

Your Comment on the Maitahi Village application

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

1. Contact Details			
Please ensure that you have authority to comment on the application on behalf of those named on this form.			
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Thank you for your comments

COMMENT BY SAVE THE MAITAI INC

Introduction

1. Save the Maitai Inc ("STM") is a group of Nelson residents and those from further afield who cherish the Maitai River and its surroundings. The recreational opportunities, rural amenity and peaceful nature of this area, being secluded from yet close to the urban environment, are highly valued. The large public recreation reserves within the Maitai Valley provide equitable access for locals and visitors alike, to enjoy walking, running, mountain biking, picnicking, river swimming, sports, community activities and social & family events. The Maitai is Nelson city's last easily accessible rural river valley that remains free from urbanisation. Children can get there by bicycle, making it a unique asset for Nelson.
2. STM formed when Private Plan Change 28 ("PPC28") was first initiated. PPC28 rezoned Kākā Valley from predominantly rural to predominantly residential zones. STM participated in PPC28 and appealed to the Environment Court. Due to funding constraints, its technical evidence for the appeal was focussed on stormwater quality and quantity-related provisions, and erosion and sedimentation risks to the Maitai River. STM also produced lay evidence regarding loss of amenity. Significant changes to PPC28 stormwater provisions were agreed through expert conferencing, meaning it was no longer necessary for STM's stormwater witness to participate in the hearing, which focussed on erosion and sediment. The Court made further changes to PPC28 in response to STM's appeal, and many of those provisions are critical for the Panel's assessment of this substantive application.
3. STM was not aware through the PPC28 process of the severely contaminated HAIL site or that the developer proposed to re-route Kākā Stream through that site. There was also no mention in the PPC 28 process of the proposal for a retirement village to take up a large part of the site.
4. This Comment addresses the following topics:
 - a. Legal analysis of requirements for the Panel's decision.
 - b. Regional benefit.
 - c. Amenity, open space and recreation values.
 - d. Flooding / stormwater flow management.
 - e. Stormwater quality.
 - f. Erosion and sediment.
 - g. Terrestrial ecology.
 - h. Kākā Stream.

- i. Wetlands.
- j. Contaminated site.
- k. Noise.
- l. Greenhouse gas emissions.
- m. Policy RE6.1 – Structure Plan.
- n. Community opposition.
- o. Relief / conclusion.

Comment

Legal analysis of key provisions relevant to the Panel's decision under the Act

Assessing regional benefit

5. An Expert Consenting Panel considering a substantive application under the Act must determine:
 - a. Whether the project it is considering has regional or national benefits.
 - b. Assuming the project has some regional or national benefits, the scale of those benefits.
 - c. Whether the project's regional or national benefits are "significant".
6. It is necessary to determine whether the project's regional or national benefits are "significant" in order to properly apply the relevant decision-making criteria. The purpose of the Act is to facilitate projects with "significant" regional or national benefits, and that purpose must be given the greatest weight when considering a consent application and conditions.¹ If a project is considered to have regional or national benefits that are less than "significant", then this weighting will have no impact for the project as the purpose of the Act is just as well met by not facilitating the project.
7. If the Panel considers that a project has significant regional or national benefits, it must consider the scale of those benefits. This is relevant:
 - a. Because when it takes the purpose of the Act into account, under a clause referred to in subsection (3), the panel must consider the extent of the project's regional or national benefits.²

¹ Clause 17(1)(a)

² Section 81(4).

- b. When the Panel comes to consider whether it should decline an approval on the basis that 1 or more adverse impacts of the approval are out of proportion to the project's regional or national benefits.³
8. The applicant says that "the Government had to be (and was) satisfied the Maitahi Village Project could deliver significant regional benefits" and that this is "highly persuasive evidence that the Project offers significant regional benefits".⁴ It therefore submits that the Panel does not need to enquire into whether significant regional benefits will accrue but only the magnitude of those significant regional benefits.⁵
9. STM disagrees that the Panel must effectively assume that a Project's national or regional benefits are "significant", and disagrees with the applicant's submissions that the Panel's assessment of the Maitahi Village Project's benefits is informed or constrained by the fact it is listed in Schedule 2 of the Act, or by the process that led to it being so listed.⁶ ⁷ A Minister's or Government's opinion on a matter that a statute directs an independent decision-making body to assess is not evidence.
10. It was open to Parliament to specify in the Act that projects listed in Schedule 2 are deemed to have significant national or regional benefit. Alternatively, Parliament could have directed Panels to consider "the extent of the project's significant regional or national benefits". Parliament did not take either of those routes. Rather, the Act directs Panels to "consider the extent of the project's regional or national benefits".⁸ This constitutes an express direction to Panels to reach their own determination as to the extent of benefits, which necessarily may be significant or less than significant.
11. The Act does not define "significant". The non-exclusive list of matters that a Minister may consider when deciding whether a project would have significant regional or national benefits for the purpose of their referral decisions includes sector-focussed considerations (e.g. "will support primary industries"⁹) and outcome-focussed considerations (e.g. "will deliver significant economic benefits"¹⁰). Given the scheme and purpose of the Act, even the sector-focussed considerations in s 22 must logically have a threshold of significance applied to them: even one new dwelling would "increase

³ Section 85(3).

⁴ At 18

⁵ At 19

⁶ Applicant Submissions at 16 - 21

⁷ The process leading to the Maitahi Village Project being listed in the Act involved a recommendation by a non-statutory body (the Fast-track Projects Advisory Group) with no third party input, then a non-statutory decision by Ministers to include certain projects in Schedule 2. Significantly, the inclusion of projects in Schedule 2 was not the subject of Select Committee scrutiny, with the list of projects being incorporated by a late amendment.

