</sup>

463. Importantly, Mr Girvan’s evidence was that when within open space areas along the Maitahi/Mahitahi River or passing through this gateway landscape along Maitai Valley Road, the urban development will typically not appear prominent and will remain beyond an established open space context. He considered such separation is an important aspect of Nelson’s established greenbelt concept and contributes to maintaining an appropriate transition from Nelson’s urban development into a broader rural context such as continues into the upper Maitahi/Mahitahi Valley.<sup>181</sup>

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<sup>179</sup> Paragraph s 54 and 55 Rebuttal Evidence of Mr Milne

<sup>180</sup> Paragraph 8-9 s42A Summary Report of Mr Girvan, 21 July 2022

<sup>181</sup> Paragraph 10 s42A Summary Report of Mr Girvan, 21 July 2022

464. We accept Mr Maassen’s submissions and we also accept the evidence of Mr Milne and Mr Girvan on this matter. We do not think PPC 28 is contrary to the NRPS provisions relating to “gateways”; the reasoning being those in Mr Milne’s and Mr Girvan’s evidence.

*Landscape conclusion*

465. Mr Milne set out in his reply statement a table including the Landscape and Visual Effects issues identified by the Panel which had been addressed by plan refinements.<sup>182</sup>
466. Overall, the Hearing Panel was persuaded by the evidence of Mr Milne that the changes proposed by PPC 28 in relation to the zoning within Kākā Valley, the lower slopes of Kākā Hill and along Botanical Hill and Malvern Hills are appropriate in a landscape/visual amenity context and will allow Nelson to grow in a logical manner and form consistent with current urban development and as anticipated by the Future Development Strategy.<sup>183</sup>
467. We accept that development of the PPC 28 site would inevitably result in a loss of some of its current rural character, and consequently some loss of rural outlook for those people residing adjacent to it, and for those viewing the site from adjacent roads and public places. However, it is our view, that provided the landscape values are maintained or enhanced, this change, in itself, is not adverse.<sup>184</sup>
468. We also accept Mr Milne’s overall opinion that the site of the PPC 28 has been identified as an area within Nelson that can absorb a relatively large amount of development to assist in providing for the needs of a growing community.
469. We accept Mr Girvan’s conclusion that while there will be some inevitable adverse landscape effects, the revised structure plan combined with measurable outcomes across revegetation overlays, increased skyline protections and increased natural character provisions offers the ability to manage potential for more significant adverse effects. Mr Girvan agreed with Mr Milne that subdivision and development enabled through PPC 28 would ensure no greater than moderate adverse landscape effects would occur beyond this site and that such development can ultimately be absorbed as an integrated part of Nelson’s landscapes.<sup>185</sup> We agree.

**14.15.6 Recommendation**

470. We recommend that the submissions that seek that PPC 28 be approved or amended in respect of Landscape, amenity values and natural character, as set out in “Matters Raised” above, be **accepted, or accepted in part** where the PPC 28 provisions reflect those changes sought.
471. We recommend that the submissions that seek that PPC 28 be declined or amended in respect of Landscape, amenity values and natural character, as set out in “Matters Raised” above, be **rejected**. This includes those submissions which sought amendments to PPC 28 either spatially, or in relation to the plan provisions which we have not recommended.

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<sup>182</sup> Paragraph 39 Reply Evidence – Mr Milne (Landscape), 29 July 2022

<sup>183</sup> Paragraph 56 Rebuttal Evidence of Mr Milne, 7 July 2022

<sup>184</sup> Paragraph 20 Statement of Evidence of Mr Milne, 15 June 2022

<sup>185</sup> Paragraph 22 s42A Summary Report of Mr Girvan, 21 July 2022

## **14.16 Urban Design**

### **14.16.1 Introduction**

472. Section 6.16 of the request addressed urban design. PPC 28 was accompanied by a Landscape and Visual Amenity and Urban Design Assessment (LVAUD) prepared by Rough and Milne.<sup>186</sup> An updated LVAUD was also provided in response to a further information request.<sup>187</sup>
473. During the hearing an indicative Master Plan was provided as well as an updated Structure Plan. We address this below, but note at the adjournment of the hearing there were no significant issues in contention between Mr Nicholson and Mr McIndoe.

### **14.16.2 Statutory and planning provisions**

474. The following NRMP provisions are relevant to the issue of urban design:

- DO13 A Urban design (chapter 5, pp.55-66)
  - Objective DO13A.1 Recognising the local context
  - Policy DO13A.1.1 Local context and environment
  - Objective DO13A.2 Improving connections
  - Policy DO13A.2.1 Accessibility
  - Policy DO13A.2.2 Natural connectivity
  - Policy DO13A.2.3 Public to private connections
  - Objective DO13A.3 Creating high quality public spaces
  - Policy DO13A.3.1 High quality public spaces
  - Policy DO13A.3.2 Multi-use
  - Objective DO13A.4 Providing for diversity
  - Policy DO13A.4.1 Flexibility, choices and adaptability
  - Objective DO13A.5 Sustainable places and communities
  - Policy DO13A.5.1 Environmentally responsive
  - Objective DO13A.6 Urban design process
  - Policy DO13A.6.1 Policy and administration
  - Policy DO13A.6.2 Coordinated approaches
  - Policy DO13A.6.3 Collaboration
- DO14 Subdivision and development (chapter 5, pp.67-76)
  - Objective DO14.1 City layout and design
  - Policy DO14.1.1 Landscape features
  - Policy DO14.1.2 Type and intensity of development
  - Policy DO14.1.3 Orderly development

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<sup>186</sup> C9a. LVA and UD Assessment Report

<sup>187</sup> C9a. LVA and UD Further Information Response

- Objective DO14.2 Amenity values
- Policy DO14.2.1 Allotments
- Objective DO14.3 Services
- Policy DO14.3.1 Rooding
- Policy DO14.3.2 Drainage, water and utilities
- Policy DO14.3.3 Areas without services
- Objective DO14.5 Community services and facilities
- Policy DO14.5.1 Community services and facilities
- DO16 Zones (chapter 5, pp.79-83)
  - Objective DO16.1 Management of resources by location
  - Policy DO16.1.1 Zones (and areas)

### **14.16.3 Matters raised**

475. Submission points seeking that PPC 28 be declined included the following reasons:

- While housing is needed in Nelson, the submitter opposes a large development but would support a smaller one, with some low-cost housing. 200 properties in the Maitahi is feasible with maybe 100 for Bayview [S27.001].
- The Kākā Valley area would be an enclave and separated from other residential areas [S51.003].
- The new development would be isolating to residents [S56.001].
- Development should be restricted to low density rural zoning of between 1 to 2 hectares [S169.001].
- Only allow development on the west facing hillside from Walter's Bluff to Marybank if such inefficient suburban housing is necessary and best practice [S195.001].
- The large sections are neither large enough to be agriculturally viable or small enough for a home garden and will be ripe for future infill with an infrastructure not built to cope [S194.001].
- The submitter has to play within the rural zoning rules, why is this development not having to play on the same field with the same restrictions and guidelines [S219.001]?
- Do not support the proposed Residential high density (300m2) or residential standard (400m2) density rezoning in the Kākā Valley [S298.002].
- The location is unsuitable for housing as it receives minimal sunshine in winter and is cold and damp [S100.001, S110.001, S233.001, S330.001, S358.001, S360.001, S401.001, S426.001, S716.001].
- It would be inequitable to build the affordable houses planned in the PPCR 28 in the shady, humid and cold area of the Kākā Valley. Lack of sunshine during the winter months in the Kākā Valley would make the housing unhealthy, damp and expensive to heat [S8.001, S231.001, S288.001, S306.001, S342.001, S358.001, S360.001].

- The Resource Management (Enabling Housing Supply and Other Matters) Amendment would allow even more development to occur. The Council may also allow further intensification, with less regard for adverse environmental impacts [S292.001, S312.001, S350.001, S350.019, S367.001].
- The development is not sustainable and should be redesigned to produce something with very good environmental design standards [S446.001].

476. Submission points seeking that PPC 28 be approved included the following reasons:

- This proposal could be good for Nelson. If the housing is intensive / semi-intensive and not urban sprawl this would provide a substantial number of dwellings close to Nelson [S276.002].
- The proposal to rezone this land to make more land available for housing development is worthy of support in principle. The submitter supports:
  - The Atawhai hill top land shown on B1.1 as Residential and Residential low-density backdrop.
  - The Kākā valley land shown on B1.1 as Small Holding Higher Density
  - The Kākā valley land shown on B1.1 as Rural
  - The Kākā valley land shown on B1.1 as Open Space and Reserve
  - The Kākā valley land shown on B1.1 as Suburban [S298.004]

477. Submission points seeking amendments to PPC 28:

- Amend the development to lower numbers of houses [S27.001].
- There is reference in the application to healthy and safe. Loneliness and disconnection are recipes for poor health so it is pleasing to see provision made for the shared facilities, e.g. corner cafe, child and elder care, community gardens / allotments etc. We all need to be thinking about what other services might provide the shared activities and spaces required to build connection and community. These plus the extensive cycle/ walkway network and open spaces, grazing and forested areas create the kind of environment where people feel supported, are able to contribute and participate and are likely to spend more of their lives [S206.004].
- The applicant's reference to comprehensive design is encouraging. Designing entire neighbourhoods (as an alternative to subdividing the land into separate lots and sliding a dwelling into each), is more likely to cater for the diversity of need and make better use of space. However, it is a challenge to create thriving, connected neighbourhoods. The pending NRMP rewrite, the conditions of consent, (and the applicant), need to be mindful of not writing conditions that set current aspirations in stone and make future rethinks and redevelopments difficult. Neighbourhoods need to evolve and the aspirations of the community rather than the rules need to be the determinants of that evolution [S206.006].
- The Kākā Valley land shown on B1.1 as Residential high density be changed to Residential low density [S298.002].
- The Kākā valley land shown on B1.1 as Residential standard and Residential Low Density, be changed to Residential low-density backdrop or Small Holding Higher Density [S298.002].

- This development should at least be medium-density, with townhouses and/or apartments. Nelson does not need more suburban sprawl [S276.002].
- Prefer a residential zone for the flatter areas at least, of the development and that there are some townhouses there, not just big houses on big sections. Would also like to see clusters of houses in bush pockets, clover-leafed off the main winding road, rather than anything like a normal suburban subdivision sprawl blandness [S311.004].
- Every section should have access to winter sun for at least three hours per day. Although it is possible to design a house to be warm without any sun and with minimal heating, it is psychologically damaging to live in a house that doesn't get any winter sun at all at some times of the year [S276.007, S311.009].
- If PPC 28 is to be approved, require covenant against further urban intensification in Kākā Valley / PPC 28 area [S292.019, S312.019, S319.006, S350.019, S367.024].
- Higher density residential development should be prioritised, with maximum site size included in the zoning (rather than just minimum) to ensure the desired high intensity residential development takes place [S320.004].
- Include universal design requirements for all houses to ensure they are sustainable and can be adapted to meet the life-time needs of the resident from the stage where they have young children in pushchairs to when they are elderly and/or have a disability [S300.002].

#### 14.16.4 Outcome of expert conferencing

478. The JWS Urban Design 5th May 2022 records the following areas of agreement:

- The Structure Plan should include an indicative street connection to Walters Bluff.
- The proposed Suburban Commercial Zone would be better located at the intersection of the primary road and a secondary road leading up the Kākā Valley.
- There is benefit in describing an indicative potential street network and lot layout to demonstrate the feasibility of development within the PPC 28 area, allowing the effects of likely development to be further assessed and the zoning plan refined if appropriate.
- An indicative secondary road leading up the Kākā Valley be shown on the Structure Plan.
- The PPC 28 area is suitable for urban growth and development, including is close proximity to the city centre.
- With planned connections to Walters Bluff and between Ralphine Way and Bay View ridgeline, the urban development of the PPC 28 area as shown in the Structure Plan will give effect to the NPS-UD Policy 1 and achieve a well-functioning urban environment.<sup>188</sup>
- While the topography places some restriction on sunlight access in the early morning and late afternoon, that restriction is not excessive and the area is suitable for the proposed housing.
- The extent and green character of the public reserves in the Maitai Valley are not changed by PPC 28.

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<sup>188</sup> This comment excludes Policy 1 d) which is outside the Urban Design Experts' area of expertise.

- PPC 28 would lead to a range of public amenity, health and wellbeing benefits which will be available to both the existing and potential new residents, including the wider Nelson community.
  - The planning framework (operative NRMP and proposed PPC 28 provisions) is suitably robust and comprehensive and will both enable and require good urban design outcomes, subject to the further refinement of the Structure Plan, information and subsequent reviews outlined above.
479. Section 3.10 of JWS Planning (2) dated 26<sup>th</sup> April 2022 records agreement that the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act is not relevant because as currently promulgated it only applies to Tier 1 urban environments and Nelson City is a Tier 2.
480. In respect of whether it is likely that future urbanisation of the site will be at a higher density that proposed in PPC 28, section 3.10 of JWS Planning (3) dated 19 & 20 May 2022 records agreement that the planners have no basis on which to speculate about the density and yield of dwellings beyond that indicated in PPC 28 as notified.
481. The matter of universal design was considered in DHB planning record dated 22 April 2022. At the conclusion, the DHB confirmed they would not be pursuing their submission and relief any further than the PPC 28 process.

#### **14.16.5 Evaluation**

482. As discussed earlier the request was accompanied by an urban design evaluation. Mr McIndoe provided input to the s42A report responding to the request and submissions. Expert conferencing occurred (as set out above), and ‘agreement’ was reached about what additional information/work would be beneficial, in section 32 terms, to address the outstanding matters between the expert urban designers. We address these below, and they were largely set out in Mr Nicholson’s rebuttal evidence.
483. Mr Nicholson’s rebuttal evidence addressed the following, and we agree that that they are the ‘outstanding’ matters as set out in the JWS, or matters raised by submitters. We address these below:
- Provision of an Indicative Masterplan agreed in the Urban Design JWS dated 5 May 2022;
  - Matters raised by Mr McIndoe in his supplementary memo on Urban Design dated 27 June 2022;
  - Matters raised with respect to the re-alignment of the Kākā Stream; and
  - A review of the potential shading effects on the Indicative Masterplan.

#### *Indicative Masterplan*

484. Mr Nicholson attached an Indicative Masterplan to his rebuttal evidence as agreed with Mr McIndoe<sup>189</sup>. We note, and accept, that the Indicative Masterplan is intended to outline one feasible development outcome based on the proposed planning provisions. While it is not intended to be part of the ‘plan machinery’ and most of any proposed development will be subject to subdivision, land use and regional resource consents, we have found it useful in demonstrating the feasibility of development within the PPC 28 area.

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<sup>189</sup> Paragraph 3.4 JWS Urban Design (1) – 5 May 2022

485. Of particular note, as part of the development of the Indicative Masterplan additional areas on the Malvern Hills have been identified as not suitable for building due to geotechnical constraints. These additional areas have been included in the Residential Green Overlay on the Structure Plan providing a more comprehensive green layer that shapes and defines the areas of urban development, and will address some concerns raised by the s42A experts and submitters.
486. We agree with Mr Nicholson that the Indicative Masterplan, provides a clearer picture of the overall vision for the proposed Maitahi Development. In particular the extent to which the proposed areas of urban development are enclosed and framed by the extensive green spaces on Kākā Hill, Botanical Hill and the Malvern Hills, and the gradation of densities from comprehensive development on the valley floor to a more conventional suburban densities on the lower slopes and low-density houses that would be set in a revegetated landscape on the ridgelines.
487. We accept that the higher density residential areas, on the valley floor and lower slopes, will have a good level of accessibility to the city centre, and will be surrounded by (high quality) open spaces, both along the margins of the adjacent Maitahi/Mahitahi River and Kākā Stream, and on the surrounding hills. We also agree that the lower density development along the ridgeline will make provision for revegetation within the private lots to extend the areas identified for revegetation in the Residential Green Overlay.
488. The primary road will provide an alternative route from the Kākā Valley to Bayview Road, and potentially Walters Bluff, improving the resilience of the transport network and accessibility for residents. The small-scale commercial centre and neighbourhood reserve will provide a meeting place for future communities, while extensive walking and cycling tracks will provide recreational opportunities for residents and visitors.
489. Overall, it is our finding that the Indicative Masterplan demonstrates that, with the planning provisions in PPC 28, PPC 28 will be able to create a high-quality urban form and character, with a range of housing types and densities, with a range of amenities and open spaces close to the centre of the city. This will give effect to the NPS-UD.

*Supplementary Memo to the Urban Design Report – Graeme McIndoe*

490. Mr Nicholson agreed with Mr McIndoe that the proposed Suburban Commercial Zone would be better located at the intersection of the primary road and a secondary road leading up the Kākā Valley. This will encourage more passing traffic and improved commercial viability, as well as co-location with neighbourhood reserve, and integrated planning<sup>190</sup>. Moreover, the new indicative road along the Kākā Stream could be amended (in the final design) to more precisely indicate the location of the secondary road adjacent to the proposed neighbourhood and esplanade reserves in order to provide better public access and positive CPTED outcomes note that these alignments are demonstrated in the Indicative Masterplan.
491. We accept that the provisions of the NRMP (AP14.2 and AP14.3), together with the provisions of the Nelson Tasman Land Development Manual, will be able address the frontage of the proposed esplanade and neighbourhood reserves at the time of subdivision design.

*Alignment of the Lower Kākā Stream*

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<sup>190</sup> Paragraph 3.2 JWS Urban Design (1) – 5 May 2022

492. We addressed the alignment of the Lower Kākā Stream in more detail in the Ecological section. This section addresses the urban design related issues.

493. It was Mr Nicholson’s opinion that in acknowledging that there may be ecological considerations resulting from either the relocation or retention of the stream in its current location, but if *“these considerations are equal, I consider that there are urban amenity related benefits arising from the relocation of the stream.*

*I agree with Mr McIndoe that the urban amenity related benefits include improved sunlight access and better aspect resulting from locating the dwellings in the higher density areas further away from the hills with an outlook over the stream to the west”<sup>191</sup>.*

494. Furthermore, while Mr Nicholson acknowledged the potential benefits of retaining a natural feature within an urban development, he considered that retaining the stream in its current location could potentially create a degree of severance between communities on either side of the stream depending on the number and location of bridges and the treatment of the riparian corridor. It was his opinion that the relocation of the stream would retain access to the natural feature while reducing the degree of potential severance by locating the stream at the base of the hill slopes and reducing the length of the potential barrier.

#### *Shading*

495. Some submitters questioned the suitability of the Kākā Valley for residential development considering it to be shady, cold and damp. Mr McIndoe in his urban design review of submissions<sup>192</sup> reviewed the sunlight access for the higher density residential areas and concluded that they would have reasonable access to sunlight. Mr Nicholson agreed, and so do we.

496. We note that the development of the Indicative Masterplan has enabled a higher level of scrutiny of the shading effects on all of the proposed residential areas. Mr Nicholson had overlayed the shading diagrams for midwinter on the Indicative Masterplan in order to review the potential shading effects. As a result, he advised us that any potential residential sections which would be completely shaded and receive less than three hours of sunlight at midwinter (note that most sections receive significantly more hours of sunlight at midwinter) had been removed from the masterplan.

497. On the issue of minimum or maximum lot sizes raised by some submitters, we consider that this is a matter that is best addressed on a plan-wide basis across all residential zones, rather than on an ad-hoc basis through PPC 28.

498. Overall, we are satisfied that the urban design response in PCC 28 is appropriate for the site.

#### **14.16.6 Recommendation**

499. We recommend that the submissions that seek that PPC 28 be declined in respect of Urban Design, as set out above under “Matters Raised”, be **rejected**.

500. We recommend that the submissions that seek that PPC 28 be approved in respect of Urban Design, as set out above under “Matters Raised”, be **accepted**.

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<sup>191</sup> Paragraphs 18 and 19 of Mr Nicholson’s Rebuttal evidence

<sup>192</sup> Dated 19th May 2022

501. We recommend that the submissions that seek that PPC 28 be amended in respect of Urban Design, as set out above under “Matters Raised”, be **accepted-in-part** to the extent we have recommended the structure plan and amendments to the planning provisions.

#### **14.17 Land suitability (Geotechnical, Land Contamination and Productive Soils)**

502. We address the following in turn below:

- Geotechnical
- Land contamination
- Productive soils

##### **14.17.1 Geotechnical**

###### **14.17.1.1 Introduction**

503. The PPC 28 request addresses geotechnical risks in section 6.6. A geotechnical assessment was carried out by Tonkin and Taylor and was appended to the request as attachment C4. Geology and Geotechnical Hazards Report (March 2021).

504. Further information on geotechnical aspects of the request was sought. The Applicant responded to this – addressed on p.9 of the Response Letter.

###### **14.17.1.2 Statutory and policy provisions**

505. The following NRPS provisions address natural hazards generally, i.e. they do not refer specifically to geotechnical risks, such as land instability (although such risks are included in the definition of ‘natural hazard’ and discussed below). They are also addressed in the Nelson Tasman Land Development Manual:

- DH2 Natural Hazards (pp.47-55)
  - Objective DH2.2.1 Protection of property, health and safety
  - Objective DH2.2.2 Minimising adverse effects
  - Objective DH2.2.3 Minimising hazard proneness
  - Objective DH2.2.4 Managing effects of hazard-related works
  - Policies DH2.3.1 – DH2.3.7

506. As with the NRPS, the following NRMP provisions do not refer specifically to geotechnical hazards:

- DO2 Natural hazards (chapter 5, pp.5-7)
  - Objective DO2.1
  - Policy DO2.1.1 Health and safety
  - Policy DO2.1.2 Property and environment
  - Policy DO2.1.3 Aggravation of hazard
  - Policy DO2.1.4 Flood mitigation

###### **14.17.1.3 Matters raised**

507. Submissions that sought that PPC 28 be declined included the following reasons:

- There is a lack of supporting technical information, including geotechnical information [S153.004].
- It has not been demonstrated that areas of high geotechnical risk proposed for residential development can be developed safely. This is critical to the zoning, including whether indicative infrastructure can proceed as planned [S292.001, S292.004, S312.001, S312.004, S350.001, S350.004, S367.001].
- Being a flood plain, a marshland 100 metres from the Maitahi/Mahitahi River could be an area prone to liquefaction if there is an earthquake [S306.001].
- The proposed housing is unlikely to be realistically affordable particularly given the new requirements for geotechnical assessments that have not been adequately considered in PPC 28 [S319.001].

508. Submissions that sought that PPC 28 be approved included the following reasons:

- PC28's Kākā Valley contains a significant area that is relatively flat, with reduced geotechnical / civil engineering challenges [S313.001].

509. Submission points seeking amendments to PPC 28:

- If PPC 28 is approved, the following information should be insisted upon before the plan change could proceed:
  - A detailed geotechnical assessment of areas of high geotechnical risk [S153.004, S292.004, S312.004, S350.004, S367.004].

#### **14.17.1.4 Outcome of expert conferencing**

510. The JWS Geotechnical 4th May 2022 recorded the following areas of agreement.

- The information supporting PPC 28 (including further information) satisfies the requirements of Clause 22(2) of the First Schedule in terms of the consideration of geotechnical effects anticipated from the proposed Plan Change.
- From a geotechnical perspective, and taking into account the existing provisions of the NRMP and the proposed provisions in PPC 28, the proposed rezoning is appropriate.
- The PPC 28 area includes land that is potentially suitable for residential development and some areas that have potential constraints for residential development. More detailed geotechnical assessments will be required at the resource consent stage.
- In combination, these requirements will ensure that the geotechnical risks are managed (avoided, remedied or mitigated) during the detailed assessment, design and construction phases of subdivision and development under the RM Act 1991.

#### **14.17.1.5 Evaluation**

511. Mr Horrey provided input to the s42A report - addressing geotechnical aspects of PPC 28. He set out that:

*...the geotechnical assessment provided with the Application (and subsequent information) is at an appropriate level for the purposes of assessing the viability of a plan change. The assessment clearly identifies areas of medium and high geotechnical risk and acknowledges the need for further investigations in all areas at later development stages. I consider that the provisions of the RMA and NRMP which must be satisfied at resource consent*

*stage are sufficient to require hazards to be further investigated such that they may be avoided, remedied or mitigated as development proceeds.*

512. Mr Foley's evidence was that geotechnical investigations had been undertaken to support the application for PPC 28. Mr Foley outlined that the *"scope of investigations had included a desktop review of published geology maps, review of Tonkin & Taylor's files for information that is relevant to the PPC 28 area, review of aerial photography taken over several decades, and review of LiDAR digital terrain models. Field investigations have included walking over a large portion of the area and reviewing surface features of geomorphology and geology, including evidence of past slope instability. Field observations have been used to support slope stability analyses and an assessment of geotechnical risks to residential development"*.<sup>193</sup>

513. He further set out that:<sup>194</sup>

- There is no evidence of significant recent slope instability in areas proposed to be zoned for residential development, however localised small shallow landslip scarps are present on some steeper slopes and some slopes show geomorphic evidence of instability in the geological past.
- The observed geology is generally consistent with the published geology maps, with predominantly strong to very strong rocks forming the hillside slopes and river alluvium and fan gravels underlying the floodplain of the Kākā Valley and the terraces and gentle slopes adjacent to Kākā Stream.
- There are no active faults mapped within the PPC 28 area.
- Areas with the PPC 28 area have variable susceptibility to slope instability, liquefaction and lateral spreading, and soil erosion geotechnical hazards.
- The natural hazard risk to residential development has been assessed in general accordance with the Australian Geomechanics Society "Practise Note Guidelines for Landslide Risk Management: 2007, supported by quantitative risk analysis. This assessment has identified areas of low, moderate and high geotechnical risk within the PPC 28 area.

514. We address the relevant aspects of Mr Foley's evidence below in relation the section "Water Quality, flooding, stormwater, water sensitive design and erosion and sediment control".

515. Overall, it was Mr Foley's view and agreed by Mr Horrey, that the PPC 28 area includes land that is potentially suitable for residential land development in accordance with the Structure Plan, associated zoning and plan provisions – but it also includes some areas which have potential constraints for residential development.

516. We accept, and it is 'standard practice', that more detailed geotechnical assessments will be required (Fourth Schedule of the RMA, the NRMP, and to satisfy Section 106 of the RMA) as part of future resource consent applications.

#### **14.17.1.6 Recommendation**

517. We recommend that the submissions that seek that PPC 28 be declined or amended in respect of geotechnical matters, as set out above under "Matters Raised", be **rejected**.

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<sup>193</sup> Paragraphs 12 and 13 of Mr Foley's evidence-in-chief

<sup>194</sup> Paragraphs 14 to 18 of Mr Foley's evidence-in-chief

518. We recommend that the submission that seeks that PPC 28 be approved in respect of geotechnical matters, as set out above under “Matters Raised” in respect of this issue be **accepted**.

#### **14.17.2 Land Contamination**

##### **14.17.2.1 Introduction**

519. The rezoning of part of the site for residential development that has been previously used for rural activities may result in adverse effects resulting from the disturbance and discharge of contaminated soil.

##### **14.17.2.2 Statutory and policy provisions**

520. Contaminated soils are managed under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (the ‘NES-SC’). This applies to any subdivision or change in the use of a piece of land, and therefore would apply to the type of land use change that would be facilitated by PPC 28. The NES-SC requires that a Detailed Site Investigation (DSI) is carried out when the use of the land changes or is proposed to be subdivided to identify the extent of the contaminants, and a Remedial Action Plan or Site Validation Reports prepared if required.
521. Objectives SO1.2.4 and policy SO1.3.5 of the RPS address avoiding, remedying or mitigating contamination of soil.
522. Policy DO3.1.3 contaminated sites in the NRMP states “management of contaminated sites to contain effects, and to promote the rehabilitation of sites to a level where risk to the environment or health is remedied or mitigated”.

##### **14.17.2.3 Matters raised**

523. There were no submissions received on land contamination.

##### **14.17.2.4 Evaluation**

524. The applicant has addressed land contamination in section 6.18 of the plan change request. We agree with their assessment.
525. While there is a risk of soil contamination being present, these risk factors are not untypical of rural landholdings. There are well-established processes and options available for managing the risk to human health when changes in land use occur. At this plan change stage there is nothing to suggest that the land is unsuitable for development given the known HAIL activities previously undertaken within the plan change area.

##### **14.17.2.5 Recommendation**

526. As there were no submission points in respect of soil contamination, we have not needed to made any recommendations.

#### **14.17.3 Productive Soils**

##### **14.17.3.1 Introduction**

527. The request was accompanied by a Productivity Report prepared by Duke & Cook Limited. This report concluded that:
- The soils have low natural levels of fertility and have limited productive use beyond plantation forestry;

- The land has not been used for productive activity over the past 50 years apart from some low intensity intermittent grazing;
- The small area of the property that does have a slightly higher level of productivity is that part zoned Rural Small Holdings;
- The loss of long-term productivity resulting from the proposed activities will be minor.

#### **14.17.3.2 Statutory and policy provisions**

528. There is no statutory direction in the RMA or in any NPS or NES in respect of productive land.<sup>195</sup>
529. Chapter 10 of the RPS sets out relevant objectives and policies in respect of soils, and in particular policy SO1.3.7 seeks to recognise that urban expansion can remove soils from primary production.
530. Objective RU1 protect resources and capacities of the NRMP seeks that land be used in a manner that protects the life-supporting capacity, versatility and availability of soil (and other matters).

#### **14.17.3.3 Matters raised**

531. One submission in opposition sought direct relief in respect to productive land should PPC 28 be approved. It considered that given the current climate crisis, potentially high yielding, fertile rural land such as that located on the alluvial terraces of the floor of Kākā Valley, should not be disturbed or built upon and instead should be protected and enhanced with riparian plantings and preserved for the potential necessity for food production in the future [S319.001].
532. Consequently, if PPC 28 was to be approved, the submitter requests that rezoning only occurs on the less fertile sloping rural land (above the floodplain terraces) on the Kākā/Maitahi/Mahitahi Valley side of the ridgeline to be rezoned rural - high density small holdings<sup>196</sup>, with a suggested minimum lot size of 1 hectare and a maximum number of 50 lots [S319.005].
533. A number of submissions in support of PPC 28 raised that the land proposed to be rezoned is not productive [S39.001, S68.002, S128.001, S313.001] and much of it is only growing gorse [S155.001]. Another raised that the land is of poor quality [S152.002]. Other submitters believe that PPC 28 will help avoid further loss of productive land due to residential development, particularly on the Waimea Plains [S7.001, S206.005, S313.001].

#### **14.17.3.4 Outcome of expert conferencing**

534. Section 3.7 of the JWS Planning (3) dated 19 and 20 May 2022 records that based on the report submitted with the request, both Mr Lile and Ms Sweetman agree that there will not be an unacceptable loss of productive land.

#### **14.17.3.5 Evaluation**

535. We have reviewed Section 6.17 of the Plan Change request which addressed productive land values and we agree with that assessment. We have also considered the expert evidence of Mr Bennison.
536. Mr Bennison set out that the subject land comprised predominantly steep north westerly and south easterly facing hill with easier contoured areas in the Kākā Valley floor. It was his opinion

<sup>195</sup> The National Policy Statement for Highly Productive Land is a draft NPS

<sup>196</sup> Noting that proposed zoning has now been removed from the plan change

that the soils had low natural levels of fertility and had limited productive use beyond plantation forestry. He set out that, *“the only productive activity over the past 50 years has been intermittent low intensity grazing on the areas of the land in pasture, predominantly around the flat areas in the Kākā Valley”*.<sup>197</sup>

537. Given that the land in question is not used for primary production beyond intermittent grazing and is not of high productive quality, we find that any loss for urban purposes is not inconsistent with the RPS or NRMP. Furthermore, any loss of long-term productivity resulting from the proposed rezoning would be minor.

#### **14.17.3.6 Recommendation**

538. We recommend that the submissions that seek that PPC 28 be declined or amended in respect of productive soils, as set out above under “Matters Raised”, be **rejected**.
539. We recommend that the submissions that seek that PPC 28 be accepted in respect of productive soils, as set out above under “Matters Raised”, be **accepted**.

### **14.18 Water and Wastewater - Infrastructure Servicing and Funding**

540. The request included an Infrastructure Assessment prepared by Tonkin and Taylor<sup>198</sup> and a response to Council’s further information request.<sup>199</sup>

#### **14.18.1 Statutory and planning provisions**

541. The NPS-UD states as Objective 6: *Local authority decisions on urban development that affect urban environments are:*

- (a) integrated with infrastructure planning and funding decisions; and*
- (b) strategic over the medium term and long term; and*
- (c) responsive, particularly in relation to proposals that would supply significant development capacity.*

542. The following NRPS provisions relate to infrastructure servicing and funding:

- DH1 Urban expansion (pp.43-47)
  - Objective DH1.2.1 Manage adverse effects of urban expansion
  - Policy DH1.3.3 Infrastructure costs
  - Policy DH1.3.4 Adequate and appropriate provision of services

543. The NRMP has the following relevant provisions:

- DO13A Urban Design (chapter 5, p.62)
  - Objective DO13A.5 Sustainable places and communities
  - Policy DO13A.5.1 Environmentally responsive
- DO14 Subdivision and development (chapter 5, pp.67-73)
  - Objective DO14.1 City layout and design

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<sup>197</sup> Paragraph 21 of Mr Bennison’s evidence-in-chief

<sup>198</sup> C7. Infrastructure and Flooding Report

<sup>199</sup> C7. Infrastructure Further Information Response

- Policy DO14.1.3 Orderly development
- Objective DO14.3 Services
- Policy DO14.3.2 Drainage, water and utilities
- Policy DO14.3.3 Areas without services

## **14.18.2 Water**

### **14.18.2.1 Introduction**

544. The Applicant addressed infrastructure servicing at 6.8 of the request document. The request also included an Infrastructure Assessment prepared by Tonkin and Taylor<sup>200</sup> and a response to Council's further information request.<sup>201</sup>
545. Tonkin & Taylor determined that the site can be appropriately serviced, and confirmed the need for the NRMP Services Overlay to be extended over the balance of the site to include the Malvern Hills land that is proposed to be zoned Residential and also the land to be zoned Rural Small Holdings.

### **14.18.2.2 Matters raised**

546. Submission points seeking that PPC 28 be declined included the following reasons:
- PPC 28 will lead to a strain on water [S34.001].
  - As indicated in the infrastructure plan, lower Maitai Valley Road and Nile Street will need to be extensively excavated to install new water supply infrastructure [S198.009].
  - The increased demand for water from 750 houses would see the Maitai reduced to the minimum allowable flow more often, with impacts on water quality and river ecology [S198.005, S209.004, S323.005].
  - Concern about installation of water pipes adjacent to Dennes Hole (T&T report – 03/21) [S263.001, S358.001, S360.001].
  - Branford Park would be subjected to months and months of roadworks disruption to connect the new Water Main line to existing infrastructure at Nile Street. This would ruin the visual and aural amenity of this tranquil recreation area [S358.001, S360.001].
547. There are no relevant submission points seeking that PPC 28 be approved.
548. Neutral submission points:
- Nelson Marlborough Health (NMH) notes the importance of rainwater harvesting as the population grows and there are more frequent droughts as a result of climate change. NMH supports the use of rainwater for gardening, cleaning or toilet/laundry purposes. NMH does not support the use of rainwater for drinking water purposes unless there are no alternative reticulated options and only where suitable treatment is in place to render the water potable [S300.010].
549. Submission points seeking amendments to PPC 28 include:
- NMH would like to see more explicit direction in the Plan of when rainwater harvesting can be used [S300.010].

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<sup>200</sup> C7. Infrastructure and Flooding Report

<sup>201</sup> C7. Infrastructure Further Information Response

- PPC 28 be rejected unless the development is required to put in place suitable provisions for handling greywater, and rainwater storage and other measures to reduce the demand on the water supply and potential impact on the Maitahi/Mahitahi River (see supporting advice from Cawthron Institute) [S198.005, S209.004, S323.005].

#### **14.18.2.3 Outcome of expert conferencing**

550. The JWS Infrastructure dated 20 May 2022 addresses water supply.

551. Matters that the experts agreed on include:

- *Water Mains* (at 3.11): That the size and location of the mains connection appear appropriate for the principle of a plan change. More detailed design can be addressed at the subdivision stage, in the event that PPC 28 is successful.
- *Reservoir size* (at 3.12): That the reservoir size as stated in the PPC 28 application is sufficient to service the PPC area.
- *Site feasibility* (at 3.13): That it is highly likely that suitable reservoir sites can be found for the smaller volumes required for PPC 28, and that any impacts from this reservoir construction could be appropriately addressed by the NRMP at the subdivision stage.
- *Effects from earthworks required to install water main* (at 3.4.1): That details on the extent of earthworks etc. can be determined at the subdivision stage. The installation of water mains would be subject to the provisions of the NRMP. In the event that adverse installation effects could not be adequately avoided, remedied or mitigated, it is highly likely that alternative routes could be used for water supply purposes.
- *Rainwater Tanks* (at 3.4.2): That any impacts from the abstraction of water for the water supply of the proposed development would be adequately covered by the existing Resource Consent.

552. The issues of rainwater harvesting and greywater recycling are Council policy decisions which are not appropriate to be addressed in the Infrastructure JWS.

553. There were no areas of disagreement.

#### **14.18.2.4 Evaluation**

554. In addition to the JWS, Mr Yarrall provided a s42A report addressing water supply. He confirmed that there were no outstanding matters to address beyond what was covered in the JWS.

555. With regard to public submissions on PPC 28, Mr Yarrall was of the view that the information provided for in PPC 28 regarding water supply was appropriate insofar as it demonstrates the feasibility of that essential service. He agreed that detailed design can be addressed at the subdivision stage. We agree.

#### **14.18.2.5 Recommendation**

556. We recommend that the submissions that seek that PPC 28 be declined or amended in respect of water supply as set out above under “Matters Raised” be **rejected**.

557. We recommend that the neutral submission in relation to water supply as set out above under “Matters Raised” be **noted**.

### **14.18.3 Wastewater**

#### **14.18.3.1 Introduction**

558. Wastewater was addressed in the plan change request - Sections 1 and 7 of the Tonkin and Taylor Infrastructure Assessment. Additional information was also provided in the response to further information request.

#### **14.18.3.2 Matters raised**

559. Submission points seeking that PPC 28 be declined included the following reasons:

- PPC 28 will lead to a strain on wastewater [S34.001].
- Concern about the provision of proper sewerage treatment for another 750+ households, when the Council is behind in the upkeep of the existing facilities [S291.001].
- Concern about installation of wastewater pipes adjacent to Dennes Hole (T&T report – 03/21). [S263.001, S358.001, S360.001, S382.001].
- Branford Park would be subjected to months and months of roadworks disruption to connect the new Wastewater Main lines line to existing infrastructure at Nile Street. This would ruin the visual and aural amenity of this tranquil recreation area [S358.001, S360.001].
- Wastewater flows have been underestimated because the base figure of 350 does not take into account the further houses planned for the upper Kākā Valley in what is known as the Bayview area [S358.001, S360.001].
- Concern about odour from the onsite storage of greywater / wastewater (Option 3, T&T report – 08/21) [S319.001, S358.001, S360.001].
- Concern about noise effects from low pressure pumping systems at each lot or household (Option 4, T&T report – 08/21) [S358.001, S360.001].
- Loss of amenity to local residents from significant infrastructure works in upgrading wastewater capacity along Nile St (Para 2.1.1 of the Infrastructure and Planning report) [S382.001].
- It is unclear what the plan is if the provision of onsite wastewater storage is not feasible before the wastewater upgrades are undertaken [S382.001].
- It is unclear whether easements will be possible to obtain in order to deal with new sections of necessary wastewater lines [S382.001].

560. Neutral submission points:

- Lack of assessment of the impact on the Wakapuaka Wastewater Treatment Plant with regards to loading, treatment efficacy and routine maintenance associated with the significantly increased flows arising from PPC 28 [S300.011].

561. Submission points seeking amendments to PPC 28 include:

- The assessment of the impact on the Wakapuaka Wastewater Treatment Plant needs to be clearly articulated [S300.011].

#### **14.18.3.3 Outcome of expert conferencing**

562. The JWS Infrastructure (2) – Wastewater dated 26 May 2022 addresses wastewater.

563. The experts agreed that the PPC 28 proposed approaches to manage wastewater from the PPC 28 development areas are appropriate.

#### **14.18.3.4 Evaluation**

564. Mr Franklin, Council's wastewater expert, provided a wastewater assessment in his s42A report. He considered that:

- substantial upgrades to the wastewater network area are required to service PPC 28;
- there are potentially other developments in these catchments that may impact on the assessments, and the timing and scale of these could affect the overall impacts and network upgrades; and
- generally, the PPC 28 proposed approaches to manage wastewater from the proposed development areas are appropriate.

565. Mr Franklin considered that a number of matters would need to be addressed at the subdivision stage. These included:

- More master planning and resource consent planning to refine the volume of the Weka Street Pump Station additional storage.
- Re-assessment of alternative wastewater storage location options.
- Mitigation of septicity issues in the network as far as practicable and consideration and mitigation of downstream impacts of increased septicity.
- Re-assessment of wastewater pipe upgrade requirements to take account of the impacts of other developments on wastewater capacity.

566. The Applicant did not contest any of the matters raised by Mr Franklin in evidence or at the hearing.

567. We agree with experts (as set out in the JWS and s42A report). Any outstanding matters will be addressed at the subdivision stage, under the operative NRMP provisions and proposed PPC 28 provisions.

#### **14.18.3.5 Recommendation**

568. We recommend that the submissions that seek that PPC 28 be declined, amended or neutral in respect of wastewater as set out above under "Matters Raised" be **rejected**.

### **14.18.4 Funding**

#### **14.18.4.1 Introduction**

569. A broad range of concerns were raised in submissions regarding servicing, including the adequacy of the existing reticulated networks to service a development of this scale, impacts on current users, and how the upgrades might be funded. A general concern expressed was that existing ratepayers will have to subsidise infrastructure development required to accommodate the additional housing.

#### **14.18.4.2 Statutory and policy provisions**

570. Objective 6(a) of the NPS-UD seeks that local authority decisions on urban development that affect urban environments are integrated with infrastructure planning and funding decisions.

571. NPS-UD Policy 10(b) requires Tier 1, 2 and 3 local authorities to engage with providers of development infrastructure and additional infrastructure to achieve integrated land use and infrastructure planning.

572. Relevant provisions from the NRMP include:

- Objective FC1
- Policy FC1.1 Responsibility for costs
- Policy FC1.2 Financial contributions in money
- Policy FC1.3 Purpose of contributions
- Policy FC1.4 Exemptions and reductions
- Policy FC1.5 Offsets
- Policy FC1.6 Financial contributions in land

#### **14.18.4.3 Matters raised**

573. A significant number of submissions (in particular the 'proforma' submissions) raised the issues of funding of infrastructure to service the development, as being unreasonable and inequitable.

574. Submission points seeking that PPC 28 be declined included the following reasons:

- The financial cost to the community of infrastructure to support the development is unreasonable and inequitable [standard reason #10, S318.001, S358.001, S360.001].
- Concerns about the cost to ratepayers of the infrastructure change needed [S3.001, S160.001, S178.001, S358.001, S360.001, S363.001, S379.001, S413.001, S423.001, S424.001].
- Council has not funded infrastructure appropriately and much of it is now in poor condition. Funds for maintaining infrastructure have been used inappropriately for political benefits. Adding a large new subdivision will create more strain on an already substandard infrastructure [S41.001].
- There is a lack of infrastructure to support the extra housing and population increase [S46.001].
- There was no community consultation prior to the Council environment department approving funding from the government infrastructure grant [S56.001].
- Funding has not been approved through the \$25m post-Covid Shovel Ready or Infrastructure Accelerator Funding [S288.001].
- PPC 28 is unintegrated and unsustainable, in respect to it needing major infrastructure development [S292.001, S312.001, S350.001].
- The PPCR area is unconnected to any existing services, thus would require entirely new infrastructure, which is an inefficient way to service housing [S358.001, S360.001].

575. Submission points seeking that PPC 28 be approved included the following reasons:

- The site is ideal. Infrastructure services in the area are good [S155.001].
- NCC can look forward to, at least, \$1 million extra per year in rates income, forever. That guaranteed extra income can be used to raise and pay off loans for much-needed infrastructure and other city improvements [S155.001].

#### **14.18.4.4 Outcome of expert conferencing**

576. Section 3.14 of JWS – Planning (3) addressed infrastructure funding.
577. All planning experts agreed that infrastructure funding was not determinative as to whether PPC 28 was approved. The planners were of the view that the key consideration was the integration and coordination of infrastructure and development to ensure that services were available prior to, or at the time, as being required to support development. These matters can be appropriately addressed through the resource consent process.
578. It was noted that details relating to the funding of development are considered through the Council's Long Term Plan process and specifically the Council's revenue and financing policy.

#### **14.18.4.5 Evaluation**

579. We did not receive any evidence from the Applicant, or from the s42A team, that the funding of necessary infrastructure was a fundamental issue or flaw in terms of PCPC 28.
580. Ms Gepp for STM stated:<sup>202</sup>

*The Court has noted that "it is bad resource management practice and contrary to the purpose of the Resource Management Act ... to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it."*

581. Ms McCabe's evidence for STM also stated the same thing as Ms Gepp (acknowledging it was in reference to an Integrated Transport Assessment).
582. However, we reiterate we have not had evidence before us in relation to the funding (or lack of) in terms of water and water supply that would raise issues of "*bad resource management practice*". In our view, the funding of any such infrastructure upgrades necessitated by the plan change is not an impediment to the rezoning.
583. Infrastructure upgrades will either need to be undertaken (and funded) by the developer; or where they are necessitated by growth beyond just this site, there are mechanisms available to the Council to recoup proportional costs from the developer such as through development contributions taken at the subdivision stage or through a developer agreement.

#### **14.18.4.6 Recommendation**

584. We recommend that the submissions that seek that PPC 28 be declined in respect of funding issues as set out above under "Matters Raised" be **rejected**.
585. We recommend that the submissions that seek that PPC 28 be approved respect of funding issues as set out above under "Matters Raised" be **accepted**.

### **14.19 Water quality, flooding, stormwater, water sensitive design and erosion and sediment control**

#### **14.19.1 Introduction**

586. We have grouped these topics together given the interrelationship between sedimentation, flooding, stormwater, water sensitive design and water quality, and the submissions received. There are also clear linkages with aquatic ecology, and while this is addressed here, it is more thoroughly addressed in the ecology section of the report.

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<sup>202</sup> Paragraph 2.9 of Ms Gepp's legal submissions

587. The request was accompanied by:

- A geology and geotechnical hazards report;
- An environmental review; and
- An infrastructure and flooding report, which was supplemented with further information.

588. Through the course of expert conferencing, additional flood hazard information was provided by Tonkin & Taylor Ltd on behalf of the Applicant, on a without prejudice basis and only for those parties to the conferencing. We note that this was dated 5<sup>th</sup> May 2022 but was not formally included in the public record until 26<sup>th</sup> May 2022 as part of JWS Flooding (3).

#### **14.19.2 Statutory and policy provisions**

589. Section 6(a) of the RMA requires decision makers to recognise and provide for “*the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development*” as a matter of national importance.

590. Section 6(h) of the RMA requires that the management of significant risks from natural hazards be “recognised and provided” for.

591. There are two national planning instruments addressing freshwater quality and quantity: (i) the NPS-FM 2020; and (ii) the NES-F 2020. Provisions within these instruments and their relevance to PPC 28 have been outlined elsewhere in this report.

592. The following NRPS provisions are relevant:

- WA1 Quality of natural waters, incl. inland and coastal waters (pp.95-101)
  - Objectives WA1.2.1 – WA1.2.2
  - Policies WA1.3.1 – WA1.3.3, WA1.3.5 – WA1.3.7
- WA2 Water allocation (pp.101-105) – *Note*, WA2 provisions are not addressed in PPCR Aug 21 doc
  - Objectives WA2.2.1 – WA2.2.4
  - Policies WA2.3.1 – WA2.3.4
- RM1 Resource monitoring (pp.147-150) – *Note*: also relevant to submissions made under ‘Ecology’ and ‘Transportation’ issues
  - Objective RM1.2.1
  - Policies RM1.3.1 – RM1.3.6
- NA6 Beds of rivers and lakes (pp.81-83)
  - Objective NA6.2.1
  - Policies NA6.3.2 – NA6.3.4

593. The following NRMP provisions are also relevant:

- DO2 Natural hazards (chapter 5, pp.5-7)
  - Policy DO2.1.4 Flood mitigation
- DO17 Activities in the beds of rivers and lakes, and in wetlands (chapter 5, pp.84-86)

- Objective DO2.1 – Natural Hazards
- Policy DO2.Policy DO17.1.3 flood damage
- Policy DO17.1.11 realignment and piping
- DO7 Coastal environment (chapter 5, pp.28-34)– Note, DO7 provisions are not addressed in PPCR Aug 21 doc
  - Objective DO7.1 Natural character
  - Policy DO7.1.1 Life supporting capacity
  - Objective DO7.2 Coastal water quality
  - Policy DO7.2.1 Discharges (general)
  - Policy DO7.2.2 Stormwater discharges
  - Policy DO7.2.4 ‘Non-point’ discharges
- DO13 Soil erosion and sediment (chapter 5, pp.52-55)
  - Objective DO13.1
  - Policy DO13.1.1 Soil erosion
  - Policy DO13.1.2 Sedimentation
- DO18 Freshwater abstraction and instream flows (chapter 5, pp.96-98)
  - Objective DO18.1 Maintaining and enhancing flows and levels
  - Policy DO18.1.1 Flow regimes: specific rivers
  - Policy DO18.1.2 Flow regimes: other rivers and streams
  - Policy DO18.1.3 Increased demands for water
  - Policy 18.1.4 Water quantity (NPS-FM 2014)
- DO19 Discharges to freshwater and freshwater quality (chapter 5, pp.108-116)
  - Objective DO19.1 Highest practicable water quality
  - Policy DO19.1.4 Class C freshwater – moderately affected
  - Policy DO19.1.5 Minimum quality
  - Policy DO19.1.6 Enhancing water quality
  - Policy DO19.1.7 Effect of land use activities on surface water bodies
  - Policy DO19.1.8 Stormwater discharges
  - Policy DO19.1.10 New development
  - Policy DO19.1.11 New and existing discharges to water

### **14.19.3 Matters raised**

594. Submission points seeking that PPC 28 be declined included the following reasons:

- Engineered changes to the Maitahi/Mahitahi River floodplains and Kākā Stream realignment will create a flood risk for downstream residents and impact on the mana, habitat value and natural character of these waterbodies [standard reason #4, S80,001,

S156.005, S188.001, S198.006, S209.001, S278.001, S319.001, S319.002, S323.006, S358.001, S360.001].