⁸ Section 81(4)

⁹ Section 22(2)(a)(v)

¹⁰ Section 22(2)(a)(iv)

the supply of housing”¹¹ but one new dwelling would not have significant regional or national benefits. The plain meaning of significant is “very important”.¹² Applying that plain meaning, the Panel should consider whether the project will have “very important” benefits at the regional or national scale.

12. In terms of regional benefit, that requires some consideration of the nature, scale, needs and vulnerabilities of the region, in order to determine when a benefit such as a positive economic impact or supply of housing is sufficiently impactful to be “very important”. Considerations such as proportion of regional GDP (where the benefit can be quantified in economic terms) or contribution in proportional terms to meeting demand for a resource may assist in determining whether a benefit is regionally significant.
13. Where a project has dis-benefits, these should be taken into account in determining whether a project has a regionally significant benefit overall.

Weighing relevant considerations

14. Clause 17(1) of Schedule 5 requires that a hierarchy of considerations is applied when considering an application for resource consents under the Act.
15. The hierarchy in cl 17(1) is similar to s 34 of the Housing Accords and Special Housing Areas Act 2013 (“HASHAA”), which required a decision-maker considering an application for a resource consent and submissions on the application to have regard to listed matters “giving weight to them (greater to lesser)” in the order listed. As in this Act, the first matter listed was the purpose of the Act.
16. Section 34 HASHAA was addressed in *Enterprise Miramar Peninsula Inc v Wellington City Council*.¹³ The Court set out the hierarchy of matters in s 34, and said:

[41] The plain words indicate, therefore, that greatest weight is to be placed on the purpose of HASHAA, namely enhancing affordable housing supply in certain districts. **That said, other considerations have been deliberately included. Decision-makers must be careful not to rely solely on the purpose of HASHAA at the expense of due consideration of the matters listed in (b)—(e).**

(emphasis added)

17. The Court found that the decision-maker was required to assess the matters listed in subs (1)(b)—(e) (i.e. the matters other than the Act’s purpose) uninfluenced by the purpose of HASHAA, before standing back and conducting an overall balancing:

¹¹ Section 22(2)(a)(iii)

¹² Collins New Zealand Dictionary, First Ed, Harper Collins Publishers 2017

¹³ *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541

[53] ...The matters listed in subs (1)(b)—(e) cannot properly be weighed alongside the purpose of HASHAA under subs (1)(a) if that purpose has first been used to effectively neutralise the matters listed in subs (1)(b)—(e).

18. As a result, environment effects “may be outweighed by the purpose of enhancing affordable housing supply, or they may not.”¹⁴ This indicates that a statutory requirement to give an Act’s purpose the most weight does not mean that it will always outweigh other considerations (in which case there would be no point in listing those other considerations). The same must be correct in relation to this Act. That interpretation is supported by s 85(3) of the Act, which is addressed below.
19. As with this Act, the HASHAA decision-maker was required to consider Part 2 RMA. The decision-maker’s “cursory analysis” of Part 2 matters in *Enterprise Miramar* was an example of the decision-maker having allowed the purpose of HASHAA to neutralise or minimise the other matters that arose for consideration, and as a result those matters were not given due consideration and weight. Rather than merely treating the purpose of HASHAA as the most important and influential matter to be weighed, the decision-maker used the purpose of HASHAA to eliminate or greatly reduce its consideration and weighing of the others 34(1) factors, and that was a “significant error of law”.¹⁵
20. Accordingly, the correct approach under cl 17 is to carefully consider each of the listed matters on their own terms, before moving to the weighing exercise. In that exercise, environmental effects or other impacts may be outweighed by the Act’s purpose, or they may not.

Section 85

21. Section 85 specifies when approvals must and may be declined. In summary, section 85(3) enables consent to be declined if the Panel forms the view that there are one or more adverse impacts in relation to the approval sought, and those are sufficiently significant to be out of proportion to the project’s benefits. “Impacts” is not limited to adverse effects, and includes any matter properly considered by the Panel that weighs against granting the approval,¹⁶ but is not met solely on the basis that an impact is inconsistent with the RMA or a planning document.¹⁷
22. STM submits that this means that the threshold for decline is not met where a project is inconsistent with an objective or policy in a planning instrument. However, it could be met where a project has one or more adverse effects *and* is inconsistent with a planning instrument.

¹⁴ At [55]

¹⁵ At [59]

¹⁶ Section 85(5).

¹⁷ Section 85(4).

Regional benefit

23. The applicant's evidence as to the project's regional benefits is sparse, vague, and significantly overstated.
24. The main economic benefit assessed in the applicant's Economic Impact Assessment is the economic contribution from employment (mostly construction). While construction jobs benefit the region, it is doubtful that they reach the threshold of a significant regional benefit.
25. The Economic Impact Assessment assumes construction will occur over a 7 year period. However, with construction extending over a longer period, the economic impact (benefit) is reduced.¹⁸ The assessment does not take into account development and construction jobs that will be provided via future stages in existing subdivisions such as Golden Elm Rise in Toi Toi, Marsden Park, Marsden Homestead and Montebello in Stoke.
26. The Economic Impact Assessment says that "there are likely to be non-economic effects, such as environmental. While these effects may result in economic impacts for the most part they have not been addressed here".¹⁹ The economic dis-benefits of the project, in particular relating to the change in the nature of the Maitai Valley and the cost of maintaining a contaminated landfill in perpetuity, have not been assessed in economic terms, but are likely to be significantly negative. It is astonishing that these economic impacts are not addressed in a report purporting to address economic effects.
27. One of the main benefits claimed is increased land/dwelling supply. The description of this benefit is vague, and not framed in the context of the Nelson market:

The proposed land area has the ability to supply the market with an additional 374 dwellings increasing capacity within a single -planned area. This provides not only the ability for the area to improve its responsiveness to growth demands but itself facilitate further growth within the area with an increase in overall competitiveness.
28. However, STM understands that existing plan enabled capacity exceeds demand.
29. The Nelson Tasman Housing and Business Capacity Assessments 2024 (the most recent assessment available at the date of this comment) considered demand and capacity for housing and business land over a 30 year period. The assessment demonstrated sufficient housing capacity in the short term (1-3 years) and long term (11-30 years). While demand exceeded supply in the medium term (4-10 years), this insufficiency is a result of constrained funding to provide infrastructure on time. Between 2014 and 2021, the Assessment report indicated that housing supply in Nelson and Tasman did not generally keep up with the increasing demand for housing. However, in recent years the number of new dwellings has theoretically exceeded household growth at a regional

¹⁸ NCC RFI Response – Attachment A – Table of Feedback

¹⁹ Attachment 1 Fast-track Economic Impact Assessment Page 5.

level.²⁰ The predictions in this Assessment report have now been found to be “significantly over-estimated” as discussed below in relation to PC29. On that basis there can be no question that existing supply is sufficient for current and future demand.

30. Affordability is improving in Nelson without the addition of any major subdivisions increasing supply. There was a steep rise in house prices in Nelson and Tasman between 2016 and 2022, but since then, house prices have reduced.²¹ The latest Massey University Home Affordability Report dated December 2024 shows home affordability in Nelson has improved 19.7% over the prior 12 months. The same report shows Nelson is the 6th most affordable region in the country out of 16 regions. It also shows Nelson was the 4th least affordable region in November 2018. So relative to the rest of New Zealand, home affordability in Nelson has improved significantly without the addition of any major subdivisions increasing supply.
31. This subdivision will be expensive for ratepayers and purchasers. NCC has allocated \$27 million towards infrastructure for this project. STM considers that allocating such a large figure to provision of infrastructure for a development that is not needed is unfair to the community. If this results in rates increases, this will have a negative impact on overall housing affordability in Nelson.
32. The Panel enquired as to the relationship between PPC28 and PC29. The applicant's response was, essentially, that:
 - a. The Nelson Tasman Future Development Strategy (“FDS”) prioritises intensification as well as making provision for greenfield development.
 - b. PC29 was NCC’s attempt to complement PPC28 by providing for intensification of existing residential zones among other measures, but the Hearing Panel determined that significant parts of PC29 could not be approved.
 - c. As Council's intensification approach has failed, “in the context of the NPS-UD requirements and the dire housing supply situation in Nelson ... the PC29 decision has elevated the criticality of the Maitahi Village Proposal.”
33. STM fundamentally disagrees with that analysis. While it is correct to say that the PC29 Hearing Panel decided that PC29 did not give effect to the Nelson Regional Policy Statement (“RPS”) and therefore could not be approved, it went on to make important findings about the population projections underpinning the FDS and PC29.
34. The Hearing Panel observed that the FDS proposes to meet residential growth in Nelson through intensification (about 78 per cent) and greenfield expansion (22 per cent) but “It is important to note that this is long term and based on a high growth scenario for Nelson and Tasman, rather than the medium growth scenario assumed for the Housing

²⁰ Urban Development Capacity Monitoring Report June 2024, page 8.

²¹ Urban Development Capacity Monitoring Report June 2024, page 13.

and Business Capacity Assessments”.²² The FDS, including the strategic accessibility analysis that informed it, was a key document informing the zoning proposed in the notified version of PC29.²³ Multiple submission points on PC29 requested a reassessment of the underlying population and residential demand projections used. Submitters expressed the view that the population projections were over-stated and therefore resulted in more widespread upzoning than was necessary.²⁴ There was a consensus that the population growth projections were ‘ambitious’ or even ‘aggressive’; the difference being that the Council’s experts considered that demand projections contained in the Nelson Housing and Business Assessment 2024 provided a sound basis for PC29, while submitters did not.

35. The Hearing Panel found that the Council projections and PC29 response provided **“significantly more [plan enabled capacity] and [commercial feasibility capacity] than required to meet demand”**²⁵ and that PC29 “significantly over-estimated the demand for new dwellings”.²⁶ The Hearing Panel recommended provisions enabling intensification in the City Centre and City Fringe, thus providing for increased dwellings but not the “over-estimated” number contemplated by PC29.
36. There is no evidence of a “dire housing supply situation” in Nelson. Rather than elevating the criticality of this project, the PC29 decision has underscored that the FDS has significantly over-estimated the future demand for housing, indicating that this project is not needed to meet Nelson demand or implement the NPSUD.
37. Moving to the Arvida component of the project, there is no evidence of a lack of retirement village accommodation in Nelson. The applicant’s Economic Impact Assessment does not assess the provision of retirement accommodation (except generically as part of the overall dwellings contributed by this project). There are a large number of retirement villages in Nelson. There is nothing before the Panel to support the proposition that providing additional retirement villas is a significant regional benefit. The same lack of analysis is true for the Care Centre, café and other non-residential components.
38. When those matters are considered, it is clearly open to the Panel to find that the Project’s regional benefits do not demonstrably reach the threshold of “significant”.
39. STM appreciates the aspirations of Ngāti Koata that form part of this project. However, those components could stand alone. It is the remainder of this very substantial project that is of concern to STM.

²² PC29 Hearing Panel’s Overview and Strategic Report at 53

²³ At 55.

²⁴ At 152-153

²⁵ At 161

²⁶ At 170

Amenity, open space and recreation values

40. The effects of the Maitahi Village Project on the amenity of the Maitai Valley and its treasured spaces for residents and the many recreational users is one of STM's most pressing concerns.
41. The RMA definition of amenity values is:
- means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.
42. RPS Objective NA1.2 is **preservation or enhancement** of amenity and conservation values. The PC29 Hearing Panel quoted this objective and said:²⁷
- It is clear to us that the operative RPS placed and places significant importance on amenity values; its objective being to preserve or enhance them. We accept this is a 'high bar'.
43. The applicant claims that the extent and green character of the public reserves in the Maitai Valley are not changed by the Maitahi Village project and that it will not have any adverse effects on open space and recreation values. STM strongly disagrees with those statements. The visual, noise, air quality and traffic effects of the Maitahi Village subdivision would in no way preserve or enhance the amenity of the lower Maitai Valley. On the contrary, amenity would be irreversibly damaged.
44. The length of time that earthworks and other construction effects will continue is unclear (the Landscape Assessment estimates 18 months, the Timeline estimates 49 months²⁸). The analysis of amenity effects is flawed because it has substantially underestimated the duration of earthworks and associated noise, dust, heavy machinery and mechanical breaking up or blasting of large rocks.²⁹
45. RPS Policy NA2 specifically identifies loss of landscape values from urban intensification as a key issue. The provisions in NA2 relating to landscape are specific and directive. Landscape values are to be protected. Development which detracts from landscape and amenity values afforded by gateways between urban and rural areas and different landscape units is to be avoided. The Kākā Valley, and this point along Maitai Valley Road, is such a gateway. The general rural landscape values of the proposed site and the specific landscape values of parts of the wider area are also not protected by the proposal, in particular through development (earthworks, vegetation clearance and buildings) in backdrop and skyline areas. The Project is not consistent with the outcomes directed by the RPS.

²⁷ Hearing Panel's Overview and Strategic Report at 53

²⁸ Attachment 23 Maitahi Village Project Anticipated Staging Timeline

²⁹ Referenced in the Geotechnical Assessment Report

46. Nelson Resource Management Plan (NRMP) objective DO15.1.3-rural greenbelt is that adverse effects on existing rural character and amenity values should be avoided, remedied or mitigated in the Maitai Valley. This is also not achieved.
47. With respect to the existing built environment (e.g. in Ralphine Way), NRPM Objective: DO14.2 - amenity values is:
- The amenity values of the built environment shall be maintained or enhanced through the subdivision and development processes.
48. The construction (traffic and noise) impacts on nearby residents and the longer-term nature of the permanent change in their surroundings do not maintain the amenity values of the built environment.

Flooding / stormwater flow management

49. The applicant says that although the site has a flood overlay, the project has been designed to mitigate flooding and the site is well situated to support managed retreat.
50. STM disagrees. Floods in August 2022 closed Maitai Valley Road at the entrance to Ralphine Way which leads to Kākā Valley. (See photos of flooded road below). Until any connecting road is built through to Bayview/Walters Bluff, the Project site will be cut off during flood events.



Figure 1: August 2022 - Flooding at Ralphine Way, looking up the Maitai Valley away from Nelson



Figure 2: August 2022 - Flooding at Ralphine way, looking down Maitai Valley towards Nelson

51. The Project will contribute to a massive increase in the extent of impervious surfaces (45.6 ha over the full PPC28 area or 16% of the total PPC28 area, compared to an expected predevelopment impervious area of less than 1%). The Project itself involves 28.8 ha of new impervious area (11% of the catchment).³⁰
52. This roughly equates to an area larger than the total area of the Nelson CBD, stretching from the Maitai River to the Church Steps, and Rutherford St to Collingwood St:

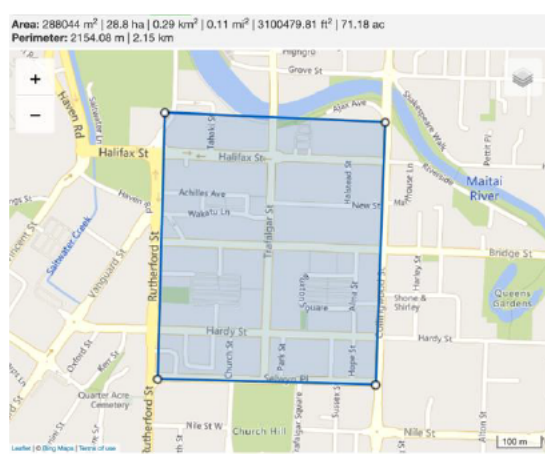


Figure 3: Depiction of impervious area scale compared to Nelson CBD

³⁰ Stormwater Assessment Report

53. The applicant assesses this land use change as resulting in a “minor” increase in post-development peak flows of 0.2 m³ /s (+1.2% increase) compared to the present day scenario. STM has concerns about the accuracy of that assessment given the magnitude of the change in imperviousness.
54. Even a small increase in peak flows will increase flooding in downstream areas such as Hanby Park, Mill Street, Nile Street, Clouston Terrace, Tory Street and Pitt Street.



Figure 4: August 2022 - Maitai Valley Road closed at entrance to Branford Park (looking from Nile St)



Figure 5 August 2022 Flooding at Clouston Bridge, Nile Street, Maitai Valley intersection with Branford Park (underwater) in background



Figure 6 August 2022 Houses around Nile Street - Maitai Valley Road flooded.