- Artificially raising the flood plain and any modification of the river bank would ruin the visual amenity and natural character of the river, damage habitat, put pressure on the capacity of the river and probably exacerbate the risk of flooding downstream [S358.001, S360.001].
- Ongoing sedimentation of the river from site works over 30 – 40 years, plus hydrological changes and pollutants from increased stormwater runoff from the new suburb will cause long-term degradation of the Maitahi/Mahitahi River. This will adversely affect the many highly valued swimming holes nearby (including Dennes Hole, Black Hole and Girlies Hole) and Nelson Haven [standard reason #5, S18.001, S28.002, S47.001, S49.001, S51.003, S56.001, S100.001, S102.001, S104.001, S105.001, S108.001, S110.001, S114.001, S115.001, S120.001, S121.001, S136.001, S153.014, S156.001, S156.002, S156.004, S160.001, S168.001, S169.001, S171.001, S178.001, S198.008, S203.001, S209.001, S211.001, S231.001, S263.001, S275.001, S278.001, S279.001, S288.001, S291.001, S292.001, S292.014, S306.001, S307.001, S308.001, S312.001, S312.014, S323.008, S330.001, S342.001, S350.001, S350.014, S352.001, S353.001, S358.001, S360.001, S363.001, S367.001, S367.019, S367.022, S377.001, S378.001, S382.001, S392.001, S395.001, S402.001, S404.001, S416.001, S425.001, S430.001, S435.001, S439.001, S452.001, S454.001, S716.001].
- The plan change does not include details on how sediment will be dealt with or how it will meet the requirements of the National Policy Statement on Freshwater [S198.007, S209.005, S323.007].
- Allowing development in the floodplain zone has the potential to degrade river water quality, including from sediment and stormwater runoff entering into the river [S156.001, S156.002, S156.004, S156.005].
- The Maitahi/Mahitahi River is already under threat from forestry and urbanisation [S188.001, S198.002, S209.001, S209.002, S209.005, S288.001, S323.003].
- Extending the urban area into the Maitai Valley poses a further threat to the water quality and river ecology, as well as potentially increasing the downstream impact of sedimentation in Nelson Haven [S110.001, S121.001, S156.001, S158.001, S188.001, S192.001, S198.002, S209.001, S209.002, S209.005, S269.001, S323.003].
- Concern about the health of the Maitahi/Mahitahi River, including the river banks downstream and adjacent to the main development [S28.002].
- The current Bayview development is resulting in slips onto State Highway 6 and sedimentation into the Haven, showing that river degradation is unavoidable with this scale of development. It would have an irreversible effect on the Nelson Haven / Pararoa Estuary [S80.001].
- The realignment of the Kākā Stream would adversely affect natural character; and its realignment is unlikely to be forthcoming under the NPS-FM and NES-F. Moving Kākā Stream would in no way remediate the apparently ‘man-made’ character of the existing stream because it would still be ‘man-made’ [S358.001, S360.001, S367.001].

- Concern about the impacts of infrastructure installation / ongoing use on water quality, particularly stormwater and wastewater [S10.001, S43.001, S162.001, S168.001, S265.001, S307.001, S308.001,].
- Routing of a huge sewerage and wastewater line past a recreational swimming hole (Dennes) risks contamination and does not constitute Te Mana o te Wai [S263.001, S288.001, S358.001, S360.001, S382.001].
- It is inconsistent with the NPS-FM and Te Mana o Te Wai [S292.001, S312.001, S350.001, S367.001, S367.022].
- It is inconsistent with the following parts of the NRPS - DH1, NA1, NA2, WA1 and WA2 [S292.001, S292.012, S292.014, S312.001, S312.012, S312.014, S318.001, S350.001, S350.012, S350.014, S367.001, S367.017, S367.021].
- It is inconsistent with NRMP DO19 as the river would be inevitably degraded by contaminated stormwater and sediment. Consideration of stormwater management should not be left until resource consent stage [S220.001, S225.001, S278.001, S292.001, S292.014, S312.001, S312.014, S350.001, S350.014, S358.001, S360.001, S367.001, S367.020].
- It is inconsistent with the NRMP, in particular DO13A.5.1(f), DO15.1.3, DO.17.1.2, DO17.1.3, DO18.4.1, and DO19.1.6ii [S292.001, S350.001, S367.001, S367.020, S367.022].
- The extent of earthworks, engineered changes to floodplains and stream alignment and sedimentation effects associated with PPC 28 are contrary to the direction indicated in the Draft Nelson Plan [S292.014, S312.014, S350.014, S367.019].
- NCC's approach to protecting water quality needs to be stricter. For example, a subdivision consent issued by Marlborough District Council prevents zincalume or bare corrugated material being used for roofing. Also, heavy metal testing of stormwater and the soil in the settling ponds is required. These measures are to protect stream water quality. PPC 28 should include provisions to allow such conditions of consent [S51.006].
- The Kākā Valley land shown on B1.1 as Residential standard is predominantly rural and the proposal is going to make it too urban. With flow on negative effects on water quality if not done properly [S298.002].
- The effects of stormwater discharges have not been adequately assessed (see review of PPC 28 documentation by Tektus Consultants) [S367.020].
- It is inconsistent with NRMP DO19 as the river would be inevitably degraded by contaminated stormwater and sediment [S220.001, S225.001, S367.001, S367.020, S367.022].
- As indicated in the infrastructure plan, lower Maitai Valley Road and Nile Street will need to be extensively excavated to install new stormwater infrastructure [S198.009].
- Impact of stormwater infrastructure installation and ongoing use on the Maitahi/Mahitahi River and swimming holes [S263.001].
- The location of stormwater storage and pumping is unclear and the effects of this breaking down has not been assessed [S292.001, S312.001, S350.001, S367.001].

- The PPC only lists options for stormwater. Information is lacking and no plan has been designed to manage stormwater at all within PPC 28 [S358.001, S360.001].
- Consideration of stormwater management should not be left until resource consent stage [S358.001, S360.001].
- NCC or Bayview have not confirmed proposed stormwater infrastructure and have not notified the public what will be put in place to manage this rainwater [S363.001].
- Proposed stormwater discharges would result in an enormous increase in the volume of stormwater, much inevitably contaminated, flowing into Kākā stream, the Maitahi/Mahitahi River and to Nelson Haven [S367.020].
- NCC's Maitai Ecological Restoration Plan acknowledges problems with stormwater discharge from a subdivision going into the Maitahi/Mahitahi River. Any development needs to adopt water sensitive design principles, but concerned whether this will be enough to stop degradation on the Maitahi/Mahitahi River [S447.001].
- There is no existing catchment management plan for the Maitai and Kākā Valley sub-catchment which means the potential impacts of intensive development are not accounted for (including stormwater capacity, stream health, and cultural health) [S465.001].
- There is no certainty that the good environmental outcomes promised by PPC 28 will be achieved. Clarity is required about things including biodiversity corridors, earthworks and structures, vegetation clearance and structures, preservation of natural character of waterbodies, protection of wetlands, flooding impacts [S292.001, S312.001, S350.001, S367.001].
- This area is prone to flooding and climate change will increase this risk, including for downstream properties [S8.001, S156.001, S156.004, S220.001, S225.001, S288.001, S306.001, S319.001, S319.004, S338.001, S353.001, S358.001, S360.001, S390.001].
- Proposed extreme floodplain modifications are inconsistent with environmental and climate change concerns, constitute absolute disrespect for the river, and do not uphold Te Mana o te Wai [S319.001, S367.001, S367.003, S367.017].
- The inherent flood risk makes it a substandard site for development with potential poor social and environmental outcomes, particularly for the proposed high density housing on the Maitahi/Mahitahi River floodplain area [S43.002, S56.001, S69.001, S73.001, S100.001, S153.001, S154.001, S156.001, S156.004, S161.001, S220.001, S225.001, S278.001, S292.001, S292.003, S292.012, S293.001, S312.001, S312.003, S312.012, S330.001, S350.001, S350.003, S350.012, S358.001, S360.001, S367.001, S367.013, S382.001].
- The form of the river should not be changed and should be enhanced. Weather events continue to become more extreme so that maintaining and enhancing the floodplain is vital to the health of the river and the haven [S208.003].
- Flooding will be displaced downstream [S210.001, S268.001, S288.001, S292.001, S292.003, S292.012, S306.001, S312.001, S312.012, S312.003, S319.001, S319.002, S319.004, S350.001, S350.003, S350.012, S352.001, S353.001, S367.001, S367.003, S367.017, S392.001, 444.001, 447.001].

- There is not a clear indication of what steps will be made to ensure protection of the houses downstream to the Kākā Valley [S363.001].
- There will be an increased flood risk, including during construction (e.g. from earthworks) and once the rural land becomes developed (e.g. from stormwater runoff) [S17.001, S27.001, S89.001, S90.001, S156.002, S158.001, S187.001, S198.006, S209.001, S268.001, S353.001, S358.001, S390.001, S421.001].
- The lowest-priced houses would be in the flood-prone area, which is inequitable [S8.001, S153.001, S154.001, S288.001, S358.001, S360.001, S367.001, S367.013].
- There is insufficient information on how the flood risk will be managed. The flood mitigation modelling is based on limited and outdated data and is insufficient for a plan change request [S153.001, S153.003, S198.006, S198.011, S209.001, S292.001, S292.003, S292.012, S312.001, S312.003, S312.012, S323.006, S350.001, S350.003, S350.012, S367.001, S367.003, S367.017, S382.001].
- The 1% AEP (Annual Exceedance Probability) flood flow is likely to increase due to global warming as demonstrated in the winter and spring of 2021 in the South Island of Aotearoa. Record-flooding is also predicted to increase (for reasons explained in a cited and referenced article) [S306.001].
- PPC 28 does not give effect to the NPSFM 2020 due to the substantial engineered changes to the Maitahi/Mahitahi River flood plains [S292.001, S312.001, S350.001, S367.001].
- The proposal does not comply with section 6(h) of the RMA (the management of significant risks from natural hazards) as the proposed development area adjacent to Dennes Hole is a flood zone. The impact on Dennes Hole and the river nearby and downstream will be catastrophic [S307.001, S308.001].
- Modification of the natural flood plain directly opposite the submitter would have an adverse effect on their property and possibly threaten the stop bank constructed in 1995 by the Council to facilitate the lowering of their home when the Council purchased a section from their original title to facilitate the creation of Maitai Cricket Ground [S386.001].
- The higher flooding risk would increase insurance premiums, or mean insurance was refused [S153.001, S187.001, S199.001, S330.001, S358.001, S360.001].

595. Submission points seeking that PPC 28 be approved included the following reasons:

- The development will not cause environmental damage; rather it could improve it and reduce pollution (including undesirable agricultural discharges) entering the Maitahi/Mahitahi River [S15.001, S128.001, S172.001].
- It will improve water quality and ecosystem functions compared to the current use [S305.002].
- There will be reduced run off and land erosion, including from an increase in tree cover [S305.002].
- It delivers the outcomes sought by the NPS-FM [289.001].
- The proposed changes to the NRMP will ensure the best practice principles are followed in the subdivision and development processes, administered through obtaining the various resource consents, all as a part of sound resource management [S289.001].

- Ngāti Koata Trust supports the inclusion of Objective RE6 (b), (d) & (f), Policies RE6.1 to RE6.3 and Schedule X.7 to X.9. We consider that these provisions will provide good freshwater quality outcomes for both the Kākā and Maitahi Awa. Freshwater is a taonga and the Maitahi Awa is the ancestral river of Ngāti Koata, therefore protection and enhancement of freshwater quality is a main priority [S303.003].
- Ngāti Koata Trust consider that the proposed protection and creation of wetlands, the realignment of the Kākā stream, and the provision for overland stormwater flows and groundwater recharge within Schedule X will mitigate against freshwater quality impacts, and will provide for the ongoing protection of the Maitahi Awa [S303.003].
- Ngāti Rārua supports development design that protects, enhances or restores ecosystem health, water quality and quantity, freshwater bodies including wetlands, indigenous flora and fauna, and ecological values (Policy RE6.3 Sensitive environmental design) [S314.005].
- Ngāti Rārua supports the application of best practice principles in X.9 'Ecological outcomes and freshwater' in order to enhance, restore and protect the mana, mauri and wairua of freshwater and aquatic ecosystems [S314.013].
- Ngāti Rārua strongly supports proposed provisions which seek to protect, enhance or restore freshwater [S314.016].
- The submitter supports the inclusion of Objective RE6(a),(e),(f) - housing needs, freshwater, cultural values, landscape, transport and biodiversity [S450.001].
- The improved water quality and environmental values proposed will benefit not only the wildlife and streams, etc. but our Iwi, or children and the generations to come [S455.001].
- The development will control Kākā Stream and have it run into several hectares of wetland next to the Maitai north boundary. This will naturally clean this water before it enters the main river. It will also act as a holding area for flood waters in the Maitai that occur on occasions [S254.001].

596. Neutral submission points:

- Freshwater values, including Te Mana o te Wai, need to be protected from inappropriate use and development and those water bodies that have degraded water quality need to be restored [S300.007].
- NMH supports the adoption of water sensitive design principles that mitigate the potential impacts from urbanisation while negating the existing degraded water quality impacts from current rural land use [S300.009].
- NMH would like to see assurances that the flood hazard risks are adequately managed to ensure people are not put at risk. This is especially important with Nelson's ageing population as older people may be physically, financially and emotionally less resilient dealing with the effects of hazards [S300.008].

597. Submission points seeking amendments to PPC 28 include:

- The construction plan must present how and when sediment traps, protective berms, and other water quality/river ecology protection measures will be in place from the moment construction begins [S198.004, S209.003, S209.005, S323.004].

- A comprehensive sediment/erosion management plan for the proposed development is necessary given the high risk of erosion and sediment runoff into waterways as part of the proposed development [S198.007].
- Work with iwi to support Cultural Health Indicator (CHI) monitoring of Kākā Stream [S328.010].
- Amend the subdivision rule to exclude use of zincalume or bare corrugated iron roofing, and testing of stormwater detention areas for heavy metals and other contaminants [S51.006].
- If PPC 28 is to be approved, the following changes are requested:
  - No modification of the Maitai flood plain or river bed/banks [S153.012, S292.012, S312.012, S350.012, S367.017].
  - No realignment of Kākā Stream [S153.012, S292.012, S312.012, S350.012, S367.017]
- If PPC 28 is to be approved, the following changes are requested:
  - Require prevention of sediment entering all waterbodies from construction and earthworks [S153.013, S292.014, S312.014, S350.014, S367.019].
  - Require waterbody quality protection to the highest possible evidenced design and require the highest possible extent of filtration to be applied to all stormwater entering waterbodies [S292.014, S312.014, S350.014].
  - Require protection of swimming holes from contamination by sediment and other waterbody pollutants with measures such as: minimum 100m riparian planting. No landform modification of river bank at Dennes Hole, and no unfiltered storm-water discharge. No loss of visual amenity at swimming holes [S292.014, S312.014, S350.014].
- If PPC 28 is to be approved, the following changes are requested:
  - Set standards for water sensitive design with the highest possible standard of filtration to be applied to stormwater entering the river [S153.013, S367.020].
  - Require first flush of 100% of stormwater for 10-year rain event - ref page 48 PPCR [S367.020].
- If PPC 28 is to be approved, the following amendments are requested to avoid and mitigate potential adverse effects on water quality, particularly from stormwater:
  - Do not allow development in the existing floodplain zone [S156.002].
  - No stormwater runoff into natural waterways [S156.002].
  - Incorporate stormwater mitigation and treatment methods into the development, including rules requiring individual onsite detention and treatment of stormwater [S156.002].
  - Greater area of wetland / more wetlands created for increased stormwater retention and to absorb stormwater runoff [S156.002].
  - Rules and methods which prevent sedimentation of waterways during construction [S156.002].

- Increased buffer area and riparian planting along waterways, particularly the Maitahi/Mahitahi River [S156.002].
- If PPC 28 is to be approved, the following amendments are requested:
  - That it does not allow any 'cut and fill' of the floodplain area to enable housing development (as shown in Figure 5.3 of Tonkin & Taylor report) [S156.005].
- If PPC 28 is to be approved, the following amendments are requested:
  - All of floodplain area to be Open space zone and a natural wetland/riparian buffer created, to reduce the impact of stormwater and sedimentation impacting on water quality in the Maitahi/Mahitahi River [S156.006].
- PPC 28 is rejected unless the developers are required to take the necessary steps to protect and preserve the water quality, river ecology and associated habitat, and amenity value of the Maitahi/Mahitahi River and Maitai Valley [S49.001, S198.002, S209.001, S279.001, S323.003].
- PPC 28 is rejected unless the Nelson City Council is required to publicly commit to resource the monitoring and mitigation of all adverse impacts on the water quality, river ecology, the amenity value of the Maitahi/Mahitahi River and Maitai Valley, including the impact of traffic [S49.001, S198.003, S209.002, S279.001, S323.012].
- PPC 28 is rejected unless all infrastructure necessary to protect and preserve water quality and river ecology is in place and functioning before any construction begins [S198.004, S209.003, S323.004].
- PPC 28 is rejected unless engineered changes to the Maitahi/Mahitahi River floodplains and Kākā Stream realignment, during the construction stage and ongoing, do not increase flood risk or have any negative impact on the ecology and natural character of the Maitahi/Mahitahi River, as noted in the supporting advice from Cawthron [S198.006, S209.001, S323.006].
- PPC 28 is rejected unless water quality and river ecology is protected from sediment and all other pollutants at all times; this includes sediment from site works, and pollutants from increased stormwater runoff, as noted in the supporting advice from Cawthron [S198.007, S209.005, S323.007].
- PPC 28 is rejected unless all necessary measures are detailed and published in a plan to protect water quality, river ecology and amenity value of swimming holes adjacent to and downstream from the subdivision. Stormwater and sewage being routed past Dennes Hole should not affect the amenity value of this area, including visual amenity [S198.008, S209.001, S323.008].
- No modification or structural changes to the natural character and form of Dennes Hole, including modification to accommodate wastewater and water mains, as this would result in permanent loss of natural character for this popular natural asset [S358.001, S360.001].
- Reject the Kākā Valley portion of PPC 28 entirely [S51.006].
- If stormwater from roads is going to go into the river, ensure it goes through some sort of ground filtration first to filter out brake and tire dust, oil residue etc. and only clean water goes into the river [S276.009, S311.011].

- If PPC 28 proceeds, stormwater runoff must have a wide, native-treed floodplain to filter through before entering the Maitahi/Mahitahi River [S293.001].
- If PPC 28 is approved, comprehensive flood risk modelling should be insisted upon before the plan change could proceed [S153.003, S292.003, S312.003, S350.003].
- If PPCR 28 may be approved, flood risk modelling should be required before a decision is made. Require diagrams clearly showing intended extent of floodplain and river bank / river bed modification from each angle, i.e. aerial as well as cross section [S367.003].
- If PPC 28 is to be approved, the following amendments are requested:
  - That residential zoning in flood plain area to be prohibited (see figure 5.2 of Tonkin & Taylor report) [S156.004].
- If PPC 28 is to be approved, the following amendments are requested:
  - No excavation, in-filling or engineered modifications to be carried out on the Maitai/Kākā floodplain up to at least the current 1 % AEP level [S319.002].
- If PPC 28 is to be approved, the following amendments are requested:
  - No modification of the Maitai flood plain or river bed/banks [S153.012, S292.012, S312.012, S350.012, S367.017].
  - No realignment of Kākā Stream [S153.012, S292.012, S312.012, S350.012, S367.017].
  - No housing on the flood plain [S153.012, S292.012, S293.001, S312.012, S319.004, S350.012, S367.013].
- PPC 28 is rejected unless engineered changes to the Maitahi/Mahitahi River floodplains and Kākā Stream realignment, during the construction stage and ongoing, do not increase flood risk or have any negative impact on the ecology and natural character of the Maitahi/Mahitahi River, as noted in the supporting advice from Cawthron [S198.006, S209.001, S323.006].
- Plan 28 is rejected unless the form of the existing river is maintained and there is no change to the flood plain within the Kākā Valley. Improvements to the flood plain should be made through appropriate plantings [S208.003].

#### **14.19.4 Outcome of expert conferencing**

598. The JWS Flooding & Stormwater (2) dated 6 May 2022 recorded the Applicant's commitment to prepare a draft Stormwater Management Plan (SMP) as part of expert conferencing. The timetable which was agreed was:

- Provision of a draft by 20 May
- An initial conferencing session on 27 May
- A further conferencing session on 2 June
- The inclusion of a stormwater management plan in the applicant's evidence by 15 June 2022.

599. The SMP was provided on 20 May, and a conferencing session was held on 27 May, but not on 2 June. No JWS was produced from the 27 May session and the Applicant decided it would present the latest version of the SMP with its evidence.

600. Section 3.30 of JWS Planning (3) addressed the submission point requesting amendment to the subdivision rule to exclude use of zincalume or bare corrugated iron roofing, and testing of stormwater detention areas for heavy metals and other contaminants.
601. All experts agreed that this matter is more appropriately considered at a district-wide level and through Stormwater Management Plans and any associated consents or rules.
602. Section 3.12 of JWS Planning (2) referred to the overall objective of Project Mahitahi as being restoration of water quality in the Maitai catchment (see point 3.12 and #18 in Appendix 1). However, it was noted that Project Mahitahi is primarily a terrestrial ecology restoration project in the Maitai catchment, focusing on pest plant and animal control rather than water quality.

#### 14.19.5 Evaluation

603. Our evaluation has been carried out for the following matters, noting that there is in some cases significant overlap between them:
- water quality (also addressed in the Ecology section);
  - flooding;
  - stormwater and water sensitive design; and
  - erosion and sediment control.
604. Due to the overlapping nature of the above matters, as a matter of clarification, we have considered the first three above matters to be relevant for the long-term performance of development that will be enabled by the plan change. The fourth matter, erosion and sediment control, is relevant during the earthworks operations associated with road and subdivision construction and during earthworks associated with development on individual lots, but is not relevant once all roads and earthworks have been completed. We also note that aspects of water quality associated with potential discharges of sediment during earthworks have been considered under the “erosion and sediment control” matter.

#### Water quality

605. Water quality has been addressed in the following expert evidence:
- *For the applicant*, primarily in the expert evidence of Mr Farrant and Mr Mills, with some discussion with respect to the water quality interface with stream ecology in the evidence of Mr Markham.
  - *For the submitters*, in the evidence of Mr Suljic for STM and in the evidence of Dr Young for Friends of the Maitai.
  - *For Nelson City Council s42a reporting*, in the evidence of Dr Fisher.
606. The opinions of the various experts on water quality are summarised below.
607. Mr Farrant, Mr Mills and Mr Markham (for the Applicant) addressed water quality through their reply evidence and their verbal summary statements which describes their verbal evidence provided at the hearing.
608. In response to Mr Suljic’s suggestion to define quantitative instream water quality targets for typical urban stormwater contaminants, Mr Farrant<sup>203</sup> considered it was not practical to monitor or enforce such targets. He suggested (as provided in the proposed planning

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<sup>203</sup> Paragraph 10 Mr Farrant’s Reply evidence

provisions) that performance outcomes need to be defined by the design of systems which collect and treat the first flush of stormwater runoff through well designed and maintained WSD solutions. We agree with Mr Farrant that one of the primary ways of ensuring appropriate stormwater quality management is through design of the treatment systems. We note Mr Farrant's evidence that many water quality parameters for the site, including sedimentation, nutrient loads, pathogens/bacteria will be improved in the future. He further noted that quantification of these water quality benefits will form part of future resource consent documentation.<sup>204</sup>

609. We consider that there will need to be a requirement to address water quality monitoring in future stormwater consenting processes. This should be for the downstream receiving environment of the Kākā Stream rather than at the outlets of individual water quality treatment devices. The monitoring should provide information which would then be used by NCC to assess trends in target attribute states and progress towards these and determine if degradation was occurring, as per sections 3.19 and 3.20 of the NPS-FM. If degradation is occurring, it would then be necessary to review the performance of any or all of the water quality treatment devices together with other water quality aspects associated with the consented stormwater discharges such as channel flow, channel erosion and any associated sedimentation. There would need to be for example a review condition that required, in the event that the water quality performance of the consented discharges, was determined to be resulting in degradation, then measures would be required to improve the water quality performance of the consented discharges.
610. We also note that under the NPS-FM Councils will be required to set and meet standards for water quality attributes including nutrients, sediment, dissolved oxygen, macroinvertebrates and E-coli. The Council will need to do this through a separate plan change process. These new standards will apply to the downstream receiving environment of Kākā Stream.
611. Mr Farrant also considered the final proposed Schedule X provisions provide a robust means of ensuring future development applications are truly integrated and appropriately support the aspirations for the development to be an exemplar of best practice urban water management.<sup>205</sup>
612. The summary paragraph of Mr Farrant's reply evidence is set out below:<sup>206</sup>

*"In summary, it is my opinion that all points raised through the hearing and prior evidence with regards to stormwater management and water sensitive design are well understood by the integrated design team and are readily able to be mitigated through future design development. The provision of updated and comprehensive SMP's to clearly communicate specific stormwater measures will support future resource consenting. The current high level SMP and PPC 28 provisions have been updated following the hearing to provide clarification on what the future SMP's will cover and the level of information provided to support future evaluation by consent authorities".*

613. In his verbal summary statement at the hearing, Mr Farrant made the following important points with respect to water quality:

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<sup>204</sup> Paragraph 30 of Mr Farrant's evidence-in-chief

<sup>205</sup> Paragraph 11 of Mr Farrant Reply evidence

<sup>206</sup> Paragraph 13 of Mr Farrant's summary statement

*“During conferencing and in subsequent evidence there was general agreement that the existing site is subject to impacts related to rural land use and that there are nationally recognised methods (supported by technical guidelines) to appropriately manage stormwater from urban development to protect freshwater receiving environments”.<sup>207</sup>*

*“The level of information provided at this stage is a reflection of the very conceptual level of design undertaken given the plan change stage. Therefore analysis has been based on demonstrating feasibility rather than providing explicit solutions which will be developed as the design progresses through consenting. Given the comparatively low density (compared with many urban centres) and extensive areas of undeveloped land it is my opinion that the level of analysis demonstrates the ability to deliver development which demonstrates water sensitive design and provides an exemplar of good urban stormwater management.”<sup>208</sup>*

614. In his reply evidence, Mr Mills noted that treatment of runoff from all road surfaces including roads within the Walters Bluff/Brooklands catchment will be provided, subject to the physical possibility to provide devices and NCC approval as the ultimate asset owner.
615. This is more than is currently required by the NTLDM and the NRMP. On the steeper roads servicing small lot areas, this is likely to consist of proprietary type treatment devices while on the ridgeline there may be scope for raingardens and swales.
616. Mr Mills noted the SMP had been updated to address gaps and inconsistencies of concern in the s42A reports. His opinion was that the SMP now provided sufficient information to clearly set out the stormwater and flood risk management requirements for future development of the site and how it had demonstrated that these matters have been addressed to a level appropriate to support the plan change application. We agree and are satisfied that these matters can be appropriately managed; and that the plan provisions we have recommended specifically address these issues, including the requirement of a SMP at the time of resource consent application. This is in addition to the existing provisions in the NRMP.
617. In his verbal summary statement Mr Mills noted that the impervious areas calculated using the Masterplan layout give an overall impervious area of 16% or 46 ha. This is approximately 35% less than what was estimated in the initial SMP. It will, accordingly, reduce the water treatment device footprints. Updating the treatment demand will be undertaken as the masterplan is further refined through the resource consenting process.<sup>209</sup> He also noted that water quality mitigation measures had been provided in the SMP to demonstrate that there was sufficient area available to accommodate these.<sup>210</sup>
618. It was Mr Mills’ opinion that having reviewed the PPC 28 provisions, satisfactory management of stormwater could be achieved. Moreover, Mr Markham, in his summary statement (freshwater ecology) tabled at the hearing, stated that the proposed updated PPC 28 would result in positive ecological and biodiversity outcomes for the Kākā Stream and the Maitahi/Mahitahi River. This is addressed further in the ecological section of this report.
619. In the addendum evidence of Mr Suljic for STM, the main points made with respect to water quality were that a catchment wide SMP was required to:

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<sup>207</sup> Paragraph 5 of Mr Farrant’s summary statement

<sup>208</sup> Ibid para 13

<sup>209</sup> Paragraph 9 of Mr Mills’ summary statement

<sup>210</sup> Ibid para 12

- demonstrate how the proposed PPC 28 principles related to the management of stormwater can be implemented for future developments at the resource consent stage;
  - demonstrate that the proposed zoning and density is appropriate and that the consequent actual and potential effects in the context of stormwater can be practically managed such that the protection and enhancement of the receiving environment will be achieved.
620. He also considered that it was appropriate to include specific provisions in PPC 28 that required a site specific SMP to be prepared in support of future developments at resource consent stage, provided the scope, the information and the relationship to the catchment wide SMP were clearly defined.
621. In his statement to the Hearing Panel<sup>211</sup>, Mr Suljic made the following points:
- it is not clear how the proposed water quality treatment criteria were developed and whether they will achieve an adequate level of treatment that will ensure long term protection of the receiving environment and the community values.
  - the water quality of the Kākā Stream will improve in the near future, irrespective of the proposed plan change as national regulations and practices are being implemented.
  - the proposed zoning and density should be based on the environmental capacity of the existing environment to support the proposed changes in land use.
622. Dr Young's evidence for Friends of the Maitai<sup>212</sup> was that sufficient information was needed now (at the plan change stage) to determine whether the size and scope of the proposed mitigation tools could be implemented, and whether they would be sufficient to address potential effects. He stated that at this stage the likely effectiveness of the proposed mitigation measures was unclear.
623. He considered that X.9 (now X.12) of the proposed provisions should include some additional principles, including the following:
- to apply to the entirety of the structure plan area
  - avoid impervious areas within 5 metres of Kākā Stream
  - avoid or minimise effects of urbanisation and stream loss
  - ensure there is a link to stormwater management plans.
624. Dr Young tabled a summary of his evidence<sup>213</sup> when he presented at the hearing. This evidence repeated the material in his 27 June 2022 evidence, together with additional comment on the SMP. His discussion of the SMP appeared to be limited to how it addressed erosion and sediment control. He noted the SMP did not appear to include monitoring requirements – both pre and post development and any water quality or other standards that need to be met and if consequences of any breach to such limits/ standards are listed.
625. At the hearing, in response to questions from the Hearing Panel, Dr Young noted it was important to protect all streams including the small ephemeral streams. He also noted that the footprint of proposed stormwater devices seemed small in relation to catchment size; but he stated he was not familiar with the design of stormwater devices.

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<sup>211</sup> dated 18 July 2022

<sup>212</sup> dated 27 June 2022

<sup>213</sup> dated 20 July 2022

626. Dr Fisher, in his s42A memo noted that the proposed provisions together with the existing provisions in the NRMP and NTLDM may not be sufficient to address the effects of development. This was especially at a catchment scale and cumulative effects, where existing controls (e.g. flood overlays) may not correctly reflect future high intensity rainfall events, erosion and flood extent. He was also uncertain whether optimal environmental protection will be provided for the Bayview ridgeline.
627. Our findings on the long-term water quality aspects of the plan change (as distinct from water quality impacts during earthworks) are that the Applicant has now provided sufficient information, including via the SMP<sup>214</sup>, to demonstrate that the water quality aspects of urbanisation enabled by the proposed plan change can be appropriately managed. This is in terms of giving effect to the relevant national and regional policy documents, as well as via the planning provisions we have recommended and the existing provisions in the NRMP, to avoid, remedy, or mitigate any adverse effects of activities on the environment as required by section 5 of the RMA. We also note the requirements on Councils for managing target attribute states under the NPS-FM as commented above.
628. In particular we note and accept the following key matters in the evidence of Mr Farrant and Mr Mills:
- there are nationally recognised methods (supported by technical guidelines) to appropriately manage stormwater from urban development to protect freshwater receiving environments.
  - given the comparatively low density (compared with many urban centres) and extensive areas of undeveloped land within the plan change area, the level of analysis carried out by the applicant demonstrates the ability to deliver development which demonstrates water sensitive design and provides an exemplar of good urban stormwater management.
  - the impervious areas calculated using the Masterplan layout give an overall impervious area approximately 35% less than what was estimated in the SMP. It will accordingly reduce the water treatment device footprints. Updating the treatment demand will be undertaken as the masterplan is further refined through the planning and consenting process.
629. We consider the provisions in the plan change are adequate to provide guidance and requirements to appropriately address water quality matters at the time of resource consent for development. In particular the provisions require:
- a comprehensive stormwater management plan to inform the assessment of incremental development of the catchments so the freshwater outcomes are not compromised by cumulative adverse effects and through incremental resource consent applications;
  - building materials to either exclude or be finished in a manner that prevents water runoff from containing copper or zinc; and
  - pass first flush of all site generated stormwater through devices prior to discharge to Kākā stream, existing wetlands or the Maitahi/Mahitahi River.
630. We note that we have modified the provisions from those included in the Applicant's Reply version of the provisions to encapsulate the advice we received in the Reply evidence of Mr

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<sup>214</sup> The latest version being provided with the Applicant's Reply documents (version 3" dated July 2022)

Mills - that treatment of runoff from all road surfaces including roads within the Walters Bluff/Brooklands catchment will be provided, subject to the physical possibility to provide devices and NCC approval as the ultimate asset owner. On the steeper roads servicing small lot areas this is likely to consist of proprietary type treatment devices while on the ridgeline there may be scope for raingardens and swales.

631. Overall, we have accepted the evidence of Mr Farrant and Mr Mills which we have found comprehensive and credible. We further note that a number of matters raised in the expert evidence of Mr Suljic, Dr Young and Dr Fisher had been satisfactorily addressed in the Applicant's expert evidence.

#### Flooding

632. We acknowledge that potential flooding (and landslides) are significant issues. We needed to be convinced that the site (particularly the lower portion of the site) could be developed in a way to avoid flooding of future residential and commercial properties on the site and avoid any increase in flooding downstream (and that residential development won't occur on slopes susceptible to landslides). We address this below, but set out here that, based on the evidence before us we are satisfied that sufficient modelling and assessment had been carried out to demonstrate there are feasible options available to address potential effects of the proposed development on flooding, and that the SMP addresses flooding at an appropriate level of detail for the whole catchment, which includes information on the proposed stormwater and flood risk for the Maitahi/Mahitahi River downstream of Kākā Stream. Special Information Requirement X.13 of the plan change provisions requires a comprehensive catchment wide SMP, and the Resource Consent stage will require further detailed work to show how flooding and landslide risks will be avoided/managed.
633. Flooding has been addressed in the following expert evidence:
- *For the applicant*, primarily in the expert evidence of Mr Vellupillai with some discussion in the evidence of Mr Mills and Mr Farrant; and
  - *For Nelson City Council s42a reporting*, in the evidence of Ms Purton.
634. The positions of the various experts on flooding are summarised as set out below.
635. Mr Vellupillai, in his Reply evidence noted that in the earlier application material and evidence his opinion was that if post development peak flows could be limited to no more than pre development peak flows, then the flood hazard in the receiving Maitahi/Mahitahi River and flood plain would not be increased as a result of PPC 28 and development of the site, even though total runoff volumes and durations would increase. He also noted that his opinion and the information used to support it were not challenged by other experts.<sup>215</sup>
636. Mr Mills in his evidence-in-chief<sup>216</sup> set out that the effects of PPC 28 on stormwater flows and flooding associated with increased levels of impervious surface and runoff would be mitigated through the provision of detention. Detention would be achieved through a combination of options which included:
- storage at source (individual onsite detention/water reuse tanks);
  - online detention by way of wetlands, stormwater ponds and detention; and

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<sup>215</sup> Paragraph 6 - Mr Vellupillai Reply Evidence

<sup>216</sup> Paragraph 19 of Mr Mills' evidence-in-chief

- off line detention by way of rain gardens, wetlands and stormwater ponds.
637. We accept that the SMP demonstrated the feasibility of attenuation for flood mitigation for the Kākā Stream catchment and the Walters Bluff/Brooklands catchment.
638. It was Mr Mills' opinion that:<sup>217</sup>
- In my earlier evidence I stated that in my opinion the Stormwater Management Plan (SMP) provides sufficient information to clearly set out the stormwater and flood risk management requirements for future development of the site, and how it shall be demonstrated that these have been met, to a level appropriate to support a plan change application. I am still of this opinion.*
639. Ms Purton, in her s42A summary report, identified the key areas of difference between the Applicant's stormwater and flood risk experts and her were:<sup>218</sup>
- sufficiency of information provided; and
  - suitability of the proposed PPC 28 plan provisions.
640. She also considered that there was a need to resolve whether detention basins are online or offline.<sup>219</sup>
641. Ms Purton opined that there was limited information on the proposed stormwater and flood risk management approach for the Walters Bluff/Brooklands catchment (north of the ridge); and that there was no information on the proposed stormwater and flood risk for the Maitahi/Mahitahi River sub-catchment to the west of Kākā Stream.<sup>220</sup> She also considered that the plan change provisions needed to include a site wide SMP and also require individual development/subdivision to provide more detailed information for their area.<sup>221</sup>
642. In short, it was Ms Purton's opinion that further work was required on the proposed plan provisions to clearly set out the stormwater and flood risk management requirements for the site, and how it needed to be demonstrated these have been met.<sup>222</sup>
643. Our findings are that we accept the evidence of Mr Vellupillai, an engineer with significant flood assessment experience. He convinced us that sufficient modelling and assessment had been carried out to demonstrate there are feasible options available to address potential effects of the proposed development on flooding, to meet the requirements of the NTLDM.<sup>223</sup> Furthermore, we consider that the Applicant responded appropriately, and to the extent necessary, with respect to the concerns and comments made by Ms Purton; with clarifications addressed as follows.
644. We accept and find that the SMP addresses flooding at an appropriate level of detail for the whole catchment; noting there are some additional requirements in version 3 of the SMP provided with the Applicant's Reply evidence. We also note that the revised SMP now includes information on the proposed stormwater and flood risk for the Maitahi/Mahitahi sub-catchment to the west of Kākā Stream.

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<sup>217</sup> Paragraph 10 of Mr Mills' Reply Evidence

<sup>218</sup> Paragraph 4 of Ms Purton's s42A Summary Report - 21 July 2022

<sup>219</sup> Paragraph 6(b) of Ms Purton's 42A Summary Report - 21 July 2022

<sup>220</sup> Paragraph 6(f) of Ms Purton's 42A Summary Report - 21 July 2022

<sup>221</sup> Paragraph 13 Ibid

<sup>222</sup> Paragraph 17 Ibid

<sup>223</sup> Paragraph 15 of Mr Vellupillai evidence-in-chief

645. The PPC 28 provisions now require preparation of an SMP and Policy RE6.3 - Integrated Management, includes a number of clauses that will need to be assessed at the resource consent stage for achieving appropriate flood mitigation.
646. In summary, we consider the Applicant has provided sufficient information (in terms of the expert evidence and the SMP) so that any potential flooding effects are understood; and that the proposed plan change provisions we have recommended, are appropriate, in section 32 terms, to ensure that the appropriate assessments will be made at resource consent stage.
647. We also acknowledge the severe flooding and land slips that occurred in Nelson in late August 2022 (after the hearing had been adjourned). Given that event we inquired from the Applicant whether or not its experts' opinions (geo-technical and flooding) remained the same or had changed since presenting their evidence. The Applicant's response from its legal counsel was<sup>224</sup>:

*Counsel can confirm on behalf of the Applicant that Mr Vellupillai<sup>225</sup> and Mr Foley's opinions have not changed.*

648. In regard to the Applicant's response in the preceding paragraph, we are satisfied that our findings on this this aspect of the plan change is unchanged.

*Stormwater and water sensitive design*

649. The scope of this matter as discussed below includes:
- the principles of stormwater management and how they are proposed to be implemented in PPC 28;
  - how a water sensitive design approach is to be implemented.
650. This focuses on hydrological and other mitigation measures to address the overall increase in runoff volume that results from urbanisation and associated potential ongoing effects - which can include stream channel erosion.
651. The scope excludes the possible lower Kākā Stream alignment, water quality and flooding, which are addressed elsewhere in this report (this section and the ecological section in particular).
652. Stormwater and water sensitive design has been addressed in the following expert evidence:
- *For the applicant*, primarily in the expert evidence of Mr Farrant, Mr Mills, Mr Foley with some discussion by Mr Markham;
  - *For Save the Mata*.; Mr Suljic;
  - *For Friends of the Matai*, Dr Young; and
  - *For Nelson City Council s42A reporting*, Mr Wilson and Ms Purton.
653. Prior to addressing the evidence, one of the fundamental issues raised by the s42A experts was the lack of information to fully assess the impact of the re-zoning request. As part of expert witness conferencing on stormwater and flooding (6 May 2022) the Applicant's experts provided an update from earlier expert conferencing sessions where the experts for other parties had requested additional information. The Applicant's experts confirmed that they would prepare a draft SMP. An SMP was prepared (dated 15/6/22) and was subsequently

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<sup>224</sup> Dated 31 August 2022

<sup>225</sup> Mr Vellupillai commented the August event confirmed his modelling

amended and updated and provided as part of the Reply evidence (“version 3” dated July 2022). It is largely that SMP we reference in this section of the report.

654. Mr Farrant’s evidence described the effects of future development of the PPC 28 area on stormwater management and the ability to undertake change in land use in a manner which protects, restores and enhances freshwater values within the Kākā Stream and the downstream receiving environment.<sup>226</sup> It was his opinion that the proposed stormwater management would reduce and mitigate the impacts from all impervious surfaces through retention and detention of runoff volumes and flowrates<sup>227</sup>.
655. Moreover, the revised SMP shows a more limited scale of development (as refined through the hearing and evidence process) and the increased proportion of land to be retired from grazing and converted to native bush. This will positively reduce any ‘downstream’ effects of development, once that occurs.
656. Based on the analysis undertaken in support of the SMP and his experience with the application of WSD in residential areas, Mr Farrant concluded that the site can be developed for residential development in a manner which effectively protects and restores the Kākā Stream and downstream freshwater values.<sup>228</sup>
657. The key summary of Mr Mills’ evidence was:

*“In order to demonstrate the feasibility of the stormwater approach and ability to comply with NTLDM detention requirements, preliminary sizing and potential location of attenuation devices were identified in the SMP, which included both offline and online options. The purpose of this was to demonstrate that it is spatially feasible that stormwater detention can be provided in the PPC 28 area, the exact provision of online and offline stormwater detention will be determined as part of the future design and planning process as the Master [plan] is further developed”.*<sup>229</sup>

658. The evidence of Mr Foley, relevant to permeability of the flood plain and associated implications for WSD, was that consideration of geohydrology has been undertaken to support the Maitahi Bayview request application. Soil permeability had been considered and conceptual models for groundwater had been developed as part of supporting judgment, but had not been formally documented. He said that the floodplain soils consist of moderate permeability silt and sand overlying high permeability gravel.<sup>230</sup>
659. He further opined that the nature of engineered fill placed over a portion of the flood plain would impact on direct infiltration rates into the filled portion of the flood plain. He also stated that fill specifications could be developed to allow WSD to be incorporated successfully into the development.<sup>231</sup>
660. Mr Foley noted there was a large range of fill sources available for use in earthworks construction – including from alluvial gravels which will mimic the permeability of the underlying gravel, to tighter more cohesive soils that may reduce direct infiltration, to high permeability rockfill which can be used to aid infiltration and treatment as part of WSD and

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<sup>226</sup> Paragraph 16 of Mr Farrant’s evidence-in-chief

<sup>227</sup> Paragraph 18 Ibid

<sup>228</sup> Paragraph 44 Ibid

<sup>229</sup> Paragraph 19 of Mr Mills’ summary statement

<sup>230</sup> Paragraphs 4 and 5 of Mr Foley’s rebuttal evidence

<sup>231</sup> Paragraph 6 Ibid

allow direct infiltration through the fill at a similar or greater rate than can occur through the existing topsoil. Finally, he said that the engineering parameters of the fill could be designed to achieve desired positive WSD outcomes.<sup>232</sup>

661. Mr Suljic, in his statement to the Hearing Panel, set out that his opinion from his evidence-in-chief remained unchanged; that the effects of earthworks in the context of soil permeability had not been adequately considered.<sup>233</sup> This opinion appears to be limited to the bottom of gullies and side slopes, as Mr Suljic acknowledged that Mr Foley's evidence discussed the permeability of the floodplain itself and the potential fill management practices that could be implemented to maintain the hydraulic connectivity of the floodplain following earthworks<sup>234</sup>.
662. Mr Suljic further noted that the hydrologic response mechanisms of the soils had not been considered in the SMP nor included in the proposed Schedule X provisions. He also set out that the effects of the elevated floodplain level on the hydrology of the connecting watercourses had not been discussed.
663. Mr Suljic also set out that to mitigate the effects of development on hydrology, the SMP proposed minimum retention and detention requirements based on the NTLDM and revegetation. His opinion was that given the topography of the land and the use of the words "*where feasible*", there was a high likelihood that the implementation of hydrology mitigation, and in particular retention, would be very limited. Furthermore, as the permeability of existing soils had not been assessed and there was no hydrological modelling carried out for small and frequent rainfall events, there was a high level of concern that the proposed hydrology mitigation requirements, and the provisions, were not adequate to achieve a hydrological balance.<sup>235</sup>
664. Mr Suljic noted that both Mr Mills and Mr Farrant acknowledged that further work was required on this matter, but it was not clear who would carry out this work, when, and how it would be implemented at a catchment-wide scale. In his view the proposed SMP and the Schedule X provisions did not demonstrate that a post-development balance in hydrology could be achieved in a way that would ensure the protection and enhancement of the receiving environment. He considered that there was a high likelihood that development would adversely change the existing catchment hydrology and elevate the erosion of Kākā Stream.
665. The evidence of Mr Wilson in his s42A summary report noted outstanding matters. It was still unclear to him what level of multidiscipline Water Sensitive Design had gone into the Structure Plan, and that the Environmental or Development Frameworks, as described in paragraph 34 of his original report, had not been provided.
666. A specific concern Mr Wilson had was that the full extent of the site's hydrological network was not shown on the Structure Plan. The lack of this information reduced, in his view, the certainty that the WSD principle of protecting and enhancing the values and functions of natural ecosystems would be achieved. He remained of the opinion that the existing and proposed plan provisions together do not provide sufficient control on future subdivision to ensure WSD outcomes are achieved.

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<sup>232</sup> Paragraph 7 Ibid

<sup>233</sup> Paragraph 5 of Mr Suljic's hearing statement - 18 July 2022

<sup>234</sup> Paragraph 4 of Mr Suljic's hearing statement - 18 July 2022

<sup>235</sup> Paragraph 6 of Mr Suljic's hearing statement - 18 July 2022

667. Mr Wilson accepted that the SMP provided additional measures to address the limitations within the NRMP regarding clear and definitive freshwater requirements and the NTLDM regarding appropriate minimum design requirements. He was, however, concerned about some of the wording in the SMP such as the frequent use of phrases like “*where feasible*” without there being any feasibility criterion. He was also unclear how the SMP was to be applied in the proposed provisions.
668. We have set out Ms Purton’s position above in the section addressing flooding – namely that her concerns were:
- sufficiency of information provided; and
  - suitability of the proposed PPC 28 plan provisions.
669. In addition to those matters raised earlier, it was her opinion, the stormwater design had not been developed sufficiently:
- To demonstrate the feasibility of the proposed stormwater and flood risk management approach to mitigate the effects of future development of the site (including cumulative effects);
  - To provide certainty for future subdivision/development of any portion of the PPC 28 area with regard to overall stormwater and flood risk management.
670. Ms Purton commented that in her view it was not currently clear how the SMP would be incorporated into the proposed PPC 28 plan provisions. Schedule X.13 refers to a Stormwater Management Plan being submitted with any application for subdivision or development; however, it was not currently clear to her what needed to be included and how this related to the current SMP.
671. Schedule X.13 also provides ecological outcomes for stormwater management. While Ms Purton was generally in agreement with these, she considered they needed to be translated into clear standards in the body of Schedule X, which future development would be required to achieve to mitigate stormwater and flood risk effects.
672. There are site-specific issues which, in Ms Purton’s opinion, needed to be included in PPC 28 provisions beyond the current NRMP and NTLDM requirements (e.g. 1% AEP flood levels and minimum floor levels, effects of filling with the floodplain, cumulative downstream effects of detention storage in multiple sub-catchments, and the potential Kākā Stream realignment).
673. In her opinion further work was required on the proposed plan provisions to clearly set out the stormwater and flood risk management requirements for the site, and how it shall be demonstrated that these have been met.
674. It is our view that Ms Purton was seeking a level of detail, specificity and prescription that was not required in a plan change; and that the ‘detail’ would be assessed at the resource consent stage. What is required (in section 32 terms), and what in our view we have recommended, is appropriate “plan machinery”<sup>236</sup> – including robust objectives, policies and matters of discretion to enable an assessment to be made of any actual development proposal having regard to the objectives and policies and its effects (positive and adverse, and if adverse if they can be avoided, remedied or mitigated).
675. Our findings are set out below.