55. Regarding attenuation of peak flows, the Stormwater Assessment says:³¹

Attenuation of peak flows is not considered necessary and has not been proposed. Note this approach does not meet specific requirements of the NTLDM to provide attenuation in the present day scenario; however, the proposed approach meets the performance outcomes of the NTLDM. In the long term scenario where vegetation improvements have been partially or fully established, the NTLDM requirement is fully met

56. This is not consistent with the requirements of NRPM Schedule X.13 Stormwater Management Plan, which says the SMP must include proposed mitigation measures to address stormwater “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”.³² Significant changes to Schedule X.13 were agreed through conferencing of expert witnesses during the PPC28 process, including the addition of that peak flow management requirement.

57. Although the AEE says that the applicant’s approach to manage stormwater runoff “is comprehensively described in section 4 of the Stormwater Assessment Report”, the Stormwater Assessment Report does not address the Arvida retirement village, as it says that development is “outside the scope of this report”.³³ It is unclear where stormwater management for the Arvida development is addressed.

Stormwater quality

Schedule X.13

58. Schedule X.13 states that 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;

³¹ Stormwater Assessment Report

³² NRMP Schedule X.13(h)

³³ Page 6.

- 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.
59. The only "Stormwater Management Plan" produced with the application documents dates back to 2022, before Schedule X.13 was changed by the Environment Court. The Maitahi Village Stormwater Assessment Report states that it (the Assessment Report):³⁴
- ... sets out, in more detail than the SMP, how stormwater is proposed to be managed specifically within the Maitahi Village portion of the Schedule X area in accordance with Schedule X.13 and other relevant design guidelines. This report, alongside the other Stormwater reports, address the specific items listed in Schedule X.13"
60. STM has not been able to identify where the applicant addresses all of the Schedule X.13 matters. For example, neither the Stormwater Management Plan nor the Stormwater Assessment report contain the "summary of pre- and post- development water quality that includes estimates of nutrients, metals and sediments reported as mean annual loads and includes comparison with a 'do nothing' approach to show the proportion of contaminants reduced" required by clause (i). This is important to manage longer term post-development (not construction-related) stormwater quality.
61. While STM does not intend to comprehensively address the volunteered conditions provided with the application on the basis that it understands a revised version is going to be presented at some point, it notes that apart from referencing connections to Council reticulated stormwater, the volunteered conditions³⁵ appear to only address

³⁴ Attachment 5.1 Maitahi Village Stormwater Assessment Report page 53

³⁵ Attachment 25 Volunteered Consent Conditions

management of construction stormwater.³⁶ There are various “general accordance” conditions which refer to the Stormwater Assessment Report (which is deficient as set out above) and no references to the Stormwater Management Plan.

Erosion and sediment

62. Contaminant discharges from urban activities, including sedimentation, and sediment disposal to sensitive receiving environments including water bodies and the coast, are identified as a resource management issue for the region.³⁷ Within Nelson’s urban areas, subdivision developments and building construction are the key activities of concern in terms of sediment generation.³⁸
63. The PPC 28 site in particular has many challenges for erosion and sediment control, associated with clay soils, steep contour in some locations and the sensitive receiving environments.³⁹
64. A report prepared for the Council found that threatened fish species present in the Maitai river lower mainstem include Longfin eel, Torrentfish, Koaro, Inanga, Lamprey, Bluegill bully and Redfin Bully.⁴⁰ The report said:⁴¹

The distribution of native freshwater fish within the region is largely associated with their life history requirements since many of the native fish are diadromous i.e. they require access to and from the sea as part of their life cycle. Certain diadromous species (e.g. shortfin eel, common smelt, giant kokopu, banded kokopu, inanga, and giant bully) are generally found close to the coast and/or in the lower reaches of larger rivers. Other diadromous species (e.g. longfin eel, koaro, and to a lesser extent torrentfish, redfin bully, black flounder and lamprey), known as strong migrants, have been found in the headwaters of the Maitai.

65. It found that the greatest threats to freshwater fish include sedimentation, and river work.⁴² It identified the Maitai River “mainstem from sea to Maitai dam” as a site of significance for Threatened fish.⁴³
66. Erosion and sediment controls must be very robust in order to protect the health of the Maitai River, and the coastal receiving environment. STM is concerned that the levels of sedimentation during construction, as well as urban run-off after construction is completed, will be at levels detrimental to river health. The three popular and highly

³⁶ E.g. Set A Land Use Comprehensive Housing Development Condition 4 i.

³⁷ Issue RI17.ii

³⁸ Nelson Tasman Erosion and Sediment Control Guidelines 2019

³⁹ Ridley s 42A report at 25

⁴⁰ June 2017, Alistair Beveridge and Kate McArthur - The Catalyst Group, Updated Aquatic Sites of Significance, p23

⁴¹ Page 4

⁴² Page 16

⁴³ Page 20

valued swimming holes downstream of the subdivision, being Dennes Hole, Black Hole and Girlies Hole, will also be adversely affected.