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<sup>236</sup> As described by Mr Maassen

676. Firstly, we note that the Applicant provided additional evidence on stormwater management and an updated version 3 SMP. Based on the Applicant's evidence and updated SMP we consider sufficient information has been provided, via a multidisciplinary process, to demonstrate the feasibility of implementing appropriate stormwater management and water sensitive design.
677. We note in particular Mr Farrant's evidence that detailed design of future development and subdivision will require detailed modelling and quantified performance metrics to demonstrate that development can 'satisfy' national, regional and local requirements including those of the NPS-FM, NES-F and the NRPS.<sup>237</sup>
678. The updated plan provisions include significant additions of matters related to integrated management in Policy RE6.3 - Integrated Management. The provisions require a SMP to be prepared by a suitably qualified and experienced expert(s), demonstrating that the matters contained in Policy RE6.3 have been applied in the subdivision and development design process. The updated Schedule X.13 requires the first SMP submitted for subdivision and development of the site to be comprehensive and catchment wide, and details the specific requirements of the SMP.
679. It is our overall finding that the combination of the requirements in the PPC 28 plan provisions (as revised) and those of the NRMP (both of which import the requirements of the NTLDM) are appropriate in section 32 terms to address stormwater management and water sensitive design. Furthermore, we note many aspects of the Applicant's proposed stormwater and flood risk management approach in PPC 28 go beyond the requirements of the NTLDM (e.g. proposed stormwater treatment, retention and extended detention).

#### *Erosion and sediment control*

680. This section addresses erosion and sediment control during the earthworks operations associated with future road and subdivision construction and during earthworks associated development. It also addresses the effects on water quality due to sediment from earthworks being entrained in stormwater and associated potential effect of this on the downstream receiving environment.
681. The section does not address erosion and sediment control once all roads and earthworks have been completed, and the earthworks on individual residential lots, as these are addressed by the existing provisions in the NRMP. It also does not address the overall increase in runoff volume that results from urbanisation which can include stream channel erosion. This has been addressed under the previous discussion on stormwater management and water sensitive design. It also excludes the proposed or possible lower Kākā Stream alignment, water quality, and flooding which are addressed elsewhere in this report.
682. Erosion and sediment control has been addressed in the following expert evidence:
- *For the applicant*, primarily in the expert evidence of Mr Parsonson and Mr Foley and some discussion by Mr Markham;
  - *For Friends of the Matai*, Dr Young; and
  - *For Nelson City Council s42a reporting*, in the evidence of Mr Ridley.
683. The major difference between Mr Parsonson and Mr Ridley was the need for modelling of sediment discharges at the plan change stage to identify the major risks, and where

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<sup>237</sup> Paragraph 24 of Mr Farrant's Rebuttal evidence

earthworks should not occur. Mr Ridley considered this was necessary, while Mr Parsonson did not. Mr Parsonson's position was as follows:

- The applicant had already identified the area of higher risks being the steeper slopes and works in or adjacent to streams, noting Mr Foley's proviso that some of the steeper slopes express shallow soils and near surface rock that has low erosion potential. The areas of higher risk had been addressed through the revised structure plan including: the deletion of the Higher Density Small Holding Area and additional provisions that would ensure that the appropriate level of assessment and control was placed on the earthworks phase of development. How those risks are refined and appropriately minimised will occur at the consent stage.<sup>238</sup>
- The steepest areas of the site are to be avoided to the greatest extent practical. Where works are required on steeper slopes adoption of erosion and sediment control techniques that were proven on equally steep land elsewhere would be utilised.<sup>239</sup>
- In response to Mr Ridley's evidence that a multi-criteria analysis (MCA) approach had been adopted by Waka Kotahi for the Puhoi and Mt Messenger highway projects, Mr Parsonson noted the conceptual equivalent of a MCA process, being the development of the structure plan through multiple constraint and opportunity layers, had been undertaken for PPC 28<sup>240</sup>.
- The preferred and consented alignments of the Puhoi and Mt Messenger projects pass through steep and challenging terrain with sensitive receiving environments. In both cases Waka Kotahi, through its experts, expressed a high level of confidence that sediment related effects would be appropriately minimised.<sup>241</sup>

684. We questioned Mr Parsonson as to why, in his opinion, Mr Ridley did not accept the proposition that the current state of technical methods, knowledge and experience could not be relied on to appropriately control and minimise earthworks effects through the consent process. Mr Parsonson commented that Mr Ridley's response was that technology had not changed much in the past 5 – 10 years; but management systems had. He provided examples of a team approach, weather management, winter restrictions and sequencing. It was Mr Parsonson's view that that methodology had been evolving over many years and was now supported by the consistent adoption of it, the outcomes achieved on large-scale projects, as well as more detailed measurement and confidence in the performance of controls.

685. With respect to the susceptibility of Dennes hole to adverse effects from sedimentation associated with future earthworks in the PPC 28 area, Mr Parsonson made the following points<sup>242</sup>:

- significant rainfall does not equate to significant sediment discharge (from the PPC 28 area) if earthworks are managed as proposed;
- residual sediment from Kākā Valley will continue to flush through Dennes Hole and

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<sup>238</sup> Paragraph 20 Ibid

<sup>239</sup> Paragraph 22 Ibid

<sup>240</sup> Paragraph 18 of Mr Parsonson's Reply Evidence

<sup>241</sup> Paragraph 19 Ibid

<sup>242</sup> Paragraph 22 Ibid

other swimming holes and it is anticipated they will continue to be recreational amenities.

686. In response to Mr Ridley's implication that the wider downstream environment, in particular the coastal environment, had not been assessed, Mr Parsonson noted that he had addressed the Nelson Haven and potential sediment effects throughout his primary evidence. He considered the NZCPS to be a relevant instrument when assessing potential effects.
687. We have set out earlier that we find that the site is not within the coastal environment, and therefore the provisions of the NZCPS would not directly apply. However, we accept that ultimately the rivers and streams will flow into the coastal marine area, and that in terms of PPC 28, any resource consent evaluation would need to be assessed under the NPS-FM, the NRPS and the NRMP (including the provisions of Schedule X). That evaluation would need to assess whether any actual or potential adverse effects on the environment (including the coastal environment) had been, or could be, avoided, remedied or mitigated.
688. Mr Parsonson opined that the PPC 28 proposal had addressed the actual and potential effects from erosion and sediment. He further opined, that the proposed plan provisions (those of PPC 28 and the NRMP) were detailed and robust enough to properly control activities and their adverse effects - in this case being earthworks and streamworks and corresponding sediment related effects during construction.<sup>243</sup>
689. Mr Parsonson, in his evidence-in-chief, suggested that the provisions of the NRMP could be strengthened to explicitly state that permitted activity earthworks must implement best-practice erosion and sediment control measures. In his rebuttal evidence<sup>244</sup> he modified his position on this matter, noting that it was a region wide matter and should be addressed through the upcoming plan change required to give effect to the NPS-FM required to be notified in 2024.
690. Mr Parsonson considered that earthworks (as a permitted activity at the individual lot scale) within the PPC 28 area were unlikely to occur for several years, and therefore likely to be subject to the provisions of the freshwater plan change. Consequently, he did not consider it necessary or appropriate to amend the permitted activity standards through the PPC 28 process.
691. With respect to the issue of the NRMP permitted earthworks rules addressed in the previous paragraph, Mr Maassen agreed with us that we did not have jurisdiction to amend the permitted activity rules as they were not before us for consideration (and no section 32 evaluation had been undertaken), and we could not amend rules (or any provisions) which extended beyond PPC 28.
692. Mr Parsonson responded to a question from the Hearing Panel regarding what standards would be appropriate for the monitoring of performance of proposed development. This was in response to Dr Young's suggestions on criteria that could be used during construction such as clarity, macroinvertebrate sampling and measurement of deposited sediment. Mr Parsonson's response noted the requirement for an adaptive management plan to be

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<sup>243</sup> Paragraph 5 Ibid

<sup>244</sup> Paragraph 23 of Mr Parsonson's Rebuttal Evidence

implemented during the earthworks phase which can accommodate relevant monitoring procedures and parameters such as those suggested by Dr Young. These would be considered, confirmed and imposed during the consenting phase. This could include upstream and downstream monitoring of turbidity and / or clarity for example, as well as onsite observation and measurement of sediment and ecological values at an appropriate frequency.<sup>245</sup>

693. The key aspects of Mr Foley's evidence are summarised as follows.

694. The preparation of the revised Structure Plan included multi discipline inputs with a focus on excluding areas with significant constraints. Input to that process included consideration of topographic and geotechnical constraints, construction materials (soil and rock) and short and long term impacts of earthworks on the environment and identifying areas. As design development progresses this process will continue in advance of an application for resource consent.<sup>246</sup> In response to questions from the Hearing Panel, Mr Foley noted that the soils on the site are typically 0.5 to 1 metre thick and are a mix of gravels and silt with some clay.

695. Mr Foley set out that his experience in planning and developing earthworks designs in advance of any resource consent application, was that the effects of earthworks construction were fully considered as part of the design development process. This included minimising or avoiding earthworks in areas where potential effects cannot be satisfactorily mitigated. At the consent application stage, he said draft construction management plans and erosion and sedimentation plans were prepared and would identify staging programmes to ensure that:

- Bare areas are minimised with appropriate controls identified to ensure sediment generation is minimised and adequate (near to source) treatment including flocculation are provided;
- Earthworks areas are stabilised progressively; and
- Monitoring and adaptive planning is an integral part of earthworks management<sup>247</sup>.

696. Dr Young agreed with the aims of best practice "principles" in X.9 of the Rebuttal version of the PPC 28 provisions to be used to avoid or reduce the effects of the development on ecological values in Kākā Stream and downstream waterways. As noted in the Ecology JWS, he considered that X.9 should also:

- Include erosion and sediment control management and vegetation clearance;
- Ensure there is a link to Stormwater Management Plans.<sup>248</sup>

697. Dr Young noted the SMP provides further discussion of high-level best practice principles but there was no specific information on where earthworks are likely to occur or the likely effectiveness of proposed mitigation measures for controlling sediment loss and discharges to downstream waterways. After reviewing the plan, he was still unsure if 'best practice' mitigation was sufficient to address the increased risk of sediment discharges to downstream waterways<sup>249</sup>

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<sup>245</sup> Paragraph 7 of Mr Parsonson's Reply Evidence

<sup>246</sup> Paragraph 7 of Mr Foley's Reply Evidence

<sup>247</sup> Paragraph 9 Ibid

<sup>248</sup> Paragraph 18 of Dr Young's Summary Evidence

<sup>249</sup> Paragraph 24 Ibid

698. He noted finally that the SMP did not appear to include any monitoring requirements (both pre- and post-development), any water quality or other standards that needed to be met and did not highlight consequences of any breaches to such limits/standards if they were to occur.<sup>250</sup>

699. Mr Ridley's conclusions from the s42A Addendum report were threefold as follows.

*"To achieve the certainty and allow for an informed assessment of the earthworks and erosion and sediment control, the following information must be provided:*

- *expected earthworks locations and extent.*
- *sediment modelling to determine sediment yields, comparative analysis with current land use yields and the areas of higher sediment yield risk.*

*PPC 28 must contain matters of discretion, rules or standards:*

- *that specify an open area limitation for earthworks that is determined based on the sediment yield modelling.*
- *that specifies completed and/or inactive earthwork areas be stabilised as soon as practicable with a specific matter of discretion allowing future consents to specify such a period.*
- *that commit to maximising the use of highly efficient chemically treatment sediment retention ponds, over design of dirty and clean water diversions and a detailed adaptive monitoring programme.*

*The key principles must be expanded to include reference to erosion and sediment control for both bulk and secondary earthworks".*

700. Mr Ridley maintained this position when he was questioned about his view by the Hearing Panel.

701. Our overall finding is that the Applicant has provided sufficient information (and evidence) to demonstrate that the erosion and sediment effects associated with earthworks required for construction of urban development within the PPC 28 area, can be appropriately managed. In this respect we accept the evidence of Mr Parsonson and Mr Foley as follows:

- The applicant has already identified the area of higher risks being the steeper slopes and works in or adjacent to streams. The areas of higher risk have been addressed at high level through the revised structure plan including additional provisions that will ensure that the appropriate level of assessment and control is placed on the earthworks phase of development (and the Higher Density Small Holding Area had been deleted). How those risks are refined and appropriately minimised will occur at the consent stage.
- Steepest areas are to be avoided to the greatest extent practical. Where works are required on steeper slopes, they will adopt erosion and sediment control techniques that are proven on equally steep land elsewhere.
- The preparation of the revised Structure Plan included multi-disciplinary inputs with a focus on excluding areas with significant constraints. Input to that process included

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<sup>250</sup> Paragraph 25 of Dr Young's Summary Evidence

consideration of topographic and geotechnical constraints, construction materials (soil and rock) and short and long term impacts of earthworks on the environment and identifying areas. As design development progresses, this process will continue in advance of an application for resource consent.

- Mr Foley’s experience in planning and developing earthworks designs in advance of any resource consent application is that the effects of earthworks construction are fully considered as part of the design development process. This includes minimising or avoiding earthworks in areas where potential effects cannot be satisfactorily mitigated within the frameworks of the RMA.

702. Based on our acceptance of the above evidence we do not see any need for the Applicant to provide further information on the expected earthworks locations and extent, or to carry out sediment modelling to determine sediment yields, comparative analysis with current land use yields and the areas of higher sediment yield risk at this stage.

703. We consider the proposed provisions, along with those in the NRMP<sup>251</sup> are robust and sufficiently thorough, and in particular, the outcomes for erosion and sediment control in the re worded Policy RE 6.5 – Earthworks, and Erosion and Sediment Control, provision X12 (now X10) – Earthworks/Indigenous Vegetation Clearance, and provision X16 - Earthworks and Erosion Sediment Control Plan.

704. It is our finding that the PPC 28 provisions that we have recommended are appropriate and robust, in section 32 terms. They will ensure that erosion and sediment associated with earthworks required to develop the land in PPC 28 for urban purposes, can be managed so that any adverse effects can be avoided or mitigated through future resource consent processes.

#### 14.19.6 Recommendation

705. We recommend that the submissions that seek that PPC 28 be declined in respect of this group of issues as set out above under “Matters Raised” be **rejected**.

706. We recommend that the submissions that seek that PPC 28 be approved, or were neutral in respect of this group of issues as set out above under “Matters Raised” be **accepted**.

707. We recommend that the submissions that seek amendments to PPC 28 in respect of this group of issues as set out above under “Matters Raised” be **accepted in part** to the extent that we have made amendments to the PPC 28 provisions.

### 14.20 Ecology

#### 14.20.1 Introduction

708. The request was accompanied by an ecological opportunities and constraints assessment report (ecology report) and Morphem environmental review report (environmental review). Through expert conferencing, the applicant introduced a further report in respect of terrestrial biodiversity titled “Supplementary Terrestrial Ecological Values Assessment”, prepared by Robertson Environmental Limited (supplementary report). The Applicant further provided Freshwater Ecology (Mr Markham) and Terrestrial Ecology (Dr Robertson) evidence, Freshwater Ecology Rebuttal evidence, and Freshwater Ecology and Terrestrial Ecology Reply evidence.

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<sup>251</sup> Noting that rule REr.61.3 – Earthworks has an extensive list of Matters of Discretion including viii – duration of bare soil to wind and rainfall, x – methods and timing of the activity and xi – the area to be cleared at any one time.

709. The s42A Report provided by NCC included expert review (Dr Blakely) of the Applicant's Freshwater and Terrestrial Ecology evidence and related aspects of the proposed additions to the NRMP, in Appendix M, a s42A Addendum report Appendix E, and a Summary Report noting key outstanding matters of concern with respect to terrestrial and freshwater ecology.
710. A JWS - Ecology – Terrestrial and Freshwater was provided recording the outcomes of expert conferencing on 20 April, 10 May and 13 May 2022.

#### **14.20.2 Statutory and planning provisions**

711. Under RMA section 6(c), decision makers must recognise and provide for *“the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna”*.
712. Under RMA section 7(d), decision makers must have particular regard to the intrinsic values of ecosystems. Section 7(h) also requires the protection of the habitat of trout and salmon.
713. Relevant National Policy Statement - Freshwater Management (NPS-FM) provisions include:
- Section 1.3 Fundamental Concept - Te Mana o te Wai
  - Section 1.3 (4) - Principles
  - Section 1.3(5) - Hierarchy of obligations:
714. The National Environmental Standards - Freshwater Management (NES – F) set rules and specify when resource consents will be required and as such they provide a relevant rule framework for the activities that they regulate; they are not directly relevant to evaluating this PPC 28.
715. Relevant NRPS provisions include:
- NA3 Protection of significant indigenous vegetation and significant habitats of indigenous fauna (pp.65-70)
    - Objectives NA3.2.1 and NA3.2.2
    - Policies NA3.3.1 – NA3.3.7
  - NA4 Management of pests (pp.71-74)
  - NA6 Beds of rivers and lakes (pp.81-83)
    - Objective NA6.2.1
    - Policies NA6.3.1 – NA6.3.4
716. Relevant NRMP provisions include:
- DO5 Natural values (chapter 5, pp.19-22)
    - Objective DO5.1
    - Policy DO5.1.1 Areas with high natural values
    - Policy DO5.1.2 Linkages and corridors
    - Policy DO5.1.3 Work with landowners
  - DO17 Activities in the beds of rivers and lakes, and in wetlands (chapter 5, pp.84-93)
    - Objective DO17.1 Effects of activities and structures in the beds and margins of rivers and lakes on the natural environment
    - Policy DO17.1.1 Disturbance of river and lake beds, excluding extraction of aggregate

- Policy DO17.1.2 Protection of natural character
- Policy DO17.1.3 Flood damage
- Policy DO17.1.4 Planting in the beds of rivers and lakes
- Policy DO17.1.5 Planting in riparian margins
- Policy DO17.1.6 Structures in and under the beds of rivers and lakes, and wetlands
- Policy DO17.1.11 Realignment and piping

### 14.20.3 Matters raised

717. Submission points seeking that PPC 28 be declined included the following reasons:

- Engineered changes to the Maitahi/Mahitahi River floodplains and Kākā Stream realignment will create a flood risk for downstream residents and impact on the mana, habitat value and natural character of these waterbodies [standard reason #4, S80.001, S156.005, S188.001, S198.006, S209.001, S278.001, S323.006, S358.001, S360.001].
- Artificially raising the flood plain and any modification of the river bank would ruin the visual amenity and natural character of the river, damage habitat, put pressure on the capacity of the river and probably exacerbate the risk of flooding downstream [S358.001, S360.001].
- The development is contrary to the strategy of ecological restoration of the Maitai tributaries and taonga species. The value of the site as habitat (including for pekapeka/native bats) has not been adequately investigated and urbanisation of this habitat could have significant adverse impacts [standard reason #6, S153.005, S292.001, S292.005, S292.015, S312.005, S312.015, S350.005, S350.015, S353.001, S358.001, S360.001, S367.005].
- PPC 28 does not protect at risk wetlands vegetation and native species within them, contrary to s6 RMA and the NPSFM 2020 [S108.001, S211.001, S257.001, S292.001, S292.013, S292.005, S292.013, S292.015, S307.001, S308.001, S312.001, S312.005, S312.013, S312.015, S350.001, S350.005, S350.015, S363.001, S367.001, S367.018, S367.023].
- The Maitai Valley is vital for sustaining the fostering of birds, insects and other native creatures, including endangered species. We should avoid habitat loss [S38.001, S43.001, S46.001, S70.001, S103.001, S112.001].
- Land use change will be the principal driver of biodiversity decline over the next century [S70.001].
- Aquatic habitat values for native species could be adversely affected [S307.001, S308.001, S358.001, S360.001].
- Effects of runoff, stormwater, sediment and other pollutants from construction and future properties will degrade water quality, river ecology, biodiversity and recreation [S18.001, S49.001, S51.003, S56.001, S100.001, S108.001, S198.002].
- The water take from the river would inevitably see the Maitai running at minimum flow more often, with resultant loss of water quality and habitat, and increased incidence of cyanobacteria blooms [S288.001].

- Impacts on the water table from increased population and impacts on biodiversity [S46.001].
- Extensive urbanisation of this rural habitat would have significant negative implications for terrestrial biodiversity in the area. Extensive artificial modification and destruction of habitat, vastly increased human activity and the associated noise and light pollution would all negatively impact wildlife [S319.001].
- The increased demand from 750 houses would see the Maitai reduced to the minimum allowable flow more often, with impacts on water quality and river ecology [S198.005].
- The Maitai Valley is a beautiful rural area and should not be built on for housing purposes and should be preserved for wellbeing and biodiversity [S47.001].
- PPC 28 will not give effect to the NPS-FM 2020, including: the fundamental concept of Te Mana o Te Wai; the requirement to manage freshwater in an integrated "whole-of-catchment" way including with regard to effects on receiving environments; the requirement for no further loss of natural inland wetlands; the requirement to protect the habitats of indigenous freshwater species [S292.001, S312.001, S350.001, S367.001].
- It is not consistent with the protection of SNAs, ecological connectivity and biodiversity maintenance anticipated in the draft NPS on Indigenous Biodiversity [S292.001, S312.001, S350.001, S367.001, S367.021].
- It is inconsistent with / contrary to the RMA, in particular: Section 5; sections 6(a), (b), (d), (e), (f), (h); sections 7(aa), (a), (b), (c), (d), (f), (g) [S211.001, S257.001, S265.001, S307.001, S308.001, S377.001].
- It would undermine work through Project Mahitahi and Council's Biodiversity Strategy and Nature Strategy objectives [S292.001, S301.001, S312.001, S350.001, S358.001, S360.001, S367.001, S367.021].
- Previous Councils have maintained and enhanced this City's wonderful natural habitat. It would be a travesty to permit a large subdivision to seriously impact on the social and environmental values that we hold so dearly [S22.001].
- It would introduce more domestic pets into the area, which have negative impacts on biodiversity [S33.001, S276.008, S292.018, S311.010, S312.018, S350.018, S367.023, S390.001, S420.001, S426.001, S716.001].
- Fish passage has not been secured [S292.001, S312.001, S350.001, S367.001].
- The PPCR mentions a Kahikatea tree that will be protected. There is no mention of an equally significant Pukatea amongst a stand of mature Titoki. The Kahikatea and Pukatea have both been nominated to NCC as worthy of Notable Tree status [S318.001].
- Extending the urban area into the Maitai Valley poses a further threat to the water quality and river ecology, as well as potentially increasing the downstream impact of sedimentation in Nelson Haven [S198.002, S209.005, S323.003].
- This scale of development will have a large impact on wildlife. Kākā Valley is part of an 8km biodiversity corridor from Nelson to Hira. The goal should be ecological restoration, which is one strategy for fighting climate change [S80.001].
- It is inappropriate to build a subdivision in the middle of a significant biodiversity corridor [S358.001, S360.001].

- Traffic associated with PPCR 28 would unnecessarily degrade the area for wildlife [S358.001, S360.001].
- There is no certainty that the good environmental outcomes promised by PPC 28 will be achieved. Clarity is required about things including biodiversity corridors, earthworks and structures, vegetation clearance and structures, preservation of natural character of waterbodies, protection of wetlands, flooding impacts [S292.001, S312.001, S350.001, S367.001].
- Information is lacking with regard to how the proponents intend to identify and manage adverse effects on indigenous vegetation and the habitats of indigenous fauna located outside of the significant natural area (SNA) shown on the Landscape Overlay [S358.001, S360.001].
- The biodiversity corridors are inadequate to ensure connectivity between SNAs and will adversely affect the ecological [S292.001, S292.015, S312.001, S319.001, S350.001, S367.001].
- Retain the rural zoning of the land with covenants to regenerate indigenous biodiversity (both flora and fauna) [S358.001, S360.001].
- Financial assistance from Council to Friends of the Maitai to improve the river's ecology, plus the further potential for removal of more exotic plantation forestry and replacement with natives would sadly be compromised forever if this plan change went ahead [S457.001].

718. Submission points seeking that PPC 28 be approved included the following reasons:

- The development will not cause environmental damage; rather it could improve it and reduce pollution (including undesirable agricultural discharges) entering the Maitahi/Mahitahi River [S15.001, S172.001].
- It will improve water quality and ecosystem functions compared to the current use [S305.002].
- It will include an attractive wetland area [S172.001].
- It is not the only tributary valley to the Maitahi/Mahitahi River system, there are others such as Sharlands Valley [S256.001].
- It achieves Part 2 of the RMA [S85.001].
- It will have amazing large recreational areas and regeneration of natives surrounding the proposed housing [S101.001].
- This looks to be a quality development, with mixed styles of homes, improved river ecology and no impact on recreation access [S172.001].
- Ngāti Koata Trust supports the inclusion of Objective RE6 (b), (d) & (f), Policies RE6.1 to RE6.3 and ScheduleX.7 toX.9. We consider that these provisions will provide good freshwater quality outcomes for both the Kākā and Maitahi Awa. We consider that the proposed protection and creation of wetlands, the realignment of the Kākā stream, and the provision for overland stormwater flows and groundwater recharge within Schedule X will mitigate against freshwater quality impacts and will provide for the ongoing protection of the Maitahi Awa [S303.003].

- Ngāti Koata Trust supports the inclusion of Objective RE6 (h), Policy RE6.1 and Schedule X.4 to X.6. Under these provisions, Significant Natural Areas will be protected, zoning will remain rural and specific native tree species must be planted which will provide biodiversity benefits [S303.006].
- Ngāti Koata Trust supports the inclusion of Objective RE6 (c), Policies RE6.1 & RE6.3 and Schedule X.4 to X.7 & X.9. These provisions will provide protection and enhancement of biodiversity in the area. The proposed enhancement and zoning of the Kākā stream, the extension of the existing reserves, the protection and creation of wetlands and the native planting provisions along the Kākā skyline will provide important connectivity within the development and into nearby Koata and Project Mahitahi restoration projects [S303.008].
- Waka Kotahi support the Maitahi development focus on environmental restoration (e.g. wetland creation) in the Structure Plan [S320.007].
- The proposed changes to the NRMP will ensure the best practice principles are followed in the subdivision and development processes, administered through obtaining the various resource consents, all as a part of sound resource management [S289.001].
- This is a significant opportunity for this community being so close to Nelson City, with excellent linkages, away from the future risks of sea level rise, and with positive recreational, biodiversity, and social outcomes [S7.001, S85.001, S155.001, S289.001, S455.001].
- There is an opportunity to advance the cause of native reforestation in respect of the areas that cannot be used for residential housing because of their physical and geotechnical constraints. This approach should support the halo effect over time for native bird life, based on the Brook Waimārama Sanctuary [S422.001].
- The identification and protection of areas of significant indigenous vegetation and habitats for indigenous fauna is supported, as giving effect to the relevant Objectives (NA3.2.1, NA3.2.2) and Policies (NA3.3.1, NA 3.3.2) of the NRPS [S310.002].
- The mapping in the B1.2 Landscape overlays is supported and request it be retained. In particular the identification of the SNA area, wetlands and mature indigenous tree and the river corridor and their related open space zoning as reserving these areas from development to protect ecological functioning, values and public access [S310.003].
- Provision for restoration and enhancement of existing indigenous biodiversity within the site as proposed is supported [S310.005].
- The principles included in X.9 are supported and considered to be an appropriate approach to maintaining and enhancing freshwater values of the site, managing the capture and treatment of stormwater to minimise impacts on freshwater habitats and features [S310.008].
- The submitter appreciates the intention of PPC 28 to make changes to the zoning overlay that is sympathetic to the identified areas of indigenous biodiversity within the Valley and to avoid and or minimise the effects of development within high value areas, while providing opportunities for enhancing these existing values, creating corridors for both biodiversity linkages and public access and enjoyment of more natural areas. [S310.009].

- Ngāti Rārua supports development design that protects, enhances or restores ecosystem health, water quality and quantity, freshwater bodies including wetlands, indigenous flora and fauna, and ecological values (Policy RE6.3 Sensitive environmental design) [S314.005].
- Ngāti Rārua supports the application of best practice principles in X.9 'Ecological outcomes and freshwater' in order to enhance, restore and protect the mana, mauri and wairua of freshwater and aquatic ecosystems [S314.013].
- Ngāti Rārua strongly supports proposed provisions which seek to protect, enhance or restore biodiversity [S314.017].
- Ngāti Rārua supports the prohibition of buildings within the Kākā Hill backdrop and skyline area and the Significant Natural Area to protect the values of these areas (Rule X.6 'Prohibited Activities') [S314.010].
- The submitter supports the inclusion of Objective RE6(a),(e),(f) housing needs, freshwater, cultural values, landscape, transport and biodiversity [S450.001].

719. Neutral submission points:

- Should the plan change be adopted, the Brook Waimārama Sanctuary would support suitable planting plans that help connect the Sanctuary to the city and sea. We are very interested in plans that support suitable planting corridors to assist wildlife connecting to Nelson. Our interest in the Maitai and Kākā Hill development are limited to and based on two points:
  - A connector between the Sanctuary, Nelson city and Tasman Bay.
  - Long-term planning for an environmental improvement that helps support the halo effect [S284.001].

720. Submission points seeking amendments to PPC 28 include:

- The construction plan must present how and when sediment traps, protective berms, and other water quality/river ecology protection measures will be in place from the moment construction begins [S198.004, S209.003, S209.005, S323.004].
- Ngāti Rārua generally supports Policy - RE6.1 Maitahi Bayview Area (Schedule X), but the enhancement of ecological and biodiversity values sought in proposed Objective RE6(c) should be reflected in this policy [S314.003].
- Protection of the SNA previously identified on Kākā Hill through this plan change is supported, although some further methods to achieve protection of this area are recommended below [S310.002].
- Protection of other stands of mature indigenous trees and wetland areas through Open Space zoning is also supported provided that appropriate buffers are in place to allow for enhancement of these sites and to limit edge effects should development occur on adjacent land zoned residential [S310.002].
- That there is further detailed assessment of the significance of indigenous biodiversity of the Kākā Hill site through surveys and applying appropriate criteria (particularly using the assessment criteria in the Draft National Policy Statement for Indigenous Biodiversity) for the determination of areas/values of significance which require protection. This

assessment should be made a requirement of resource consent application for subdivision [S310.002].

- Consider setting the high density residential and commercial zones back from the proposed open space zones where possible. Higher density residential and commercial zoning adjacent to areas to be zoned open space such as the river corridor may have an effect on the values of the river corridor as an ecological linkage [S310.004].
- Rule X.6 'Prohibited Activities' is supported particularly as this somewhat limits further removal of indigenous vegetation in this part of the site and provides some protection for the identified SNA. With regards to clause B prohibiting buildings being established in the SNA, this should be expanded to also prohibit earthworks and vegetation clearance within the SNA to provide protection, and the explanation amended to make it clear that these rules are to protect both landscape values and provide protection for significant indigenous [S310.007].
- The substantial amenity plantings on the property at large make a significant contribution to the suite of eco-corridors in this largely undeveloped section of rural property. This is a significant natural world asset which should not be overlooked when approaching allotment geometry [S328.004].
- Require all of the floodplain area to be Open space zone and a natural wetland /riparian buffer to reduce the impact of stormwater and sedimentation impacting on water quality in the Maitahi/Mahitahi River, and to increase the green space within the development [S156.006].
- Strict standards must be met for erosion, groundwater pollution, habitat destruction, native species protection and native bush regeneration [S229.004].
- Kākā Stream flows over a large distance of the property. Its current state has significant potential for enhancement through this proposal and it is acknowledged that appropriate zoning for the stream has been considered in the plan change proposal. Zoning needs to account for adequate meander, etc. It also needs comprehensive riparian plantings along both sides – zone width implication. The extent of zoning also needs to be generous to allow natural meander / movement over time [S328.007].
- The best outcome for Te Ātiawa and its rohe would be: engagement of ecologists (freshwater and plant) to look at best way to enhance the life supporting capacity of Kākā Stream and ensure sufficient extent of zoning for the eco-corridors for fish and bird. Enhancement of riparian margins and eco-corridors should extend to other waterways on the property (the 'drains') [S328.007].
- PPC 28 contravenes NCC's strategy of ecological restoration of the Maitai's tributaries. One of the Council's Biodiversity Strategy aims is 'protecting and restoring alluvial, riparian and coastal ecosystems of the Maitai Valley'. Under the RPS, protection of riparian margins is required, public access should be maintained, and anything happening on land needs to ensure that water quality and life supporting capacity is maintained or improved [S367.021].
- A 40m buffer along Kākā Stream, an area of Open Space on the north-eastern boundary of the Structure Plan area, a small regenerating area beside the Centre of New Zealand Park, two small wetlands and a few isolated trees are insufficient to meet ecological biodiversity requirements recommended in the Ecology Report. Minimum recommended

biodiversity corridors are shown in the Parks and Facilities plan appended to the Sweetman report [S358.001, S360.001].

- Require riparian planting along all waterways to a minimum width of 50 metres [S153.016, S292.017, S312.017, S350.017, S367.021].
- The biodiversity corridors are inadequate to ensure connectivity between SNAs and will adversely affect the ecological functioning of adjoining SNAs. The much larger biodiversity corridors set out in Appendix 1 to the Council's letter dated 3 August 2021 should be applied [S292.001, S292.015, S312.001, S312.015, S350.001, S350.015, S367.001, S367.023].
- Require retention/restoration of indigenous vegetation/habitat in biodiversity corridors and upper reaches of Kākā Hill as proposed by Nelson City Council in Appendix 2 to the letter of 3 August 2021 [S292.015, S312.015, S350.015, S367.023].
- The location of biodiversity corridors should be specified in the structure plan [S292.001, S292.015, S312.001, S312.015, S350.001, S350.015].
- If PPC 28 is to be approved, survey and protect all existing wetlands at the zoning stage [S292.013, S312.013, S367.018].
- If PPC 28 is granted, that a greater area of wetland/more wetlands are created for increased stormwater retention and to absorb stormwater runoff [S156.002].
- If PPCR 28 may be approved, the following information should be required before a decision is made: Pekapeka survey / Pūtangitangi survey / Powelliphanta snails survey / Maitai Gecko survey [S153.005, S292.005, S312.005, S350.005, S367.005].
- When considering the application for consent to develop Kākā Valley, the council take into account the Significant Natural Area (SNA) 166 that identifies Kākā Valley as part of an eight-kilometre-long corridor for native forest birds and other wildlife between the Nelson City area and the Hira area [S33.001].
- When so much biodiversity has been lost all remaining areas are of huge importance. We cannot afford to lose more of our unique native species nor the habitats that support them. At all costs, to protect the existing indigenous biodiversity in the area; to create and protect biodiversity corridors including streams; protect any water bodies and enhance where possible; where there is development to use good subdivision practices such as swales, using stormwater to enlarge wetlands and landscape planting with natives [S33.001].
- PPC 28 is rejected unless the developers are required to take the necessary steps to protect and preserve the water quality, river ecology and associated habitat, and amenity value of the Maitahi/Mahitahi River and Maitai Valley [S49.001, S198.002, S209.001, S279.001, S323.003].
- PPC 28 is rejected unless the Nelson City Council is required to publicly commit to resource the monitoring and mitigation of all adverse impacts on the water quality, river ecology, the amenity value of the Maitahi/Mahitahi River and Maitai Valley, including the impact of traffic [S198.003].
- PPC 28 is rejected unless all infrastructure necessary to protect and preserve water quality and river ecology is in place and functioning before any construction begins [S198.004, S323.003].

- PPC 28 is rejected unless engineered changes to the Maitahi/Mahitahi River floodplains and Kākā Stream realignment, during the construction stage and ongoing, do not increase flood risk or have any negative impact on the ecology and natural character of the Maitahi/Mahitahi River, as noted in the supporting advice from Cawthron [S198.006, S209.001, S323.006].
- PPC 28 is rejected unless water quality and river ecology is protected from sediment and all other pollutants at all times; this includes sediment from site works, and pollutants from increased stormwater runoff, as noted in the supporting advice from Cawthron [S198.007, S209.005].
- PPC 28 is rejected unless all necessary measures are detailed and published in a plan to protect water quality, river ecology and amenity value of swimming holes adjacent to and downstream from the subdivision. Stormwater and sewage being routed past Dennes Hole should not affect the amenity value of this area, including visual amenity [S198.008, S209.001, S323.008].
- PPC 28 is rejected unless the Nelson City Council is required to publicly commit to resource the monitoring and mitigation of all adverse impacts on the water quality, river ecology, the amenity value of the Maitahi/Mahitahi River and Maitai Valley, including the impact of traffic [S49.001, S198.003, S209.002, S279.001, S323.012].
- There should be no keeping of domestic pets as they have negative impacts on biodiversity [S33.001, S276.008, S292.018, S311.010, S312.018, S350.018, S367.023].

#### 14.20.4 Outcome of expert conferencing

721. The JWS Ecology – Terrestrial and Freshwater dated 13th May 2022 records the outcomes of conferencing on 20 April, 10 May and 13 May 2022.

722. The areas of agreement recorded in the JWS are:

- That an additional clause could be added to Rule X.9 to provide for an assessment of the significance of indigenous biodiversity values and the potential threat to those values from domestic pets at the time of subdivision or development resource consent applications<sup>252</sup>. Mr Lile committed to prepare a draft additional clause to be considered at planning expert conferencing. This was drafted and included as Rule X.15 in the provisions provided by the Applicant.
- That the water quality and ecology of the lower reaches of the Kākā Stream are highly modified and are currently impacted by existing land use. There is potential to achieve positive outcomes through PPC 28 with respect to the water quality and ecology for either the current alignment or a proposed realignment of the lower reaches of the Kākā Stream.<sup>253</sup>

723. Other matters that were recorded in the JWS are:

- Dr Blakely confirmed that there should be enough information now available to the applicant to input into a revised Structure Plan, including ecological values and connections<sup>254</sup>

<sup>252</sup> Paragraph 3.1, JWS Ecology - Terrestrial & Freshwater, 13 May 2022

<sup>253</sup> Paragraph 3.5, JWS Ecology - Terrestrial & Freshwater, 13 May 2022

<sup>254</sup> Paragraph 3.2, JWS Ecology - Terrestrial & Freshwater, 13 May 2022

- Mr Lile confirmed that a draft SMP, revised structure plan, planning maps and Schedule X were to be provided and would form part of the applicant's evidence to be circulated by 15th June 2022, if not provided prior<sup>255</sup>
- Dr Blakely and Dr Young were both concerned about the minimum width of esplanade reserve to be provided on each side of the stream, but did agree a minimum total width of 40 metres is appropriate and that there is a need for some flexibility to reflect natural topography and geological features<sup>256</sup>
- Mr Lile, Dr Robertson and Mr Markham considered that the PPC 28 provisions for esplanade reserves were adequate<sup>257</sup>
- Mr Lile and Ms Sweetman noted that any proposal to realign the Kākā Stream would fall under the Freshwater chapter and the Earthworks rules of the NRMP. Both of these sets of provisions are "regional" matters and are not being amended by PPC 28<sup>258</sup>. As we understand it, any proposal to realign the Kākā Stream would be, at least, a Discretionary Activity in the NRMP.
- Dr Blakely and Dr Young provided a list of 8 additional matters that should be referenced in rule X.9, which Dr Robertson saw merit in. Dr Robertson committed to a revised version, which the planners agreed would be considered at the planners' expert conference.<sup>259</sup>

#### 14.20.5 Evaluation

724. We have considered the Applicant's Freshwater and Terrestrial Ecology evidence, the s42A Ecology reports, Expert Evidence on Freshwater Ecology by Dr Young for Friends of the Maitai, the JWS Ecology and submissions, in deciding whether PPC 28 will give effect to relevant sections of the RMA, the NPS-FM and relevant provisions of the NRPS.
725. The overarching question from an ecological perspective, is whether the Plan Change can deliver on the Applicant's vision of providing a vibrant community that connects with and enhances its natural environment and setting, while also restoring and enhancing the fresh water and terrestrial ecosystems of the Kākā Valley and receiving environment.
726. The Applicant acknowledged, and many submitters have pointed out that the receiving environment of Kākā Stream - the Maitahi/Mahitahi River, is highly valued by the Nelson community and supports a variety of aquatic life. The Maitahi/Mahitahi River flows into the Nelson Haven and then into Tasman Bay, also highly valued by the local community.
727. The JWS Ecology records that it was accepted by all the ecology experts that the water quality and ecology of the lower reaches of the Kākā Stream are highly modified and currently impacted by existing land use.
728. We have been presented with a range of views, from expert ecologists and a number of lay submitters, on the likely environmental impacts of the proposed development, as outlined above. Some submitters expressed concern over potential detrimental environmental effects. Others were of the view that PPC 28 offers an opportunity to enhance the terrestrial and aquatic

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<sup>255</sup> Paragraphs 3.1, 3.2, 3.4, JWS Ecology - Terrestrial & Freshwater, 13 May 2022

<sup>256</sup> Paragraph 3.3, JWS Ecology - Terrestrial & Freshwater, 13 May 2022

<sup>257</sup> Paragraph 3.3, JWS Ecology - Terrestrial & Freshwater, 13 May 2022

<sup>258</sup> Paragraph 3.5, JWS Ecology - Terrestrial & Freshwater, 13 May 2022

<sup>259</sup> Paragraph 3.6, JWS Ecology - Terrestrial & Freshwater, 13 May 2022

ecosystems, and biodiversity of the Kākā Valley and Kākā Stream, and contribute to improvements in regional biodiversity.

729. Dr Blakely's expert review of the Applicant's Freshwater and Terrestrial Ecology Evidence and related aspects of the proposed additions to the NRMP, recommended:<sup>260</sup>

- *The ecological values, including (but not limited to) areas of significant and / or high value vegetation and habitats, waterways, wetlands, OLFPs, should be included on the Structure Plan, Landscape Overlay, or an additional Ecology Overlay. These could represent "blue-green" corridors and would provide a framework to guide opportunities for ecologically appropriate biodiversity connections and areas to be avoided or enhanced.*
- *This ecology information should include all of the zones within the Structure Plan area and not be limited to Residential Zones.*
- *The location of ecological connectivity paths should be specified on the Structure Plan. These should provide ecological connections between the SNA, Kākā Hill, Kākā Stream, Atawhai / Maitahi ridgeline, and coastal slopes.*
- *The Structure Plan should provide for a buffer width of at least 20 m buffer on each side of the river, where the natural topography and geological features allow, in addition to the "minimum total width of 40m" provided for in X.7(b).*
- *The Structure Plan should also provide for a minimum of 5-10 m (on each side) of riparian margin planted with ecologically suitable indigenous vegetation along the length Kākā Stream. The Structure Plan should also avoid impervious surfaces and other structures within 5 m of Kākā Stream.*
- *Further, in areas of high density residential and suburban commercial zones, a wider (than 40 m total) area may be justified to protect the waterway from increased effects of urbanisation.*
- *These recommendations may logically sit within X.7 or X.9.*
- *The Structure Plan should acknowledge (within current X.9) that ecological enhancement of Kākā Stream may be achieved without realigning the lower reaches.*
- *The Structure Plan should include additional provisions for ecology outcomes where X.9 should also:*
  - *Apply to the entirety of the Structure Plan area*
  - *Refer to the mandatory fish passage requirements of the NPS-FM and NES-F*
  - *Avoid impervious surfaces and structures within 5 m of Kākā Stream*
  - *Avoid or minimise adverse effects of urbanisation and stream loss*
  - *Include ecological principles / provisions for terrestrial ecology to ensure areas that provide important connectivity or buffering functions, and significant indigenous vegetation and significant habitats for indigenous fauna*
  - *Allow for an alternative to the realignment of Kākā Stream as an enhancement opportunity*
  - *Include erosion and sediment control management and vegetation clearance*
  - *Ensure there is a link to Stormwater Management Plans.*
- *In addition to the above, a clause should be added to provide for an assessment of the significance of indigenous biodiversity values and the potential threat to those values*

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<sup>260</sup> Paragraphs 55-65, s42A Appendix M Ecology, Dr Blakely

*from domestic pets at the time of subdivision or development resource consent applications.*

730. These recommendations were addressed by the Applicant's expert witnesses in Rebuttal and Reply Evidence statements, and in the redrafting of the proposed changes to the NRMP, including Schedule X.
731. The ecological provisions in X.9 of the original PPC 28 Application plan provisions have now been shifted to Policy RE6.3 (Integrated Management), which applies across the entire structure plan area. A number of additions have been made to the wording to strengthen ecological considerations.
732. A Vegetation Overlay has now been provided, and this and the Structure Plan show more detail on ecological values and connectivity corridors across the Plan Change area.
733. The provision (policy direction) to realign Kākā Stream has been removed and has a provision to 'restore and enhance the degraded lower portion of Kākā Stream'. Mr Maassen's Reply Submission stated,<sup>261</sup>

*PPC 28's Structure Plan shows a realigned stream in its lower reaches but the Applicant does not seek in the provisions of PPC 28 direct support for that outcome. Accordingly, in V4 -PPC 28 all references to realignment have been removed.*

734. Dr Blakey, Dr Young, Dr Robertson and Mr Markham were all of the opinion that improvements could be achieved with or without stream realignment. Dr Robertson and Mr Markham were of the view that realignment as proposed is appropriate on ecological grounds. Whether or not restoration and enhancement of the stream is achieved by realignment will be the subject of more detailed assessment as part of subsequent consenting processes.
735. The provisions now require consent applications for subdivision or development to provide an Ecological Impact Assessment, including consideration of potential threats from domestic pets, and recommending measures to avoid, remedy, mitigate, offset or compensate potential effects. We accept that this provides sufficient provisions to ensure appropriate consideration of ecological impacts in subsequent consenting considerations.
736. The provisions require an esplanade reserve with a minimum total of 40m, and that any stormwater treatment has a minimum 10m riparian buffer between device and stream. Both Mr Markham<sup>262</sup> and Dr Robertson<sup>263</sup> consider that requiring a minimum buffer on each side of the stream could drive design with unintentional poor ecological outcomes and it is better to focus on requiring biodiversity to be protected, restored or enhanced as an integral part of subdivision/development, as in proposed Policy RE6.4. We accept their advice, along with the provisions in RE6.3, RE6.4 and X.7.
737. From a terrestrial ecosystem perspective, the revised Structure Plan has over 50% of the Plan Change area as "Residential Green Overlay" and "Revegetation Overlay" (Rural), requiring (RE6.4.iv) 80% canopy cover with indigenous vegetation. A proposed significant ecological (terrestrial) values area (SNA) on Kākā Hill is shown on the Landscape Overlay. The Structure Plan also shows connectivity across the site to provide biodiversity corridors. We consider that these measures will provide expanded and improved habitat for indigenous biodiversity.

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<sup>261</sup> Paragraph 60, Applicant's Reply Submission, 29 July 2022

<sup>262</sup> Paragraph 24, Dr Robertson's Reply Evidence, 29 July 2022

<sup>263</sup> Paragraph 8, Mr Markham's Reply Evidence, 29 July 2022

738. We find that the proposed Significant Natural Area (SNA) on Kākā Hill is an area of significant indigenous vegetation or significant habitat of indigenous fauna that needs to be recognised and provided for in terms of s6(c) of the RMA. The Applicant identified it and the PPC 28 provisions we have now recommended provide appropriate protection of it.
739. A key factor in considerations in relation to freshwater ecosystems is the effectiveness of Water Sensitive Design principles and Storm Water Management in mitigating potential effects of the development and potentially improving the health of Kākā Stream. This is dealt with under the Water quality, flooding, stormwater, water sensitive design and erosion and sediment control section above.
740. We have considered the concerns of submitters in relation to the receiving environments - the Maitahi/Mahitahi River, Nelson Haven and Tasman Bay, and in particular the water quality of the swimming holes downstream of the Kākā Stream inflow.
741. We accept that there are potential effects on Kākā Stream from sediment and contaminants. We were advised by Mr Farrant, in response to questioning at the Hearing, that the flow of lower Kākā Stream is intermittent, and that during flooding events it contributes about 10% of the volume of the lower Maitahi/Mahitahi River. Aside from the low relative contribution to the river volume from Kākā Stream, provided the health and wellbeing of Kākā Stream is protected, as the Applicant's experts opined, the effects on the receiving environment, including the coastal environment and swimming holes will be avoided or mitigated. As already stated, resource consents will be required. We are satisfied that the current provisions of the NRMP in combination with the PPC 28 provisions we have recommended, in section 32 terms, are appropriate to enable a full and robust assessment to be undertaken in relation to the effects of the activity.
742. We consider that with effective Water Sensitive Design and storm water management as required in the PPC 28 provisions we have recommended, the health and wellbeing of Kākā Stream, and hence of the receiving environments of the Maitahi/Mahitahi River and the coastal environment will be protected.
743. A number of submitters considered that PPC 28 does not give effect to the NPS-FM. While PPC 28 is not a Freshwater Planning document, we are, overall, satisfied that the current provisions of the NRMP in combination with the PPC 28 provisions we have recommended (which ensure more detailed information is provided on sediment and stormwater management, and ecological impacts) will give effect, to the extent possible at the plan change level, to the NPS-FM. In this regard we note that the policy 'position' in PPC 28 provisions is the protection, restoration and enhancement of freshwater quality; consistent with the NPS-FM.
744. We also note that any resource consent applications and decisions will need to be considered in terms of the NPS-FM, and its hierarchy of obligations, and that under the NPS-FM Councils will be required to set and meet standards for water quality attributes including nutrients, sediment, dissolved oxygen, macroinvertebrates and E-coli.
745. We find that PPC 28 satisfies sections 7(d) and 7(h) of the RMA, and gives effect to the relevant provisions of the NPS-FM and the NRPS for the reasons we have set out above. We also find that the provisions we have recommended are the most appropriate in terms of sections 32 and 32AA of the RMA.