67. The AEE says that “the Kākā valley catchment is not within the coastal environment, and so the NZCPS 2010 is not relevant to this Project.” That is not correct. The project will discharge sediment and urban development-related contaminants such as metals to the river, and the coastal environment is the ultimate receiving environment for those contaminants. Effects of a proposed activity in one part of the environment may impact on another, and the NZCPS will be relevant to land-based activities that may affect the coast.⁴⁴ That will be the case even where a regional policy document has substantially incorporated the relevant provisions of other planning instruments.⁴⁵
68. Nelson Haven is a shallow intertidal-type estuary with high ecological and human use values. Notwithstanding historical reclamation and modification, the estuary still supports a variety of important intertidal and subtidal habitats (e.g. saltmarsh, seagrass/macroalgal beds, unvegetated mud/sand flats) and inhabitant biological communities (e.g. macroinvertebrates, fish and birds). The overall ecological vulnerability of Nelson Haven has been assessed as ‘moderate-high’ with the main pressure being elevated fine sediment (grain size <63 um - mud) from catchment runoff.⁴⁶
69. The Environment Court considering PPC28 accepted the importance of ensuring cumulative effects of earthworks were appropriately managed. It addressed this through (among other things) the requirement for an Ecological Impact Assessment addressing the whole PPC28 site:

[38] The application must include an Ecological Impact Assessment (“EIA”) identifying and describing the significance and value of freshwater and terrestrial habitat and features, and the potential effects on ecology from the proposed activities (including earthworks). **The EIA is to cover the whole of the PPC28 site.** The EIA is to describe methods to achieve the outcomes in policy RE6.4, **the first such report to address “all of the land and freshwater environment” contained within the structure plan** and account for effects downstream (including in the Maitahi and Nelson Haven) (X.15).

70. The importance of addressing the whole site was to ensure that incremental development of the PPC28 structure plan area would not be considered in isolation, risking inappropriate cumulative sediment inputs to downstream receiving environments. That requirement is reflected in X.15:

Each Ecological Impact Assessment submitted for subdivision and development or earthworks 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

⁴⁴ *Environmental Law Initiative v Canterbury Regional Council* [2024] NZHC 612 at [139] – [141]

⁴⁵ *Environmental Law Initiative* at [142]

⁴⁶ Parsonson SOE before Hearing Panel considering PPC28

and Nelson Haven). Each Ecological Impact Assessment must also address any specific matters that are related to the given stage or activity relevant to each application for resource consent.

71. The applicant's Ecological Impact Assessment does not comply with X.15 as it is limited to the Project footprint. The analysis of effects on Nelson Haven is extremely limited.

Terrestrial ecology

72. STM recognises that the development involves some planting and other environmental benefits, but considers that the impacts on birds and other terrestrial ecological features of the significant construction works and land use change to urban development have not been adequately addressed.

Birds within the site

73. Bird identification has been minimal, with the applicant having used a non-standard method of bird identification euphemistically called a "roaming bird survey" (i.e. a walk around). Council has identified a range of species that are likely to be present but which have not been identified. The applicant proposes to address species presence and risk assessment through an ecological management plan ("EMP") but no draft has been provided nor are there conditions setting out the standards to be achieved for birds. Mitigation measures also seem to be at the very high-level, conceptual stage. Seasonal impacts are to be "addressed through the EMP."⁴⁷
74. STM considers the analysis of avifauna values and measures to mitigate effects are inadequate, that conditions are lacking and that a draft management plan should have been provided.

Significant Natural Areas adjacent to the site

75. The proposal is adjacent to SNAs 166, 79 and 78, which support sensitive native species such as New Zealand Robin⁴⁸. Council asked how increased human disturbance or cat (stray, feral, companion) predation would be avoided, remedied or mitigated. The applicant's response was that the volunteered EMP would address this. This has been accepted by Council.⁴⁹
76. The application materials do not include a draft EMP and there is no recommendation for such a plan in the Ecological Impact Assessment (which does not address effects on adjacent SNAs and is limited to recommending that the project "avoid direct effects to the habitat immediately outside of the Project Area".⁵⁰)

⁴⁷ Attachment A – Maitahi Village Table of Feedback – NCC Response to Panel Minute 5

⁴⁸ Threat status: At risk /declining

⁴⁹ Attachment A – Maitahi Village Table of Feedback – NCC Response to Panel Minute 5

⁵⁰ Attachment 3.1 Ecological Impact Assessment 6.3.1

77. The National Policy Statement on Indigenous Biodiversity (“NPSIB”) contains policies that are relevant to effects of subdivision, use and development “that is in, or affects” an SNA. Certain effects must be *avoided*, including “a reduction in the population size or occupancy of a Threatened or At Risk (declining) species that uses an SNA for any part of their life cycle”.⁵¹ Other effects must be managed by applying the effects management hierarchy.⁵²
78. Effects of human and cat disturbance as a result of subdivision is an effect within the scope of the RMA.⁵³ It is not feasible for increased human and cat disturbance on sensitive species to be managed through an EMP. No conditions identifying the standards to be achieved by that management plan. No analysis has been provided to demonstrate that the subdivision will avoid a reduction in population size or occupancy of New Zealand Robin and other Threatened/At Risk species. It is surprising that the Council was willing to accept that a non-existent management plan could address this issue.
79. Construction noise effects on fauna in adjacent SNAs have not been addressed.

Kākā Stream

80. Kākā Stream is an important tributary of the Maitai River. It flows into the Maitai River at Dennes Hole, a much-used swimming spot.