#### 14.20.6 Recommendation

746. We recommend that the submissions that seek that PPC 28 be declined in respect of ecological matters, set out above under “Matters Raised”, be **rejected**.
747. We recommend that the submissions that seek that PPC 28 be approved in respect of ecological matters, as set out above under “Matters Raised”, be **accepted**.
748. We recommend that the submissions that seek amendments to PPC 28 in respect of ecological matters, as set out above under “Matters Raised”, be **accepted in part** to the extent that we have amended the PPC 28 provisions.

#### 14.21 Transportation/Traffic Effects

##### 14.21.1 Introduction

749. The application was accompanied by a Traffic Impact Report, which was supplemented by further information prepared in response to Council’s request.
750. Submissions covered impacts on the roading network, parking, pedestrian and cycle connections, public transport and cumulative effects. These were addressed comprehensively through the JWS Transportation (addressed below).
751. We note that issues relating to traffic noise, air pollution, construction, and climate impacts have been addressed under those topic headings. They are not repeated here.

##### 14.21.2 Statutory and planning provisions

752. The NPS-UD is relevant insofar that:
- Policy 1 defines well-functioning environments as those that have good accessibility including by way of public or active transport.
  - Policy 8 requires local authority decisions be responsive to plan changes that would add significantly to development capacity.
  - Policy 10 requires local authorities to engage with providers of development infrastructure to achieve integrated land use and infrastructure planning.
  - Policy 11 requires that district plans do not set minimum car parking rate requirements, other than for accessible car parks.
753. Relevant NRPS provisions include:
- IN2 Land transport (pp.137-141)
    - Objective IN2.2.1
    - Policies IN2.3.1 – IN2.3.5
754. Relevant NRMP provisions include:
- DO10 Land transport (chapter 5, pp.38-43)
    - Objective DO10.1 Land transport system
    - Policy DO10.1.1 Environmental effects of vehicles
    - Policy 10.1.2 Road network
    - Policy 10.1.3 Expansion of the road network

- Policy 10.1.4 Traffic effects of activities
- Policy DO10.1.5 Access to sites
- Policy 10.1.6A On-site parking – reductions in required levels
- Policy 10.1.7 Pedestrian and bicycle traffic
- DO14 Subdivision and development (chapter 5, pp.69-71)
  - Objective 14.3 Services
  - Policy DO14.3.1 Rooding.

### 14.21.3 Matters raised

755. Submission points seeking that PPC 28 be declined included the following reasons:

#### *Rooding network*

- There will be significant safety, noise, air pollution and climate impacts from construction traffic and new resident's vehicles, plus through traffic if this becomes a temporary or long-term alternative to SH6 [standard reason #7, S10.001, S17.001, S18.001, S20.001, S34.001, S43.001, S46.001, S47.001, S49.001, S50.001, S70.001, S87.001, S100.001, S104.001, S117.001, S121.001, S154.001, S162.001, S164.001, S168.001, S171.001, S173.001, S175.001, S178.001, S210.001, S220.001, S225.001, S231.001, S249.001, S271.001, S278.001, S282.001, S292.001, S293.001, S312.001, S318.001, S319.001, S319.007, S344.001, S348.001, S350.001, S353.001, S358.001, S360.001, S377.001, S491.001].
- The impact of increased traffic (safety, congestion, amenity) on Nile St, Maitai Valley Rd and other connecting streets in Nelson East, including those leading to the city centre [S3.001, S5.001, S10.001, S20.001, S44.001, S51.003, S56.001, S80.001, S89.001, S105.001, S107.001, S108.001, S109.001, S114.001, S118.001, S127.001, S142.001, S160.001, S168.002, S171.001, S173.001, S175.001, S188.001, S198.009, S211.001, S220.001, S225.001, S251.001, S257.001, S265.001, S269.001, S278.001, S288.001, S291.001, S292.001, S293.001, S298.002, S302.002, S307.001, S308.001, S312.001, S319.001, S323.009, S350.001, S327.001, S342.001, S358.001, S360.001, S366.001, S367.001, S367.008, S386.001, S395.001, S402.001, S402.002, S410.001, S413.001, S420.001, S423.001, S424.001, S425.001, S452.001, S454.001, S458.001, S459.001, S466.001, S716.001].The Council has a duty of care from a safety point of view (in relation to increased traffic) [S3.001].
- There has been no community consultation on the idea of providing a SH6 alternative route [S358.001, S360.001].
- Submitter does not want 3 sets of Traffic Signals on Nile Street [S358.001, S360.001].
- Concern that the trees lining Nile St will be removed to accommodate the increase in traffic, which would impact on the street's character and amenity values [S3.001, S135.001, S139.001, S171.001, S211.001, S296.005, S358.001, S360.001, S459.001].
- Loss of the trees outside Nelson Central School (on Nile St) would directly impact the school and tamariki on hot days, as they combat the urban heat island effect by keeping the school grounds cooler [S296.005].

- Bayview Road should not be used as an access. It is inadequate and unsafe for the volume of traffic it already serves, and construction and vehicle traffic will add to this [S21.001, S251.001].
- The current road system cannot accommodate the extra traffic [S21.001, S27.001, S70.001, S108.001, S272.001, S286.001, S452.001].
- The grades and geometry of the proposed roading network would render them unsuitable for other than small vehicles. The suggestion that these roads be used as an alternative to SH6, albeit temporarily, is fanciful [S16.004].
- Traffic assessments are incomplete / unrealistic, are not based on the Waka Kotahi accepted standard, and underestimate likely traffic volume [standard reason #7, S46.001, S80.001, S107.001, S153.001, S198.009, S209.006, S292.001, S302.002, S307.001, S308.001, S318.001, S312.001, S320.006, S323.009, S350.001, S358.001, S360.001, S367.001, S410.001].
- The traffic assessment has not considered traffic from the new biking hub [S307.001, S308.001].
- Traffic impact reports do not address/underplay the serious safety issues for cyclists, pedestrians and motorists that will require specific mitigation for this residential development [S28.001, S382.001].
- Some crash data has been excluded from the traffic assessment and there is no data specific to Maitai Valley crashes [S367.001, S367.008].
- Further traffic would negatively impact the safety of tamariki coming to and from school [S56.001, S105.001, S162.001, S208.001, S249.001, S319.001, S319.007, S365.001, S423.001, S424.001].
- PPC 28's transport connections with the existing network are not known (possibly a connection to Frenchay Drive, possibly to Walters Bluff), the need for upgrades to existing bridges, roads and infrastructure and their environmental impacts are unknown [S51.001].
- The exit from the valley to Nile St at the Clousen Bridge is already very dangerous. The only safe way would be to make the Maitai end a blind road with the exit only to Atawhai Drive [S31.001].
- Increased traffic would likely see parents restricting children's independent use of the Maitai Valley reserves due to increased risk from increased traffic [S358.001, S360.001].
- To reduce the impact of so many houses on the character of the lower Maitai Valley's peaceful and safe aspect there should be no vehicle access to Kākā Valley [S208.001].
- There is missing or inaccurate information in respect to traffic and transport [S292.001, S312.001, S350.001].
- Hypothetical connection to development using Walters Bluff is "out of scope" [s16.001, S68.002]
- Walters Bluff was intended to provide future road access to the Malvern Hills for housing development. The Bayview development should not be allowed to go ahead without a connection to Walters Bluff and Frenchay Dr being guaranteed [S51.002].

- The information provided in the Applicant's Traffic report is incorrect with respect to Walters Bluff. The traffic impact on the environs of Walters Bluff would be significantly detrimental [S16.002, S68.002].
- Davies Drive was never intended as an access route to the proposed subdivision area and is not suitable for through traffic volumes [S30.001, S92.001].
- PPC 28 contemplates an extensive link road from Frenchay Drive / Dodson Valley across the Atawhai Malvern Hill ridgeline to Kākā Valley. That is a substantial infrastructure connection for Nelson City, the costs of which can be supported by a relatively intensive residential section development [S422.001].
- There is no space to widen Frenchay Drive [S77.001].
- The one lane Gibbs bridge is not adequate for so many users; there are traffic safety concerns with the intersections of Ralphine Way and Maitai Valley Road and Maitai Valley Road and Nile Street [S28.001, S49.001, S51.003, S100.001, S110.001, S135.001, S210.001, S291.001, S312.001, S350.001, S319.001, S386.001, S413.001, S420.001, S426.001, S447.001].
- PPC 28 will not give effect to NRPS NA1 'Amenity', as the visual, noise, air quality and traffic effects will not preserve or enhance the amenity of the Valley [S292.001, S312.001, S318.001, S350.001, S367.001].
- Traffic associated with PPC 28 would unnecessarily degrade the area for wildlife [S325.001, S358.001, S360.001, S404.001].
- There has been no modelling of air quality impacts from traffic [S292.001, S312.002, S350.002, S367.001, S367.002].
- The need for upgrades to existing bridges, roads and infrastructure and their environmental impacts are unknown [S51.001, S168.001].

#### *Parking*

- During peak times, Nile Street has parked cars on both sides of the street and visibility is a critical issue when pulling out of driveways. Removal of all trees and berms on the northern side of Nile Street, the creation of parking (or even no street parking) on that side may make it safer for ingress and egress from the residential properties [S3.001].
- Allowing more cars into Nelson city centre would exacerbate its existing parking problem [S60.001, S153.001, S358.001, S360.001].
- New dwellings should be either located in town (urban intensification) or in suburbs that are well serviced by infrastructure, especially public transport routes and commuter parking spaces [S121.001].
- There is missing or inaccurate information in respect to traffic and transport, including: i) an assessment of existing summer traffic, parking and active mode use in the Maitai Valley; and ii) evidence of any specific community engagement relating to any proposed on-street parking loss as a result [S292.001, S312.001, S350.001].
- increased traffic will put pressure on parking within the Valley, on roads towards central Nelson and in the CBD [S292.001, S312.001, S350.001, S367.001].
- There would be an impact if on-street parking was removed for schools, businesses and residents [S293.001].

- The submitter would not like to see removal of parking spaces to create linkage along Nile St [S358.001, S360.001].

#### *Pedestrian and cycle connections*

- PPC 28 is unlikely to result in significant active transport uptake. Barriers to uptake include lack of connectivity, height/gradient, distance to the CBD, necessity to transport passengers or deliver goods and weather [S21.001, S51.003, S92.001, S121.001, S118.001, S153.001, S154.001, S231.001, S292.001, S312.001, S342.001, S350.001, S358.001, S360.001, S391.001, S395.001, S421.001].
- It is no closer than other commuter suburbs with low active transport uptake [S153.001, S288.001, S367.001].
- Most people presently residing in Ralphine Way rarely use any mode of transport other than a motor vehicle. It is unrealistic to expect new residents in the Kākā Valley to not do the same in the absence of strong incentives to use active modes [S311.001].
- Only a small proportion of Nelsonians identify as committed bicycle commuters [S153.001, S358.001, S360.001].
- The cycling route is impractical and does not integrate with existing biking infrastructure [S28.001, S307.001, S308.001].
- The additional traffic generated by PPC 28 will make walking and cycling unsafe, including for children attending school [S28.001, S43.003, S80.001, S100.001, S104.001, S105.001, S109.001, S139.001, S162.001, S178.001, S181.001, S198.009, S244.001, S281.001, S288.001, S307.001, S308.001, S318.001, S319.001, S358.001, S360.001, S363.001, S365.001, S367.001, S367.008, S371.001, S402.001, S421.001, S425.001, S458.001].
- Bikes, dedicated bus links and walking via Nile St would assist many local residents' existing worries, but still won't reduce extra traffic caused by 500 extra stand-alone houses [S286.001].
- There is a risk that walk and cycle linkages would remain incomplete as they are outside the PPCR area. It would be unsafe for people to use active transport modes due to the lack of linkages [S358.001, S360.001].
- It directly contradicts the Council's recent statements emphasising the need to begin moving to an emphasis on walking, cycling and more acceptable forms of transport such as electric vehicles, not to mention more efficient and available forms of public transport [S174.001].
- There is missing or inaccurate information in respect to traffic and transport [S292.001, S312.001, S350.001].
- Branford Park and the river paths do not provide a very safe walking environment at dawn or dusk, nor an environment well suited to people in business attire [S51.003].

#### *Public transport*

- There are no existing public transport routes, meaning transport will be predominantly private cars. The development's transport and buildings are not consistent with the decarbonisation pathways required to achieve net zero carbon [standard reason #8, S197.001, S198.010, S212.001].

- The Council should hold the status quo giving time for investment in rapid transport systems that would allow restrictions to car access to city centre, like in many European cities [S60.001].
- New dwellings should be either located in town (urban intensification) or in suburbs that are well serviced by infrastructure, especially public transport routes and commuter parking spaces [S121.001].
- It directly contradicts the Council's recent statements emphasising the need to begin moving to an emphasis on walking, cycling and more acceptable forms of transport such as electric vehicles, not to mention more efficient and available forms of public transport [S174.001].
- Bikes, dedicated bus links and walking via Nile St would assist many local residents' existing worries, but still won't reduce extra traffic caused by 500 extra stand-alone houses [S286.001].
- There is missing or inaccurate information in respect to traffic and transport [S292.001, S312.001, S350.001].
- It is unclear how the traffic density increase will be mitigated by an increase in cycle and pedestrian traffic and how public transport use will increase [S302.002].
- If public and school bus services are implemented to service the proposed development, this will add to heavy traffic/pollution along Nile St to and from the city centre [S342.001].
- The area is not on a current public transport corridor and any provision of public transport would be highly unlikely to be regular enough to be efficient for commuting or daily activities [S367.001].
- There is no public transport servicing the Maitai Valley [S371.001].
- As there is a limited bus service nearly all the traffic will be cars and this will increase pollution [S47.001, S212.001].

#### *Cumulative effects*

- Cumulative traffic effects with development on Orchard Flats [S89.001].

756. Submission points seeking that PPC 28 be approved included the following reasons:

#### *Roading network*

- Ngāti Koata Trust supports the inclusion of Objective RE6 (g) and Policy RE6.1. These provisions will provide for better transportation outcomes for the development, including better transport connectivity and more resilience in the system [S303.007].
- The proposal will reduce reliance on private motor vehicles, which in turn will reduce congestion and carbon emissions in line with Objective 8 and Policy 1 of the NPS-UD [S85.001, S183.001, S254.002, S303.007, S455.001].
- It is better for the environment as it is close to town, meaning fewer cars on the road for shorter periods [S7.001].
- There is excellent roading, it is close to Nelson City and its services and there is a school within a cycling route [S24.001].

- Assuming the lateral road link through Walters Bluff is built, the Bayview / Malvern Hills area will be closer than Kākā Valley to the city centre [S422.001].
- PPC 28 contemplates an extensive link road from Frenchay Drive / Dodson Valley across the Atawhai Malvern Hill ridgeline to Kākā Valley. That is a substantial infrastructure connection for Nelson City, the costs of which can be supported by a relatively intensive residential section development [S422.001].
- It would enable an additional roading link over the Atawhai Hills to the City, that would alleviate dependence on SH6 for accessing north of the City, and provide an alternative route in the event of emergency should for any reason SH6 be blocked improving the City's resilience [S128.001].
- Nile Street has a wide road reserve with grassed margins amenable to more intensive traffic engineering [S256.001].
- Further development of the Richmond Plains would only exacerbate the City's current traffic congestion [S128.001, S172.001].
- The submitter supports the development in general as long as there are appropriate improvements to Nile St and Maitai Valley Road to accommodate increased traffic [S48.002].
- The residents on Domett St have been working with council officers to better prepare our street for this subdivision. Proposals include some traffic control from Nile St and a raised crossing at the end of the footbridge for walkers and cyclists and to slow traffic, and that the northern end of Domett St to be made one-way north only [S254.003].
- PC28 is all located on the eastern side of Nelson City, which does not have the traffic snarls around the Port Nelson and Waimea Road networks [S313.001, S316.001].
- The submitter supports the inclusion of objective RE6(a),(e),(f) - housing needs, freshwater, cultural values, landscape, transport and biodiversity [S450.001].

#### *Pedestrian and cycle connections*

- People are wanting to live closer to the city, able to cycle to work or school yet still have recreational space within walking distance of their homes [S39.001].
- The area's proximity to central Nelson will encourage people to walk and bike into the CBD [S24.001, S85.001, S128.001, S155.001, S172.001, S183.001, S254.002, S303.007, S305.002, S316.001, S321.001, S455.001].
- The inclusion of walkway / cycleway links throughout the development, including where these are within land designated as open space recreation zone [S67.001, S206.004, S422.001].
- PPC 28's Malvern Hill area will eventually connect Kākā Valley through to Dodson Valley, providing attractive walking and cycle way amenities [S313.001].
- Ngāti Rārua strongly supports enhancement of non-vehicular transport options [S314.020].

#### *Public transport*

- Its proximity to town will enable a variety of transport modes, and reduce carbon emissions, being consistent with Objective 9 and policy 1 of the NPS-UD [S85.001].

- It will be easy to extend The Bus, the short way, to service the new development [S155.001].

757. Neutral submission points:

#### *Roading network*

- The proposed subdivision and plan change would significantly increase the traffic past Nelson Central School and the impact on the safety of our tamariki would be extreme. Currently we have only one pedestrian crossing, and no other safe means to cross any intersection within a radius of two blocks of the school. NCC has recognised the traffic danger by adopting a rule banning logging trucks passing the school within pick up & drop off times. Further traffic would negatively impact the safety of the tamariki coming to and from school [S296.003].
- The PPC proposes the connection of SH6 to Maitai Valley as an alternative SH6 route if needed. This would see an even greater increase in heavy traffic and cars passing our school which would be a concern to the safety of our tamariki [S296.003].
- The PPC to create a linkage along Nile St might require the removal of the trees outside the school. However, importantly, trees combat the urban heat island effect which impacts directly on our school and tamariki on hot days by keeping it cooler [S296.005].

#### *Parking*

- Removal of parking along Nile St would impact our whānau picking and dropping off students, parking to attend school events and our staff who travel to work. There is already limited parking near the school due to the large number of NMIT staff and students and being in close proximity to town. Removing parks to create more roading would create further concern for the school community, and put pressure on the remaining local parking infrastructure [S296.004].

#### *Pedestrian and cycle connections*

- NMH is pleased to see that active transport routes will be established to link to Nelson City [S300.012].
- Walk and cycle linkages are not complete and this would be a concern for our school community. Many of our whānau walk and cycle to school and maintaining and improving safe ways for our tamariki to travel is paramount. Improved walking and cycling linkages would be necessary to ensure safe passage for tamariki. We would like to be able to continue to encourage active transport as a safe and healthy option for our tamariki. Enabling tamariki to walk, scooter or cycle themselves to school also helps develop their independence [S296.006].
- The Ministry supports the inclusion of shared pedestrian/cycle paths within the PCA and connections to central Nelson to enable safe access between the site and nearby schools and seeks ongoing engagement to ensure that the path is appropriately designed to be safe for school staff and students travelling to and from schools [S376.003].
- The Ministry supports cycle connections in the Nile Street East and Maitai Road intersection area that are being considered for future projects by Council and requests that they are implemented prior to development of the PCA to ensure safe transport connections for school staff and students [S376.004].

### *Public transport*

- It is critical that the new development is accessible by public transport as this provides people with more transport options and supports mode shift [S300.013].

758. Submission points seeking amendments to PPC 28:

### *Roading network*

- Delete: i) reference to Walters Bluff connection to proposed development; and ii) Walters Bluff as a potential link to the proposed development [S16.001, S16.002, S68.002].
- Deletion of subdivision roading network as alternative to SH6 [S16.004].
- Reduced speed limits and physical traffic control measures to limit vehicle speed between development area and town centre [S28.001].
- If PPC 28 is approved in any way, the Council needs to be clear in its decision that Davies Drive may NEVER be used for access to the area. It would be dishonest of council to leave any doubt, so thereby enabling the issue to be raised again in the future [S30.001].
- If PPC 28 is approved, a large proportion of residential traffic should not be allowed down to the Maitai Valley Road and should be directed over to Atawhai via Davies Drive [S293.001].
- Approve as long as appropriate improvements to Nile St and Maitai Valley Road to accommodate increased traffic [S48.002].
- PPC 28 be rejected unless measures are included to reduce and calm traffic [S49.001].
- The large trees on Nile St should be removed and replaced with smaller, less intrusive types which frees up the berm areas for road improvements. This would also improve thermal absorption during the cold months for many properties and facilitate more use of solar generation panels [S302.002].
- Decline PPC2 unless any road linking across the hills to Atawhai is prohibited, or alternatively build a new purpose-built feeder road from the hill tops down to the State Highway north of the Bayview Road intersection [S50.001].
- Bayview Road should not be used as an access. A permanent access road proximal to this subdivision should be provided somewhere between Bayview, Tui Glen and Dodson Valley, at less cost [S251.001].
- Reject the Bayview Portion of PPC 28. If the entire Plan Change is not rejected, then the Bayview portion of the Plan Change is amended to:
- Provide on the Structure Plan an indicative road connection in a position that can connect to Walters Bluff and to Frenchay Drive [S51.002], and
  - Remove any roading connection into the Kākā Valley and Ralphine Way [S51.002], and
  - Provide a more detailed Structure Plan that shows indicative local streets with the Plan Change area [S51.002], and
- Only approve the Plan Change as amended above if the Council has been able to secure legal rights over land outside the Plan Change area to ensure the necessary connections of roads within the proposed PC to Walters Bluff and Frenchay Drive [S51.002].

- Road engineering measures should be taken to discourage vehicles from exiting Bay View Road and the Malvern and Botanical Hills areas through the Kākā Valley road. An exit down the Walters Bluff Road may be useful [S168.002].
- PPC 28 should be modified to reduce the impact of the expected very large traffic volumes (under the present proposal) on the down-stream roading net-work [S168.001, S168.002].
- PPC 28 be rejected unless NCC is required to publicly commit to resource the monitoring and mitigation of all adverse impacts on the water quality, river ecology, the amenity value of the Maitahi/Mahitahi River and Maitai Valley, including the impact of traffic [S49.001, S198.003, S209.002, S279.001, S323.012].
- PPC 28 be rejected unless measures are included to reduce and calm traffic [S49.001, S279.001].
- PPC 28 is rejected unless steps are taken to ensure any impact of increased traffic on the lower Maitai Valley and Nile Street (including during construction) is consistent with best practices for active transport and for public safety [S198.009, S209.006, S323.009].
- The PPC 28 should consider the impacts of this development on the safety of school children, and their whānau [S296.003, S296.005].
- If PPC 28 is granted, before any construction on the Maitahi development begins, the Nile St roadway, intersections, berms and footpaths/cycleways need to be completely redesigned to improve visibility and safety [S302.002].
- PPC 28 is rejected unless no motor vehicle access is allowed or provided directly into the Ralphine Way or the Maitai Valley, that motor vehicles are made to go the long way around to get into town via Atawhai. Furthermore, rather than all this traffic impinging on one road, one community in Atawhai, it should be shared into multiple streets so no one street or area is affected too much. Suggested street connections are: Walters Bluff, Garin Heights, Paremata Street, Sea Watch Way, Bay View Road and Dodson Valley [S311.001].
- That a Locked gate is provided at the present end of Ralphine way for Fire Service only. This could be opened should State Highway 6 become blocked, but this must be a temporary opening, noting that there will be multiple other ways to get past a SH6 blockage from Dodson Valley into any of the above street connections including Walters Bluff [S311.003].
- Have an alternate corridor via Bayview Drive which allows for better emergency response in the instance of a tsunami (for example) that closes off SH6 and makes it impossible to quickly evacuate the community [S229.011].
- If PPC 28 is to be approved, there should be no through road linking SH6 to The Maitai Valley [S319.007].
- Gibbs Bridge needs to be replaced with a two-lane bridge [S152.001].
- Gibbs Bridge: Visibility is poor, the footpath is not accessible for people with buggies and it needs something done to make it better for cyclists, ideally a cycle/footpath either side [S276.005].
- Council accepts PPC 28 and seeks that the developers are required to: make Gibbs Bridge two way include cycle/walkways to the CBD [S321.002].
- There needs to be restricted speeds on the valley road [S321.002].

- All access to the site must be improved, i.e. a two lane bridge over the Maitahi/Mahitahi River [S283.004].
- Improve the intersection with Nile St [S283.004].
- That the plan change application assess the proposed development against national policies more thoroughly [S320.005].
- The provision of a more detailed Structure Plan showing the proposed local road network, active mode transport links (grade / width), integration with existing roads /pathways (including any required upgrades or new facilities) [S320.005].
- If PPC 28 may be approved, require the provision of full road crash data before a decision is made [S367.008].
- PPC 28 is rejected unless all access to this development via the Maitai Valley is active transport only – walking, biking or scooters (not vehicle traffic) - with the exception of emergency vehicles [S208.001, S402.002].
- Require restrictive covenants on the deed which require each household to own "low-impact vehicles" (definition provided) if they want to use the Ralphine Way ingress/egress [S229.002].
- Any vehicle access or side roads off the main Road through the development / Ralphine Way should be 30kph shared zones where drivers feel that they are driving through a pedestrian place and children are to be expected playing on the road. These need to feel like pedestrian areas with no kerb, but perhaps a central drainage channel and street trees [S276.003, S311.005].
- Private Plan Change 28 is rejected unless the development's transport infrastructure plans and building requirements are consistent with the central government decarbonisation pathways required to achieve net-zero carbon by 2050, and with the Nelson City Council's declaration of a Climate Emergency [S192.010].
- The Maitai Valley Road needs some changes so it does not feel like a 100kph road, plant trees down the middle or in the paving either side of the road, to narrow the roadway and make it feel like a country lane rather than a racetrack [S276.004].
- If PPC 28 is to be approved, apply development contributions to recover the full costs of infrastructure required for the subdivision, to be borne by the developers, including downstream requirements such as replacement of Gibbs Bridge, reconfiguration of Clouston Intersection, traffic signals on Nile Street and all walking and cycling connections [S153.009, S292.009, S312.009, S350.009, S367.015].
- Should the plan change be approved and followed by resource consents for subdivision, financial contributions should be considered relating to further assessment of the cumulative traffic and safety impacts in providing safe, multi-modal transport options, with particular regard to the Bay View Rd/SH6 intersection [S320.006].

#### *Pedestrian and cycle connections*

- If PPC 28 is to be approved, make the following changes:
  - Require provision for walk and cycle facilities with full walk and cycle connections to the city at the outset of the development (not delayed by staging) [S153.010, S292.010, S312.010, S350.010, S367.016].

- It is essential that the proposed re-zoning go hand in hand with a transport infrastructure plan that favours active transport (walking and cycling) and public transport as the preferred means to get to work and the shops (especially for the Kākā Valley development) [S290.001].
- That priority is given to walking and cycling modes on local roads. In the development of intersections in new subdivisions, cars would need to give way to active modes who are travelling straight [S300.012].
- NMH would like to see requirements to be added for cycle parking. This would support cyclists to cycle [S300.012].
- The provision of a more detailed Structure Plan showing the proposed local road network, active mode transport links (grade / width), integration with existing roads /pathways (including any required upgrades or new facilities) [S320.005].
- The information provided as part of the plan change could better define the key walking and cycling links and give consideration to a number of other factors, including:
  - Identification of the level of service of the walkway / cycleways road allocation and intersection design [S320.005].
  - How walking and cycling networks safely connect with existing networks outside the development [S320.005].
  - Alignment of with planned infrastructure projects and programmes [S320.005].
  - Space for future public transport and active modes and linking to places people want to go [S320.005].
  - Safety improvements in the Maitai Valley corridor including a safer river crossing option plus safe riverside and road corridor route options - E-bikes being a 'step change' in infrastructure requirements [S320.005].
  - How greenhouse gas emissions could be reduced by enabling active mode and public transport links [S320.005].
  - Maximum lot size needed to ensure the desired density of housing to support public and active transport comes to fruition [S320.005].
- Dedicated and uninterrupted pedestrian and cycle linkages should be an integral part of design and provided from the development area to Nelson Central School and town centre [S28.001].
- In order to encourage significant modal shift, make active transport very direct, convenient and safe [S276.005, S311.002].
- PPC 28 is rejected unless steps are taken to ensure any impact of increased traffic on the lower Maitai Valley and Nile Street (including during construction) is consistent with best practices for active transport and for public safety [S198.009, S209.006].
- PPC 28 is rejected unless all access to this development via the Maitai Valley is active transport only – walking, biking or scooters (not vehicle traffic) - with the exception of emergency vehicles [S208.001, S402.002].

- That all transportation associated with the proposed subdivision should be able to be accommodated via known confirmed connections. No access via Walter's Bluff, which is too steep and unsafe for cycling [S68.002].
- Separation of cars and trucks from cyclists and walkers is a must to encourage alternative transport options [S183.001].
- PPC 28 should include a comprehensive design of the cycle/shared path routes and how they will be compliant with Ausroad standards and the NZ Cycle Trail Design Guide at a level suitable for most people [S183.001].
- PPC 28 should include a development levy specifically targeted to improvements to the cycle network links to the CBD [S183.001].
- That the Council progress plans to construct a segregated cycle path along the Maitai, to link with the Maitai Hub, together with improvements planned on Nile Street, prior to any development taking place [S67.002].
- Enhance bicycle (and other alternative forms of transport such as mobility scooters, skateboards, electric bikes, mopeds, low-noise motorbikes, etc.) transport corridors and walking tracks from the development along Maitai Valley Rd, down Nile St and into town [S229.006].
- Make the corridor from Ralphine Way to Maitai Valley Rd to Nile St to Collingwood Street an exemplary implementation conducive to multiple and alternate transport modes and to facilitating modal transportation shift [S229.006].
- Provide cycle access to the proposed development via Dennes Hole [S152.001].
- The best outcome for Te Ātiawa and its rohe would be the inclusion of cycle-links to promote planet friendly modes of travel (less emissions) [S328.005].
- If PPCR 28 may be approved, design details of walk and cycle linkages should be required before a decision is made [S367.007].
- If PPR28 is granted, before any construction on the Maitahi development begins:
  - The Nile St roadway, intersections, berms and footpaths/cycleways need to be completely redesigned to improve visibility and safety [S302.002].
  - Moving the cycleways off Nile St should be explored. While they are there, they should be properly marked, signage about appropriate usage be installed and speed limits imposed [S302.002].
  - Alternative and public forms of transport need to be encouraged and provided supported by appropriate incentives and bylaws [S302.002].
- Amenity values could be enhanced by ensuring cycleways and footpaths in the proposed development connect easily and safely to the existing cycleway and tracks along the Maitai Valley into town [S156.009].

#### *Public transport*

- If PPC 28 is to be approved, make early provision for public transport and associated facilities [S152.001, S153.010, S188.001, S288.001, S292.010, S312.010, S350.010, S367.016].

- That NCC supports the private plan change SUBJECT to taking early action to provide for effective public transport, especially along Maitai Valley Rd and Nile St, e.g., by designating a priority lane for public transport [S290.001].
- It is essential that the proposed re-zoning go hand in hand with a transport infrastructure plan that favours active transport (walking and cycling) and public transport as the preferred means to get to work and the shops (especially for the Kākā Valley development) [S290.001].
- That there is a requirement for bus stops to be added into the street design [S300.013].
- If PPR28 is granted, before any construction on the Maitahi development begins, alternative and public forms of transport need to be encouraged and provided supported by appropriate incentives and bylaws [S302.002].
  - The information provided as part of the plan change could better define a number of factors, including:
  - Space for future public transport and active modes and linking to places people want to go [S320.005].
  - How greenhouse gas emissions could be reduced by enabling active mode and public transport links [S320.005].
  - Designed to accommodate, enable and enhance public transport services in and around the area [S320.005].
  - Maximum lot size needed to ensure the desired density of housing to support public and active transport comes to fruition [S320.005].

*Cumulative transport network effects*

- The cumulative traffic effects (incorporating the proposal and other subdivisions taking place in the Bay View Special Housing Area) on the Bay View Rd / SH6 intersection and on the safe and efficient operation of the state highway network - have not been adequately assessed in the application [S320.006].
- The impact of PPC 28 on the wider transport network should be addressed, ideally by an Integrated Transport Assessment, to ensure coordination of land use planning and transport in and around the new development [S320.006].
- Further assessment relating to the cumulative traffic and safety impacts in providing safe, multi-modal transport options, with particular regard to the Bay View Rd / SH6 intersection, including:
  - A concept plan of a suitable intersection upgrade [S320.006].
  - Prior to commencement of construction and during the works, a construction management plan must be agreed and approved by Nelson City Council, Waka Kotahi and the developers' contractors [S320.006].
  - Prior to completion of construction, intersection safety upgrades at Bay View Road / SH6 intersection are to be carried out to the satisfaction of Waka Kotahi and NCC [S320.006].

759. We note that section 3.3 of the JWS Transport (1) records that the relief sought by Waka Kotahi from PPC 28 applicants has reduced in scale to exclude any upgrade of the Bay View Road /

State Highway 6 (SH6) intersection. Waka Kotahi clarified that the key outcome they were seeking through the PPC 28 process is surety of the provision of safe, efficient, convenient and timely multi-modal transport options within the plan change area and linking to existing transport infrastructure and urban amenities.

#### **14.21.4 Outcome of expert conferencing**

760. These submissions and transport and traffic related matters were considered at the expert conferencing held on 4th and 10th May 2022 and are recorded in JWS Transport (1) and JWS Transport (2). Pedestrian and cycle connections were also considered through the JWS Recreation and Open Space dated 13 May 2022.

761. In summary, agreement was reached on the following matters:

- That the proposed indicative paths and tracks within PPC 28 are appropriately located, and a new path should be provided linking the Sir Stanley Whitehead Walkway at its existing northern end with the Bayview area below and north of the ridgeline with views to the sea (3.5 - JWS Recreation)
- That PPC 28 and the Maitahi Development Dennes Hole Interface Plan details an appropriate network of walk and cycle ways, and will be refined through resource consents (3.6 - JWS Recreation)
- That there is a feasible route for a road and walking/cycling facilities from Ralphine Way to the ridgeline and this is acceptable; and the provisions of PPC 28, the NRMP and NTLDM are appropriate and adequate in this regard (3.2 - JWS Transport (1))
- No further area wide modelling is required to inform PPC 28 (3.4 - JWS Transport (1))
- That the trip generation rates used to assess PPC 28 are appropriate and adequate (3.5 - JWS Transport (1))
- That if a Walters Bluff connection is completed this will reduce the loadings onto both Maitai Valley Road and Bay View Road (3.6 – JWS Transport (1))
- That a future indicative road and walk / cycle connection to the existing Walters Bluff Road is desirable and the Structure Plan diagram should be amended to include these within the PPC 28 area, noting that there is a private property outside of the PPC 28 area separating the site from the existing road (3.9 – JWS Transport (1)).

762. Matters still remaining in contention from expert conferencing include:

- Whether the alignment of route from Ralphine Way to the ridgeline could accommodate a bus (3.2 – JWS Transport (1));
- How trips would be distributed (3.6 – JWS Transport (1));
- Whether the route from Ralphine Way to Bayview Road needs to be constructed in the first stage of development (3.7 – JWS Transport (1));
- Whether the existing services overlay provisions are suitably robust to ensure that the deficiencies that have been identified in the wider roading network are addressed prior to development occurring; and whether any future deficiencies identified through future applications are addressed prior to development occurring (3.8 – JWS Transport (1) and 3.1 – JWS Transport (2)); and

- Whether the rates for active transport cited in the applicant's traffic report were appropriate (3.2 of JWS Transport (2))
763. Section 3.3 of JWS Transport (2) also notes that the Council's current Long-Term Plan includes provision for cycle lane improvements on Nile Street, and these are irrespective of PPC 28.
764. We note in respect to the matter 3.8 – JWS Transport (1), that in 3.1 – JWS Transport (2) the Applicant committed to review a list of five identified upgrades in respect of their specificity of a scope of works for inclusion within Schedule X. These have now been included in the plan provisions we have recommended ("Services Overlay- Transport Constraints and Required Upgrades"). These were agreed by the traffic experts, and we address them later in this section of the report.
765. Section 3.12 of JWS Planning (3) records the planners' agreement that the NRMP does not refer to the term Integrated Transport Assessment (ITA) and does not explicitly require the provision of one. It also records the planners' agreement was that in combination, Schedule 4 RMA and the NRMP information requirements would allow the Council to request an ITA or similar, and such an assessment could include area wide transport matters outside of the PPC 28 area.
766. Also noted in the same section is that all of the planners, excluding Mr Lile, agreed that the matters of discretion in Schedule X (Services Overlay) were not sufficiently robust to consider the wider transport effects, particularly in relation to the timing and provision of upgrades to address transport deficiencies in the wider area as a result of PPC 28 development. However, all the planners, excluding Ms McCabe, were of the view that this could be addressed through amendments to Schedule X, including an explicit requirement to provide an ITA.

#### 14.21.5 Evaluation

767. There was a high level of agreement between the traffic experts, including Mr James for STM, particularly in relation to the roading network. We accept the outcome of the expert conferencing sessions.
768. Having heard all of the traffic/transportation related evidence, we understand that there are virtually no outstanding issues in contention between Mr Clark and Mr Georgeson - provided the planning provisions as set out by Mr Georgeson in his s42A Summary document are adopted. The areas that remained in contention with respect to Mr James' evidence were around the increase in vehicle emissions from PPC 28, parking congestion around Branford Park, cycling infrastructure and the potential change in active transport. We accept the evidence and opinions offered by Mr Clark and Mr Georgeson.
769. We deal first with the issue of vehicle emissions from PPC 28. Mr James set out in evidence that:<sup>264</sup>

*Emissions reduction policy provide grounds for only allowing greenfields development such as PPC 28, which will increase emissions compared to intensification in Nelson Centre, where intensification is insufficient to achieve Nelson's housing needs.*

And

*In my opinion, the policy directives discussed above mean that meeting housing demand through intensification should be achieved before considering whether it is necessary, in*

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<sup>264</sup> Paragraphs 3 and 28 of Mr James' evidence

*order to meet housing capacity requirements, to allow for the increased emissions associated with greenfield developments such as PPC 28.*

770. Mr James accepted he was not an expert in vehicle emissions. Nonetheless he opined that PPC 28 would increase vehicle emissions due to its urbanisation, and that intensification as opposed to greenfield development should be pursued.
771. We have already addressed the issue of intensification vis-à-vis greenfield development and the provisions of the NPS-UD. We do not traverse this again other than to state that Policy 1 in the NPS-UD states that planning decisions contribute to well-functioning urban environments and, among other things, “*support reductions in greenhouse gas emissions*”. PPC 28 would, in our view, support reductions in greenhouse gas emissions given we accept there is a need for more greenfield land for housing supply, its location close to the Nelson CBD (opposed to being in Stoke or Richmond), as well as the provisions of active mode transport. In short, we disagree with Mr James and agree with the opinions of Mr Clark and Mr Georgeson in relation to this matter.
772. With respect to ‘transportation infrastructure’, PPC 28 intends use of the existing infrastructure and provides for new infrastructure (roads and active modes). As Mr Clark opined the use of existing road infrastructure is currently “*operating below its functional capacity as noted in the JWS for Transport*”<sup>265</sup>. Notwithstanding this, it was agreed by the experts that there were some gaps in the network; and that these have been identified in Schedule X – Services Overlay – Transport Constraints and Required Upgrades. Those upgrades are to be completed before subdivision and development occurs in the PPC 28 area.
773. We note that the only required vehicle infrastructure improvements are at the intersection of Nile Street East/Maitai Road. All of the other identified improvements are for encouraging/increasing active mode transport which is consistent with reducing emissions (as addressed above in relation to Mr James’ concerns). The gaps in the active transport modes exist currently and with more pressure placed on the current infrastructure by projects, such as the mountain bike hub at the Maitai Golf Course, we accept (as did Mr Clark<sup>266</sup>) that there is already a need to provide safe and efficient active routes on this corridor. We further accept that PPC 28 is ideally located to assist and benefit from the development of these corridors.
774. In relation to the above Mr Georgeson, in his s42A Summary, set out that a number of mechanisms within the proposed Schedule X provisions, address the transport outcomes of development within the PPC 28 site. It was his opinion that they would “*afford the Council appropriate control in managing the development outcome at subsequent resource consent stages*”<sup>267</sup>. We agree, along with some amendments we have recommended to the provisions (addressed below).
775. In addition to the requirements set out in the Services Overlay – Transport Constraints and Required Upgrades (which Mr Georgeson supports), the assessment of any further network interventions would be determined through resource consents, and the requirement for ITAs under Schedule X.14. The scope of these ITAs is required to align with the scale of activity proposed, to ensure the area of influence and level of assessment is appropriate.

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<sup>265</sup> Paragraph 9 of Mr Clark’s Rebuttal evidence

<sup>266</sup> Paragraph 10 of Mr Clark’s Rebuttal evidence

<sup>267</sup> Paragraph 3 of Mr Georgeson’s s42A Summary Report

776. Under Schedules X.2 and X.3, any comprehensive housing development and any subdivision would be assessed, at a minimum, as a Restricted Discretionary Activity. Matters of discretion include the design and layout of roads, cycleways and walkways, including in accordance with the NTLDM.
777. Some site-specific exceptions are provided for under Schedule X.3, acknowledging the nature of the land topography may present the need for departures from the NTLDM with respect to gradients and future bus routes and stops. We also accept that active mode paths that serve a transport function will need to achieve specific gradient thresholds, and provide additional widening on steeper sections. Furthermore, given the importance of completing the north-south spine route and/or achieving a roading connection towards Walters Bluff, a specific development threshold is included in the Services Overlay – Transport Constraints and Required Upgrades for when such roading connections are to be constructed.
778. With respect to the Services Overlay – Transport Constraints and Required Upgrades we accept and agree with Mr Lile that the “*off-site transport constraints must be resolved and what upgrades are required in advance of subdivision and development*”.<sup>268</sup> Due to this, we have made the required upgrades in the Services Overlay – Transport Constraints and Required Upgrades a Standard, as opposed to a matter of discretion (as proposed by Mr Lile) in the rules relating to Comprehensive Housing Developments the Residential Zone – Higher Density Area and Subdivision – General (Residential Zone).
779. Making the Transport Constraints and Required Upgrades a Standard, will ensure that they are undertaken and are operational prior to significant development occurring. Should for any reason, an applicant for resource consent decide it is not necessary or appropriate to undertake the upgrades prior to subdivision and development, and therefore not meet the Standards of the Restricted Discretionary Activity; the application, as we understand it, would become a full Discretionary Activity. We consider this appropriate.
780. We accept Mr Georgeson’s overall conclusion in section 7 of his s42A report that:
- I find the proposed Structure Plan to be generally logical, noting the agreed addition of a future connection at Walters Bluff. I also recommend the design of the sub-collector route through the site be developed to a standard capable of functioning as a future bus route.*
- Overall, I consider that the transport effects of PPC 28 can be appropriately managed through the further assessments that will be required during the subdivision consent stage. The additional provisions to be added into the PPC 28 ‘Schedule X’ that were agreed to at the traffic conferencing<sup>269</sup>, and which set out specific off-site mitigation required prior to development at the site, will further ensure adverse effects and infrastructure requirements can be appropriately addressed in a timely manner, including in respect of active modes.*
781. Issues were raised by submitters (and in particular Mr English) about the scope for adding an indicative road at Walters Bluff. That Indicative Road was added following expert conferencing between the Applicant and Council experts on urban design and transport.
782. Mr English contended that the amendment to the Structure Plan showing an Indicative Road to Walters Bluff was beyond the scope of the PPC 28. We disagree. A number of submitters, as

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<sup>268</sup> Paragraph 38 of Mr Lile’s Reply Evidence

<sup>269</sup> Joint Witness Statement (2) – 10 May 2022; Para 3.1

outlined in Mr Maassen's Reply submissions, sought this road connection. These included, in particular:

- David Jackson, under the heading "Decisions Sought" and stated at 1(b) provide on the Structure Plan Indicative Road connection and position that connect to Walters Bluff and to Frenchay Drive.
- Lincoln and Christine McKenzie filed a submission stating an exit down Walters Bluff Road may be useful. That was a recommended response to their proposal to reduce large traffic volumes on the downstream roading network.
- Mr Olorenshaw filed a submission that talked about a connection at Walters Bluff (clause 2.2) that would reduce traffic demand.
- The Waka Kotahi submission noted in various places that the Applicant's TIA referred to a potential connection to Walters Bluff, but that was not shown in the Structure Plan. Waka Kotahi's general request for relief sought analysis and amendments, as discussed in this submission.

783. Furthermore, the traffic experts agreed that this road connection was appropriate from a transportation perspective.
784. Overall, we find that PPC 28 (and the recommended provisions), coupled with the NRMP and the NLTDM, will ensure that the traffic impacts on the wider network are appropriately managed, and the internal layout is appropriate in terms of its location, connections and gradient. The resource consent process will enable a full assessment of these matters including the internal layout, the provisions for walk and cycle paths and connections with the wider network. These paths will, in our view, provide wider benefits beyond the site and allow areas that have been previously only accessed through the goodwill of the landowner to be accessed by the public.
785. We also accept the opinions of Mr Clark, and Mr Georgeson's responses to the themes of submissions in respect to the roading network, the use of PPC 28 as an internal road connection to SH6, active modes, public transport, impacts on cyclists and pedestrians using the roading network, and the safety of intersections.
786. In terms of public transport, we consider this is a matter best addressed at the time of subdivision of the site. We accept that the layout will provide the opportunity for public transport to be provided, and that there is adequate scope provided through the subdivision phase to ensure that public transport can be accommodated.
787. Importantly, we accept that the site is close to the city centre and that use of active transport modes is feasible and realistic, particularly noting submitters' statements elsewhere that the Maitai Valley is one of the only areas of public open space that is in walking distance of the city centre. We are also satisfied the transport network will be able to operate safely.

#### **14.21.6 Recommendation**

788. We recommend that the submissions that seek that PPC 28 be declined or where they are neutral in respect of transportation/traffic effects, as set out above under "Matters Raised", be **rejected**.
789. We recommend that the submissions that seek that PPC 28 be approved in respect of respect of transportation/traffic effects, as set out above under "Matters Raised", be **accepted**.

790. We recommend that the submissions that seek amendments to PPC 28 in respect of transportation/traffic effects, as set out above under “Matters Raised”, be **accepted in part** to the extent that we have amended the PPC 28 provisions to address submitters concerns, or **rejected** where we have not recommended the amendments sought.

## 14.22 Historic Heritage

### 14.22.1 Introduction

791. The PPC 28 request included an Historic and Archaeological assessment prepared by Ms Young, a cultural heritage consultant.<sup>270</sup> The assessment identified a number of historic heritage items/sites on the subject property:

- MS57, a recorded archaeological site described as being a Tūmatakōkiri/Ngāti Kuia lookout and urupā. The exact location of the site was unclear and no archaeological evidence was found by Ms Young in the vicinity of the recorded location, although sub-surface evidence may be present. MS57 is listed in the NRMP (Appendix 3: Archaeological Sites) and is subject to relevant objectives, policies and rules.
- The site of Edendale, the original farmstead built by the Richardson family (ca 1842) with the chimney still standing.
- The Richardson shearing shed/hop kiln and associated structures (e.g. yards), estimated to have been built in the early 20<sup>th</sup> or late 19<sup>th</sup> Century.<sup>271</sup>

792. A second recorded archaeological site (MS58, a Ngāti Kuia Pā) is located near to, but outside of, the subject property within the Maitai Recreation Reserve.

793. Ms Young concluded that:

*The two subject properties, Bayview and Maitahi, generally have limited historical and archaeological potential with the exception of small areas and structures which have high heritage value or potential high value... The river flats and main ridgeline have more archaeological potential than the steep and moderate slopes although it is acknowledged that no archaeological evidence was seen in these areas and they have undergone varying degrees of modification over the last 100 years or so.*

*There may be physical evidence of Māori activity and occupation on the property; however, this is most likely to be evidence of resource gathering and transitory movement. There may also be other remnants of the Richardson’s farming operation (p.18).*

794. We note that there were no issues in contention with respect to archaeology, and we have not addressed this (other than in relation to the shearing shed and chimney) in any detail further in this report.