Figure 7 Dennes Hole, Maitai River

⁵¹ Policy 3.10(2)(d)

⁵² Policy 3.10(3)

⁵³ See for example *Weston Lea Ltd v Hamilton City Council* [2021] NZEnvC 111 at [26]



Figure 8 Dennes Hole, Maitai River

81. The health of Kākā Stream affects the health of the Maitai, the ecosystems that rely on it and the people who swim in it. Contamination risks are addressed below.
82. The AEE seeks consent to reclaim a significant length of Kākā Stream. Appendix 24⁵⁴ specifies that the reclamation of the bed of the Kākā Stream requires consent as a discretionary activity under Regulation 57 of the Resource Management (National Environmental Standard for Freshwater) Regulations 2020. Regulation 57(2) is:

(2) A resource consent for a discretionary activity under this regulation **must not be granted unless** the consent authority has first—

(a) **satisfied itself that there is a functional need** for the reclamation of the river bed in that location; and

(b) **applied the effects management hierarchy.**
83. STM has not seen any analysis of these requirements, particularly functional need.
84. “Functional need” means:

... the need for a proposal or activity to traverse, locate or operate in a particular environment because that activity can only occur in that environment
85. The definition has been considered in various authorities. In *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council*⁵⁵ which concerned a new state highway i.e. linear infrastructure “which is required to join with two existing and fixed points on the highway”, the High Court upheld the Environment Court’s finding that the project:

⁵⁴ Appendix 24: Assessment of Activity Status

⁵⁵ *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 629 at [38] and [53]-[58]

[58] ... can only occur in “in the relevant *environment*, namely the lower Mangapepeke Valley. This is a context and fact specific inquiry, in which the Environment Court considered the comparatively short distance the project traverses, the nature of linear infrastructure, the environment it is proposed to traverse, as well as the alternatives considered by Waka Kotahi

86. The applicant has not demonstrated that the activity can only occur in this environment such that there is a functional need for the reclamation of the river bed in this location. STM does not believe that there is a functional need to reclaim Kākā Stream, rather the applicant wants to reclaim the stream so it can fit more built development into the site.

Wetlands

87. The applicant has not determined whether earthworks close to Natural Inland Wetland 1 require consent as a non-complying activity. They proposed to defer this to be addressed through conditions.⁵⁶ This is not a valid approach: whether to grant consent to this activity or not is a matter for the Panel, not something that can be addressed by an ecologist down the track.

Contaminated site

88. Council advises that it has not reviewed the Site Contamination and Remediation Reports because it does not have internal contaminated land specialists. This is of significant concern to STM, particularly given the issues raised by HAIL Environmental. STM has engaged expert consultancy EHS Support to review the applicant’s information. The report by EHS Support is **attached**. Its findings are adopted by STM, and are generally not repeated in this document.
89. Given Council’s lack of expertise in this area, the importance of this issue and the shortcomings in Envirolink’s approach (as demonstrated by the issues raised by HAIL Environmental), should the approval be granted, any future matters that need to be signed off by a Suitably Qualified and Experienced Practitioner should require a dual sign-off / peer review approach.

The HAIL site and the RAP

90. STM is concerned that there is no clear justification for taking the high risk option of routing a stream through site that is contaminated by high levels of arsenic and dieldrin, particularly as:
- a. Contaminated material will remain after “remediation”.
 - b. The stream flows through the contaminated site and from there into Dennes Hole.
91. There are significant data gaps in the DSI and RAP meaning that the extent of contamination is not properly established, as discussed by STM. This should be

⁵⁶ Response to request for information dated 13 June 2025

established now, not after consent has been granted. There is insufficient information on which the Panel can be satisfied as to the level of risk/effect, or that the remediation approach is acceptable.

Soil reuse onsite

92. The application materials are vague regarding the parameters for soil reuse. STM is not confident that human health and the environment will be protected.

The landfill / encapsulation cell

93. Creating a landfill / encapsulation cell within the Kākā Valley site is outside the scope of the approvals that a substantive application can properly seek through this process.
94. There was no reference to a land fill in the listing application. The Project listed in the Act is:

Develop approximately 180 residential dwellings (50 to be Ngāti Koata iwi-led housing), a commercial centre, and a retirement village (approximately 194 townhouses, 36 in-care facility units, a clubhouse, and a pavilion)

95. An authorised person may lodge a substantive application for consent for a “project” which for a listed project means “(a) the project as described in Schedule 2” and “(b) includes any activity that is involved in, or that supports and is subsidiary to, a project referred to in paragraph (a)”. Logically there must be limits on the extent to which an activity “is involved in”, “supports” or “is subsidiary to” a listed project. For example, the project’s roads will require bitumen, but a bitumen plant would not reasonably come within the scope of (b). STM considers that (b) must be limited to activities that could reasonably have been foreseen from the listing application, which was for a project that is residential and (in small part) commercial. A contaminated landfill is an industrial activity which would in no way be contemplated as part of those activities. It is an entirely separate activity, subject to its own rules in the NRMP and also subject to the requirements (including levies) of the Waste Minimisation Act 2008. It is not within the scope of clause (b) of the definition of “project”.
96. The proposed landfill location and design have not been properly investigated. The location is unclear due to the scale of the plan showing it. Its distance from sensitive features like waterbodies is unclear, as is the depth to groundwater and its vulnerability to climate change/land movement. A standalone application for a landfill of this nature would require significantly more information and analysis. The fact that the landfill has been tacked on to the subdivision application should not justify a lower level of information and analysis.

97. The landfill / encapsulation cell is to remain on land held in private ownership⁵⁷ but the proposed owner is not specified and STM is concerned that this may be an entity (e.g. a company) that cannot be held responsible in perpetuity for the landfill site and any environmental damage or other liability resulting from it. The applicant says that the landowner will be responsible, and those responsibilities will be clearly defined by the consent conditions and a consent notice.⁵⁸ The consent conditions do not address this.
98. Council's Team Leader Integrated Catchments has requested conditions of consent preventing the Kākā Stream Diversion along the proposed alignment until the HAIL site has been appropriately remediated and certified as such by suitably qualified and experienced land contamination professional.⁵⁹ This is a critical issue and not a matter that should be left to a certification process.
99. The Panel asked whether the response to the review of the RAP (Attachment 8.3) has been reviewed by HAIL Environmental and, if so, whether HAIL Environmental are in agreement with the proposed approach. The applicant says that "HAIL Environmental is in agreement with this approach."⁶⁰ That is not evidence: a statement from HAIL Environmental should be provided. It is noted that HAIL Environmental only reviewed the RAP and not the supporting RSI. As identified in the EHS Support report, this is a flaw because HAIL Environmental's conclusions may well have differed if they had also reviewed the supporting documents.