795. Two addendum reports were introduced through expert conferencing; being:

- “Maitahi Valley Farm Buildings, 7 Raphine Way, Maitai Valley Nelson” dated 11 May 2022. This was prepared jointly by Mr Miller and Ms Young.

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<sup>270</sup> Young, A. (2020) C2. Historic and Archaeological Assessment

<sup>271</sup> Although was there was contention about this between Dr McEwan and Mr Millar

- Investigations into selected heritage structures – timber woolshed/barn, concrete chimney, and concrete/stone wall remnants, dated 6 April 2022. This was prepared by Mr Miller.
796. The following changes and clarifications to the Young 2020 report were made based on the further examination of the buildings/structures and expert analysis in Miller 2022:
- Page 17. It was agreed that the standing chimney was not part of the original ca.1842 cob cottage but more likely to date to one of the twentieth century renovations.
  - Page 18. In the conclusion, the specific mention of the chimney being pre-1900 is incorrect. It appears to be post-1900 and therefore that particular feature does not fall under the provisions of the Heritage NZ Pouhere Taonga Act 2014.
797. Ms Young and Mr Miller considered that the heritage values of the buildings when assessed against the NRMP criteria (AP1.1.xii) would indicate a Group C rating, which is defined as buildings, places and objects ‘whose protection and retention are desirable’.
798. In light of this new information, Mr Miller and Ms Young stated in their joint report that:
- The Plan Change proposal will result in the demolition of the assessed buildings/structures as part of the plan to create a new residential subdivision on the Maitahi property site. From a heritage conservation perspective, the buildings have lost their original and past uses leaving them redundant (p.3).*
799. Consequently, Mr Miller and Ms Young recommended the following mitigation measures;
- Salvage of some of the shearing shed’s building components;
  - Archaeological investigations and recording of the shearing shed and Edendale sites; and
  - Incorporation of the results of 1 & 2 above into the character and physical development of the PPC 28 proposals (pp.3-4).
800. Mr Lile agreed with Ms Young and Mr Miller, and proposed a policy and rule (controlled activity) in the PPC 28 provisions to address the shearing shed and chimney.
801. Dr McEwan had a different view to that of the Applicant’s experts. It was her opinion, set out in the s42A report, and her ‘Summary s42A report – dated 21 July 2022) that:<sup>272</sup>
- In my opinion the heritage values of the shearing shed, particularly in regard to its high historic significance due [to] its association with Ralphine Richardson, support a B ranking according to the heritage assessment criteria in the operative NRMP. I also consider a B ranking is supported using the revised criteria and assessment methodology in the proposed WWNP.*
802. Ms Sweetman agreed with Dr McEwan. Ms Sweetman’s initial recommendation to us was that, in preferring Dr McEwan’s evidence over that of the Applicant’s experts, the structures be scheduled as category B in the NRMP. In questioning from the Hearing Panel, Ms Sweetman accepted that scheduling these structures was not within the Hearing Panel’s jurisdiction, and recommended a bespoke rule framework stating:
- In my comments on the proposed PPC 28 provisions, I further identify that instead of a controlled activity rule, the applicant may want to consider a bespoke restricted discretionary activity or discretionary activity rule that cross-reference back to REr.85, and*

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<sup>272</sup> Paragraphs 16 – 18 of Dr McEwan's summary s42A report

*REr.87 of the NRMP and include additional bespoke matters of discretion (for the restricted discretionary activity rule). For a discretionary activity rule, Mr Lile may want to consider adding to the bespoke structure plan policy RE6.1.*

803. For the reasons we set out below, we prefer the evidence of Mr Miller and the planning response from Mr Lile.

#### **14.22.2 Statutory and policy provisions**

804. Section 6(f) of the RMA requires decision makers to recognise and provide for the following two matters of national importance:

*the protection of historic heritage from inappropriate subdivision, use, and development*

805. We record here that in our view, based on the evidence that we have preferred (Mr Miller and Mr Lile), we do not consider the shearing shed and chimney to be “historic heritage” that warrants “protection” in terms of section 6(f).

806. Relevant NRPS provisions include:

- NA1 Amenity and conservation Values (p.57-61)
  - Objective NA1.2.1
  - Policies NA1.3.1 - NA1.3.6

807. Relevant NRMP provisions include;

- DO4 Heritage (chapter pp.13-18)
  - Objective DO4.1 Heritage values
  - Policy DO4.1.1 Heritage identification and classification
  - Policy DO4.1.5 Archaeological sites and overlays

#### **14.22.3 Matters raised**

808. A number of points relating to effects on historic heritage were raised by submitters. Submission points seeking that PPC 28 be declined included the following reasons:

- The historic heritage of the Maitai has been overlooked [S211.01].
- Concerns about the effects of increased traffic on the character and “heritage feel” of Nile St and The Wood (S60.001, S153.001, S293.001, S459.001).

809. Submission points seeking amendments to PPC 28 include:

- Archaeological sites MS57 and MS58 have been referred to incorrectly in some of the plan change documents, including in proposed Schedule X Policy RE6.2 Cultural values [S107.005, S314.004].
- Given the cultural and spiritual significance of the property, Te Ātiawa Trust seeks that the applicant volunteers the Accidental Discovery Condition which recognises Te Ātiawa Trust and provides contact details of the iwi (wording provided in submission) [S328.008].

810. In addition, the following submission points were made by Ngāti Kuia, who support PPC 28 and seek that it be approved, but who also identified the following matters:

- Uncertainty about the location of recorded archaeological site MS57, which is known to include at least one burial site (that of Ngāti Kuia tupuna Whiro) [S305.002].

- The potential for accidental discovery of archaeological material [S305.002].

#### 14.22.4 Outcome of expert conferencing

811. JWS Heritage dated 16 May 2022 records the outcome from expert conferencing.
812. Mr Miller and Ms Young jointly prepared a report dated 11 May 2022. A copy of that report was attached to the JWS Heritage. Ms Young and Mr Miller confirmed that their current findings and recommendations are those recorded in the updated 11 May 2022 report.
813. In addition, Mr Miller was commissioned by the Applicant to provide a review of Ms Young's 2020 report and to particularly refine the phasing of alterations to the Richardson shearing shed/hop kiln and Edendale site, and their relative age (dated 14 March 2022 (draft), updated 6 April 2022). Mr Miller's updated memorandum is also attached to the JWS Heritage.
814. The Heritage experts agreed that:
- Under the Heritage New Zealand Pouhere Taonga Act 2014, an archaeological authority is legally required for modification or destruction of any archaeological site.
  - The buildings and structures are not identified nor protected as heritage items in the NRMP.
  - There is no statutory requirement to protect built historic heritage resources within the PPC 28 area and therefore the recommendations put forward by Robin Miller and Amanda Young are reasonable in the circumstances.

#### 14.22.5 Evaluation

815. Dr McEwan assessed the heritage values of the shearing shed against the NRMP criteria (AP1.1.xii) and in her opinion it achieved a Group B status, defined as buildings, places and objects whose 'protection and retention are considered to be important'. This assessment was appended to her report and was set out in her evidence.
816. Mr Miller's (and Ms Young's) opinion was that the structures met the criteria for Group C – we were advised there are no NRMP provisions protecting Group C items beyond a requirement to provide two months-notice in writing before demolition or removal.
817. Mr Miller, Ms Young and Dr McEwan agreed the structures had heritage significance. However, it was the extent of heritage significance that was in dispute. Dr McEwan's evidence was that the structures had considerable heritage significance (to warrant its scheduling), while Mr Miller's opinion was that it did not have the significance opined by Dr McEwan, and its protection was not required.
818. Considering the 'competing' evidence, we agree with Mr Miller where he stated:<sup>273</sup>

*"I re-affirm that I do not consider the shearing shed to be a 'significant example of a particular style or time period'. With regard to technological significance, I would question exactly which element(s) of the shearing shed Dr McEwan believes to have important technological and scientific interest through its rarity and educational value and has the potential to provide further information through research" and*

*Spread across the country, there are some special shearing sheds – significant for various reasons, such as large size, unusual or distinctive materials, special design features like*

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<sup>273</sup> Paragraphs 13 and 18 of Mr Miller's Rebuttal Evidence

*wool press towers, and group value with other station/estate buildings. The subject shearing shed has none of these features.”*

819. As set out in the Applicant’s Reply submissions, the Applicant considers that Dr McEwan has overstated the association of the shearing shed with Ralphine Richardson when the farm was leased for long periods and underwent continuous reconstruction. Mr Miller addressed this in his Rebuttal Evidence. We agree.
820. Furthermore, a significant issue, and difference between the experts was the suitability of the shearing shed for adaptive reuse. It was Mr Miller’s opinion, who in addition to his heritage expertise is a highly experienced building surveyor, was that the combination of the heritage value he attributed to the building and the ability to make the building structurally sound so as enable some adaptive re-use, meant it did not warrant protection as opined by Dr McEwan.
821. We agree with Mr Miller that the shearing shed does not warrant the ‘value’ as opined by Dr McEwan (for the reasons set out above), but that it is also unsafe and at the end of its useful life. We agree with Mr Miller where he states:<sup>274</sup>

*“The constructional nature of the shearing shed/woolshed and its condition will not adapt readily to a new use. It would require very substantial (if not complete) rebuilding with new materials and extensive upgrading to meet current day Building Code requirements. I doubt there would be much, if anything, left of its heritage fabric and authenticity after such a rebuild. The result would likely be no more than a replica of a type of old building that has not been recognised as being special or distinctive to the development of Nelson.”*

822. Furthermore, no assessment had been made of Ngāti Koata’s tangata whenua heritage values as part of Dr McEwan’s assessment. As set out by Mr Maassen in his Reply submissions,<sup>275</sup>

*“Māori heritage values exist within the place and the whenua (rather than structures) of significance to Ngāti Koata. The definition of historic heritage in the RMA is broad and sufficient to capture those heritage values articulated by Ngāti Koata”.*

823. The shearing shed is within an area proposed for higher density residential development. The significance of this is that adopting Dr McEwan and Ms Sweetman’s recommendation that the shearing shed be protected; would likely frustrate the provisions of additional housing and *“the appreciation of cultural and heritage values by Māori that led to tangata whenua involvement in the project”*.<sup>276</sup> This has been addressed earlier in this report.
824. Given our findings above, and that the heritage experts agree there is heritage merit in the shearing shed and chimney, we support the policy and controlled activity rule in relation to the shearing shed and chimney proposed by Mr Lile (with some modification recommended by us).
825. With regard to the two submission points by Ngāti Kuia, we note that further work is being carried out by the submitter and the Applicant to determine the best way to accurately identify and protect the burial site and any other sites that may be present.
826. With respect to submitters’ concerns about the potential for accidental discovery of archaeological material during development of the plan change area, this is a matter that can be addressed at resource consent stage, by way of an accidental discovery protocol for archaeological sites.

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<sup>274</sup> Paragraph 38 of Mr Miller’s Evidence-in-Chief

<sup>275</sup> Paragraph 82 of the Reply Submissions

<sup>276</sup> Paragraph 83 of the Reply Submissions

#### 14.22.6 Recommendation

827. We recommend that the submissions that seek that PPC 28 be declined in respect of Historic Heritage as set out above under “Matters Raised” be **rejected**.
828. We recommend that submissions that seek that PPC 28 be approved or amended in respect of Historic Heritage as set out above under “Matters Raised” be **accepted** or **accepted in part**.

### 14.23 Open space and recreation

#### 14.23.1 Introduction

829. PPC 28, at section 6.14 of the request, addressed open space and recreation. This, in particular, identified new and an extension of the existing open space and recreational amenity areas proposed through PPC 28. A network of new publicly accessible walking and cycling paths, including a pathway along the ridge line from Bayview Rd to the Centre of New Zealand were proposed, and shown on the final version of the Structure Plan. The request (at section 6.14) concluded that there would be no actual or potential adverse effects arising from the rezoning proposal.
830. The Applicant also provided Recreation evidence.<sup>277</sup> Recreation and open space are also addressed in the Applicant’s Urban Design expert evidence.<sup>278</sup> Expert review of the Applicant’s Recreation evidence and proposed additions to the NRMP was provided in the s42A Report.<sup>279</sup>
831. Through the expert conferencing process, the Applicant produced the Indicative Maitahi Development Dennes Hole Interface Plan.
832. In addition, PPC 28 proposes Rule X.7 in respect of the vesting of esplanade reserves along the Maitahi/Mahitahi River and over Kākā Stream.

#### 14.23.2 Statutory and policy provisions

833. RMA section 6(d) requires “the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers” to be recognised and provided for as a matter of national importance. We note that PPC 28 would achieve this.
834. RMA section 7(c) and (f) require that particular regard be had to the maintenance and enhancement of amenity values and the quality of the environment.
835. Objective 1 and policy 1 of the NPS-UD focus on achieving or contributing to well-functioning urban environments. In clause (c) of policy 1, well-functioning urban environments *have good accessibility for all people between housing, jobs, community services, natural spaces and open space, including by way of public or active transport*. We again note that PPC 28 would achieve this.
836. Relevant NRPS provisions include:
- NA5 Riparian and coastal margins (pp.74-80)
    - Objectives NA5.2.1 – NA5.2.3
    - Policies NA5.3.1 – NA5.3.13
837. Relevant NRMP provisions include:

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<sup>277</sup> Statement of Evidence (Recreation) Mr Greenway

<sup>278</sup> Statement of Evidence (Urban Design) Mr Nicholson

<sup>279</sup> s42A Appendix R, Recreation, Mr Petheram

- DO6 Riparian and coastal margins (chapter 5, pp.23-28)
  - Objective DO6.1
  - Policy DO6.1.1 Priority margins
  - Policy DO6.1.2 Activities in margins
  - Policy DO6.1.4 Management of margins
- Open Space and Recreation Zone (chapter 11, pp.1-3)
  - Objective OS1 Present uses
  - Policy OS1.1 Recognise amenity provided
  - Policy OS1.2 Enable identified uses
  - Policy OS1.3 Neighbouring zones

### 14.23.3 Matters raised

838. Submission points seeking that PPC 28 be declined included the following reasons:

- The Maitai Valley's rural character and amenity should be protected and preserved for the benefit of current and future generations. Suburban sprawl will change the nature of this valley forever. The proposed urban development would result in loss of open space in the city's greenbelt, and conflict with recreational values. Undeveloped green spaces like the Maitai Valley are essential for people's health and wellbeing [standard reason #1, S47.001, S73.001, S106.001, S109.001, S156.001, S156.003, S173.001, S178.001, S188.001, S195.001, S198.001, S208.002, S209.001, S211.001, S231.001, S297.001, S319.005, S323.002, S343.001, S491.001].
- Ongoing sedimentation of the Maitahi/Mahitahi River from site works over 30 – 40 years, plus hydrological changes and pollutants from increased stormwater runoff from the new suburb will adversely affect the many highly valued swimming holes nearby (including Dennes Hole, Black Hole and Girlies Hole) [standard reason #5, S18.001, S28.002, S47.001, S49.001, S51.003, S56.001, S100.001, S102.001, S104.001, S105.001, S108.001, S110.001, S114.001, S115.001, S120.001, S121.001, S136.001, S153.014, S156.001, S156.002, S156.004, S160.001, S168.001, S169.001, S171.001, S178.001, S198.008, S203.001, S209.001, S211.001, S231.001, S263.001, S275.001, S278.001, S279.001, S288.001, S291.001, S292.001, S292.014, S306.001, S307.001, S308.001, S312.001, S312.014, S323.008, S330.001, S342.001, S350.001, S350.014, S352.001, S353.001, S358.001, S360.001, S363.001, S367.001, S367.019, S367.022, S377.001, S378.001, S382.001, S392.001, S395.001, S402.001, S404.001, S416.001, S425.001, S430.001, S435.001, S439.001, S452.001, S454.001, S716.001].
- It is the last remaining patch of rural land near Nelson that is within easy walking distance of the centre [S8.001, S70.001, S108.001, S110.001, S118.001, S121.001, S231.001, S291.001, S331.001, S342.001, S352.001, S431.001, S436.001].
- The Maitai Valley is a highly valued recreational area for Nelson residents and is extensively used [S20.001, S208.002, S367.001, S367.022, S421.001, S431.001, S435.001, S457.001]
- The development would impair and reduce recreational values, including through increased traffic [S2.001, S21.001, S51.001, S51.003, S51.005, S73.001, S89.001, S100.001, S108.001, S113.001, S116.001, S121.001, S123.001, S135.001, S136.001, S139.001,

S154.001, S158.001, S168.001, S169.001, S210.001, S213.001, S222.001, S278.001, S279.001, S281.001, S291.001, S292.001, S293.001, S311.001, S318.001, S319.001, S319.007, S326.001, S327.001, S327.001, S331.001, S345.001, S348.001, S358.001, S360.001, S367.001, S367.009, S377.001, S392.001, S401.001, S402.001, S430.001, S433.001, S435.001, S459.001, S467.001, S491.001].

- Previous councils have maintained this area for recreation and its natural habitat [S171.001, S179.001].
- The Council should maintain a greenbelt [standard reason #1, S73.001, S156.003, S210.001, S220.001, S281.001, S293.001, S431.001, S439.001, S491.001].
- The uniqueness of the current configuration with Maitai and Brook Valleys being 'no exit' should be protected at all costs for future generations to appreciate.
- The land should be acquired by the Council and converted into a reserve/park [S282.001, S309.001, S339.001, S435.002].
- PPC 28 does not comply with the provisions of the RMA, including: s5(2)(i) as it does not sustain the potential of resources to meet the reasonably foreseeable needs of future generations (use of the Maitai for recreation, its amenity); and ss7(b) and (c) as the Valley provides wellbeing benefits and the Council should be working towards enhancing this vital and special recreation area, not destroying it. [S307.001, S308.001].
- It is inconsistent with the NRMP, in particular DO15.1.3, DO17.1.2, DO17.1.3, DO18.4.1, and DO19.1.6ii [S220.001, S225.001, S278.001, S292.001, S292.014, S312.001, S312.014, S367.001, S367.020, S367.022, S350.001, S350.014, S367.001, S367.020].
- Nelson has an unparalleled opportunity to become a city for the future, with urban intensification within existing urban areas providing much needed housing BUT offset by expansive greenspace within a few minutes bike from the city. The need for inner city residents to own a car would be minimal with such a recreational asset so close [standard reason #12, S37.001].
- The Maitai is a significant resource as a natural area, a playground for all in Nelson, and it is extensively used. This development is not what Nelson needs [pro-forma+ reason #15, S195.001].
- The Maitahi/Bayview subdivision goes totally against the Council's long-term vision for the beautiful Maitai Valley. This large subdivision proposed would seriously denigrate and compromise this environment that is the very reason why the public like to recreate in this special part of the city [S22.001, S51.003].
- The Maitahi/Mahitahi River is at the heart of Nelson and many generations of families have enjoyed swimming at Denny's Hole and other parts. This strong connection must be respected and protected [S28.002, S269.001].
- At a minimum, buffer space should be increased between the rivers and proposed areas of development, in particular alongside the Kākā – Maitahi/Mahitahi River junction. Existing leisure points must be protected from damage during development [S28.002].
- There should be more specific council planning to improve and maintain the river bank paths and facilities for the Maitahi/Mahitahi River outside and downstream of the development, in anticipation of greatly increased pedestrian, cyclist and leisure activities.

These might include carefully designed toilet blocks, path reinforcing and planting, swimmer access points [S28.002].

- The NCC Roding and Maitahi/Mahitahi Rivers Users Survey 2015, Rob Greenaway and Associates (copy attached) has good information about use of the Maitai. The PC assessment does not reference the Greenaway report or anything similar and has little evaluation on the impact on recreation, which needs to be rectified [S51.003].
- Branford Park and the river paths do not provide a very safe walking environment at dawn or dusk, nor an environment well suited to people in business attire. Paths could be added and improved to make them more attractive, and lighting for safety, but that would change the character and the purpose of the recreational areas, and not reduce walk time significantly [S51.003].
- Recreation opportunities provided by the Maitai Valley are crucial to good mental and physical health [S199.001, S203.001, S207.001, S219.001, S224.001 (inch refs), S282.001, S293.001, S345.001, S353.001, S358.001, S360.001, S445.001, S467.001].
- The Council should leave one valley for recreation when all others have already been used for housing [S199.001].
- Rezoning this area of the Maitai would remove public access to a rural recreational area [S358.001, S360.001].
- Developments have already blocked off recreational opportunities for many bikers and walkers up Walters Bluff [S87.001].

839. Submission points seeking that PPC 28 be approved included the following reasons:

- PPC 28 does not impact recreational access to the Maitai [S172.001].
- There are ample existing recreational opportunities in the area [S155.001].
- The Maitahi/Mahitahi River and its adjacent recreational areas will not be affected; and conditions can be imposed that preserve the riverbank facilities [S155.001].
- The Kākā Valley is private land [S172.001].
- It will have amazing large recreational areas and regeneration of natives surrounding the proposed housing [S101.001].
- More of the Kākā Valley and the Atawhai Hills will be opened for recreation than ever before [S128.001].
- PC28's Malvern Hill area will eventually connect Kākā Valley through to Dodson Valley, providing attractive walking and cycle way amenities.
- This is a significant opportunity for this community being so close to Nelson City, with excellent linkages, away from the future risks of sea level rise, and with positive recreational, biodiversity, and social outcomes [S7.001, S85.001, S155.001, S289.001, S455.001].
- PPC 28 will provide recreational space close to where people live [S39.001, S67.001].
- Animals have been freely drinking, walking through, defecating in and around the Kākā stream, which flows directly in the Maitahi/Mahitahi River at Dennes swimming hole. As planned, this development will control this stream and have it run into several hectares of

wetland next to the Maitai north boundary. This will naturally clean this water before it enters the main river [S254.001].

- Ngāti Koata Trust supports the inclusion of Objective RE6 (I), Policy RE6.1 and Schedule X.7. We consider that these provisions will provide for better recreational outcomes for Nelson [S303.005].
- The proposed establishment of an esplanade trail along the Kākā stream, the expansion of the Botanical Hill and Sir Stanley Whitehead Reserves, and the development of communal greenspace within the Valley is supported will provide recreational opportunities for residents and the wider community as well. This will add to the existing recreational value of the Maitahi Valley, which will enhance the connection with the Valley that Nelson residents' treasure [S303.005].
- Improved recreational opportunities, conservation values and aesthetic values from the creation of new Conservation zone and proposed QEII Reserve on Kākā Hill [S305.002].
- Ngāti Rauru strongly supports proposed provisions which seek to protect, enhance or restore recreational opportunities (S314.019).
- Developing Bayview area will help to address the local housing shortage concern while balancing recreational, cultural, and ecological values [S317.001].
- Waka Kotahi support the Maitahi development focus on provision for open space and recreational facilities in the Structure Plan [S320.008].
- NMH is pleased to see that PPC 28 will include accessible, sustainable off-road tracks that provide enjoyable and safe recreation opportunities for all users as this is beneficial to people's mental and physical health [S300.014].

840. Submission points seeking amendments to PPC 28 include:

- Ngāti Rārua supports the vesting of esplanade reserves and the general planting palette (X.7 'Esplanade Reserve Standards'). This should be amended to clarify that plants must be indigenous species [S314.011].
- There are no rules in Schedule X pertaining to the Open Space/Recreation Zone, which is an oversight. Amend Schedule X in the Open Space/Recreation Zone to protect this part of the Botanic Hills face from any built form incursion in a similar fashion to Kākā Hill. This would require a new paragraph in Schedule X.6 Prohibited Activities [S107.002].
- Require improved riparian planting along all waterways to a minimum width of 50 metres [S292.017, 153.016, 312.017].
- Buffer space should be increased between the rivers and proposed areas of development, in particular alongside the Kākā – Maitahi/Mahitahi River junction [S28.002].
- Waka Kotahi supports the provision of a multi-modal transport network within the Maitahi development area and linking it to nearby services and infrastructure, and open space / recreation areas that provides for community cohesion, connectivity and resilience. However, details around the timely provision of appropriate infrastructure to support safe transport options for all modes has not yet been provided [S320.005].
- Existing leisure points must be protected from damage during development [S28.002].
- More specific council planning to improve and maintain the river bank paths and facilities for the Maitahi/Mahitahi River outside and downstream of the development, including

carefully designed toilet blocks, path reinforcing and planting, swimmer access points [S28.002].

- Enhanced connection of tracks in the new development with those already existing in the Botanical Reserve, Branford Park, and adjoining Walter's Bluff [S229.009].
- That the trails to be designed to be inclusive and were proposed as shared use trails, of a suitable width to facilitate safe use by a range of modalities [S67.001].
- That the walkways and cycleways within the structure plan be designed to address the imbalance between the grades of tracks available within the network, as recognised in NCC's Out and About Strategy, and provide for lower grade trails [S67.001].
- Inclusion of a cycling climbing trail through this recreation space to the north-east of the plan, to link through to the Mountain Bike Trails in the Sharlands Forest (see original submission for a map showing the proposed connecting trail) [S67.001].
- Protection of all swimming holes and tramping trails adjacent to the development [S229.005].
- If PPC 28 is to be approved, the following changes are requested:
  - Require protection of swimming holes including: a) minimum 100m riparian planting; b) permit no landform modification of the river bank at Dennes Hole; and c) permit no loss of visual amenity at swimming holes [S367.022].
- Private Plan Change 28 be rejected unless there are measures to ensure the river (particularly the swimming holes) and the amenity value of the Maitai Valley and is adequately monitored and protected [S49.001, S279.001].
- PPC 28 should be rejected unless the amenity value of the Maitahi/Mahitahi River and valley is protected so that everyone can continue to enjoy the quiet and safe space for all ages and including dogs [S208.002].

#### **14.23.4 Outcome of expert conferencing**

841. The JWS Recreation and Open Space records the areas of agreement between Mr Petheram and Mr Greenaway. There were no areas of disagreement. In summary, their agreement covered:

- That there would be an increased local population using existing and proposed recreation opportunities in the Maitai Valley;
- That additional demand on local recreation areas would result from any population growth in Nelson City;
- That PPC 28 includes additional open space assets;
- That Maitai Valley Road below Gibbs Bridge is sufficiently wide to allow for treatments suited to minimising conflict between cars and other road users, and that there were ample opportunities to develop off-road cycle and walkways within the open space or road corridor within the Maitai Valley in particular, and on Nile Street;
- The public open space provisions are appropriate;
- That the swimming holes are significant regional recreation assets and maintaining high water quality for contact water in the Maitai River is essential;

- That the proposed provisions require existing recreation amenity for swimming is maintained and enhanced;
- The setback of 80m Dennes Hole reserve land is appropriate;
- The proposed linkages to Branford Park, Dennes Hole, Botanical Hill and Sir Stanley Whitehead Reserve are appropriate. A path linking Sir Stanley Whitehead Walkway at its existing northern end with the Bayview area below and north of the ridgeline with views to the sea would be an appropriate addition; and
- The locations of the proposed walk and cycle ways are appropriate. At the resource consent stage, the Council would consider the use of walk and cycle way standards suitable for the local topography.

842. Mr Petheram also noted:

- That the development of PPC 28 could intensify residential demand sooner and at a greater rate.
- The Council would not want additional land over and above that proposed.

843. Through the conferencing process, the Applicant introduced a new document titled “Maitahi Development Dennes Hole Interface Plan”.

844. Section 3.9 of the JWS Urban Design addressed the impacts of PPC 28 on public amenity, and health and wellbeing. Submitters raised perceived impacts on recreational amenity as a result of PPC 28. In summary, Mr McIndoe and Mr Nicholson agreed that:

- There are significant public amenity benefits in opening up the Kākā Valley;
- Locating well-designed residential neighbourhoods in close proximity with extensive and green open spaces and pathways provide public health benefits;
- The extent and green character of the public reserves in the Maitai Valley are not changed by PPC 28; and
- PPC 28 will increase the extent of publicly available green area and recreational facilities, which are available to existing and potential new residents.

845. Section 3.17 of the JWS Planning (3) addressed the submission that sought that buildings in Open Space Zones be a prohibited activity. Ms Sweetman and Mr Lile did not consider that there was any justification for such an activity status. Ms McCabe reserved her position. As recorded in Section 3.18, Ms Sweetman and Mr Lile considered that no further provisions are required in the NRMP to apply specifically to the PPC 28 Open Space and Recreation Zoned land. We accept the opinions of Ms Sweetman and Mr Lile, noting that the activity status of buildings in the Open Space Zone would be those set out in the NRMP.

#### **14.23.5 Evaluation**

846. We have considered the Applicant’s expert evidence, the s42A report (recreation and urban design), the JWS Recreation, relevant sections of the JWS Urban Design and JWS Planning, and the submissions opposing and supporting PPC 28 as set out above, in deciding whether PPC 28 will give effect to relevant sections of the RMA and the national and regional policy documents.

847. The Applicant acknowledged, and many submitters have pointed out, that the Maitahi/Mahitahi Valley downstream of Kākā Valley contains a large number of popular reserve areas and recreational activities. These were identified in the Application as, “*Branford Park*,

*the Maitai Cricket Ground, Waahi Taakaro Reserve, Maitai camping ground, various swimming holes (such as Dennes Hole, Black Hole, Sunday Hole), the Waahi Takaro Golf Club, and mountain biking opportunities. Dennes Hole is the closest to the site as it is located on the right bank of the Maitai River immediately adjoining the site, and at the confluence of the Kākā Stream.”*<sup>280</sup>

These were also the areas most often referred to by submitters.

848. We were presented with a range of views from submitters on the likely recreation and amenity impacts of the proposed development, as outlined above. These ranged from concerns that the recreation and amenity values will be significantly adversely impacted from urban development (noise, traffic, water quality and pollution), to enthusiasm for the increased access and recreational opportunities that would be offered by PPC 28.
849. Many submitters were concerned that PPC 28 would result in a reduction in amenity values for present users. This was based on increased traffic between the city centre and the Ralphine Way Road entrance to access the site, noise and general ‘urban’ activity that would result from PPC 28, water quality issues (which we have addressed elsewhere in this report) and an increase in people accessing the Lower Maitai reserve/recreational areas.
850. A number of submitters drew comparisons to publicly accessible green spaces in other cities in New Zealand and other countries and considered them to provide exemplars of excellent urban design. These included Christchurch and Hagley Park, New York and Central Park and London and its various parks. They claimed that PPC 28 would significantly reduce the amenity values of the Lower Maitai in comparison to the examples in the other cities. We find this logic difficult to follow, as the examples given were all where green space is surrounded by (in most cases intensive) urban development; and that those ‘green spaces’ were publicly owned, unlike the PPC 28 land which is privately owned, but where the proposed development will increase the green space/recreational area available for public use.
851. Recreation, urban design and planning expert opinion (as recorded above) considered that PPC 28 would not significantly detract from the existing recreational facilities; and that the increased extent of publicly available Open Space zoned land and recreational facilities available to existing and potential new residents would provide significant public amenity benefits.
852. We also note, as commented earlier in this report, that the NPS-UD acknowledges in Policy 6 that urbanisation can result in significant change which will affect (detract from) some people’s amenity values, but may improve others.
853. Mr McIndoe in the s42A report comments that:<sup>281</sup>
  - *The extent and green character of public reserves in the Maitai Valley would be unchanged.*
  - *The development of Kākā Valley follows the same principle of proximity to publicly accessible green spaces in the large cities cited by submitters.*
  - *PPC 28 would not lead to any loss of publicly-accessible woodlands*
  - *The presence of additional potential reserve users would not be of such a magnitude that it would compromise the greenness, open space, amenity and recreational value of the existing recreational area*

<sup>280</sup> Plan Change Request to the Nelson Resource Management Plan, Landmark Lile Ltd, amended August 2021, p26

<sup>281</sup> Paragraphs - 56-63 s42A Appendix Q Urban Design, Mr McIndoe, 19 May 2022

- PPC 28 would place more people in proximity to nature, green space and walking trails, and extends the network of walking trails

854. Mr Greenaway set out in his evidence, in addressing concerns raised by a number of submitters:<sup>282</sup>

*That the proposal will result in the loss of greenspace in the Maitahi/Mahitahi Valley. I find that it will increase the amount of greenspace provided and that the open space provisions of the proposal are appropriate considering the local terrain and the connections with existing areas of public open space.*

*That the proposal will result in conflict with existing recreational opportunities and values in the Maitahi/Mahitahi Valley. I find that the local increase in population will lead to increased use of local recreation resources, but that this would also result from general population growth in Nelson. There will be the need to 'harden' some local recreation assets to cope with this increased demand. There is also the potential for adverse effects via increased conflict between vehicles and runners, walkers and cyclists within the Maitahi/Mahitahi Valley Road corridor. Mr Petheram and I in our JWS defer to the traffic experts for their more fulsome assessment, but note that there is ample scope in the Maitahi/Mahitahi Valley road corridor for various solutions to this issue.*

*That effects on water quality in the Maitahi/Mahitahi River will adversely affect swimming in the River. In my evidence I refer to survey work that I have previously completed for the NCC which identifies existing concerns about water quality in the Maitahi/Mahitahi River. I defer here to the assessment Mr Stu Farrant who addresses methods to maintain and improve water quality and habitat in Kākā Stream and the Maitahi/Mahitahi River.*

855. We agree with Mr McIndoe's and Mr Greenaway's expert opinions. While current users may well notice increased use of existing green space and recreational areas, and increased traffic movement, there is no reduction in this space or access to it. There will, in fact, be an increase in publicly accessible green space. We find this to be entirely consistent with RMA sections 6(d), 7(c) and 7(f), and objective 1 and policy 1 of the NPS-UD requirement for well-functioning urban environments to *have good accessibility for all people between housing, jobs, community services, **natural spaces and open space**, including by way of public or active transport.*

856. In terms of the water quality impacts of PPC 28 on the swimming holes in the Maitahi/Mahitahi River, the JWS Recreation and Open Space noted that (the then) X.9 of the proposed Plan Change "makes reference to the implementation of the NPS-FM and NES-F 2020 and includes provisions for implementing various means to maintain and enhance water quality in Kākā Stream. Both recreation experts agreed that the degree to which implementation of these standards will maintain and enhance water quality in the Maitai River is beyond their expertise but agreed that the existing and proposed provisions require that existing recreation amenity for swimming is maintained and enhanced".<sup>283</sup> Water quality is addressed elsewhere in this report.

857. In his s42A report, Mr Petheram recommended that the following provisions be included to ensure the protection of the existing nearby recreation facilities and the successful integration of the proposed reserves within development of the site:

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<sup>282</sup> Paragraph 14 a to c of Mr Greenaway's evidence.

<sup>283</sup> JWS Recreation and Open Space, 13 May 2022, para 3.3

- *Maintenance or improvement of water quality in the Kākā Stream and the Maitai River to safeguard the recreational values of the public swimming holes.*
  - *Essential infrastructure is designed and sensitively placed to avoid visual and physical obstruction within the proposed esplanade or recreational reserves.*
  - *Retain the visual amenity of existing public recreation areas, for example Dennes Hole, by avoiding the placement of infrastructure services within public view.*
  - *Transport solutions implemented for the safety of pedestrians and cyclists using the Maitai Valley Road for recreational purposes or accessing recreational facilities via the Maitai Valley Road. This could be as a result of expected population increase within Nelson City but accelerated by PPC 28.*
  - *Pedestrian and cyclist access and safety to recreation facilities is enabled.*
  - *Linkages to existing recreational tracks and trails on the Botanical Hill, Centre of New Zealand, Sir Stanley Whitehead Park, Walters Bluff and Frenchay Drive included in the Structure Plan.*<sup>284</sup>
858. Mr Petheram also addressed the question of the width of riparian and biodiversity corridors. He advised that from a recreational perspective *“riparian and biodiversity corridors are appropriate”*.<sup>285</sup>
859. We also questioned Mr Petheram on the width of cycle and shared pathways in relation to the Austroads recommended width for frequent use shared commuter paths and shared commuter/recreation paths of 3.0m and 3.5m respectively. This was partly in response to Mr Gilbertson’s presentation about the active mode corridors and the width of the cycle and shared pathways, citing the Austroads standards, and that the 2.5 metre width proposed was not wide enough. Mr Petheram responded that NCC uses the Austroads recommendations.
860. Given the importance of the active transport mode options to PPC 28, and the imperatives of the NPS- UD, we agree that the specified width of the shared path in the Services Overlay – Transport Constraints and Required Upgrades should state “at least 3000mm” and not “2500mm”.
861. We are satisfied that the current provisions of the NRMP in combination with the PPC 28 provisions we have recommended (which ensure more detailed information is provided on sediment and stormwater management, and ecological impacts, and including the requirements of the Transport Constraints and Required Upgrades), address Mr Petheram’s recommendations. In this regard we note that the policy ‘position’ in PPC 28 provisions includes increasing the community’s recreational opportunities and the protection, restoration and enhancement of freshwater quality.
862. Mr Petheram also addressed the submissions that sought that Kākā Valley be turned into a reserve. In his s42A memo he stated:<sup>286</sup>

*Several submitters asked about the process of turning Kākā Valley into a reserve. The site is private land and if the owner does not wish to sell to the Council the Council does not have the mechanism to force it to do so.*

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<sup>284</sup> Paragraphs 64.1-64.6 s42A Appendix R Parks and Recreation Matters, Mr Petheram, 19 May 2022

<sup>285</sup> Paragraph 63 s42A Appendix R Parks and Recreation Matters, Mr Petheram, 19 May 2022

<sup>286</sup> Paragraphs 33 -34 in the s42A Appendix R Parks and Recreation Matters, Mr Petheram, 19 May 2022

*Conservation reserves, esplanade reserves and biodiversity corridors are acquired by the Council as suitable sites come available, usually through subdivisions. In this case the Council could not justify a further large reserve in this area. Nelson is currently well above provision per resident for open space, administering over 10,000 ha of conservation and landscape reserves. Its provision of 213.5 ha per 1,000 residents is well above the NZ Median of 17 ha per 1,000 residents largely due to the inclusion of the Maitai and Brook water catchments. The esplanade widths of 40m minimum are appropriate considering the scale and location of the development proposed. Greater widths could not be justified given the ongoing costs of maintenance.*

863. We accept Mr Petheram’s statement regarding the overall adequacy of reserves and open space in the Nelson region.
864. Overall, we find that PPC 28 and its provisions are appropriate in section 32 terms, with regard to the provision for, and impacts on, open space and recreation.

#### **14.23.6 Recommendation**

865. We recommend that the submissions that seek that PPC 28 be declined in respect of Open Space and Recreation, as set out above under “Matters Raised”, be **rejected**.
866. We recommend that the submissions that seek that PPC 28 be approved in respect of Open Space and Recreation, under “Matters Raised”, be **accepted**.
867. We recommend that the submissions that seek that PPC 28 be amended in respect of Open Space and Recreation, as set out above under “Matters Raised”, be **accepted in part** in terms of the amendments made to the PPC 28 provisions.

### **14.24 Noise**

#### **14.24.1 Introduction**

868. Increased noise from the urbanisation of the area, including traffic noise and general ‘suburban noise’ was raised by a number of submissions. We address those concerns and our findings and recommendations below.

#### **14.24.2 Statutory and policy provisions**

869. RMA section 7(c) and (f) require that particular regard be had to the maintenance and enhancement of amenity values and the quality of the environment.
870. The following noise provisions are contained in the NRPS:
- DA2 Noise (pp.116-118)
    - Objective DA2.2.1
    - Policy DA2.3.1

#### **14.24.3 Matters raised**

871. The following are the matters raised in relation to noise:
- PPC 28 would see a significant increase in noise from construction traffic and new residents’ vehicles, plus through traffic if this becomes a temporary or long-term alternative to SH6 [standard reason #7, S18.001, S56.001, S70.001, S89.001, S117.001, S160.001, S174.001, S175.001, S178.001, S188.001, S231.001, S232.001, S257.001, S296.007, S311.001, S353.001, S367.012, S454.001, S459.001].

- Increased traffic noise would not benefit our tamariki's learning environment, or enhance their learning experience [S296.007].
- There will be a range of noise effects from multiple noise sources: vehicles, construction traffic, earth-works machinery, house construction, and general suburban noise [S46.001, S47.001, S51.003, S100.001, S110.001, S154.001, S158.001, S171.001, S230.001, S265.001, S292.001, S293.001, S312.001, S350.001, S358.001, S360.001, S367.012].
- Increased noise will affect the tranquillity, open space and recreational values of the Maitai Valley [S2.001, S18.001, S20.001, S51.003, S90.001, S100.001, S115.001, S116.001, S117.001, S121.001, S135.001, S139.001, S162.001, S173.001, S178.001, S179.001, S181.001, S188.001, S199.001, S236.001, S251.001, S297.001, S298.002, S307.001, S308.001, S311.001, S319.001, S331.001, S343.001, S344.001, S358.001, S360.001, S367.012, S377.001, S391.001, S392.001, S395.001, S402.001, S430.001, S466.001].
- Increased noise will negatively impact wildlife [S18.001, S139.001, S158.001, S319.001].
- There has been no modelling of noise impacts [S292.001, S292.002, S312.001, S312.002, S350.001, S350.002].
- Plan 28 should be rejected unless the amenity value of the Maitahi/Mahitahi River and valley is protected so that everyone can continue to enjoy the quiet and safe space for all ages and including dogs [S208.002].
- PPC 28 should consider the impacts of noise from this development on the safety of school children, and their whānau [S296.007].
- If PPC 28 is to be approved, no suburban noise should be audible from the Cricket Ground or Dennes Hole [S367.012].

#### **14.24.4 Outcome of expert conferencing**

872. Noise was addressed in the JWS Planning (3) – at section 3.9. The question posed was *"Is there a need for an assessment of effects of the rezoning on noise?"*
873. Mr Lile considered that the nature of PPC 28 was such that the noise effects associated with the urban development proposed were adequately addressed within the current provisions of the NRMP and the RMA. He also set out that the current zoning provides for rural small holdings development which could see a further 40 residential units developed in the Kākā Valley site, and combined with other changes such as the Council's Mountain Bike Hub, will mean the receiving environment will change over time.
874. Ms Sweetman considered that there was nothing unusual or unique about what is proposed in PPC 28 that would be any different to any other residential zone within the city in terms of noise effects. In terms of traffic noise effects, while she accepted there would be additional traffic generated by the future development of PPC 28, nothing unusual in the type of traffic movements that would be generated necessitated an assessment of noise effects. Mr Lile agreed.
875. Both Mr Lile and Ms Sweetman agreed that construction noise conditions are commonplace on resource consents issued within Nelson City for large scale developments.
876. Ms McCabe considered that the provisions of the NRMP did not sufficiently address noise effects associated with the increased traffic movements arising from PPC 28, particularly on the

properties fronting Ralphine Way. Ms McCabe considered that a noise assessment should be provided.

#### 14.24.5 Evaluation

877. Some submitters raised the issue of noise impacts that would be generated if PPC 28 was approved and urban development was provided for. This raised the question for many submitters as to why a noise impact assessment was not provided in support of PPC 28.

878. Mr Maassen set out in this Reply submissions, the following<sup>287</sup>:

*The Applicant's answers to those matters are:*

*(a) The provisions of the NRPM will control noise emissions from residential use, and so the anticipated envelope of noise impacts can be extrapolated from those provisions. These are vanilla controls.*

*(b) There is no evidence that the impacts are likely to be significant from residential use because there are no sensitive receiving locations near residentially zoned land in PPC 28 that could be potentially affected. For that reason the Council did not consider it necessary to require an acoustic assessment.*

*(c) The existing environment is rurally zoned and has noise controls that provide for a productive environment.*

*(d) Any construction noise will be controlled by the usual construction standards applied to the development of this type.*

879. Ms Sweetman set out her opinion on noise in the s42A report: She stated:<sup>288</sup>

*My assessment of noise effects is addressed in section 3.9 of the JWS Planning (3) and I do not repeat them. In addition, in respect of noise effects on residents in Ralphine Way raised by Ms McCabe, while I agree that there would be increased traffic and therefore noise and change the aural amenity the residents currently enjoy, I do not consider that any increase in noise would be to the extent that would warrant a noise assessment.*

880. We agree with both Mr Maassen's legal submissions and Ms Sweetman's planning opinion expressed above. Urbanisation will clearly change the environment, including the noise environment. However, we have found, for the reasons already expressed, that the area is appropriate for urbanisation, with safeguards built in (as per the recommended plan provisions). The Applicant has not sought to 'deviate' from or amend the current noise provisions in the NRMP, nor have they sought activities likely to generate 'unreasonable' noise.

881. We are satisfied that any noise effects generated from enabling this land to be urbanised will not be significant in the context of an urban environment. On this basis we are satisfied that sections 7(c) and (f) of the RMA requiring that particular regard be had to the maintenance and enhancement of amenity values and the quality of the environment have been appropriately addressed. In this regard we reiterate Policy 6 of the NPS-UD, which says that RMA planning documents may involve significant changes to an area, and those changes may detract from amenity values appreciated by some people but improve amenity values appreciated by other people; and that this of itself is not an adverse effect.

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<sup>287</sup> Paragraph 87 of the Reply Submissions

<sup>288</sup> Paragraph 531 of the s42A report

#### 14.24.6 Recommendation

882. We recommend that the submissions that seek that PPC 28 be declined in respect of noise as set out above under “Matters Raised” be **rejected**.

### 14.25 Climate change

#### 14.25.1 Introduction

883. Section 6.9 of the request addressed climate change. A flooding report by Tonkin Taylor was attached to the request (C7. Infrastructure and Flooding Report) and the flood model used to inform that report has been provisionally updated to take account of potential climate change effects, as follows:

*T+T are currently updating the Maitahi/Mahitahi River model in accordance with latest guidance from the Ministry for the Environment (MfE) with respect to climate change, and latest information from NIWA with respect to design rainfall intensities and storm patterns. As the peer review process has not been completed, the reported levels in this report are provisional (p.9).*

#### 14.25.2 Statutory and planning provisions

884. RMA sections 7(i) and (j) respectively require Council to have particular regard to the effects of climate change and the benefits to be derived from the use and development of renewable resources.

885. We have addressed the relevance of the Resource Management Amendment Act 2020 to the assessment of PPC 28 earlier in this. In short, there is no duty at this time to have regard to the Amendment Act, or to the Draft National Adaptation Plan (August 2022) and Emissions Reduction Plan (May 2022) prepared under the Climate Change Response Act 2002.

886. NPS-UD Objective 8 and Policy 1(e) support reductions in greenhouse gas emissions, and Objective 8, Policy 1(e) and Policy 6(e) require consideration of resilience to the current and future effects of climate change.

887. Provisions in the NRPS relating to climate change include:

- EN1 Use of energy and emission of greenhouse gases (pp.119-123)
  - Objective EN1.2.1 – transitioning from non-renewable to renewable energy sources
  - Objective EN1.2.2 – stabilising greenhouse gas emissions and managing adverse effects
  - Policy EN1.3.1 – use of renewable energy
  - Policy EN1.3.2 energy conservation and efficiency in city form and design of developments
  - Policy EN1.3.3 - energy conservation and efficiency in transportation
  - Policy EN1.3.4 – remedy or mitigate adverse effects of greenhouse gases

888. There are very few provisions in the NRMP that include reference to climate change. Policy DO10.1.1 seeks to avoid or mitigate the environmental effects of vehicles by promoting urban intensification and co-location of housing, employment and services, in order to reduce the need to drive and the distance travelled. The explanation and reasons note that “*Dependence on the private motor vehicle... has indirect effects such as the risks associated with a*

*community's reliance on fossil fuels, Nelson's carbon footprint and impact on climate change"* (chapter 5, p.39).

889. Policy DO17.1.3 seeks to prevent structures in river beds and their margins from exacerbating flood damage. It is noted in the explanation and reasons that, *"Climate change could affect rainfall patterns and intensity in Nelson. In the longer term this may lead to a change in the frequency of flood events. In future, if the Government's advice or legislation changes, the Council may need to change its flood protection requirements"* (chapter 5, p.86).
890. Policy DO7.1.6 relates to activities within the coastal environment, which is outside the PPC 28 area. However, the policy identifies future climate change as a matter to be taken into account, including the possibility of 0.6m sea level rise. A number of submitters in support identify the location of PPC 28 away from the effects of sea level rise as a positive aspect.

### **14.25.3 Matters raised**

891. Submissions that sought that PPC 28 be declined included the following reasons:

- There will be significant climate impacts from construction traffic and new resident's vehicles, plus through traffic if this becomes a temporary or long-term alternative to SH6. Traffic assessments are incomplete and underestimate likely traffic volume [standard reason #7]
- There are no existing public transport routes, meaning transport will be predominantly private cars. The development's transport and buildings are not consistent with the decarbonisation pathways required to achieve net zero carbon [standard reason #8].
- The carbon footprint of more houses and accommodating additional people's transport needs is contrary to New Zealand's obligations under the Paris Accord [S95.001].
- Aside from transport emissions, no consideration has been given to carbon emissions associated with the development's roads and buildings [S367.025].
- The infrastructure required to develop the area will require extractive industries to produce raw materials, generating more greenhouse gases [S25.001].
- Climate change cannot be denied, and all decisions and planning must be based around this change. Accepting the private plan change for urban development will be contrary to new thinking required to address climate change [S157.001].
- It is inconsistent with international agreements / Council's climate change goals / it does not support a reduction in greenhouse gas emissions (NPS-UD) / it is contrary to Part II of the RMA [S2.001, S123.001, S154.001, S173.001, S211.001 S220.001, S225.001, S350.001, S350.002, S350.016, S271.001, S286.001, S292.001, S292.002, S292.016, S312.001, S312.002, S312.016, S319.001, S319.005, S323.010, S348.001, S350.001, S358.001, S360.001, S367.001, S452.001].
- In the current climate crisis, potentially high yielding, fertile rural land such as that located on the alluvial terraces of the floor of Kākā Valley, should not be disturbed or built upon and instead should be protected and enhanced with riparian plantings and preserved for the potential necessity for food production in the future [S319.001, S319.005].
- Greenfield subdivisions have a much higher detrimental environmental impact than intensification, including through requiring entirely new infrastructure, increasing use of private motor vehicles, increased stormwater runoff through sealed surfaces (such as

streets, driveways & footpaths), and use of concrete which causes up to 8% of global CO2 emissions [S358.001, S360.001, S367.001].

- Intensification should be prioritised over greenfield development in order to reduce climate change effects [S8.001, S17.001, S58.001, S80.001, S286.001, S358.001, S360.001, S452.001].
- This area is prone to flooding and climate change will increase this risk, including for downstream properties [S8.001, S156.001, S156.004, S220.001, S225.001, S288.001, S306.001, S319.001, S319.004, S338.001, S353.001, S358.001, S360.001, S390.001].
- Proposed extreme floodplain modifications are inconsistent with environmental and climate change concerns, constitute absolute disrespect for the river, and do not uphold Te Mana o te Wai [S319.001, S367.001, S367.003, S367.017].
- Questions how owners of new build property in a valley below the Maitai Dam be able to get affordable insurance for their property given climate change and an increase in record storm events [S363.001].
- Such a large and long- term development will have a negative effect on sediment flows into the Maitai, particularly during heavy rain events, which are expected to be more frequent and severe with climate change [S51.003, S125.001, S490.001].
- This scale of development will have a large impact on wildlife. Kākā Valley is part of an 8km biodiversity corridor from Nelson to Hira. The goal should be ecological restoration, which is one strategy for fighting climate change [S80.001].
- PPC 28 has not considered the effects of climate change or addressed the impacts of the application on climate change [S112.001, S113.001, S173.001, S183.002, S226.001, S367.001].
- Any new proposals that are not carbon neutral will mean the Government has to purchase more carbon credits. The Council needs to factor in compensation for the impact of housing and roading (submission provides figures) [S183.002].
- The adverse effects of increasing climate change should be ameliorated by adding to the Mahitahi regeneration and enhancement works to include the Kākā Valley part of the proposed plan change, instead of severely degrading it with suburban housing [S220.001, S225.001].
- The Maitai Valley is an ecological asset in climate change mitigation which should remain a priority [S403.001, S406.001].
- The proposed development will replace 310 hectares of carbon sequestering bush and pasture and a biodiverse ecosystem with 750 houses and associated development, which will generate carbon emissions (figures supplied) [173.001].
- The PPC 28 property could be easily preserved for recreational purposes and used to plant trees, having a positive impact absorbing carbon and improving water quality in the Maitahi/Mahitahi River [S226.001].

892. Submissions that sought that PPC 28 be approved included the following reasons:

- Development in this location will provide climate change resilience to the residents, meaning that this will be a long-term housing solution [S303.002].
- Climate change means we should build higher on the hills. [S7.001]

- The subject property's proximity to the town centre would reduce vehicle usage and increase walking and cycling, thereby reducing carbon emissions. This is consistent with the Council's Transport Strategy and Objective 9 and policy 1 of the NPS-UD [S183.001, S206.002, S303.007].
- This is a significant opportunity for this community being so close to Nelson City, with excellent linkages, away from the future risks of sea level rise, and with positive recreational, biodiversity, and social outcomes [S7.001, S85.001, S155.001, S289.001, S455.001].

893. Submission points seeking amendments to PPC 28:

- The development must be zero-carbon, i.e. balance housing with green space. Higher density communities are better than old fashioned green field development. Tiny homes should be catered for [S283.002].
- There need to be covenants requiring houses to be built with measures including power-points for charging e-vehicles, and with appropriate solar power. Meeting net-zero carbon also needs to include support from Nelson City Council with the provision of public transport to and from the subdivision [S198.010, S209.007].
- NMH would like to see the promotion of low- carbon buildings. Consideration could be given to using a Life Cycle Assessment to provide useful information to support eco-efficient and to reduce the climate impact of buildings [S300.006].
- Require building designs to incorporate carbon zero standards [S153.015, S292.016, S312.016, S350.016, S367.025].
- PPC 28 be declined unless the development's transport infrastructure plans and building requirements are consistent with the central government decarbonisation pathways required to achieve net-zero carbon by 2050, and with the Nelson City Council's declaration of a Climate Emergency [S323.010].
- The applicant should prepare an assessment of the carbon produced for this proposal and be required to compensate for the carbon by setting aside reserve for planting on part of the PPC 28 area [S183.002].

#### **14.25.4 Outcome of expert conferencing**

894. All planners attending the expert Planning (2) conferencing (26 April 2022) agree that:

- There are provisions in the NPS-UD that for example "support reductions in greenhouse gas emissions" (NPS-UD Objective 8).
- There is no requirement at this time for PPC 28 to demonstrate that it is carbon zero.
- The matters raised in the Nelson City Council Climate Action Plan are more appropriately considered under the framework of the NPS-UD.

#### **14.25.5 Evaluation**

895. The effects of climate change on flooding have been addressed elsewhere in this report; but we are satisfied PPC 28 has adequately addressed flooding, including in relation to climate change.

896. In addition to the JWS, Mr McIndoe (urban design) provided a s42A report addressing urban design. This included a number of matters relevant to the consideration of climate change. We

agree with his conclusions and recommendations. These are set out in more detail in the Urban Design section above, but in summary are:

- There would be a greater increase in vehicle distance travelled should other sites further away from the centre be developed. Considering the wider whole of city and regional context, this placement of a large amount of new housing relatively close to the city centre is optimal.
- Supports the range of residential densities proposed in PPC 28, including for reasons of maximising potential for public transport service, and locating the highest density of housing in the most accessible locations closest to centres and public amenities.
- Considers that the NRMP and the New Zealand Building Code already cover matters of energy and resource efficient housing and there is no clear rationale for application of more rigorous controls in the PPC 28.

897. The provision of public transport to PPC 28 is considered in the Traffic/Transport section of this report, as is active transport infrastructure.

898. At this point in time, the Council is not obliged to consider the effects of development on climate change; rather the consideration is the effects of climate change. The exception to this is NPS-UD Objective 8 and Policy 1, which seek that urban development supports reductions in carbon emissions.

899. In our view, the direction from the NPS-UD is not to require reductions per se, but to “support” reductions through location, development that supports multi-modal transport, reduced car use and more sensitive design (including water sensitive design). We find that PPC 28, to the extent the zoning and the plan provisions enable, is consistent with the NPS-UD provisions in terms of its location, proximity to the city centre and provision for multi-modal connections.

#### 14.25.6 Recommendation

900. We recommend that the submissions that seek that PPC 28 be declined, or modified in respect of climate change as set out above under “Matters Raised” be **rejected**.

901. We recommend that the submissions that seek that PPC 28 be approved in respect of climate change as set out above under “Matters Raised” be **accepted**.

### 14.26 Air quality

#### 14.26.1 Introduction

902. Section 6.19 of the request addresses air quality.

#### 14.26.2 Statutory and planning provisions

903. The air quality provisions in the following planning instruments have already been discussed in this report:

- NES-AQ;
- NAQP.

904. The NRPS has one air quality objective, which seeks the “*Improvement of Nelson’s ambient air quality*”. The objective is implemented by seven policies:

- *DA1.3.1 To set minimum ambient air quality standards that are at levels which ensure that adverse effects on people or ecosystems at ground level are avoided or mitigated.*

- *DA1.3.2 Where existing air quality is higher than the standards set under the above policy, no significant degradation to existing ambient air quality shall be permitted.*
- *DA1.3.3 To control and/or reduce the volume or concentration of point source discharges so that the adverse effects on people or ecosystems at ground level are avoided or mitigated.*
- *DA1.3.4 To ensure industrial, commercial, rural and domestic discharges avoid significant adverse effect on the environment, including people, plants or animals.*
- *DA1.3.5 To minimise the adverse effects of odours on public amenity by requiring new or existing activities seeking new sites, which discharge contaminants into air, to locate away from residential dwellings, educational facilities, hospitals, shops or other similar public buildings, unless adverse effects can be avoided, remedied, or mitigated.*
- *DA1.3.6 To promote energy conservation in buildings.*
- *DA1.3.7 To seek to minimise vehicle emissions from motor vehicles while acknowledging the effects of primary transport corridors on air quality and the resultant incompatibility between some land use activities and those primary transport corridors.*

#### **14.26.3 Matters raised**

905. Submission points seeking that PPC 28 be declined included the following reasons:

- Air pollution from a significant increase in traffic generated by the plan change, including construction vehicles and new resident's vehicles, plus through traffic if this becomes a temporary or long-term alternative to SH6 [standard reason #7, S18.001, S25.001, S47.001, S70.001, S89.001, S92.001, S153.002, S288.001, S292.002, S296.008, S307.001, S308.001, S312.002, S350.002, S353.001, S367.002, S401.001].
- Air quality effects arising from construction (e.g. dust) [S47.001, S51.003, S110.001, S121.001]
- Air pollution from miniscule rubber particulates resulting from tyre erosion [S174.001].
- Air quality impacts arising from the installation of ultra-low emissions burners (ULEBs) [S51.004, S153.011, S288.001, S292.011, S312.011, S350.011, S367.027].
- Lack of modelling data to inform about air quality impacts [S18.001, S288.001, S292.001, S292.002, S296.008, S312.001, S312.002, S350.001, S350.002, S367.001, S367.002].

906. Submission points seeking that PPC 28 be approved included the following reasons:

- Kākā Valley's proximity to Nelson City, and the provisions for alternate transport modes (walking and cycling trails) mean residents won't be as reliant on vehicular transport, which will reduce congestion and have better outcomes for both air quality and health (S303.007).

907. Neutral submission points:

- Air quality impacts on the learning environment and safety of local school children [S296.008].

908. Submission points seeking amendments to PPC 28 include:

- If PPCR 28 may be approved, require an assessment of air quality impacts, including for traffic from the subdivision and from Atawhai, before a decision is made [S153.002, S292.002, S312.002, S350.001, S350.002, S367.001, S367.002].
- The Private Plan Change 28 should consider the impacts of this development on the safety of school children, and their whānau [S296.008].
- If PPC 28 is to be approved, prevent use of solid fuel burners, including low emission burners [S153.011, S292.011, S312.011, S350.011, S367.021].

#### 14.26.4 Outcome of expert conferencing

909. Section 3.13 of JWS Planning (2) dated 26 April 2022 sets out the relevant NAQP provisions, as agreed at the expert Planning conference (26 April 2022). The establishment of activities within the PPC 28 site will either need to meet the permitted activity conditions of the NAQP or be required to obtain a resource consent in terms that Plan.
910. All planning experts agreed that the relevant NAQP provisions will appropriately address air quality matters arising from rezoning of the PPC 28 area.
911. Section 3.11 of JWS - Planning (3) sets out the agreement that no additional rules were required in respect to air quality to not allow the installation of solid fuel burners, as sought by Mr Jackson [S51.004] and others.
912. Moreover, the NAQP rules as they relate to PPC 28, and as agreed in the expert Planning (2) conference, - the transitional provisions in Rule AQr.25A were initially identified as relevant to PPC 28. However, they apply to solid fuel burners that were existing at the time the NAQP was notified (3 August 2003) and not to new solid fuel burners that were established after that date. The relevant NAQP rules are AQr.21, AQr.22, AQr.26, AQr.26A, as described in Section 9.13.

#### 14.26.5 Evaluation

913. For the reasons outlined above, including the existing capacity for installation of additional ULEBs in Airshed C, we accept that the current NAQP and NRPS provisions are sufficient for addressing discharges to air resulting from any development provided for in PPC 28.
914. In respect to emissions from transport, these are not specifically managed through the NRMP. However, as set out previously, the site's proximity to the city centre and its multi-modal connections will mean there will potentially be less vehicle use than may otherwise be anticipated from a greenfield development further away.

#### 14.26.6 Recommendation

915. We recommend that the submissions that seek that PPC 28 be declined, or amended, or neutral, in respect of air quality as set out above under "Matters Raised" be **rejected**.
916. We recommend that the submissions that seek that PPC 28 be accepted in respect of air quality be as set out above under "Matters Raised" **accepted**.

### 14.27 Housing Design

#### 14.27.1 Introduction

917. Issues raised by submitters in this section deal with aspects of housing type, design, performance and sustainability. These issues have also been addressed in the Urban Design section earlier.

### **14.27.2 Statutory and planning provisions**

918. Relevant NRPS provisions include:

- DA1 Air quality (pp.113-116)
  - Objective DA1.2.1
  - Policy DA1.3.6 (“To promote energy conservation in buildings”)

919. Relevant NRMP provisions include:

- Residential (chapter 7, pp.1-9)
  - Objective RE1 Living style
  - Policy RE1.1 Densities
  - Policy RE1.2 flexibility in development
  - Policy RE1.2.A comprehensive housing
  - Policy RE1.4 lower density areas
  - Objective RE2 residential character
  - Policy RE2.1 noise
  - Policy RE2.2 nuisances
  - Policy RE2.3 Daylight and sunlight
  - Policy RE2.4 privacy and outlook
  - Policy RE2.5 scale
  - Policy RE2.6 non-residential activities
  - Policy RE2.7 community dislocation
  - Policy RE2.8 community benefit

### **14.27.3 Matters raised**

920. Submission points seeking that PPC 28 be declined included the following reasons:

- It is unclear if it accommodates space for retirement villages [S322.001].
- There is no indication of the type, sustainability and environmental suitability of the houses [S56.001, S198.010].

921. Submission points seeking amendments to PPC 28 include:

- Require building designs to incorporate carbon zero standards [S153.015, S292.016, S312.016, S350.016, S367.025].
- NMH would like to see the promotion of low- carbon buildings. Consideration could be given to using a Life Cycle Assessment to provide useful information to support eco-efficient and to reduce the climate impact of buildings [S300.006].
- Require energy efficient, passive house construction including: solar power production on each property, fresh air ventilation system, triple glazing, extra insulation, passive solar heating [S194.001, S290.003, S367.026].

- That opportunity is given to developers to build at high energy efficient standards, which include options to integrate solar power, rainwater harvesting and roof top gardens into the design [S300.006].
- There is no detail in the PPCR of the type of housing planned, but it will be likely the developers' usual style with the minimum eco-measures required to meet the building code. If it does go ahead this should be remedied with the enforcement of measures such as minimal garaging, power points for e-vehicles, solar power systems, co-housing and public transport [S288.001].
- PPC 28 potentially provides for unsustainable housing, e.g. footprint, materials, statistical occupancy numbers, architecture that is motor-vehicle-subservient, etc., and potentially creates stormwater and water quality issues (more impervious surfaces). Include covenants for eco-housing, impervious surface limits, solar heating / power, roof water storage, limited car space on site, use of native planting species, etc [S328.006].
- All the houses should be eco houses, some in these clusters with adjoining walls, giving more space in other places for bush. In this context, define Eco houses as being nett zero embodied carbon without offsetting, needing minimal space heating, zero cooling and having floor area of less than 50m<sup>2</sup> per person accommodated. They should also be natural recessive colours, include rainwater storage and stormwater detention, low water use showers, taps and toilet fittings, low Volatile Organic Compounds, all have a clothesline and all be passive solar designs [S311.007].
- A minimum size of 400 square metres may require that all houses are free standing, whereas an alternative construction style could be both more affordable and more energy efficient. The plan rules for high density housing should not preclude construction of affordable and energy- efficient townhouses, such as those located on the corner of Tantragee Rd and Brook St [S290.004].
- A condition of accepting the plan change should be that no covenants relating to minimum house size, plan shape or cladding of dwellings is allowed [S311.006].
- Housing typology in NZ has traditionally been 3-4 bedroom houses. As our population ages and also becomes more diverse, there is growing demand for both 1-2 bedroom houses as well as larger 5 bedroom houses that meet the needs of multi-generational families [S300.005].
- Something over a quarter of Nelson dwellings house just one person and the average occupancy is something substantially less than three people per household. So, as well as larger dwellings with even more modest, but usable outdoor spaces, there is clearly an unmet demand for well-designed, single bedroom/studio apartments with similarly modest outdoor space [S206.003].
- Create a range of housing options in the development for a wide range of needs, including affordable housing and low-income housing. By having a variety of housing make it more possible for young adults and young families to continue to live in Nelson, as we have divergent population trends between our over 65 residents and our under 35-year-olds [S229.010].
- Tiny homes should be catered for [S283.003].

- PPC 28 is rejected unless the development's building requirements are consistent with the central government decarbonisation pathways required to achieve net-zero carbon by 2050, and with the Nelson City Council's declaration of a Climate Emergency [S198.010].

#### 14.27.4 Outcome of expert conferencing

922. The JWS Urban Design dated 5 May 2022 did not specifically consider these matters. Section 3.6 of JWS Planning (2) dated 26 April 2022 records the planners' agreement that there is no requirement at this time for the Applicant to demonstrate that PPC 28 is carbon zero.

#### 14.27.5 Evaluation

923. The majority of the issues raised by the submitters relate to the nature and design of the buildings themselves. While many of the suggestions may have merit, they are largely matters outside the scope of the RMA, and particularly in relation to a plan change which seeks urban zonings - to enable urban development. The nature, type, sustainability and environmental suitability of the houses will be addressed by other provisions, such as the Building Act.

924. There are no particular provisions in PPC 28 that would preclude a retirement village as raised by one submitter. PPC 28 provisions provide for "Comprehensive Housing Development in Residential Zones as a restricted discretionary activity."

925. Mr McIndoe, as part of the s42A team considered a number of matters relevant to housing design. Those particularly relevant included:

- *Energy and resource efficient housing requirements:* No change is required with regard to enabling energy and resource efficient housing. Mr McIndoe noted that the NRMP Appendix 24 for Comprehensive Housing Development and the New Zealand Building Code cover these matters. Consequently, there is no clear rationale for application of more rigorous controls to the dwellings in the residential zones in the PPC 28 area.
- *Facilitating cluster and terraced development in the higher density zone:* Mr McIndoe notes that this is already facilitated in the higher density residential zone with application of NRMP Appendix 22, which provides for Comprehensive Housing Development.
- *Dwelling colours:* Mr McIndoe considers this matter is already in part incorporated into the plan change (for the Backdrop and Skyline Areas). Mr McIndoe did not support extending application of the colour control to other less visually prominent locations as that would be unnecessary and arbitrarily restrictive.
- *Providing for a range of housing options:* Mr McIndoe considered that the proposed range of residential zones and mix of uses will contribute a positive degree of choice. The proposed range of residential zones and mix of uses will contribute a positive degree of choice.

926. In respect of the matter of preventing the landowner from imposing covenants on titles, this is a matter which the Council has no ability to regulate.

#### 14.27.6 Recommendation

927. We recommend that the submissions that seek that PPC 28 be declined or amended in respect of Housing Design matters as set out above under "Matters Raised" be **rejected**.

## **14.28 Health and safety**

### **14.28.1 Introduction**

928. This section considers the health and safety matters raised in the submission of Fire and Emergency New Zealand (FENZ). FENZ has taken a neutral stance on whether or not PPC 28 should be approved.

### **14.28.2 Matters raised**

929. The following submission points were received:

- It is important to FENZ that, particularly in rural areas, any new development that does not have access to a reticulated water supply has access to an adequate firefighting water supply of some kind. This essential emergency supply will provide for the health, safety and wellbeing of people and the wider community, and therefore achieves the purpose of the RMA [S299.002].
- PPC 28 includes provision of a new reservoir with a minimum size requirement to enable 350 out of the 750 lots to be serviced with a reticulated water supply which will account for both emergency and firefighting water storage. It is unclear to FENZ how the remaining 400 lots will be serviced, particularly in the Open Space and Rural-Higher Density Small Holdings zones [S299.002].
- Adequate access to both the source of a fire and a firefighting water supply is essential to the efficient operation of Fire and Emergency [S299.003].
- The Roads and access Services Overlay in the NRMP triggers the requirement for resource consent only in residential and rural areas, while other areas require compliance with the transport standards set out in the NTLDM. FENZ is concerned that standards in the NTLDM will not be sufficient to ensure that road designs for all new subdivisions and private site access for new buildings will be adequate for fire appliances to access safely [S299.003].

930. The submission points seeking amendments to PPC 28 were:

- Firefighting water supply and access to that supply is provided to all new developments and subdivisions within the PPC 28 area in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 [S299.002, S299.003].
- FENZ is engaged to ensure that Emergency access is provided through the PPC 28 area [S299.003].

### **14.28.3 Outcome of expert conferencing**

931. Section 3.1 of JWS Planning (3) dated 19 & 20 May 2022, records the discussion of FENZ's submission points. In summary, FENZ no longer seeks any amendments to PPC 28. Mr McGimpsey confirmed that FENZ submission points were resolved and it would not be pursuing their submission any further in the hearing process.

### **14.28.4 Evaluation**

932. We have given no further consideration to the FENZ submission points.

### **14.28.5 Recommendation**

933. We recommend for the reasons set out above that the submission points from FENZ [S299.002 and S299.003] be **accepted in part**.

## 14.29 Construction effects

### 14.29.1 Introduction

934. The plan change request did not include any specific section on construction effects. This is because the plan change is not a specific development proposal, but a plan change to the NRMP to enable this area to be urbanised. We accept that if the plan change is approved, and the area is developed as provided for in PPC 28, there will be construction and effects arising from that. Those effects will be addressed in terms of the existing NRMP provisions, and those relevant in PPC 28.

### 14.29.2 Statutory and planning provisions

935. Construction effects are generally a consequential effect arising from rezoning and cover a range of different effects. The other sections of this report set out the relevant statutory and policy provisions relating to these different effects.

### 14.29.3 Matters raised

936. A number of submitters raise concerns about the impact that the plan change will have on the amenity or environmental quality of the surrounding areas, including the following concerns about:

- Significant road safety, noise, air pollution, dust, and climate impacts from construction traffic [standard reason #7, S17.001, S47.001, S51.003, S110.001, S121.001, S154.001, S171.001, S173.001, S175.001, S198.009, S209.006, S220.001, S225.001, S230.001, S251.001, S278.001, S296.007, S296.008, S307.001, S308.001, S318.001, S319.001, S319.007, S320.006, S323.009, S344.001, S358.001, S360.001, S367.001, S367.002, S367.012, S377.001, S385.001, S459.001].
- Effects of runoff and sedimentation during construction, including on water quality, biodiversity and recreation [S17.001, S18.001, S22.001, S51.003, S121.001, S125.001, S173.001, S187.001, S198.004, S209.003, S209.005, S288.001, S291.001, S292.001, S292.014, S307.001, S308.001, S312.001, S312.014, S319.001, S323.004, S350.001, S350.014, S367.001, S367.019, S490.001].

### 14.29.4 Evaluation

937. The issue relating to road safety, noise, air pollution, climate impacts, runoff and sedimentation during construction, water quality, biodiversity and recreation, are all addressed in more detail in other sections of this report.

938. We find that the health and safety impacts resulting from construction will be addressed by specific assessment at the time of subdivision and/or development resource consents, and through existing mechanisms. These will include - the control of noise through the NZ Standard for construction noise; management of dust through requirements under the NRMP; and subdivision consent conditions relating to the construction phase.

### 14.29.5 Recommendation

939. We recommend that the submissions seeking that the plan change be declined due to construction effects as set out above under “Matters Raised” be **rejected**.

## **14.30 Education Facilities**

### **14.30.1 Introduction**

940. The plan change request did not include a specific assessment on the impact on school capacity.

### **14.30.2 Statutory and planning provisions**

941. There are no specific statutory or planning provisions that apply to school capacity. However, the provisions in the NPS-UD in respect to requiring well-functioning urban environments, which would include educational facilities, could be relevant.

### **14.30.3 Matters raised**

942. Submission points seeking that PPC 28 be declined included the following reasons:

- A number of submitters who sought PPC 28 be declined were also concerned that there was not enough capacity for local schools to take in new students [S10.001, S110.001, S113.001, S181.001, S248.001, S249.001, S365.001, S371.001, S459.001].

943. The following neutral submission points were received:

- The Ministry of Education (S376.002) and Nelson Central School (S296.002) expressed concern about the additional pressure that PPC 28 will place on existing school capacity.
- The Ministry noted that *“the applicant has not considered potential effects on local school capacity within their assessment. However, based on the information in PPC 28, the Ministry considers that it is likely that the anticipated demand of school-aged children arising from the development can be accommodated by Clifton Terrace School, Matai School, Nelson Central School, Nelson College, and Nelson College for Girls”*.
- The Ministry requested consultation with the Applicant to ensure that there are sufficient provisions in PPC 28 regarding the provision of educational facilities within the plan change area.

944. The following further submission was received from the Ministry:

- The Ministry has met with the Applicants to better understand the proposed plan change and discuss the Ministry’s submission. The Ministry requested that the Applicant include provisions for educational facilities within the plan change area to enable the Ministry to meet school demand in the future in this area, if required. The proposed amendments requested are as follows:
  - Add “j) Is supported by educational facilities where required” to Objective RE6 Maitahi Bayview Area (Schedule X).
  - Add “Educational facilities where required” to the bulleted list in Policy RE6.1 Maitahi Bayview Area (Schedule X) [FS13.001].

### **14.30.4 Outcome of expert conferencing**

945. Section 3.2 of JWS Planning (3) dated 19 & 20 May 2022 considered the issue of school capacity and whether the provisions sought by the Ministry of Education in their further submission were appropriate.

946. Mr Lile and Ms Sweetman considered that the operative NRMP already contained appropriate provisions that relate to educational facilities. Mr Lile and Ms Sweetman did not consider it appropriate to introduce the changes sought to the residential zones only into PPC 28. They

considered this was a plan-wide issue that is more appropriately addressed as a plan-wide change that is not specific to PPC 28.

947. Mr Lile further noted that the PPC 28 area has a limited area that would be suitable for a school and it is highly unlikely that there would be space available for a school in future.
948. Ms Lepoutre, the Ministry of Education's planner considered that the NPS-UD required that regard be given to additional infrastructure which included schools when adding additional capacity for growth. She opined that the plan change was introducing bespoke provisions into the NRMP and therefore there was an opportunity to give effect to the NPS-UD through the inclusion of the objective and policy outlined in the Ministry's further submission.
949. In relation to the duplication of objectives and policies, Ms Lepoutre was of the view that there are already new policies and objectives that are proposed to be introduced through PPC 28 that are already provided for in the NRMP.

#### 14.30.5 Evaluation

950. In her evidence, Ms Lepoutre stated:<sup>289</sup>

*As outlined in the further submission lodged by the Ministry and discussed during expert conferencing, I support the inclusion of an addition to Objective RE6 and to Policy RE6.1 as follows (requested additions underlined):*

*RE6 Maitahi Bayview Area (Schedule X) Enabling greenfield subdivision and development of the Maitahi/Bayview Area (Schedule X) to contribute to Nelson's urban development capacity in a manner that: ....*

*j) Is supported by educational facilities where required.*

*RE6.1 Maitahi Bayview Area (Schedule X) Development of the Maitahi Bayview area shall generally accord with the Structure Plan identified within Schedule X by providing:*

*•Educational facilities where required.*

951. The Hearing Panel questioned Ms Lepoutre about the implication of the amendments she sought to the provisions. It was her view that the provisions were enabling rather than directive. Ms Sweetman had the same view when we questioned her.
952. We have a different view of the provisions as recommended by Ms Lepoutre. Our view is the wording is directive, as when development was proposed the MoE may decide that additional educational facilities were "required" and submit accordingly. While this may not have been Ms Lepoutre's intent, it is how we have interpreted the Ministry's proposed provisions.
953. It is our view that the Applicant agrees with our interpretation of the provisions. Mr Maassen set out in his Reply Submissions, the following:<sup>290</sup>

*It is submitted that the relief that the Ministry of Education seeks aims at a policy 'tail-wind' for the establishment of educational facilities (if required) on the Site. The Ministry of Education implements the provision of educational facilities by means of a designation. Therefore, the aim of the provisions recommended by Ms Lepoutre at [4.5] of her evidence*

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<sup>289</sup> Paragraph 4 of Ms Lepoutre's evidence

<sup>290</sup> Paragraphs 90 and 91 of Mr Maassen's Reply Submissions

*is to support a future designation application using, in part, the statutory regard in RMA, s 171(1)(a)(iv).*

*Ms Lepoutre's proposed provisions, provide the Ministry of Education a platform to argue that the NRMP supports a notice of requirement.*

954. Mr Maassen set out that in this case, there are two circumstances of particular relevance. The first that there is no evidence of a need for additional education facilities on the site to meet the City's education needs, nor is there evidence the site would be suitable to meet a wider catchment need. The second circumstance is that the flat land in Kākā Valley is land in which Ngāti Koata has an interest. This raises the question whether, under RMA Part 2 and NPS-UD, it is appropriate to provide a 'tail-wind' for the Ministry as an agency of the Crown, particularly as it is only in relation to PPC 28 and is not plan-wide.

955. In relation to the second circumstance above, Mr Maassen stated<sup>291</sup>:

*On the second point in the paragraph above, it is submitted that for the reasons in Section 1 it would be contrary to the Te Tiriti principle of 'active protection' to give the Crown a policy 'tail-wind' for the acquisition of Ngāti Koata interests in land to be zoned residential. That obligation of 'active protection' obtains great force in light of the historical grievances outlined in the Proprietors of Wakatū v. Attorney-General in Section 1. Also, attached with these submissions is a decision of the Privy Council in the well-known case of McGuire v. Hastings District Council. That case concerns the performance of designating powers affecting tangata whenua interests. That decision strongly supports the Te Tiriti analysis above.*

956. We agree with Mr Maassen's submissions with respect to the "two circumstances of particular relevance" addressed above.

957. For the reasons outlined above, we do not consider the amendments to the plan provisions are appropriate or necessary. Furthermore, we agree with Mr Lile and Ms Sweetman that this issue is already addressed in the operative NRMP.

#### **14.30.6 Recommendation**

958. We recommend that the submissions that seek that PPC 28 be declined in respect of education facilities as set out above under "Matters Raised" be **rejected**.

959. We recommend the amendments proposed by the Ministry of Education in their further submission are **rejected**.

960. We recommend that the neutral submissions in respect of education facilities as set out above under "Matters Raised" be **noted**.

### **14.31 Non-notification clauses**

#### **14.31.1 Introduction**

961. PPC 28 as notified proposed that a number of activities (rules) would be "... considered without notification or service of notice". The majority of the submissions opposed to the plan change or seeking amendments raised concerns about the requested non-notification clauses.

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<sup>291</sup> Paragraph 93 of Mr Maassen's Reply Submissions

### 14.31.2 Statutory and planning provisions

962. The relevant statutory provisions are contained in sections 95A, 95B and 77D.
963. Sections 95A(5)(a) and 95B(6)(a) provide for public and limited notification to be precluded if the activity is subject to a rule that precludes public or limited notification.
964. Section 77D states that a local authority may make a rule specifying that the activities for which the consent authority must give public notification of an application is precluded from public or limited notification.

### 14.31.3 Matters raised

965. Submission points seeking that PPC 28 be declined included the following reasons:
- If the Plan Change goes ahead, all future subdivision and buildings within Kāka Valley/Bayview would be processed without notification to the public or affected parties, despite critical aspects of the development not being specified or supported by technical information at this stage (including air quality, geotechnical and downstream flooding assessments). That approach unfairly excludes people from being involved in decisions that may affect them [standard reason #11].
  - Concerned with no public or limited notification, as this is unfair, and supports opportunities for intensifying building and further urbanisation [S47.001].
  - At present, beyond the general zoning and overlays, and the rules in the PC (from which the public is excluded from any future involvement - 'without notification or service of notice'), it is impossible for people to understand and respond to the full effects of the proposal [S51.002].
  - It is not appropriate for such a potentially significant development to occur without full public scrutiny [S51.003].
  - Opposes any proposed earthworks and construction work in the Kākā Valley for the following reasons: any future subdivision and development would be processed without notification to the public and affected parties [S100.001].
  - Critical aspects of the development are not detailed or supported by technical information at this stage, such as sediment and downstream flooding assessments. This leaves the Council in a difficult position and places considerable uncertainty on whether subsequent detailed development consents would be approved [S198.011].
966. Submissions points seeking amendments to PPC 28:
- Amend the PPC subdivision rules to make public notification mandatory [S51.003].
  - The submitter has no objection to the non-notification provisions proposed in PPC 28, however these should not apply to Non-Complying Activities. This suggested amendment would incentivise applicants to meet the Controlled Activity provisions regarding Skyline protection.
  - If PPC 28 is to be approved, delete all provisions specifying non-notification of future consent applications [S153.008, S292.008, S312.008, S350.008, S367.014].
  - That NCC supports the private plan change SUBJECT to the Kākā Valley subdivision proposal requiring limited or public notification, given the uncertainties in the wider policy setting and matters of discretion to achieve stated outcomes [S290.005].

- Remove sentence wherever it appears in PPC 28 that says "Resource Consent ... shall be considered without notification or service of notice." The proposal provides lots of good information about how it might look and what it might do but there are no detailed specifics, that is all left for the subdivision stage. How can the public submit if you make it no notification? [S298.003]
- PPC 28 is rejected unless future subdivisions and buildings within Kāka Valley/Bayview be subject to Resource Consent and appropriately notified to the public [S198.011, S209.008, S323.011].

#### 14.31.4 Outcome of expert conferencing

967. Section 3.26 of JWS Planning (3) dated 19 & 20 May 2022 records the discussion on non-notification.
968. Mr Lile supports the non-notification clauses in PPC 28. He clarified that the current NRMP provides for non-notification of comprehensive housing developments located within the higher density area of the residential zone. This rule is enabling. PPC 28 used the same enabling provisions within X.2 of Schedule X for its proposed higher density area. In order to qualify as a restricted discretionary activity and benefit from the non-notification provision, a comprehensive housing development must first comply with all of the relevant rules. This is the same approach already used in the NRMP Subdivision provisions.
969. Ms McCabe, Ms O’Sullivan and Ms Sweetman agreed that use of non-notification clauses in rules X.2 and X.3 was consistent with the construct used in the NRMP. However, they were of the view that there was (currently) insufficient information to determine that the non-notification clauses were appropriate in respect of PPC 28.

#### 14.31.5 Evaluation

970. As outlined above, this matter had not been agreed through the expert conferencing. It was also a recurring ‘theme’ during the hearing, from submitters, that if PPC 28 was approved, it would not be appropriate to allow the range of activities proposed to be dealt with on a non-notification basis – either fully publicly notified or on a limited notified basis.
971. Mr Lile addressed the issue of the non-notification clauses in Rebuttal evidence. He stated:<sup>292</sup>

##### *“Non-Notification Clauses for Rules X.2 and X.3*

*The approach taken in the drafting of X.2 and X.3 is explained in the PPC 28 Request, recorded in the JWS Planning dated 19 & 20 May 2022 (section 3.26), and in my evidence in chief. Quite simply, I have followed the current planning framework. This is not a case of including a streamlined process more favourable than the current NRMP provisions.*

*X.2 adopts the same CHD provisions as in the Residential Zone - Higher Density Area in The Wood. This is enabling, however non-notification of the CHD activity is only on the basis that the proposal can achieve the listed performance standards.*

*X.3 is a subdivision rule that combined the subdivision rules of the NRMP, including the rules for subdivision in the Services Overlay. Again, there are a number of performance standards in X.3 that would trip an application out of the RDA classification.”*

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<sup>292</sup> Paragraphs 30- 32 of Mr Lile’s Rebuttal Evidence

972. In his Reply evidence he stated:<sup>293</sup>

*Non-Notification*

*"I have made no changes to the non-notification provisions in X.2 (nor X.3). In Ms Sweetman's summary statement, she said she was more comfortable with this provision in terms of Comprehensive Housing Development "if the rule was for land use only and not subdivision" (my emphasis). Her reasoning for this assessment is given in paragraph 16 of her summary, being that CHD consents are more focused on design and location elements, with internalised effects, and also given the sensitive location of the Higher Density Zone in the floodplain area.*

*The NRMP provides the following definition of CHD:*

***"Comprehensive Housing Development"** - Means three or more residential units, design and planned in an integrated manner, where all required resource and subdivision consents are submitted together, along with sketch plans of the proposed development. The land on which the proposed residential units are to be sited must form a separate contiguous area." (my emphasis)*

*Separating the activity of subdivision from the land use/housing would not therefore align with the approach taken in the NRMP to enable an integrated approach. As I have clearly expressed in my evidence and in the answer to questions from the Panel on the topic, these provisions are of central importance to achieving the purpose and intent of the NPS-UD (May 2022)".*

973. It was Ms Sweetman's opinion that:<sup>294</sup>

*Given the scope of the matters addressed by both rules and the potential effects arising, I remain of the view that a non-notification clause is not appropriate. I agree with Mr Lile that X.2 and X.3 only relate to specific activities and not a broader range of activities that require resource consent approval. However, the scope of what is covered by X.2 and X.3 is in my view much broader than the rules relating to comprehensive housing developments and subdivision in the NRMP. It is my preference to take a more cautious approach in this circumstance and not preclude either public or limited notification. Irrespective, as Mr Lile says, other consents will likely be required at the same time, which would in my view make any preclusion clause redundant in any case.*

974. Notwithstanding Mr Lile's position (following the convention in the NRMP), we agree with Ms Sweetman. The Comprehensive Housing Development in the Residential Zone – Higher Density Area (X2) and Subdivision – General (Residential Zone) (X.3) addresses matters such as: cultural matters, water sensitive design, stormwater and transport. These matters could have effects beyond the site which may, potentially, be more than minor. On this basis an assessment should be made at the resource consent application stage in terms of the notification 'tests' in the RMA.

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<sup>293</sup> Paragraphs 21- 23 of Mr Lile Reply Evidence

<sup>294</sup> Paragraph 14 Addendum 42A Report – NON-NOTIFICATION CLAUSES FOR RULES X.2 AND X.3

975. Requiring the standard notification to apply does not necessarily mean any application will be publicly or limited notified. The notification tests will need to be applied to determine if an application needs to be publicly notified, limited notified or processed without notification.
976. We find that the rules relating to buildings in the Back Drop Area (X4) and the Skyline Area (X5) can state that these applications shall be considered without notification or service of notice. This is for the reasons expressed by Mr Lile.

#### **14.31.6 Recommendation**

977. We recommend that those submitters who sought that PPC 28 be refused on the basis of the non-notification provisions as set out above under “Matters Raised” be **accepted in part** (for the reasons we have set out above).

### **14.32 Consultation undertaken**

#### **14.32.1 Introduction**

978. A number of submitters raised the issue of a lack of consultation, or consultation previously undertaken, as a reason for their opposition to PPC 28, and why PPC 28 should not be approved. We address those concerns below.

#### **14.32.2 Matters raised**

979. Reasons for opposition to PPC 28 on the basis of a lack of consultation, or consultation previously undertaken, included:
- That the community should be given a say in whether development areas should be identified in the Maitai Valley before an RMA hearing is held [S331.001].
  - There is significant community opposition, including the voices of 13,000 residents who are being ignored [S59.001, S110.001, S153.001, S154.001, S286.001, S288.001, S318.001, S331.001, S358.001, S360.001, S367.001, S431.001].
  - The public has been excluded from decisions that affect the well-being of Nelsonians [S154.001, S358.001, S360.001, S435.002].
  - Public consultation on proposed suburban development in the Kākā Valley in the 2006 Nelson Urban Growth Strategy showed that the majority of the Nelson public were against this type of development in this area. There has not been any indication that this opinion has changed [S169.001].
  - NCC has failed miserably to adequately consult with its ratepayers on the initiatives that have led to its application now for PPC 28 [S307.001, S308.001].
  - Public consultation on PPC 28 has been inadequate. Initial emails regarding making submissions were sent only to ratepayers who live nearby, have a view of the proposed development or would be affected by traffic noise. More than these people would be affected, including renters. Emails should have gone out to all Nelson residents [S307.001, S308.001].
  - The council is railroading this development through even though it has been presented with twelve thousand plus signatures against the development [S56.001].
  - The Council has failed to discharge its duties of consultation. Nelson had spoken, and it was clear that the Maitai is a taonga and not to be opened up for urban sprawl, yet the 2019 Future Development Strategy (which lacked public consultation or transparency) was

tailormade for PPC 28. This PPC should not be considered until the new FDS has been settled [S211.001].

- Nelson residents have said no in the past to the Valley's development. The poor job the Council did on public consultation and feedback on the revised resource management plan has given the developers an opportunity that would not have otherwise existed if the Council had done a better job [S20.001].
- PPC 28 is undemocratic. Previous public consultation has indicated the Nelsonians do not want the Kākā valley developed and the public continue to make this known [S117.001, S118.001, S301.001].
- The Maitai Valley has been protected by all previous Nelson City Councils after consultation with the residents of Nelson [S220.001, S225.001].
- Inadequate community consultation, including in respect to the government infrastructure grant [S6.001].

### 14.32.3 Evaluation

980. The matters raised in respect to the FDS have been addressed earlier, and have not been repeated here.
981. Schedule 1 of the RMA sets out the requirements in respect of the preparation, change, and review of plans, including private plan changes. Part 2 of that Schedule 1 sets out specific matters in respect of private plan changes, such as PPC 28. In respect of PPC 28, the Council “accepted” rather than “adopted” PPC 28 under clause 25; meaning that it continued to be processed as a private plan change. Had the Council adopted PPC 28, it would have been processed in accordance with Part 1 of Schedule 1.
982. PPC 28 was publicly notified in accordance with clause 5. In doing so, the Council sent a copy of the public notice and information to every ratepayer for the area where that person, in the Council’s opinion, was likely to be directly affected by PPC 28. The Council also published the public notice in accordance with clause 5(1A)(b).
983. While we note that under clause 3 of Part 1, there is no duty to consult with the general public or adjacent landowners on a plan change, as set out above, we are satisfied the Applicant has undertaken appropriate and sufficient consultation as required under the RMA for a private Plan Change.

### 14.32.4 Recommendation

984. We recommend that to the extent that submitters sought that PPC 28 be refused on the basis of a lack of, or inappropriate consultation, as set out above under “Matters Raised” those submissions be **rejected**.

## 14.33 Other

### 14.33.1 Introduction

985. There were a number of “other” submission points or reasons received that did not fit within previous sections of this report.

### 14.33.2 Matters raised in submissions

986. Other submission points seeking that PPC 28 be declined included the following reasons:
- The on-site quarry would bring noise, dust and sediment [S110.001].

- Lack of information about whether there will be a quarry on-site [153.001, 154.001, S318.001, S358.001, S360.001].
- The raising of 5.6ha by 2m would require a quarry to be constructed further up the valley, resulting in noise pollution and changing the character of the natural environment [S171.001].
- Current rates are already unaffordable for many Nelson residents and this would add to it [S199.001, S220.001, S225.001, S278.001].

987. Other submission points seeking that PPC 28 be approved included the following reasons:

- It will provide ongoing local employment and local revenue (S155.001).
- It will generate additional rates (S155.001).

988. Other submission points seeking amendments to PPC 28 include:

- In the absence of information to the contrary, PPC 28 potentially proposes development that likely cements the gap between Haves and Have-nots. Recommends use of the proposed commercial space for commercial community-specific business [S328.009].
- Rather than dividing into “for” and “against” camps, adopt an approach that unifies everyone around a set of goals, creating a prosperous, equitable, liveable, sustainable and vital community; and then, see if this development can be done in such a way to advance those goals [S229.001].
- Two parcels of Rural Zone land to the north-west of the subject site appear to have been re-zoned Residential by mistake. Although it is logical to rezone these two parcels to align with the surrounding zone, it should be done via a 'corrections' plan change or other legal tidy-up process [S107.004].

### **14.33.3 Outcome of expert conferencing**

989. The JWS Economics dated 27 April 2022 records the experts’ agreement that from an economic perspective the development of the plan change area would result in significant benefits to Nelson and the region.

990. They also agree that there are substantive benefits to result from the provision of additional housing to the region from urban residential development in this location, including from the construction phase (although the experts differ in their view on the extent of benefit that would arise from the construction phase).

### **14.33.4 Evaluation**

*Quarry:*

991. The Structure Plan does not include or permit a quarry, and the establishment of any quarry would need to be subject to a separate resource consent.

*Effect of PPC 28 on local employment / revenue / rates:*

992. As noted above, PPC 28 is expected to result in a substantive economic benefit to the region, including from the construction phase.

993. As outlined in the Infrastructure Section in this report, infrastructure upgrades will either need to be undertaken (and funded) by the developer; or where they are necessitated by growth beyond the PPC 28 site, there are mechanisms available to the Council to recoup proportional

costs from the developer such as through development contributions taken at the subdivision stage or through a developer agreement.

*Use of Commercial Space:*

994. Decisions concerning the use of the commercial space proposed in PPC 28 are not a matter that can be addressed through the plan change process.

*Adopting a 'unified' approach:*

995. The desire to see a prosperous, equitable, liveable, sustainable and vital community created aligns with the visions presented by the developers, and in particular by Mr Toia on behalf of Ngāti Koata as a partner in the PPC application. In presenting his evidence, Mr Toia reiterated, in part, the vision Ngāti Koata and their Partners have for the Kākā Valley:<sup>295</sup>

- a vibrant community that connects with and enhances its natural environment and setting;
- a vibrant community that connects with each other, people connecting with people;
- a place families will call home;
- a place where families will be able to buy their first home, their next home, their last home; and
- a place where people will connect with tangata whenua – socially, culturally and environmentally.

996. The process for considering plan changes is determined by the RMA. We note that this process allows for public involvement whereby a range of views may be expressed and considered during decision-making. We also note, as we have already addressed, anyone is entitled to apply for a private plan change at any time after a regional or district plan is made operative.

#### **14.33.5 Recommendation**

997. We recommend that the submissions that seek that PPC 28 be declined in respect of these issues as set out above under “Matters Raised” be **rejected**.

998. We recommend that the submissions that seek that PPC 28 be approved as set out above under “Matters Raised” be **accepted**.

## **15 Part 2 Matters**

999. Under s74(1)(b), any changes to a District Plan must be in accordance with the provisions of Part 2 of the RMA.

1000. Part 2 of the RMA sets out the Act’s Purpose and Principles, as covered under sections 5 to 8. We set out those parts of sections 6, 7 and 8 that are (potentially) engaged by PPC 28. We then address the extent to which PPC 28 satisfies the purpose of the Act at section 5. Section 5 sets out the sustainable management purpose of the RMA, which is to – “...promote the sustainable management of natural and physical resources”. We have already addressed those matters more specifically where relevant in the earlier sections of this report.

1001. Section 6 sets out the Matters of national importance. Those addressed in this report are:

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<sup>295</sup> Mr Toia’s Closing Statement

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:*
- (g) the protection of protected customary rights:*
- (h) the management of significant risks from natural hazards.*

1002. In terms of s6(a) we have found that the site is not part of the coastal environment. However, even if it were, we are satisfied that the nature of the existing environment and the planning provisions in PPC 28 would give effect to (a) such that any subdivision, use, and development would not be inappropriate. Furthermore, we are satisfied that the natural character of the existing valley and stream are not significant, and would be enhanced by the provisions of PPC 28.

1003. In terms of s6(b) there are no outstanding natural features or landscapes (all landscape experts agree).

1004. In terms of s6(c), PPC 28 identifies and protects the Significant Natural Area.

1005. In terms of s6(d), public access to and along the stream would be provided for, noting there is currently no access.

1006. In terms of s6(e), we have extensively addressed the relationship of Ngāti Koata and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga in this report. Section 6(e) is met with respect to PPC 28.

1007. In terms of s6(f), we have found that the shearing shed structure and chimney are not of such significance to constitute Historic Heritage and ‘trigger’ s6(f).

1008. In terms of s6(g), we are satisfied there are no “*protected customary rights*”.

1009. In terms of s6(h), we are satisfied any significant risks from natural hazards have been addressed.

1010. Section 7 sets out a range of the Other matters that we are to have particular regard to. Those relevant to PPC 28 include:

- (a) kaitiakitanga:

- (aa) the ethic of stewardship:
- (b) the efficient use and development of natural and physical resources:
- (c) the maintenance and enhancement of amenity values:
- (d) intrinsic values of ecosystems:
- (f) maintenance and enhancement of the quality of the environment:
- (g) any finite characteristics of natural and physical resources:
- (h) the protection of the habitat of trout and salmon:
- (i) the effects of climate change:

1011. We are satisfied that we have had particular regard to the relevant Other matters, as addressed throughout this report.

1012. Section 8 sets out that in relation to managing the use, development, and protection of natural and physical resources, we are to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). We have done that.

1013. We find that PPC 28 meets Part 2 of the RMA.

## **16 Overall Finding and Recommendation**

1014. It is our finding that PPC 28 meets the purpose and principles of the RMA having evaluated it under sections 32 and 32AA of the RMA. We have set out our reasoning for this above in this report. This finding is subject to the plan provisions that we have recommended for inclusion in the NRMP.

1015. PPC 28 also gives effect to the NPS-UD and NPS- FM (to the extent it can as essentially a land use plan change to the NRMP) and the NRPS.

1016. Overall, we recommend that PPC 28 be approved, and that the submissions be accepted, accepted in part, or rejected as set out in the topic sections above. Some neutral submissions have been noted.



Greg Hill, Chairman, on behalf of the Hearing Panel

9 September 2022

## Appendix A – Parties

### PRIVATE PLAN CHANGE 28 – MAITAHĪ BAYVIEW HEARING

#### Parties and People

|                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Applicant</b>                                                                                                                                      |
| John Maassen – Legal                                                                                                                                  |
| Andrew Spittal – Applicant                                                                                                                            |
| Hemi Toia – Applicant                                                                                                                                 |
| Tim Heath – Economics                                                                                                                                 |
| Tony Milne – Landscape and Visual                                                                                                                     |
| Richard Bennison – Productive Land Values                                                                                                             |
| Hugh Nicholson – Urban Design                                                                                                                         |
| Michael Parsonson – Earthworks and Sediment Control                                                                                                   |
| Rob Greenaway – Recreation                                                                                                                            |
| Robin Miller – Heritage                                                                                                                               |
| Amanda Young – Archaeology                                                                                                                            |
| Gary Clark – Transportation                                                                                                                           |
| Ben Robertson – Terrestrial Ecology                                                                                                                   |
| Josh Markham – Terrestrial Ecology                                                                                                                    |
| Stu Farrant – Water Sensitive Design                                                                                                                  |
| Damian Velluppillai – Flooding                                                                                                                        |
| Maurice Mills – Infrastructure                                                                                                                        |
| Mark Foley – Geotechnical                                                                                                                             |
| Mark Lile – Planning                                                                                                                                  |
| <b>Submitters</b>                                                                                                                                     |
| Geoff Harley (s422)                                                                                                                                   |
| Ngāti Koata Trust (s303) <ul style="list-style-type: none"> <li>Matthew Hippolite,</li> <li>Melanie McGregor and</li> <li>Kimiora McGregor</li> </ul> |
| Charles Bladon (s488) - Peter Taylor speaking on his behalf <sup>296</sup>                                                                            |
| Bill Gilbertson (s183)                                                                                                                                |
| David Jackson (s51)                                                                                                                                   |

<sup>296</sup> Noting that the Hearing Panel did not accept Mr Bladon statement of evidence (as it as it was expert evidence and was not filed on time) for the reasons set out in the hearing.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Gwendolyn Struik Bray (s122 & s125)                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Jacquetta Bell (s288)                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Maree Sharland (s211)                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Jennifer Duncan (s360)                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Tony Healey (s316)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Wendy Barker (s308)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Tony Pearson (s265)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Tim Bayley (s254)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Tom Jerram (s104) - Anne Kolless speaking on his behalf                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Abbi Jerram (s105) - Anne Kolless speaking on her behalf                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Anne Kolless (s445)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Susan Corry (s298)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Richard English (s16)                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Save the Maitai Incorporated (s367) <ul style="list-style-type: none"> <li>• Sally Gepp – Legal</li> <li>• Anne Steven – Landscape and Visual</li> <li>• Dali Suljic – Stormwater/Infrastructure</li> <li>• Andrew James – Traffic</li> <li>• Kelly McCabe – Planning</li> <li>• Aaron Stallard</li> <li>• Jennifer Duncan</li> <li>• Astrid Sayer</li> <li>• Sophie Weenink</li> <li>• Monika Clark-Grill</li> <li>• Peter Taylor</li> <li>• Anthony Haddon</li> <li>• Annette Milligan</li> </ul> |
| Monika Clark-Grill (s292)                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Peter Taylor (s312)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Anthony Haddon (s318)                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Mohun Krishnasamy (s3)                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Elizabeth Dooley (s151)                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Aaron Stallard (s331)                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Gretchen Holland (s225)                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Geoff Cooper (s176)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Libby Newton (s207)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| David Ayre (s446)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

|                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| David Haynes (s173)                                                                                                                                                                                                                                         |
| Marian Fraser (s158)                                                                                                                                                                                                                                        |
| Pauline Miller (s171)                                                                                                                                                                                                                                       |
| Graeme Ferrier (s235)                                                                                                                                                                                                                                       |
| Serge Crottaz (s306) - Anne Kolless speaking on his behalf                                                                                                                                                                                                  |
| Ali Howard (s154)                                                                                                                                                                                                                                           |
| Linley Taylor (s326)                                                                                                                                                                                                                                        |
| Andries (Paul) Jonkers (s511)                                                                                                                                                                                                                               |
| Trevor Carson (s477) & June Carson (s489)                                                                                                                                                                                                                   |
| Mike Ward (s206)                                                                                                                                                                                                                                            |
| Lucy Charlesworth (s271)                                                                                                                                                                                                                                    |
| Bill Dahlberg (s287)                                                                                                                                                                                                                                        |
| Daniel Levy (s319)                                                                                                                                                                                                                                          |
| Susan MacAskill (s447)                                                                                                                                                                                                                                      |
| Scott Smithline (s412)                                                                                                                                                                                                                                      |
| Anthony Stallard (s307)                                                                                                                                                                                                                                     |
| Silvano Lorandi (s226)                                                                                                                                                                                                                                      |
| Ronald Thomson (s135)                                                                                                                                                                                                                                       |
| Friends of the Maitai (s198) <ul style="list-style-type: none"><li>• Steven Gray</li><li>• Roger Young – Ecology</li></ul>                                                                                                                                  |
| Doug McKee (Bayleys Real Estate Nelson) (s313)                                                                                                                                                                                                              |
| Matthew Hay - Fineline Architecture (s403)                                                                                                                                                                                                                  |
| Caroline Vine (s431)                                                                                                                                                                                                                                        |
| Mike Tasman-Jones (s358) - Jennifer Duncan speaking on his behalf                                                                                                                                                                                           |
| Ministry of Education (s376) <ul style="list-style-type: none"><li>• Karin Lepoutre - Planning</li></ul>                                                                                                                                                    |
| David Wheeler (s218)                                                                                                                                                                                                                                        |
| <b>Council Section 42A team</b> <ul style="list-style-type: none"><li>• Kirdan Lees – Economics</li><li>• Paul Horrey – Geotechnical</li><li>• Mike Yarrall – Water</li><li>• Malcolm Franklin – Wastewater</li><li>• Paul Fisher – Water quality</li></ul> |

- Kate Purton – Stormwater and flood risk
- David Wilson – Water sensitive design
- Graeme Ridley – Erosion and sediment control
- Tanya Blakely – Ecology
- Mark Georgeson – Transport
- Ann McEwen – Heritage
- Rhys Girvan – Landscape
- Graeme McIndoe – Urban design
- Andrew Petheram – Recreation
- Gina Sweetman – Planner and section 42A report author

#### Hearings Administration

- Bev McShea

#### Tabled Statements

- Waka Kotahi - written statement dated 11 July 2022 from Lea O’Sullivan – Principal Planner.
- Te Ātiawa Manawhenua Ki Te Tau Ihu Trust – attached to Mr Lile’s planning evidence
- Legal submissions on behalf of the Nelson City Council - Dated 8 July 2022

## Appendix B – PPC 28 Plan Provisions

### Amendments to Planning Maps (NRMP, Volume 4)

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Amend **Planning Maps A2.1 and A2.2** (Road Hierarchy Maps) by adding:

- a. a Proposed Sub Collector Road from the end of Bayview Road and Frenchay Drive, through the site and following the alignment of the proposed indicative road, through Ralphine Way and down Maitai Valley Road as far as Nile Street East; and
- b. a Proposed Sub Collector Road from the new indicative road (described in (a) above) down to the northern side boundary, following the alignment of a future roading link to Walters Bluff (see Attachments B1.1 and B4).

**Amend Planning** (Zoning – right hand side) **Maps 5, 7, 8, 11, 15 and 52** by deleting the current Rural and Rural-Higher Density Small Holdings Area zoning and substituting the zoning proposed in accordance with the proposed Maitahi/Mahitahi Bayview Structure Plan (Attachments B2.1 to B2.6).

**Amend Planning** (Zoning – right hand side) **Maps 5, 7, 8, 11, 15 and 52** by adding Schedule X in accordance with the proposed Maitahi/Mahitahi Bayview Structure Plan (Attachment B2.1).

**Amend Planning** (Overlay – left hand side) **Maps 5, 7, 8, 11, 15 and 52** by adding the Services Overlay to the land the subject of proposed Maitahi/Mahitahi Bayview Structure Plan (Attachment B3).

### Amendments to Text (NRMP, Volume 2)

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#### Chapter 7: Residential Zone

**Add** to REd as follows:

To meet some of the anticipated significant demand for additional residential land, the Kākā Valley and Bayview properties are identified within Schedule X (Maitahi/Mahitahi Bayview Area). The future residential development opportunity provided by the provisions of Schedule X and its Structure Plan are designed to meet a variety of needs and residential housing densities, including those of Māori. Other important outcomes include: increasing the community's recreational opportunities; a small commercial area for resident's day to day needs; ensuring transport (including active transport) connectivity at a local and regional scale; and protecting, restoring and enhancing the indigenous terrestrial and freshwater values; all in a culturally appropriate manner recognising the ancestral values of the land and waterbodies to Whakatū Tangata Whenua.

**Add** to RE3.1.viii as follows:

.... and landscape values of the Malvern Hills, Botanical Hill and Kākā Hill - see Schedule X – Maitahi/Mahitahi Bayview.

**Add** Policy RE3.9 Maitahi/Mahitahi Bayview Area, along with explanation, reasons, and methods:

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### **Policy RE3.9 Maitahi/Mahitahi Bayview Area (Schedule X)**

Require that the landscape and natural character values of the Malvern Hills, Botanical Hill and Kākā Hill skyline and backdrop areas, and the Maitahi/Mahitahi and Kākā Valleys, be protected and managed by:

- a. Avoiding building and development on the Kākā Hill skyline and backdrop areas that would have more than minor adverse effects on Kākā Hill's landscape, visual, natural character and ecological values, including its backdrop function for Nelson City;
- b. Requiring buildings, associated earthworks, and native planting within the Backdrop Area and Skyline Area of Malvern Hills and Botanical Hill to be designed, located and landscaped so as to protect the values of the Backdrop and Skyline Areas;
- c. Requiring that a Residential Green Overlay is established with appropriate planting and protected at the time of subdivision and development;
- d. Requiring that existing indigenous vegetation within the Revegetation Overlay is managed and protected over the long term;
- e. Ensuring earthworks are minimised to the greatest extent practicable within the Residential Green Overlay; and
- f. Requiring that natural character and ecological values are incorporated into any works within Open Space zones and within any proposal to modify freshwater tributaries of Kākā Stream.

#### Explanation and Reasons

##### RE3.9.i

Kākā Hill is an important natural feature and visual backdrop for Nelson City. These values need to be protected from buildings and development that would result in more than minor adverse landscape, visual and natural character effects.

The Kākā Valley has indigenous vegetation that should be preserved, as well as steep areas suitable for re-vegetation that can enhance the natural character and ecology of the valley.

The Maitahi Bayview Area has been identified as an area within Nelson which can absorb a relatively large amount of development. However, to maintain the natural character and landscape values of the area, controls are proposed over building locations, form, finish and landscaping requirements. These controls are imposed through Schedule X, the Structure Plan and Overlays for the Maitahi Bayview Area.

Schedule X, the Structure Plan and Overlays for the Maitahi/Mahitahi Bayview Area have also imposed spatial controls over development.

#### Methods

- RE3.9.ii Identification of the Malvern Hills, Botanical Hill and Kākā Hill landscape units within the Maitahi/Mahitahi Bayview Structure Plan and using zoning, overlays and the resource consenting process, guided by assessment criteria, as a package

to manage, protect and enhance the area's landscape, visual and natural character values.

- RE3.9.iii Specific rules to restrict the building form, colour, and landscaping on the Malvern Hills and Botanical Hill.
- RE3.9.iv Specific rules to avoid inappropriate development on Kākā Hill by imposing a higher level of restriction (non-complying activity status) on built development.
- RE3.9.v Requiring native revegetation within the Residential Green Overlay (Residential Zone) and Revegetation Overlay (Rural Zone) shown on the Structure Plan at the time of subdivision and development, in accordance with an Ecological Management Plan.

**Add Objective RE6 Maitahi/Mahitahi Bayview Development (Schedule X) and Reasons:**

### **Objective**

#### **RE6 Maitahi/Mahitahi Bayview Area (Schedule X)**

The Maitahi/Mahitahi Bayview Area (Schedule X) contributes positively to the social, economic, cultural and environmental well-being of the Nelson Whakatū community while:

- creating a sense of place that is responsive to, and respectful of, natural character, landscape and Whakatū Tangata Whenua values; and
- development is fully serviced with three waters infrastructure, and coordinated with transport infrastructure upgrades; and
- freshwater quality and freshwater and terrestrial ecology and biodiversity is improved.

### **Explanation and Reasons**

- RE6.i The Plan Change and the Nelson Tasman Future Development Strategy have identified the Maitahi/Mahitahi Bayview Area as being suitable for accommodating future development as an expansion of Nelson's urban area to provide for population growth and meet consequential housing demand. Schedule X and the associated Maitahi/Mahitahi Bayview Structure Plan are to ensure that residential and commercial development and open space can meet a range of needs. The Schedule's provisions will ensure development is appropriate, culturally sensitive, and provides for enhanced community recreational opportunities and ecological values. The Structure Plan also provides for road, cycle and pedestrian linkages which will benefit the areas within and outside of the Maitahi Bayview Area. Landscape values are recognised through green and revegetation overlays, building control rules and overall design guidance around landscaping and use of recessive colours for buildings.

**Add Policy RE6.1 Maitahi/Mahitahi Bayview (Schedule X), explanation and reasons, and methods:**

#### **Policy RE6.1 Maitahi/Mahitahi Bayview Area**

Provide for subdivision and development which is consistent with the Maitahi/Mahitahi Bayview Structure Plan in Schedule X and where it is demonstrated that:

- a. It will contribute to a well-functioning urban environment;

- b. It accommodates a range of housing densities and forms to meet the diverse needs of Whakatū Nelson's community;
- c. It achieves high quality urban design outcomes;
- d. Any comprehensive housing development is consistent with the requirements of Appendix 22;
- e. It is consistent with the requirements of Appendix 9 (where appropriate) and Appendix 14;
- f. The recreational opportunities to meet the needs of current and future residents are implemented and available to the wider community, including the creation of the identified reserves and walkway linkages;
- g. The multi-modal transport connections in the Structure Plan, in the form of roads, cycleways and pedestrian linkages, are implemented; and
- h. The urban environment is safe from flooding risks and is resilient from the effects of climate change.

#### Explanation and Reasons

RE6.1.i Subdivision and development within the Maitahi/Mahitahi Bayview area consistent with the Schedule and Structure Plan will ensure that the area is developed in a manner which provides for a diversity of housing choice to meet the needs of Nelson. The provisions of Schedule X are designed to ensure development occurs in a manner that achieves best practice urban design, maintains landscape values and protects, restores and enhances indigenous terrestrial and freshwater values. The Structure Plan provides public amenity through provision of road, cycleway and pedestrian linkages and reserves all of which are designed to integrate development into the surrounding environment. The Schedule and Structure Plan have been designed in accordance with urban design principles which take account of the existing landforms and landscape amenity values of the valley, surrounding hills, and ridgelines.

#### Methods

RE6.1.ii The use of scheduling for the Maitahi/Mahitahi Bayview area to ensure integrated development and servicing in accordance with the Structure Plan.

RE6.1.iii Zoning and rules which provide for diversity of housing choice, size and style in a manner which achieves the desired urban design outcomes.

RE6.1.iv Subdivision and development of Maitahi/Mahitahi Bayview area in accordance with best practice landscape and urban design principles and freshwater outcomes.

RE6.1.v Specific rules within the Schedule to avoid, remedy or mitigate the adverse effects of subdivision and development.

RE6.1.vi Additional information requirements under section 88 of the RMA.

**Add Policy RE6.2 Whakatū Tangata Whenua Values, explanation and reasons, and methods:**

## **Policy RE6.2 Whakatū Tangata Whenua Values**

Ensure subdivision, use and development of the Maitahi/Mahitahi Bayview area recognises and provides for cultural values and mātauranga Māori through:

- a. Recognition of the customary interests, values, rights and responsibilities exercised by Whakatū Tangata Whenua in a manner consistent with the sustainable management of natural and physical resources;
- b. The protection of Kākā Hill's natural and spiritual values in a manner that respects its cultural significance and the customary interests, values, rights and responsibilities exercised by Whakatū Tangata Whenua;
- c. Ensuring that subdivision and development reflects Whakatū Tangata Whenua values, and enables the exercise of kaitiakitanga; and
- d. Ensuring that Whakatū Tangata Whenua are involved throughout the subdivision and development process.

### Explanation

RE6.2.i Section 5 of the Resource Management Act requires that social, cultural and economic well-being of people and communities and their health and safety be addressed in the process of sustainable management of resources. Furthermore, section 6 (e) requires the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga to be recognised and provided for, while section 7 requires particular regard to be had to kaitiakitanga, and section 8 requires the principles of the Treaty of Waitangi to be taken into account. In recognition of tangata whenua values associated with the site and area, the Schedule rules require ongoing consultation and involvement with Iwi through each development phase to ensure tangata whenua values are recognised and provided for.

### Methods

- RE6.2.ii The specific provision for Iwi involvement following the principle of Mana Whakahaere through the requirement of a cultural impact assessment for any resource consent application involving earthworks, freshwater, discharges, subdivision or comprehensive housing.
- RE6.2.iii Consultation with Iwi on issues relating to the relationship of Māori with their ancestral lands, water, sites, waahi tapu and other taonga.

**Add** Policy RE6.3 Integrated Management, explanation and reasons, and methods:

## **Policy RE6.3 Integrated Management**

Require that subdivision and development within Schedule X ensures a comprehensive and integrated management approach including, but not limited to:

- A. Ensuring integrated stormwater management, erosion and sediment control and flood hazard mitigation by:

- a. Implementing best-practice erosion and sediment control measures for the duration of all earthworks (as addressed in Policy RE6.5 Earthworks, and Erosion and Sediment Control);
  - b. Integrating flood hazard mitigation solutions that address any identified potential significant adverse effects on downstream flood hazard up to the 2130 RCP8.5 1% AEP event; and
  - c. Integrating the management of surface water and ground water.
- B. Ensuring urban development:
  - a. Uses 'green infrastructure' engineering solutions to mimic and work with natural processes;
  - b. Retains, restores and enhances existing elements of the natural drainage system, and integrates these elements into the urban landscape;
  - c. Conserves the use of water resources through rainwater capture and reuse to meet non potable demands; and
  - d. Requires that building materials either exclude or be finished in a manner that prevents water runoff from containing copper or zinc.
- C. Ensuring Water Sensitive Design principles are utilised in the planning and implementation stages.
- D. Mimicking pre-development hydrology through retention and detention by matching pre-development mean annual volume of stormwater runoff and pre-development channel forming flows in Kākā Stream to reduce the risk of scour, sediment mobilisation and adverse impacts on instream biota.
- E. Providing for the 'first flush' of all site generated stormwater (excluding where on lot reuse or infiltration occurs) to be passed through constructed vegetated treatment devices to avoid temperature fluctuations and minimise concentrations of copper, zinc, hydrocarbons, nutrients and sediment to the smallest amount practicable prior to discharge to Kākā Stream, existing wetlands or Maitahi/Mahitahi River. First flush is to be based on treating 80-85% of mean annual volume or stormwater resulting from 3-month ARI Rainfall events (25mm rainfall depth or 10mm/hr rainfall intensity).
- F. Providing treatment of runoff from all road surfaces within the Walters Bluff/Brooklands catchment, subject to the physical possibility to provide devices and Nelson City Council approval as the ultimate asset owner. On the steeper roads servicing small lot areas this is likely to consist of proprietary type treatment devices while on the ridgeline there may be scope for rain-gardens and swales.
- G. Requiring the mapping of areas with suitable infiltration capacity and factoring in design to optimise groundwater recharge where viable as part of integrated water sensitive design strategy. Infiltration capacity is to be protected through construction and optimised in-fill areas with specific design and construction of permeable fill.

- H. Providing and protecting overland flow paths through road design and other dedicated pathways to pass peak flows from upper slopes safely.
- I. Maintaining and enhancing the upper reach of Kākā Stream (above the Residential Zone Higher Density Area), and
- J. Restoring and enhancing the lower reaches of Kākā Stream through a continuous riparian corridor (Blue-Green Spine) with:
  - a. The corridor reflecting natural topography;
  - b. Channel meanders and flood benches;
  - c. Robust riparian vegetation;
  - d. Peak flood capacity;
  - e. Ecosystem function and habitat;
  - f. Stormwater treatment wetlands in areas of suitable topography;
  - g. Public access via well designed walking/cycling paths (excluding roads except at crossing points); and
  - h. Natural character values.
- K. Minimising stream loss and protecting springs and seeps including their flow paths, and providing for 1% annual exceedance probability (AEP) flood flow (including allowance for the effects of climate change to 2130) within the stream including its riparian margin, so as to protect and enhance the Kākā Stream and its tributaries.
- L. Providing for the co-location of stormwater treatment wetlands/rain-gardens within the Kākā Stream Blue-Green Spine where this is the most appropriate option to: protect the main stream, increase ecological values, and provide high quality public amenity. Where stormwater treatment is located in the Blue-Green Spine the design shall ensure a minimum 10 m riparian buffer between any device and the stream and support ongoing maintenance access.
- M. Managing earthworks and compaction outside residential zones to minimise changes to the hydraulic response of flows directly or indirectly discharging into the Kākā Stream and its tributaries.
- N. Including on-lot management of water quality/quantity through rainwater capture and reuse and soakage (where viable) so as to conserve and reuse water for non-potable internal and external purposes.
- O. Providing for the integration of peak flood attenuation within the Blue-Green Spine, while ensuring: that stream ecology (including fish passage) is preserved; any off line stormwater treatment devices are protected; natural character is maintained or enhanced; and the health and safety of community and visitors is protected.

#### Explanation and Reasons

- RE6.3.i Subdivision and development within the Maitahi Bayview area needs to be undertaken in an integrated manner, addressing those matters set out in the policy above. It also provides an opportunity for the restoration, protection and enhancement of freshwater and terrestrial ecology values. The Schedule requires the application of best practice principles in all subdivision and development design processes to align with the objectives and intent of the

National Policy Statement for Freshwater Management 2020 and National Environmental Standards for Freshwater 2020. Schedule X provides practical guidance around engineering solutions to meet best practice guidelines and proposes to co-design with nature an integrated and regenerative approach to urban development.

- RE6.3.ii Best practice erosion and sediment control measures, including staging, will be required and imposed through resource consents.

#### Methods

- RE6.3.iii Subdivision and development being required to demonstrate water sensitive design best practice.
- RE6.3.iv Use of nature based or 'green infrastructure' engineering solutions where possible.
- RE6.3.vii Additional requirements for earthworks in Schedule X.
- RE6.3.viii Requiring that subdivision and development demonstrate consistency with the Stormwater Management Plan required in Schedule X.

**Add Policy RE6.4 Indigenous Biodiversity, explanation and reasons, and methods:**

#### **Policy RE6.4 Indigenous Biodiversity**

Ensure that indigenous terrestrial and freshwater biodiversity is restored, protected and enhanced as an integral part of subdivision and development, including by:

- a. Restoring and enhancing the degraded lower portion of the Kākā Stream where this provides for improved ecological outcomes, and may include the provision of off-set stream enhancement to ensure a net gain of in-stream values within the Structure Plan area;
- b. Identifying, protecting and enhancing existing natural wetlands, their margins and connections to streams;
- c. Providing for ecological linkages between ecological areas (freshwater and terrestrial) inside and neighbouring Schedule X;
- d. Protecting and enhancing threatened species habitats within Kākā Stream; and
- e. Providing significant areas of "Residential Green Overlay" and "Revegetation Overlay" requiring indigenous plantings.

#### Explanation and Reasons

- RE6.4.i The Maitahi Bayview Structure Plan recognises the importance of indigenous biodiversity and the significant opportunity to connect, enhance and protect biodiversity features on Kākā Hill (including the identified Significant Natural Area shown on the Landscape Overlay), Kākā Stream, Atawhai/Maitahi/Mahitahi ridgeline, and adjacent coastal slopes. Schedule X requires the identification and management of indigenous biodiversity to ensure that potential environmental changes arising from subdivision and development processes will not reduce associated values or the provision of ecosystem services or functions. The Schedule anticipates a net gain of

indigenous biodiversity values across the land and freshwater resources contained within Schedule X in the medium term.

#### Methods

- RE6.4.ii Use of Structure Planning which includes the Open Space and Recreation Zone, 'Residential Green Overlay' and 'Revegetation Overlay'.
- REr.6.4.iii Requiring an Ecological Impact Assessment and associated Environmental Management Plan as a part of applications for subdivision and development to demonstrate the anticipated net gain of biodiversity values within these overlay areas in the medium term, as required by Schedule X.15.
- RE6.4.iv Requiring enhancement of areas within the 'Residential Green Overlay' and 'Revegetation Overlay' to achieve 80% canopy cover with indigenous vegetation over 80% of the area within a 5-year timeframe as a part of each stage of subdivision and development.
- RE6.4.v Requiring that applications for subdivision or development provide a Stormwater Management Plan that ensures a comprehensive stormwater management approach which will maintain and enhance freshwater ecosystem health.
- RE6.4.vi Identification, protection and enhancement of all remaining natural wetlands.
- RE6.4.vii Provide for ecological linkages with other areas with ecological values.

**Add** Policy RE6.5 Earthworks, explanation and reasons, and methods:

#### **Policy RE6.5 Earthworks, and Erosion and Sediment Control**

Require that development within Schedule X does not accelerate soil erosion or mobilisation, by:

- a. Implementing best-practice erosion and sediment control measures for the duration of all earthworks consistent with freshwater and recreational values, and in particular any adverse effects on the Kākā Stream, Maitahi/Mahitahi River and its swimming holes;
- b. Avoiding, to the greatest extent practicable, and otherwise minimising, earthworks on steeper slopes, and staging and progressively stabilising all earthworks to minimise the risk of erosion during development;
- c. Minimising the overall extent of earthworks to the greatest extent practicable;
- d. Minimising the area of earthworks exposed at any given time by staging and progressive stabilisation;
- e. Implementing a comprehensive site management and monitoring procedure to ensure all erosion and sediment control measures remain fully functional; and
- f. Implementing an adaptive management methodology and plan that incorporates measures to monitor the effectiveness of erosion and sediment control measures, and contingency responses if actual or potential adverse effects are identified during the consenting of earthworks.

### Explanation and Reasons

- RE6.5.i Earthworks are necessary for, and anticipated by, the development provided for in the Maitahi/Mahitahi / Bayview area. In some locations, that will require appropriately managed earthworks on steeper slopes. Policy RE6.5 informs the overall design of development within the context of the outcomes sought by all other provisions. The outcomes of this policy may be achieved in various ways which will incorporate a risk-based approach considering overall design and reflecting specific geological conditions, cut and fill balances, geotechnical and other opportunities or constraints. For example, areas that expose rock will have significantly lower erosion potential than other areas that expose soils. Areas with low clay content soils will have a lower sediment yield risk than areas of higher clay content soils. Some areas may be worked in larger stages over shorter durations to allow completion of works during summer. Other areas may be tightly staged to minimise the area exposed at any given time. All these factors will contribute to the design and management of earthworks that achieves the outcomes of the policy.

### Methods

- RE6.5.ii Nelson City Council has technical documents and guidelines that set minimum standards for the design and management of earthworks. To be consistent with this policy, all works undertaken within the Maitahi/Mahitahi / Bayview area must adopt those standards as a minimum. However, there may be circumstances where a higher standard is required. That will be identified and adopted on a case-by-case basis through the preparation and assessment of earthworks consent applications. The details of how the policy and its principles are incorporated into design will be provided in the report and proposed Earthworks and Erosion Sediment Control Plan that is required by Schedule X.16.

**Add** Policy RE6.6 Heritage Structures, explanation and reasons, methods and rules:

#### **Policy RE6.6 Heritage Structures**

Ensure that the values of the shearing shed and chimney are recorded and recovered prior to their demolition.

### Explanation and Reasons

- RE6.6.i The older part of the shearing shed and the chimney remnant are structures that have some remaining heritage value. This policy and the associated Rule X.8 ensure that these values are recorded and, where practicable, recovered for reuse prior to demolition.

### Methods

- RE6.6.ii Resource consent requirement, with specific matters of control.

**Add** to the 'Contents of Residential Zone rule table':

REr.106D Maitahi Bayview Structure Plan (Schedule X)

**Add** a new rule REr.106D

| Item                                                                 | Permitted                            | Controlled                           | Discretionary / Non-Complying        | Assessment criteria                  | Explanation                          |
|----------------------------------------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|
| REr.106D<br><br>Maitahi/Mahitahi Bayview Structure Plan (Schedule X) | REr.106D.1<br><br>Schedule X applies | REr.106D.2<br><br>Schedule X applies | REr.106D.3<br><br>Schedule X applies | REr.106D.4<br><br>Schedule X applies | REr.106D.5<br><br>Schedule X applies |

**Add** to REr.109.5 (Landscape Overlays – Subdivision) as follows:

The rules pertaining to subdivision and development within Maitahi/Mahitahi Bayview Structure Plan area are located in Schedule X. These controls address the specific amenity landscape values applicable to that location.

**Add** a new ‘Schedule X (Maitahi Bayview)’ as follows:

|                   |                             |
|-------------------|-----------------------------|
| <b>Schedule X</b> | <b>Maitahi Bayview Area</b> |
|-------------------|-----------------------------|

|            |                                    |
|------------|------------------------------------|
| <b>X.1</b> | <b>Application of the Schedule</b> |
|------------|------------------------------------|

This Schedule applies to the Kākā Valley and Bayview property area shown as ‘Schedule X’ on Planning Maps 5, 7, 8, 11, 15 and 52.

The majority of the Schedule site is located within the Kākā Valley which is enclosed by the Botanical, Malvern, and Kākā Hills, with Malvern Hills separating the valley from Nelson Haven. The remainder of the site is on the north-western facing slopes of the Malvern Hills looking over Nelson Haven and Tasman Bay. Botanical Hill is identified as an important visual focus for part of the inner-city area with the Malvern range providing a visual backdrop to the northern side urban area. Kākā Hill is identified as a strategic part of the city backdrop.

The site is located close to the city centre and is recognised as having the ability to accommodate future growth through the Future Development Strategy. However, this must be weighed against the important landscape and visual characteristics (which are valued by the community), tangata whenua values, the appropriate maintenance and enhancement of recreational values, and ecological values.

Spatial tools (the Structure Plan and Overlays) direct development in an appropriate manner taking account of topography, landscape and visual character and ecological values. The Structure Plan has been prepared using best practice urban design principles.

The development of the Kākā Valley for residential and commercial development and open space is located within a valley which is physically self-contained and setback from the open space and corridor of the Maitai Valley. The lower and middle slopes of the Malvern Hills are already developed, and the proposed residential zoning of the upper slopes provides an extension of this existing development and zoning. However, there are specific controls on the development of the upper Malvern Hills, Botanical Hill and Kākā Hill areas, which are defined in this Schedule as the ‘skyline’ and ‘backdrop’ areas, to ensure landscape and natural character values are maintained; and where appropriate adverse effects from development are avoided.

Schedule X integrates into the Nelson Resource Management Plan (NRMP) by requiring that the zones are developed in a manner consistent with the Plan provisions, but with additional controls designed to ensure the primary characteristics are maintained or enhanced. This is to meet the expectations of the community and ensure development is undertaken in a harmonious and consistent manner. The purpose of the additional rules proposed within this Schedule is to provide for higher quality environmental and urban design outcomes for areas of the site which are particularly sensitive to the local landscape and visual amenity values. The rules also require that ecological values are restored and enhanced in a manner which is consistent with the National Policy Statement for Freshwater Management 2020.

The purpose of Schedule X is to ensure that subdivision and development is guided by the Structure Plan accompanying this Schedule, and to incorporate specific rules and overlays within the Schedule and relevant Rule Tables of the NRMP.

Schedule X is referred to in the following Residential, Rural, Open Space & Recreation and Suburban Commercial Zones rules: REr.106D, REr.109.5, SCr.69C, SCr.71.2, OSr.75, and RUr.77C.

All activities provided for in the relevant rule tables for each zone apply to the land within Schedule X, except as specifically provided for in this Schedule and the Structure Plan. Additional rules are provided for specific overlays and zoned areas within the Structure Plan. These rules are to be considered in addition to all relevant zone rules except where specified.

The NRMP contains both district and regional rules, with the provisions in Schedule X traversing across both of these functions in an integrated manner. As a result, and as directed by AD11.4, the NRMP cannot be administered in isolation from Schedule X. This is of particular relevance and importance when considering the special provisions in Schedule X that relate to water sensitive design, earthworks, and stormwater management.

## **X.2 Comprehensive Housing Development in the Residential Zone – Higher Density Area**

Comprehensive Housing Development (with or without subdivision) in the Residential Zone – Higher Density Area is a restricted discretionary activity if:

- a. it is accompanied by the design and information requirements as detailed in AP14.2 in Appendix 14, as well as the Special Information Requirements set out within X.11-X.16 of Schedule X;
- b. the required transport upgrades set out in X.9 Services Overlay – Transport Constraints and Required Upgrades of Schedule X have been completed and are operational;
- c. it meets the restricted discretionary standards and terms of Rule REr.22.3;
- d. it complies with the mandatory matters in the Nelson Tasman Land Development Manual 2020; and
- e. esplanade reserve is provided in accordance with the standards in X.7 of Schedule X.

Discretion is restricted to:

- i) The matters of control under REr.107.2 where subdivision is proposed;
- ii) The ability of the subdivision, as expressed in the design statement, contextual analysis and preliminary infrastructure design to demonstrate the urban design outcomes sought;
- iii) The matters in Rule REr.22.3;
- iv) Consistency with Appendix 22 (Comprehensive Housing Development);
- v) The matters in the Nelson Tasman Land Development Manual 2020, and consistency with the Stormwater Management Plan provided in accordance with X.13 of Schedule X;
- vi) The matters in Appendices 11 to 12 of the Plan;

- vii) The design and layout of roads, access, cycleways, walkways, reserves and biodiversity corridors;
- viii) The staging of development and associated roading and reserves;
- ix) The restricted discretionary matters listed in REr.108.3 (Subdivision in the Services Overlay) where subdivision is proposed;
- x) Consistency with the Maitahi/Mahitahi Bayview Structure Plan;
- xi) Any recommendations made in the Cultural Impact Assessment required by X.11 of Schedule X;
- xii) The matters that are relevant to the Water Sensitive Design assessment provided in accordance with X.12 of Schedule X;
- xiii) The matters that are relevant to Earthworks/Indigenous Vegetation Clearance and Earthworks and Erosion Sediment Control Plan in accordance with X.10 and X.16 of Schedule X respectively;
- xiv) The matters that are relevant to the Stormwater Management Plan provided in accordance with X.13 of Schedule X;
- xv) The matters that are relevant to the Integrated Transport Assessment provided in accordance with X.14 of Schedule X, and whether the transport constraints identified in X.9 of Schedule X have been addressed and are operational; and
- xvi) Consistency with the outcomes identified within any Environmental Management Plan, in relation to the Residential Green Overlay and Revegetation Overlay, as provided in accordance with X.15 of Schedule X.

Activities which contravene a standard for the restricted discretionary activity are discretionary.

#### Explanation

This specific rule for Schedule X supersedes REr.22, REr.107.3 and REr.108.3 of the Plan for comprehensive housing developments. The purpose of this is to make specific provision for higher density residential development as a restricted discretionary activity to achieve the *National Policy Statement on Urban Development (May 2022)* in an efficient manner, while still requiring high quality outcomes and appropriate servicing.

### **X.3 Subdivision – General (Residential Zone)**

Subdivision is a restricted discretionary activity if:

- a. it is accompanied by the design and information requirements as detailed in AP14.2 in Appendix 14, as well as the Special Information Requirements set out within Rules X.11-X.16 of Schedule X;
- b. the required transport upgrades set out in X.9 Services Overlay – Transport Constraints and Required Upgrades of Schedule X have been completed and are operational;

- c. it complies with all relevant standards in Appendices 10 to 12;
- d. it complies with the mandatory matters in the Nelson Tasman Land Development Manual 2020, except for:
  - i. The final gradient of the north-south spine road to be designed to ensure that where there is no practicable impediment, the road achieves as low a grade as possible within the southern hillside environment, being no steeper than 1:8 and with sections no steeper than 1:15 where bus stops are to be provided; and
  - ii. Off-road paths that serve a transport function to be constructed to a minimum 2500mm width and with grades no steeper than 1:20, and no steeper than 1:15 through the hillside environment. Where constraints are proven to prevent 1:15 grades being achieved, then sections no steeper than 1:12 will be required to be constructed to a minimum 3000mm width;
- e. esplanade reserve is provided in accordance with the standards in X.7 of Schedule X;
- f. the net area of every allotment is at least:
  - Residential – Higher Density Area: 300m<sup>2</sup>
  - Residential – Standard Density Area: 400m<sup>2</sup>
  - Residential – Lower Density Area: 800m<sup>2</sup>
  - Residential - Lower Density Area (Backdrop Area): 1500m<sup>2</sup>

Except for allotments created solely for access or utility services;
- g. a rectangle measuring 15m by 18m is capable of being located within the boundaries of any allotment, that is clear of any right of way and on a front site, part of which is within 5m of the road boundary, except for allotments created solely for access or utility services; and
- h. the layout is consistent with the Structure Plan for Schedule X.

Discretion is restricted to:

- i) The matters of control under REr.107.2;
- ii) The ability of the subdivision, as expressed in the design statement, contextual analysis and preliminary infrastructure design to demonstrate the urban design outcomes sought;
- iii) The matters in the Nelson Tasman Land Development Manual 2020, and consistency with the Stormwater Management Plan provided in accordance with X.13 of Schedule X;
- iv) The matters in Appendices 11 to 12 of the Plan;
- v) The design and layout of roads, access, cycleways, walkways, reserves and biodiversity corridors;
- vi) The staging of development and associated roading and reserves;

- vii) The restricted discretionary matters listed in REr.108.3 (Subdivision in the Services Overlay);
- viii) Night-time lighting effects within the Backdrop Area and Skyline Area caused by road lighting and signage;
- xvii) Consistency with the Maitahi/Mahitahi Bayview Structure Plan;
- xviii) Any recommendations made in the Cultural Impact Assessment required by X11 of Schedule X;
- xix) The matters that are relevant to the Water Sensitive Design assessment provided in accordance with X.12 of Schedule X;
- xx) The matters that are relevant to Earthworks/Indigenous Vegetation Clearance and Earthworks and Erosion Sediment Control Plan in accordance with X.10 and X.16 of Schedule X respectively;
- xxi) The matters that are relevant to the Stormwater Management Plan provided in accordance with X.13 of Schedule X;
- xxii) The matters that are relevant to the Integrated Transport Assessment provided in accordance with X.14 of Schedule X, and whether the transport constraints identified in X.9 of Schedule X have been addressed and are operational; and
- xxiii) Consistency with the outcomes identified within any Environmental Management Plan, in relation to the Residential Green Overlay and Revegetation Overlay, as provided in accordance with X.15 of Schedule X.

Activities which contravene a standard for the restricted discretionary activity are discretionary.

#### Explanation

This specific rule for Schedule X supersedes REr.107.3, REr.108.3 and REr.109.3 of the Plan. The purpose of this is to make specific provision for residential development as a restricted discretionary activity to achieve the *National Policy Statement on - Urban Development (May 2022)* in an efficient manner, while still requiring high quality outcomes and appropriate servicing.

The Maitahi/Mahitahi Bayview Structure Plan and Schedule X contain site specific controls over landscape effects from building, including Rules X.4 – X.6 below.

#### **X.4 Backdrop Area (excluding the Skyline Area)**

Building within the Backdrop Area (excluding the Skyline Area) of Malvern Hills and Botanical Hill (as identified on Attachment B1.2 of Schedule X) is a controlled activity if:

- a. The final colour of any building's external roof and gutters uses a natural range of greys, browns or greens with a light reflectivity value (LRV) of less than 20%;
- b. The final colour of any building's external walls, joinery and spouting uses a natural range of greys, browns or greens with a light reflectivity value (LRV) of less than 32%;

- c. A landscape planting plan is provided showing the site planted with a minimum of 20% native vegetation cover using the planting palette listed below; and
- d. The building is not located within the Residential Green Overlay as identified on Attachment B1.1 and B1.3 of Schedule X.

Control is reserved over:

- i) The building's external appearance; and
- ii) The following planting palette and a maintenance schedule:

#### Trees

- *Alectryon excelsus* – Titoki
- *Aristotelia serrata* – Makomako
- *Beilschmiedia tawa* – Tawa
- *Cordyline australis* – Cabbage tree, tī kouka
- *Dodonaea viscosa* – Akeake
- *Dacrydium dacrydioides* – Kahikatea
- *Dacrydium cupressinum* – Rimu
- *Fuchsia excorticata* – Kōtukutuku, tree fuchsia
- *Fuscopora solandri* – Black Beech, Tawhairauriki/tawairauriki
- *Fuscopora truncate* – Hard Beech, Tawhairaunui
- *Griselinia lucida* – Puka
- *Hoheria angustifolia* – Houhi
- *Kunzea ericoides* – Kānuka
- *Leptospermum scoparium* – Mānuka
- *Macropiper excelsum* – Kawakawa
- *Melicytus ramiflorus* – Māhoe
- *Myoporum laetum* – Ngaio
- *Myrsine australis* – Māpou
- *Olearia paniculate* – Akiraho
- *Pittosporum eugenioides* – Tarata
- *Pittosporum tenuifolium* – Kōhūhū
- *Plagianthus regius* – Lowland ribbonwood, Manatū
- *Podocarpus totara* – Tōtara
- *Prumnopitys ferruginea* – Miro
- *Prumnopitys taxifolia* – Mataī
- *Pseudopanax crassifolius* – Lancewood, Horoeke
- *Sophora microphylla* – Kōwhai
- *Weinmannia racemosa* – Kāmahi

#### Shrubs, Ground Covers, Grasses, and Sedge

- *Brachyglottis repanda* – Rangiora

- *Coprosma repens* – Taupata
- *Coprosma robusta* – Karamū
- *Veronica stricta* – Koromiko
- *Melicytus crassifolius* – Coastal porcupine shrub, Mahoe
- *Ozothamnus leptophyllus* – Tauhinu
- *Phormium cookianum* – Wharariki
- *Cortaderia richardii* – South Island Toetoe

Any building that does not comply with a controlled activity standard shall be a restricted discretionary activity, with the following matters of discretion:

1. The building's external appearance;
2. Visibility of the building from public places;
3. Effects on the visual amenity values of the Backdrop Area; and
4. Opportunities for mitigating the visual effects and reducing a building's visual prominence through planting, earthworks, or through the use of low impact architectural design techniques.

Resource Consent for a Restricted Discretionary Activity shall be considered without notification or service of notice.

#### Explanation

This rule, combined with the minimum allotment sizes required by X.3 above and the information requirements of Appendix 14, will ensure the visual amenity of the hill slopes within the Backdrop Area are maintained to an appropriate standard.

### **X.5 Skyline Area (Malvern Hills and Botanical Hill)**

Building within the Skyline Area (Malvern Hills Landscape Overlay and Botanical Hill Landscape Overlay) as identified on Attachment B1.2 of Schedule X shall be a Restricted Discretionary Activity if:

- a. The final colour of any building's external roof and gutters uses a natural range of greys, browns or greens with a light reflectivity value (LRV) of less than 20%;
- b. The final colour of any building's external walls, joinery and spouting uses a natural range of greys, browns or greens with a light reflectivity value (LRV) of less than 32%;
- c. A landscape assessment by a suitably qualified and experienced landscape architect along with a detailed landscape plan, is provided setting out how the visual impacts of the building have been designed to avoid or mitigate adverse effects; and
- d. A landscape planting plan is provided showing the site area planted with at least a minimum of 20% native vegetation cover using the planting palette listed in X.4 above.

Discretion is reserved over:

- i) Earthworks associated with the building platform and building design;
- ii) The building's location;
- iii) The building's external appearance;
- iv) Effects on the visual amenity values of the Skyline Area;
- v) The extent to which structures will be visible from the Nelson City Centre, State Highway 6 (QE II Drive between the Maitahi/Mahitahi River bridge and Atawhai Drive) and from Maitahi/Mahitahi Valley Road between Jickells and Sharland Bridge; and
- vi) Opportunities for mitigating the visual effects and reducing the building's visual prominence through planting, earthworks, or through the use of low impact architectural design techniques.

Resource Consent for a Restricted Discretionary Activity shall be considered without notification or service of notice.

#### Explanation

This rule, combined with the minimum allotment sizes required by X.3 above and the information requirements of Appendix 14, will ensure the landscape values of the Skyline Area are maintained to an appropriate standard.

### **X.6 Building on Kākā Hill**

The following activities are non-complying:

- a. Buildings within the Kākā Hill Backdrop and Skyline area as identified on Attachment B1.2 of Schedule X;
- b. Buildings within the Kākā Hill Significant Natural Area as identified on B1.2 of Schedule X (Landscape Overlay).

#### Explanation

These rules will ensure the landscape, natural values and identified significant ecological (terrestrial) values of Kākā Hill are protected.

### **X.7 Esplanade Reserve Standards**

- a. For the area adjoining the Maitahi/Mahitahi River and Kākā Stream, esplanade reserve shall be vested in stages as subdivision progresses in accordance with the Maitahi/Mahitahi Bayview Structure Plan.
- b. An esplanade reserve with a minimum total width of 40m shall be vested in stages as subdivision progresses.
- c. Planting shall be indigenous species and in general accordance with the following planting palette:

#### Trees

- *Alectryon excelsus* – Titoki
- *Aristotelia serrata* – Makomako

- *Beilschmiedia tawa* – Tawa
- *Cordyline australis* – Cabbage tree, tī kouka
- *Dacrydium dacrydioides* – Kahikitea
- *Dodonaea viscosa* – Akeake
- *Dacrydium cupressinum* – Rimu
- *Fuchsia excorticata* – Kōtukutuku, tree fuchsia
- *Fuscospora solandri* – Black Beech, Tawhairauriki/tawairauriki
- *Fuscospora truncate* – Hard Beech, Tawhairaunui
- *Griselinia lucida* – Puka
- *Hoheria angustifolia* – Houhi
- *Kunzea ericoides* – Kānuka
- *Leptospermum scoparium* – Mānuka
- *Macropiper excelsum* – Kawakawa
- *Melicactus ramiflorus* – Māhoe
- *Myoporum laetum* – Ngaio
- *Myrsine australis* – Māpou
- *Pittosporum eugenioides* – Tarata
- *Pittosporum tenuifolium* – Kōhūhū
- *Plagianthus regius* – Lowland ribbonwood, Manatū
- *Podocarpus totara* – Tōtara
- *Prumnopitys ferruginea* – Miro
- *Prumnopitys taxifolia* – Mataī
- *Pseudopanax crassifolius* – Lancewood, Horoeke
- *Sophora microphylla* – Kōwhai
- *Weinmannia racemosa* – Kāmhai

#### Shrubs, Ground Covers, Grasses, and Sedges

- *Aposadmia sismilis* – Oioi
- *Carex secta* – Pukio
- *Carex virigata* – Pūrei
- *Cortaderia richardii* – South Island Toetoe
- *Phormium tenax* – Harakeke
- *Juncus edgariae* – common rush, Wiwi
- *Juncus pallidus* – Giant Rush
- *Juncus australis* – Rush, Wiwi

#### Plants set back from Stream and Wetland Margins

- *Astelia frangrans* – Kahakaha
- *Coprosma propinqua* – Mingimingi
- *Coprosma rigida* – streamside coprosma, Karamū
- *Coprosma robusta* – Karamū
- *Myrsine divaricate* – Weeping Māpou

- *Veronica stricta* – Koromiko

#### Explanation

This requirement will ensure that esplanade reserve is vested in accordance with the Maitahi/Mahitahi Bayview Structure Plan, and that the enhancement planting be undertaken in general accordance with an appropriate planting palette.

### **X.8 Shearing Shed and Chimney Structures**

The demolition of the existing “shearing shed” and “chimney” is a controlled activity.

Control is reserved over:

- The salvage of the shearers’ graffiti on the rusticated weatherboard clad walls and sliding doors to Woolshed Part A1 and Part B (refer Miller 2022) for adaptive reuse and presentation;
- The salvage of the shearing equipment and the ground floor windows to Part A1 (refer Miller 2022), including any timber and building materials that are recoverable and reusable; and
- Recording the existing shearing shed and chimney by digital 3D scanning inside and outside and a 3D model produced.

“Shearing shed” and “chimney” in this rule relate to the specific structures identified within the Origin Consultants Limited Memo updated 6 April 2022 and entitled “*Investigations into selected heritage structures – timber woolshed/barn, concrete chimney, and concrete/stone wall remnants*” and presented within PPC28. Furthermore, in relation to the shearing shed, it is only part A1 of the building that is captured by this rule.

Note: An Archaeological Authority is also required pursuant to the Heritage New Zealand Pouhere Taonga Act 2014.

### **X.9 Services Overlay – Transport Constraints and Required Upgrades**

This table relates to X.2 and X.3 of Schedule X.

| <b><i>Transport Upgrade</i></b>                                                                                                                                                                                          | <b><i>Construction or improvement</i></b>                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>The existing intersection of Nile Street and Maitai Road;</i>                                                                                                                                                         | <i>Upgrade intersection to address safety deficiency.<br/>These improvement works are likely to be Traffic Signals, but other options can be considered.</i> |
| <i>The active mode connections from the PPC 28 Plan Change area to the city centre (Collingwood Street). There may be separate routes to provide for recreational users and commuters (includes work and education);</i> | <i>Construct a separated shared path from PPC 28 to Nile Street and/or Hardy Street.<br/><br/>The shared path must be at least 3000mm wide.</i>              |

|                                                                                                  |                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                  | <i>There are a number of design options that will be considered as part of Stage 1 of the subdivision.</i>                                                                                                                         |
| <i>Gibbs Bridge walk / cycle provision;</i>                                                      | <p><i>Construct a shared cycle/walk bridge across the Maitahi/Mahitahi River.</i></p> <p><i>Note that this upgrade may be replaced with alternative shared path access from PPC 28 that removes the need for this project.</i></p> |
| <i>The intersection of Ralphine Way and Maitai Valley Road;</i>                                  | <i>Improve sight lines, install intersection control and provide right turn bay for Ralphine Way.</i>                                                                                                                              |
| <i>Bay View Road requires the management of the road for vehicles, parking and active modes;</i> | <p><i>Implement parking restrictions and improve forward sight lines through vegetation removal.</i></p> <p><i>This does not include the intersection of Bay View Road and State Highway 6.</i></p>                                |
| <i>Link road from Bay View Road to Walters Bluff and/or Ralphine Way.</i>                        | <i>Provide connection from Bay View Road to Nelson via either Walters Bluff and/or Ralphine Way.</i>                                                                                                                               |

## **X.10 Earthworks / Indigenous Vegetation Clearance**

### Earthworks - General

- a. The current NRMP rules apply; however, the following is an additional matter of control and/or discretion in addition to those under rules REr.61, OSr.49 and RUr.27.
  - the extent to which the requirements listed in Policy RE6.5 have been considered and achieved.

### Earthworks or indigenous vegetation clearance within the 'Residential Green Overlay'

- b. Any earthworks or indigenous vegetation clearance within the 'Residential Green Overlay' as shown within the Structure Plan (Schedule X) is a discretionary activity.

Note: This rule provides protection over the small area of existing indigenous vegetation located within the 'Residential Green Overlay' in advance of subdivision and development of the site.

### **Special Information Requirements that apply within Schedule X**

In order to ensure subdivision and development within Schedule X occurs in a manner that achieves the relevant objectives and policies within Chapter 7, the following special information requirements apply under Section 88 of the RMA.

#### **X.11 Cultural Values and Engagement with Te Tau Ihu Iwi**

A Cultural Impact Assessment (prepared by or on behalf of the relevant iwi authority) shall be submitted with any resource consent application involving earthworks, discharges, freshwater and terrestrial ecology, comprehensive housing, or subdivision. The extent to which recommendations in the Cultural Impact Assessment have been included shall be detailed in the resource consent application.

If a Cultural Impact Assessment is not provided, a statement of any reasons given by the relevant iwi authority for not providing that assessment shall be provided.

#### **X.12 Water Sensitive Design**

Applications for subdivision or development within Schedule X must provide a report from a suitably qualified and experienced expert(s) that demonstrates that the provisions contained in Policy RE6.3 have been applied in the subdivision and integrated development design.

#### **X.13 Stormwater Management Plan**

Applications for subdivision or development within Schedule X must provide a Stormwater Management Plan prepared by a suitably qualified and experienced expert(s) that demonstrates that the matters contained in Policy RE6.3 have been applied in the subdivision and development design process.

The first SMP submitted for subdivision and development of this site must be comprehensive and catchment wide.

The content of the SMP must include:

- a. Breakdown of sub-catchments including landcover (roads, roofs, hardstand, gardens, open space etc) and associated imperviousness;
- b. Mapping of existing waterways, natural wetlands and overland flow paths;
- c. Mapping of predevelopment infiltration capacities to be adopted in design;
- d. Assumptions for sizing of rainwater tanks (contributing roof areas, people per dwelling and non-potable demands);
- e. Assumptions for the design of all stormwater treatment devices (size relative to contributing catchments, hydraulic function, design attributes, contaminant reduction) including allowance for climate change;
- f. Summary of sub-catchment water quality treatment and hydrological mitigation strategy including areas draining to reuse tanks, soakage, consolidated raingardens or wetlands;
- g. Summary of pre and post development hydrology including estimates of losses (evapotranspiration/reuse), infiltration and surface runoff reported as mean annual volumes, with assessment of impacts on baseflow and stream channel erosion
- h. Summary of the existing flood hazard affecting the application area, and the potential adverse effects of the development on flood hazard affecting downstream and off-site properties. This should also include any proposed mitigation measures to address these potential effects, and how any mitigation measures are expected to perform. In particular, how changes to the magnitude, duration and timing of peak flows during the range of design events will be

- managed so as to avoid or mitigate potential adverse effects such as increased flood risk or stream scour;
- i. Summary of pre and post development water quality including estimates of nutrients, metals and sediments reported as mean annual loads. Include comparison with 'do nothing' approach to show proportion of contaminants reduced through proposed water sensitive design measures; and
- j. Mapping of post developed treatment/soakage locations, waterway enhancements, overland flow paths and flood attenuation devices.

#### **X.14 Integrated Transport Assessment**

Applications for subdivision or development within Schedule X must provide an Integrated Transport Assessment (in accordance with the *"Integrated Transport Assessment Guidelines"* dated November 2010 - RR442) prepared by a suitably qualified and experienced transport expert. The Integrated Transport Assessment (ITA) prepared for the future subdivisions will fall into two scopes as set out in Table 6.3 of RR442.

Any subdivisions with fewer than 100 dwellings must have a "Moderate" scope ITA prepared as part of the consent application.

Any subdivisions with more than 100 dwellings must have a "Broad" scope ITA prepared as part of the consent application.

#### **X.15 Ecological Impact Assessment / Environmental Management Plan**

Applications for subdivision or development within Schedule X must provide an Ecological Impact Assessment prepared by a suitably qualified and experienced ecologist:

- a. Identifying and describing the significance and value of freshwater and terrestrial habitats and features;
- b. Describing the potential effects (including cumulative effects) on local ecology arising from the proposed activity, including the potential threat from domestic pets;
- c. Recommending measures as appropriate to avoid, remedy, mitigate, offset or compensate potential effects (including any proposed conditions / Ecological Management Plan (EMP) required).

The first Ecological Impact Assessment submitted for subdivision and development must address all of the land and freshwater environment contained within Schedule X and account for potential effects on downstream receiving environments (Maitahi/Mahitahi River and Nelson Haven).

Any EMP shall describe the methods proposed to achieve the outcomes set out within Policy RE6.4 and its Methods in relation to the Open Space and Recreation Zone, Residential Green Overlay and Revegetation Overlay, as shown within the Maitahi/Mahitahi Bayview Structure Plan.

#### **X.16 Earthworks and Erosion Sediment Control Plan (ESCP)**

Applications for earthworks within Schedule X must provide a report from a suitably qualified and experienced erosion and sediment control expert that demonstrates that the provisions contained in Policy RE6.5 have been addressed and achieved in the earthworks

design, including a proposed ESCP that will inform detailed ESCPs that will be applied during the construction process. The report and management plans must detail adaptive management procedures that will be applied with triggers and responses when effects are greater than anticipated.

**Add** Maitahi/Mahitahi Bayview Structure Plan and supporting maps to Schedule X – Volume 2.

## **Chapter 9: Suburban Commercial Zone**

**Amend** SCd.1 as follows:

*This Zone includes ... Bishopdale, Kākā Valley, and ...*

**Add** to SCd as follows:

*Within the Maitahi/Mahitahi Bayview area (Schedule X), provision is also made for appropriately scaled areas for commercial development in a central location to enable the establishment of activities to serve this new community.*

**Add** SCX Maitahi/Mahitahi Bayview Development (Schedule X) after SC3.2:

SC4 Maitahi/Mahitahi Bayview (Schedule X)

For objectives and policies relevant to the Suburban Commercial Zone which is contained within Schedule X area, refer to RE6 and associated policies within Chapter 7 Residential Zone.

**Add** to Contents page for the Suburban Commercial Zone:

*SCr.69C Maitahi/Mahitahi Bayview Structure Plan (Schedule X)*

|                                                      |                    |                    |                    |                    |                    |
|------------------------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| SCr.69C                                              | SCr.69C.1          | SCr.69C.2          | SCr.69C.3          | SCr.69C.4          | SCr.69C.5          |
| Maitahi/Mahitahi Bayview Structure Plan (Schedule X) | Schedule X applies | Schedule X applies | Schedule X applies | Schedule X applies | Schedule X applies |

**Add** to SCr.71.2 as follows:

- i) *In respect of Maitahi/Mahitahi Bayview Schedule X, compliance with Schedule X rules requiring subdivision layout and design to generally accord with Schedule X, Figure 1, Maitahi/Mahitahi Bayview Structure Plan, located in Chapter 7 Residential Zone.*

## **Chapter 12: Rural Zone**

**Add** to RUd as follows:

As a part of meeting some of the significant demand and need for additional residential land, the Kākā Valley and adjoining Bayview property is identified within Schedule X (Maitahi/Mahitahi Bayview). The future residential development enabled by Schedule X is ideally located to meet a range of needs, while adding positively to community recreational opportunities, increasing connectivity and resilience, being culturally sensitive, and enhancing ecological and freshwater values.

**Add** to RU2.1.iA as follows:

and Maitahi/Mahitahi Bayview (Schedule X)

**Amend** RU2.ii(b) to read:

and Maitahi/Mahitahi Bayview (Schedule X)

**Amend** RU2.2.iA to read:

and Maitahi/Mahitahi Bayview (Schedule X)

**Add** RU5 as follows:

RU5 Maitahi/Mahitahi Bayview Development (Schedule X)

For objectives and policies relevant to the Rural zoned land which is contained within Schedule X area, refer to RE6 and associated policies within Chapter 7 Residential Zone.

**Add** to Contents page for the Rural Zone:

RUr.77C Maitahi/Mahitahi Bayview Structure Plan (Schedule X)

**Add** a new rule RUr.77C

| RUr.77C                                              | RUr.77C.1          | RUr.77C.2          | RUr.77C.3          | RUr.77C.4          | RUr.77C.5          |
|------------------------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Maitahi/Mahitahi Bayview Structure Plan (Schedule X) | Schedule X applies | Schedule X applies | Schedule X applies | Schedule X applies | Schedule X applies |

## **Chapter 11: Open Space & Recreation Zone**

**Add** to OSd.8 as follows:

As a part of meeting some of the significant demand and need for additional residential land, the Kākā Valley and adjoining Bayview property is identified within Schedule X (Maitahi/Mahitahi Bayview). This also includes new Open Space & Recreation areas. The future residential development enabled by Schedule X is ideally located to meet a range of needs, while adding positively to community recreational opportunities, increasing connectivity and resilience, being culturally sensitive, and enhancing ecological and freshwater values.

**Add** OS3 as follows:

OS3 Maitahi/Mahitahi Bayview Development (Schedule X)

For objectives and policies relevant to the Open Space and Recreation Area which is contained within Schedule X area, refer to RE6 and associated policies within Chapter 7 Residential Zone.

**Add** to Contents page for the Open Space & Recreation Zone:

OSr.75 Maitahi Bayview Structure Plan (Schedule X)

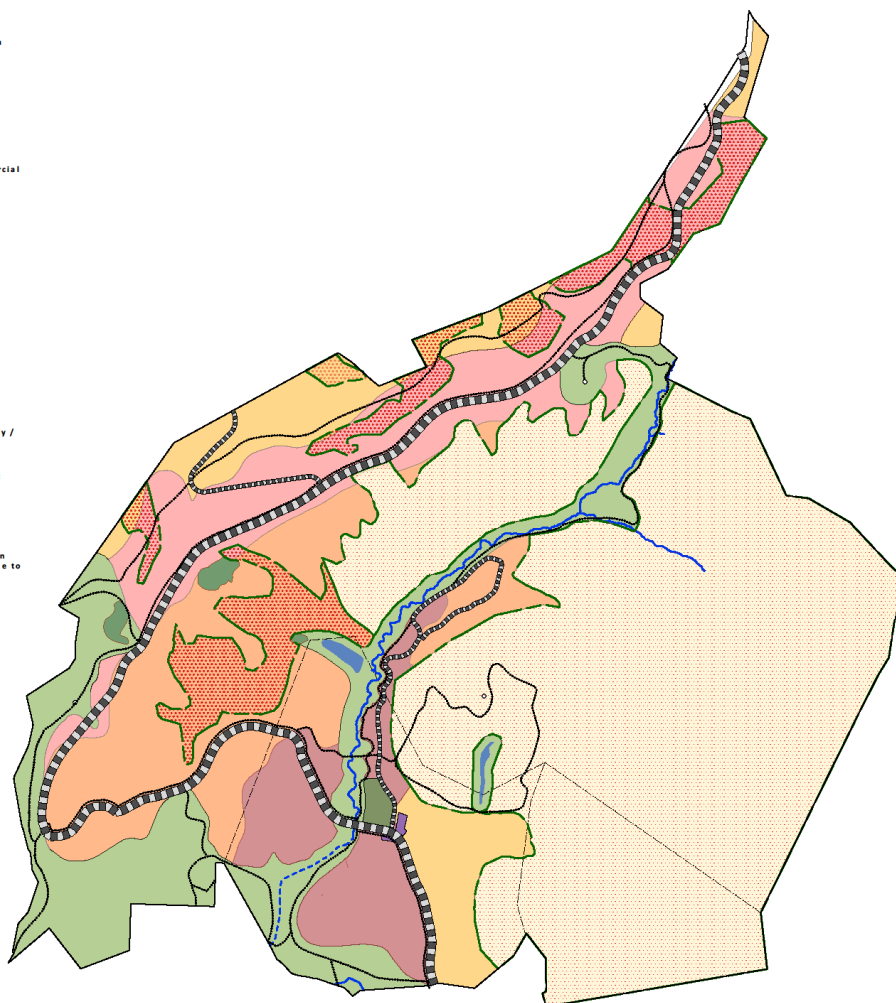
**Add** a new rule OSr.75

| RUr.75                                               | RUr.75.1           | RUr.75.2           | RUr.75.3           | RUr.75.4           | RUr.75.5           |
|------------------------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Maitahi/Mahitahi Bayview Structure Plan (Schedule X) | Schedule X applies | Schedule X applies | Schedule X applies | Schedule X applies | Schedule X applies |

## Appendix C – Structure Plan

### LEGEND

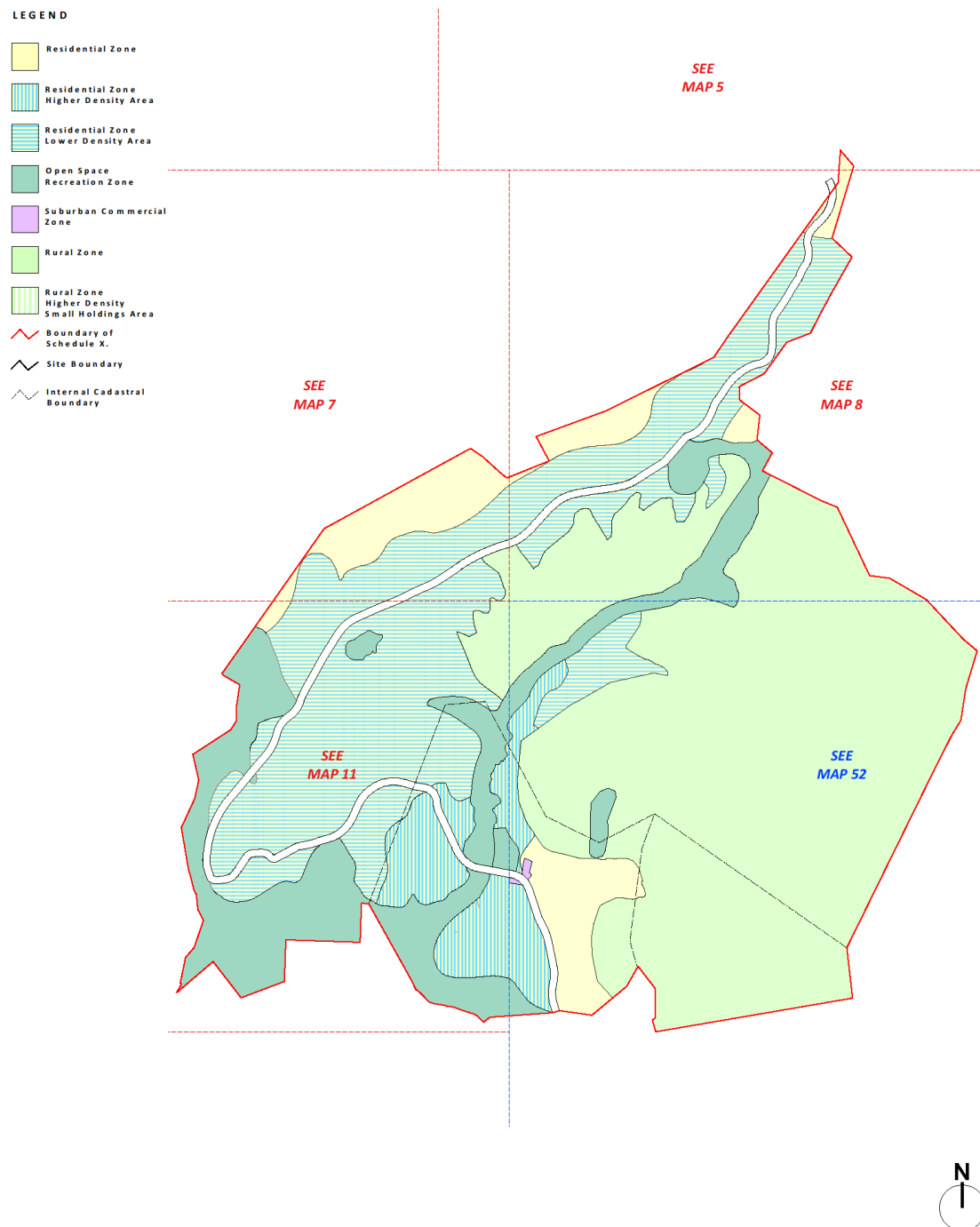
-  Residential Zone
-  Residential Zone Higher Density Area
-  Residential Zone Lower Density Area
-  Residential Zone Lower Density Backdrop Area
-  Open Space Recreation Zone
-  Suburban Commercial Zone
-  Rural Zone
-  Residential Green Overlay
-  Revegetation Overlay in Rural Zone
-  Neighbourhood Reserve
-  Indicative Road
-  Indicative Walkway / Cycleway Link
-  Indicative Lookout Locations
-  Wetland
-  Kanuka Vegetation and Kahikatea Tree to be Protected
-  Existing River
-  Proposed River
-  Site Boundary
-  Internal Cadastral Boundaries



Attachment B1.1:  
Maitahi Bayview Structure Plan - Part of Schedule X  
Scale 1:10,000 @ A3

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           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## Appendix D – Zoning Maps

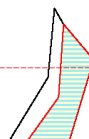


|                     |                      |
|---------------------|----------------------|
| <b>RMM</b>          | 100% Maitahi Bayview |
| DATE: 10/10/2024    | DATE: 10/10/2024     |
| PREPARED BY: [Name] | DATE: 10/10/2024     |
| APPROVED BY: [Name] | DATE: 10/10/2024     |
| DATE: 10/10/2024    | DATE: 10/10/2024     |

Attachment B2.1:  
Maitahi Bayview Planning Maps - Zoning Maps 5, 7, 8, 11 & 52  
Scale 1:10,000 @ A3

 Residential Zone  
 Residential Zone  
Higher Density Area  
 Residential Zone  
Lower Density Area  
 Open Space  
Recreation Zone  
 Suburban Commercial  
Zone  
 Rural Zone  
 Rural Zone  
Higher Density  
Small Holdings Area  
 Boundary of  
Schedule X.  
 Site Boundary  
 Internal Cadastral  
Boundary

**SEE  
MAP 5**



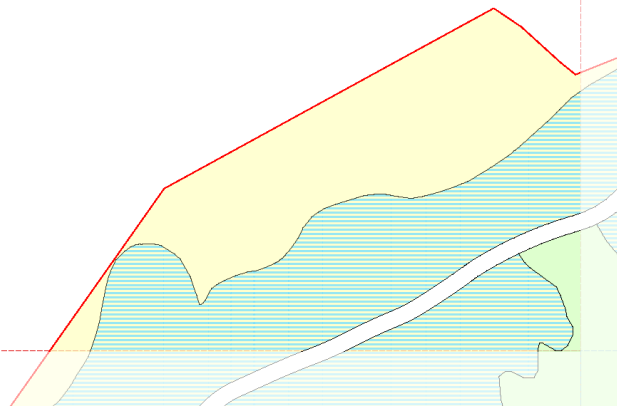
Attachment B2.2:  
Maitahi Bayview Planning Maps - Zone Map 5  
Scale 1: 5,000 @ A3

|                               |                                                        |
|-------------------------------|--------------------------------------------------------|
| <b>RMM</b>                    | PO BOX 90000<br>DALLAS, TX 75209                       |
| GEORGE J. SCHUBERT<br>WABAKA  | 404 230-0201<br>104 S 234 3040                         |
| AMUKLAND<br>SUNEDIN<br>MI SON | 84 23 27 8 95 29<br>404 23 400 2700<br>104 23 740 1050 |
| PROCTER & KEMBLE              | 800 400 0000 20 20 20                                  |

LEGEND

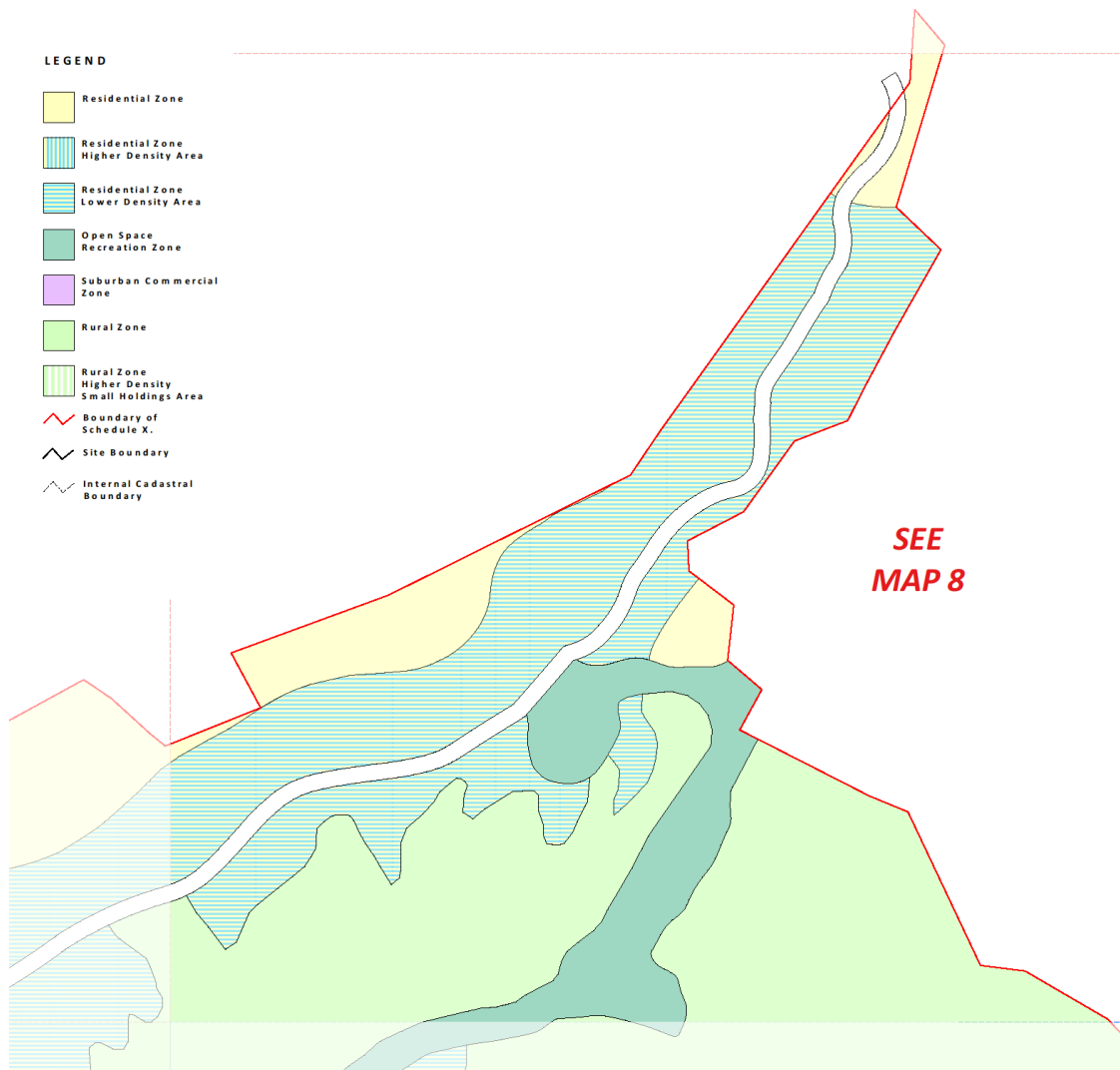
-  Residential Zone
-  Residential Zone  
Higher Density Area
-  Residential Zone  
Lower Density Area
-  Open Space  
Recreation Zone
-  Suburban Commercial  
Zone
-  Rural Zone
-  Rural Zone  
Higher Density  
Small Holdings Area
-  Boundary of  
Schedule X.
-  Site Boundary
-  Internal Cadastral  
Boundary

**SEE  
MAP 7**



Attachment B2.3:  
Maitahi Bayview Planning Maps - Zone Map 7  
Scale 1: 5,000 @ A3

|            |             |
|------------|-------------|
| <b>RMM</b> | 2022 - 2023 |
| DATE       | 2022-01-11  |
| BY         | 2022-01-11  |
| FOR        | 2022-01-11  |
| BY         | 2022-01-11  |
| FOR        | 2022-01-11  |
| BY         | 2022-01-11  |
| FOR        | 2022-01-11  |

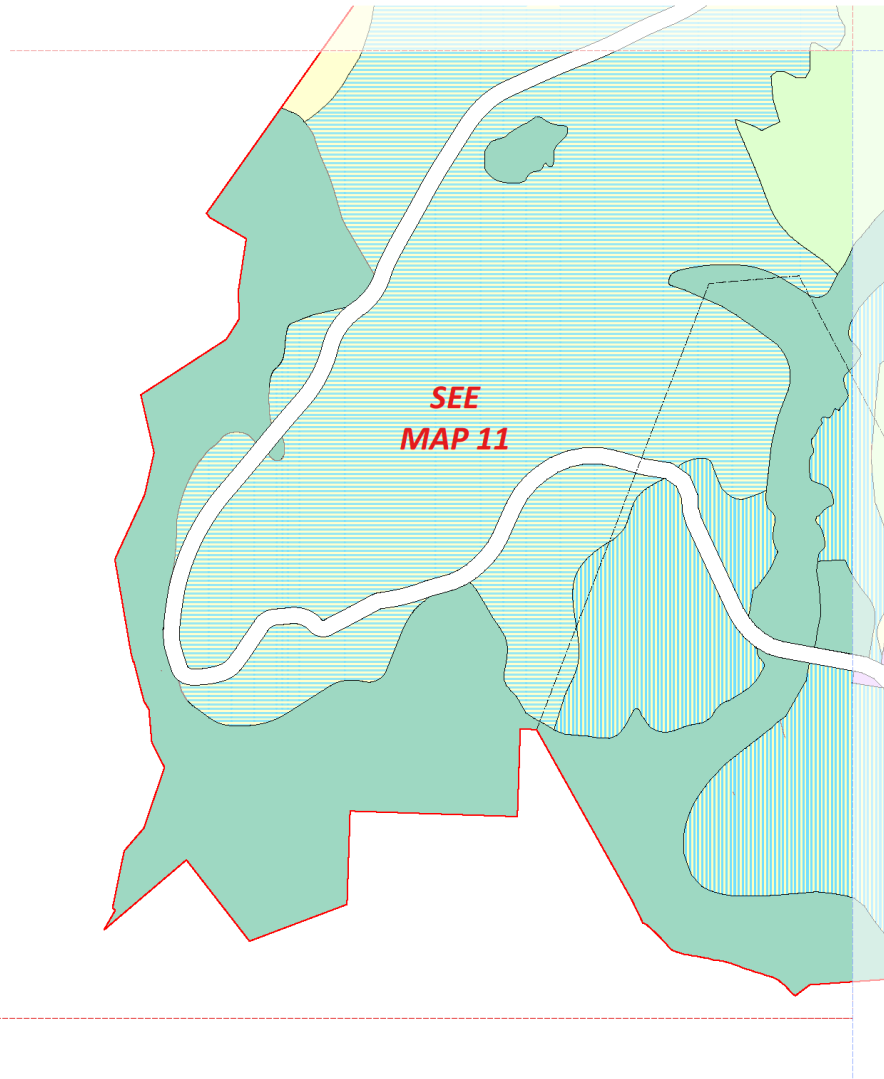


Attachment B2.4:  
Maitahi Bayview Planning Maps - Zone Map 8  
Scale 1: 5,000 @ A3

|            |                          |
|------------|--------------------------|
| <b>RMM</b> | 400/06 - Maitahi Bayview |
| CONSULTANT | JANISCHKE ARCHITECTS     |
| DATE       | 10/10/2014               |
| REVISION   | 04/10/2014               |
| APPROVAL   | 10/10/2014               |
| DATE       | 10/10/2014               |
| BY         | 10/10/2014               |
| FOR        | 10/10/2014               |

**LEGEND**

-  Residential Zone
-  Residential Zone Higher Density Area
-  Residential Zone Lower Density Area
-  Open Space Recreation Zone
-  Suburban Commercial Zone
-  Rural Zone
-  Rural Zone Higher Density Small Holdings Area
-  Boundary of Schedule K.
-  Site Boundary
-  Internal Cadastral Boundary



**Attachment B2.5:**  
**Maitahi Bayview Planning Maps - Zone Map 11**  
 Scale 1: 5,000 @ A3

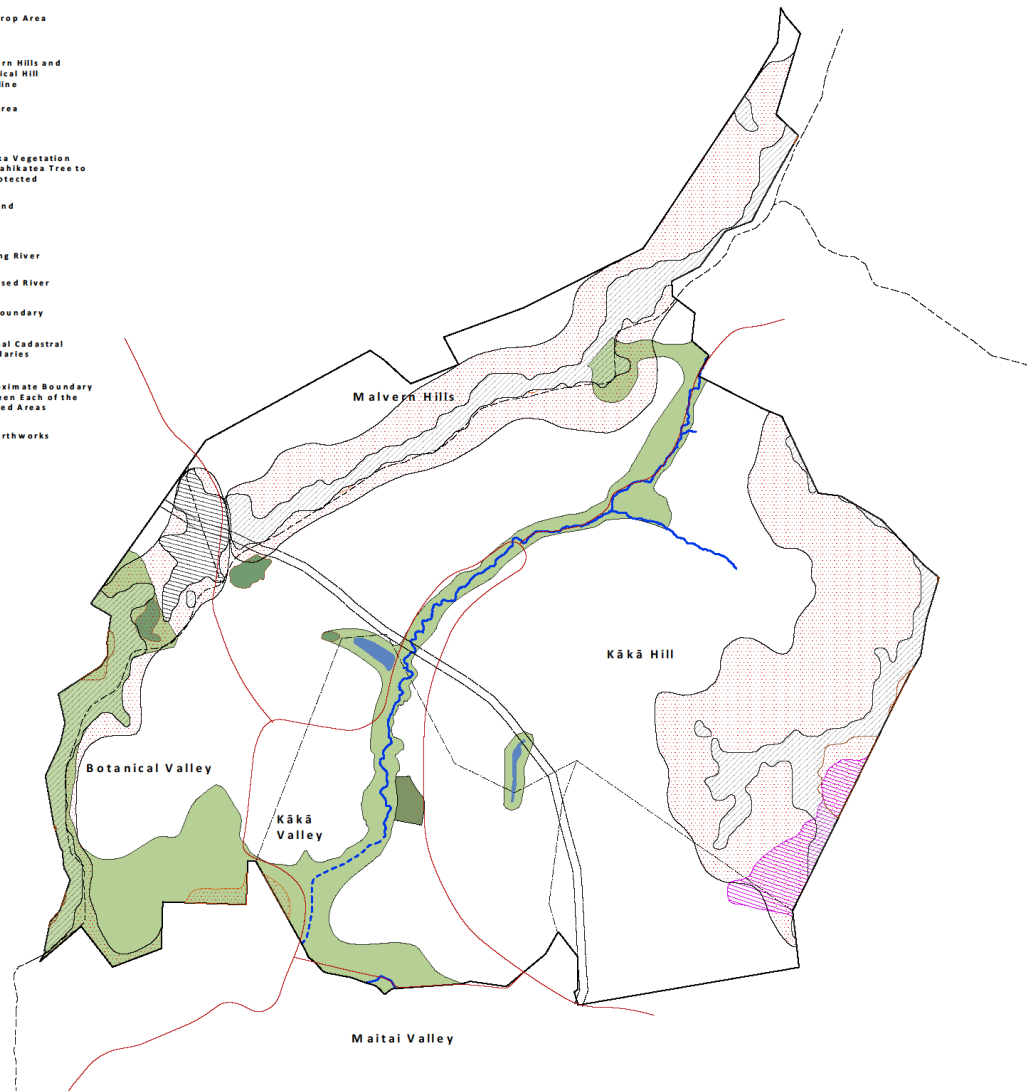
|               |                  |
|---------------|------------------|
| <b>RMM</b>    | DATE: 08/01/2014 |
| PROJECT: RMM  | PROJECT: RMM     |
| REVISION: 1   | REVISION: 1      |
| REVISION: 2   | REVISION: 2      |
| REVISION: 3   | REVISION: 3      |
| REVISION: 4   | REVISION: 4      |
| REVISION: 5   | REVISION: 5      |
| REVISION: 6   | REVISION: 6      |
| REVISION: 7   | REVISION: 7      |
| REVISION: 8   | REVISION: 8      |
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## Appendix E – Landscape Overlay

### LEGEND

-  Open Space Recreation Zone
-  Neighbourhood Reserve
-  Skyline Area
-  Backdrop Area
-  Malvern Hills and Botanical Hill Ridgeline
-  SNA Area
-  Kanuka Vegetation and Kahikatea Tree to be Protected
-  Wetland
-  Existing River
-  Proposed River
-  Site Boundary
-  Internal Cadastral Boundaries
-  Approximate Boundary Between Each of the Labelled Areas
-  No Earthworks



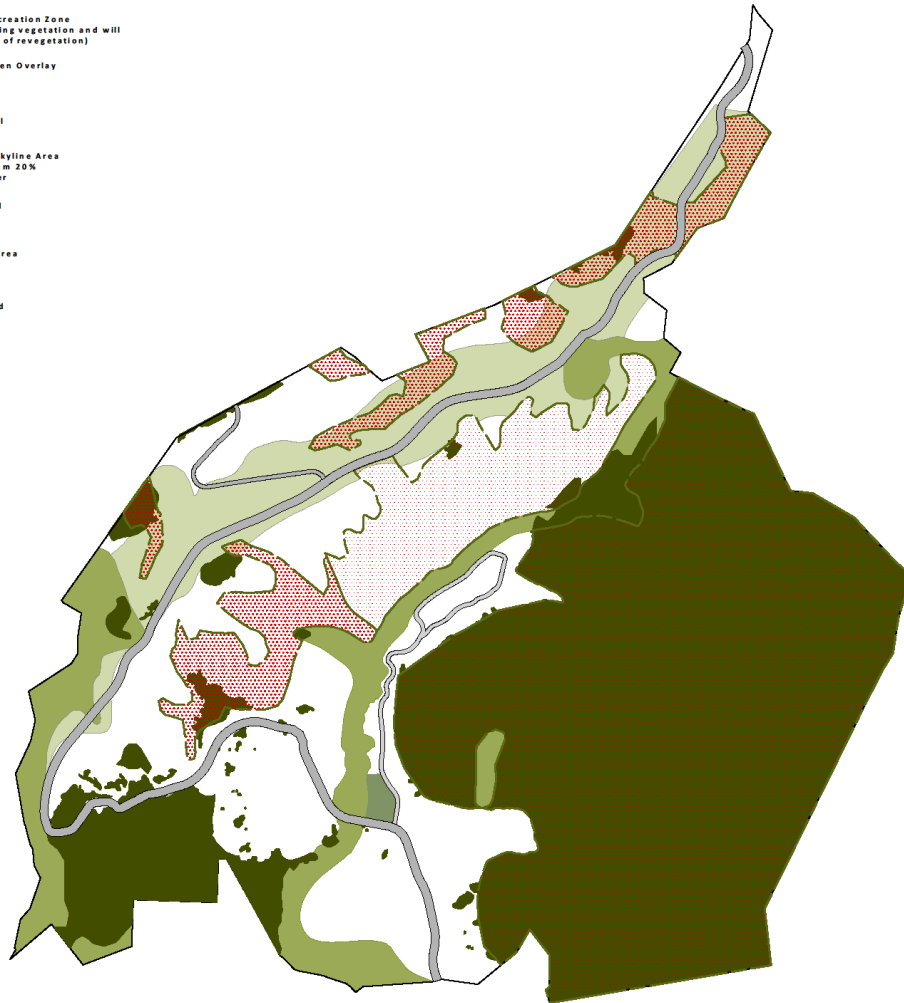
Attachment B1.2:  
Maitahi Bayview Structure Plan - Landscape Overlays Part of Schedule X  
Scale 1:10,000 @ A3

|                |                  |
|----------------|------------------|
| <b>RMM</b>     | 2024/01/10 11:11 |
| CHIEF ENGINEER | 2024/01/10 11:11 |
| DESIGNER       | 2024/01/10 11:11 |
| CHECKER        | 2024/01/10 11:11 |
| DATE           | 2024/01/10 11:11 |
| BY             | 2024/01/10 11:11 |

## Appendix F – Vegetation Overlay

### LEGEND

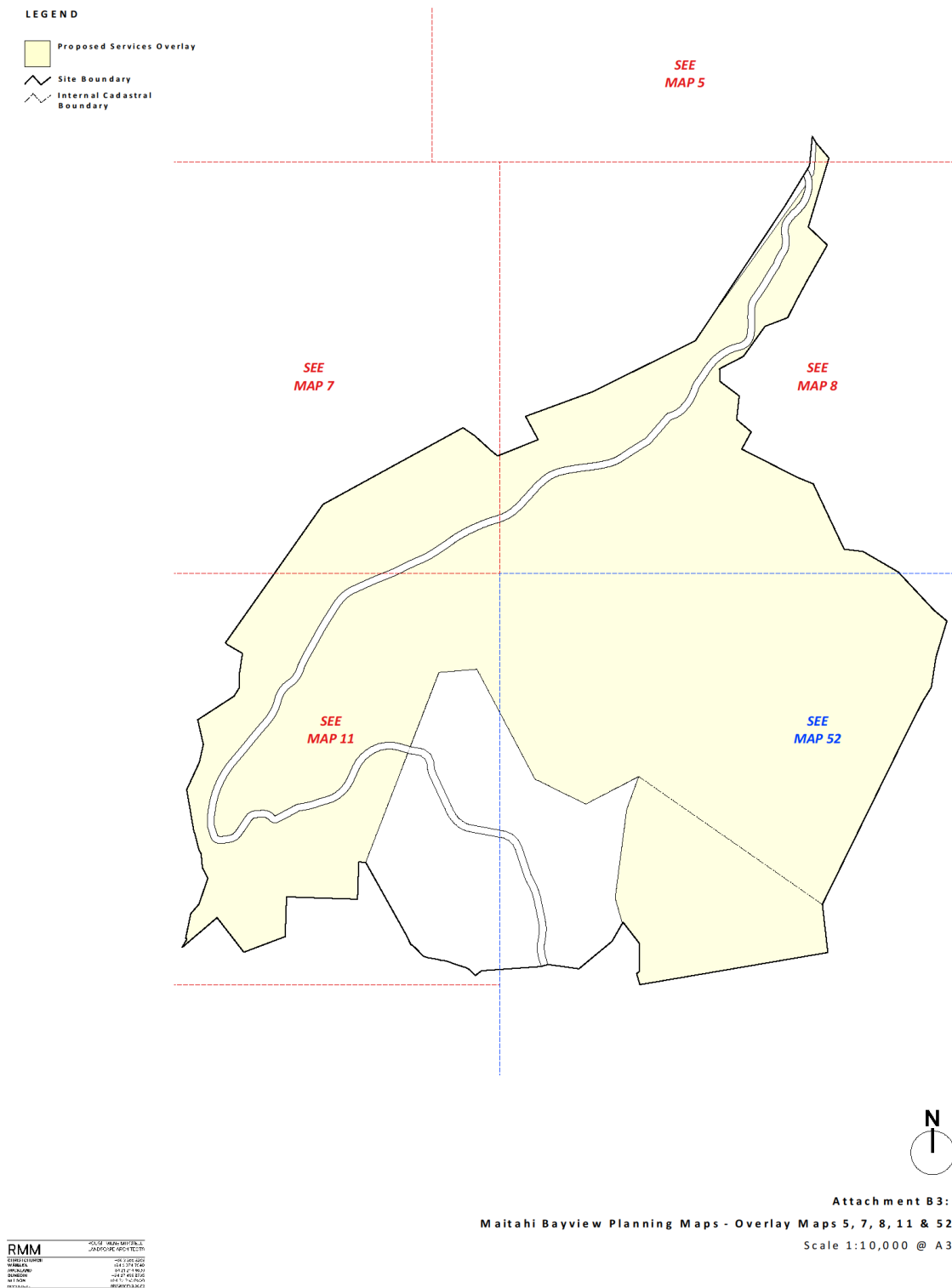
-  Areas of Existing Vegetation  
Note: Existing vegetation as shown has been surveyed in the field and mapped using the latest drone survey information. Note, vegetation only surveyed in proposed residential zones.
-  Open Space Recreation Zone (Contains existing vegetation and will also have areas of revegetation)
-  Residential Green Overlay
-  Revegetation Overlay in Rural Zone
-  Backdrop and Skyline Area to have minimum 20% vegetation cover
-  Neighbourhood Reserve
-  Development Area
-  Indicative Road
-  Site Boundary



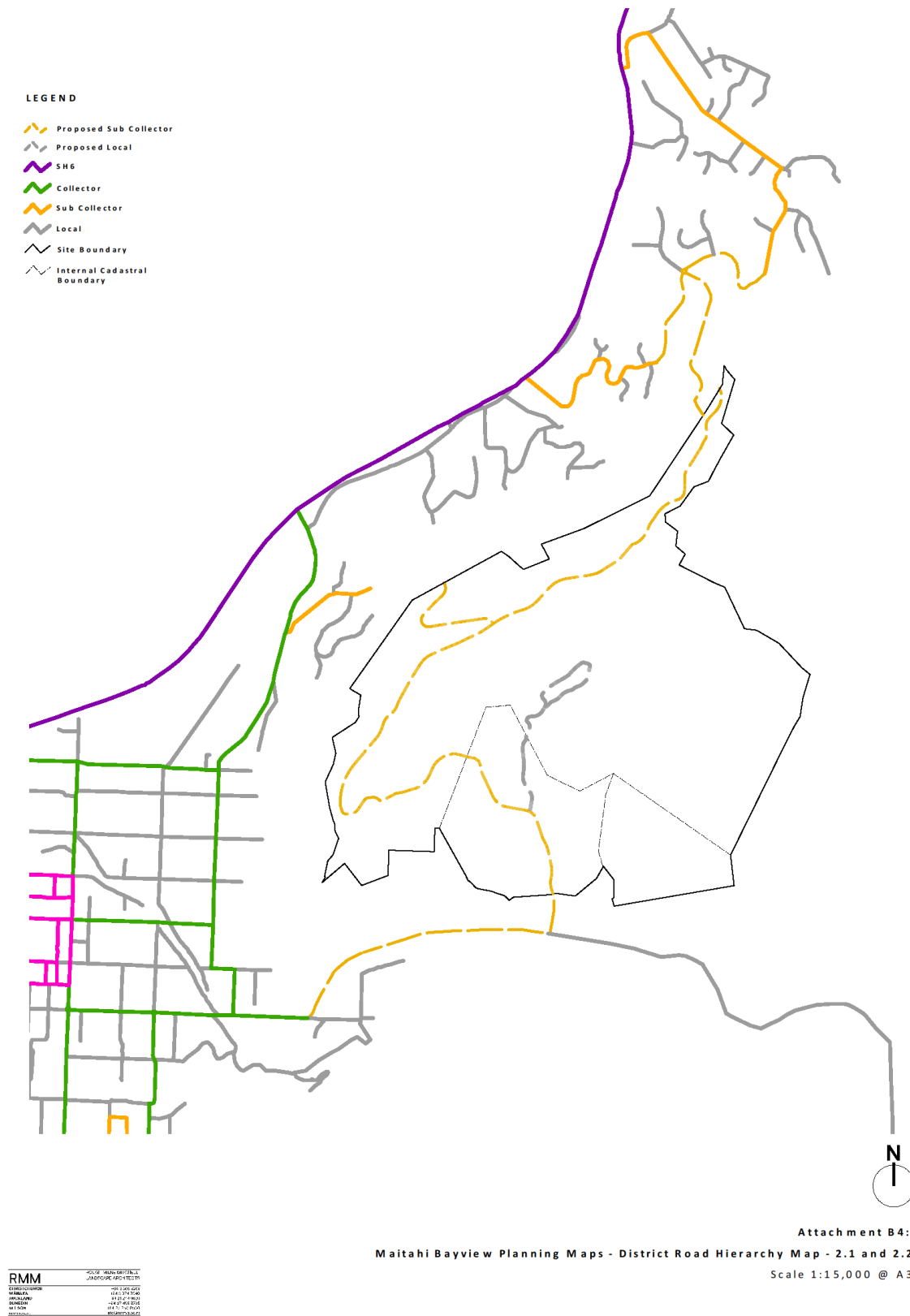
Attachment B1.3:  
Maitahi Bayview Structure Plan - Vegetation Overlay Part of Schedule X  
Scale 1:10,000 @ A3

|                                         |                                         |
|-----------------------------------------|-----------------------------------------|
| <b>RMM</b>                              | DATE: 04/05/18 10:11                    |
| PROJECT: Maitahi Bayview Structure Plan | PROJECT: Maitahi Bayview Structure Plan |
| DESIGNER: RMM                           | DESIGNER: RMM                           |
| APPROVED: [Signature]                   | APPROVED: [Signature]                   |
| DATE: 04/05/18                          | DATE: 04/05/18                          |
| BY: [Signature]                         | BY: [Signature]                         |
| FOR: [Signature]                        | FOR: [Signature]                        |

## Appendix G – Services Overlay (B3)



## Appendix H – Roading Hierarchy



## Appendix I – Indicative Dennes Hole Interface Plan

### Indicative Dennes Hole Interface Plan

| Legend |                                     |
|--------|-------------------------------------|
|        | Backsloped Zone Higher Density Area |
|        | Water                               |
|        | Existing Planting                   |
|        | Native Shrub Planting               |
|        | Grassland Area                      |
|        | Native Riparian Planting            |
|        | Wetland                             |
|        | Timber Boardwalk                    |
|        | Proposed Tree                       |
|        | Existing Tree                       |
|        | Proposed Path                       |
|        | Picnic Table                        |
|        | Site Boundary                       |
|        | Existing Contour                    |
|        | Proposed Contour                    |
|        | Existing Track                      |
|        | Temporary Flood Area                |
|        | Lot Boundary                        |

Scale 1:1250 @ A3  
RMM

100 m



CCKV Maitai Development Co LP and Bayview Nelson Ltd PPC28 Graphic Attachment

12

## Appendix J – Acronyms

The following is a list of the most commonly used acronyms.

|        |                                                                           |
|--------|---------------------------------------------------------------------------|
| FDS    | Future Development Strategy                                               |
| HBA    | Housing and Business Capacity Assessment Report                           |
| IAP    | Intensification Action Plan 2020                                          |
| IMP    | Iwi Management Plan                                                       |
| JWS    | Joint Witness Statement (arising from Expert Conferencing)                |
| MoE    | Ministry of Education - Te Tāhuhu Mātauranga                              |
| NAQP   | Nelson Air Quality Management Plan                                        |
| NES-F  | National Environmental Standards for Freshwater 2020                      |
| NHB    | Nelson Health Board (formally the District Health Board)                  |
| NPS-FM | National Policy Statement for Freshwater Management 202                   |
| NPS-UD | National Policy Statement on Urban Development 2020 (updated in May 2022) |
| NRMP   | Nelson Resource Management Plan                                           |
| NRPS   | Nelson Regional Policy Statement                                          |
| NTLDM  | Nelson Tasman Land Development Manual                                     |
| NZCPS  | New Zealand Coastal Policy Statement                                      |
| PPC 28 | Private Plan Change 28                                                    |
| RMA    | Resource Management Act 1991                                              |
| SMP    | Stormwater Management Plan                                                |
| STM    | Save the Maitai                                                           |
| WSD    | Water Sensitive Design                                                    |
| WWNP   | Draft Whakamahere Whakatū Nelson Plan                                     |