Noise

Construction noise

100. The application does not contain a construction noise assessment and says only that the activities will comply with NZS 6803:1999. The assessment provided in response to a request for information⁶¹ includes an assessment which identifies that "careful management of works" will be required to ensure compliance with NZS6803:1999 at the Ralphine Way receivers. A management plan is proposed.
101. Construction noise limits in NZS6803:1999 are high. The long-term limits apply to construction noise of 20 weeks duration or more. It is questionable whether they anticipate and are appropriate for construction noise that extends for several years or decades. While there will be some staging of activities during this time, heavy construction vehicles will pass close by these properties for the entire duration of the Project's earthworks and construction.

⁵⁷ Response to request for information dated 13 June 2025

⁵⁸ Response to request for information dated 13 June 2025

⁵⁹ Attachment A – Maitahi Village Table of Feedback – NCC Response to Panel Minute 5

⁶⁰ Response to request for information dated 13 June 2025

⁶¹ Attachment A – Maitahi Village Table of Feedback – NCC Response to Panel Minute 5

102. In any event, STM does not agree that noise and vibration effects are reasonable simply because they are within the maximum specified in NZS 6803:1999, particularly given the length of time (potentially decades) that construction noise will be experienced, and conditions authorising construction between 7.00am to 6.00pm Monday to Friday and 8.00am to 5.00pm on Saturdays. This is an intolerable situation for nearby residents as well as the many people who use the area for recreation in a currently peaceful setting. More consideration should be given to the *effects* of construction noise in this currently peaceful semi-rural environment, not simply compliance with standards, particularly given the RPS and NRMP direction on protection of amenity as discussed above. Some areas may well be unsuitable for development because they cannot be developed in a way that protects amenity.

Post-development noise

103. Regarding post-development noise, the applicant says:

The Maitahi Village is essentially a residential subdivision and development and so is expected to generate characteristically low levels of noise without any significant adverse effects on the environment.

104. This has not been substantiated, and STM does not agree. People currently visit the Maitai Valley for multiple different recreational activities in a peaceful rural setting. After a subdivision is installed, urban noise - lawnmowers, leaf blowers, cars, motorbikes, delivery vehicles and in later years home maintenance such as water blasters, sanding, and hammering will all add detrimental noise to the existing recreational areas especially bush tracks on Olive Hill, the Maitai cricket ground and walkway, and Sunday Hole and Dennes Hole, two popular adjacent swimming spots. All these areas will no longer be a set within a quiet peaceful rural landscape, but beside a noisy urban subdivision, so there will definitely be permanent significant adverse noise impacts on the environment.
105. Given the applicant has now added a retirement village into the mix, STM anticipates an increase in ambulance call outs with associated sirens up and down the valley and Nile street, large noisy trucks bringing provisions such as foodstuffs, laundry and other maintenance needs in and out of the area, creating a more distinctly urban aspect to the previously highly-valued rural setting of the adjacent recreation areas. None of those effects have been assessed.
106. There has been no assessment of effects of traffic noise on residents and other users. The comments regarding lack of analysis and failure to protect amenity are also relevant to post-development noise.

Greenhouse gas emissions

107. STM does not agree that this project will support reductions in greenhouse gas emissions in terms of Policy 1 NPSUD.

108. The applicant claims that the Maitahi Village site is 2.7km from Nelson City Centre and can be served by public transport. That stated distance is misleading. It is 3.5km from Ralphine Way to Hardy Street (the centre of the CBD) and around 7km from the Bayview end of the site to Hardy Street.⁶²
109. The site is not currently served by public transport, and the applicant has not demonstrated that buses can access the overly steep gradients proposed for some streets.
110. Furthermore, public transport in Nelson struggles to get uptake, no doubt in part due to hilly routes where people find it too difficult or unappealing to walk up or down a gradient from the bus stop to their house. There is no reason to suggest this subdivision would be any different. The distance and steep roading gradients within the subdivision will also negatively affect the uptake of active transport. Thus, as in the rest of Nelson, most people will rely on private motor vehicles to get to and from their house to work, school, or recreation. Building houses where people need to rely on cars contributes to climate change.

Policy RE6.1 - Structure Plan

111. Policy RE6.1 Maitahi / Mahitahi Bayview Area is to “provide for subdivision and development which is consistent with the Maitahi / Mahitahi Bayview Structure Plan in Schedule X” and where it is demonstrated that certain matters are achieved.
112. The project is not consistent with the Structure Plan.
113. A retirement village that includes “192 residential units, a care facility containing 36 beds, and the full range of communal facilities such as a Residents Clubhouse and Pavilions”⁶³ that will occupy 9.6 hectares⁶⁴ is now proposed for the Residential Zone – Higher Density Area. There was no discussion of a retirement village in the PPC28 process. The applicant says that a village development like that proposed by Arvida is considered a Comprehensive Housing Development.
114. Comprehensive Housing Development is defined as:
- means three or more residential units, designed 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.

⁶² Transportation Impact Report, page 24

⁶³ AEE page 31

⁶⁴ AEE page 49

115. A Pavilion, Clubhouse, Care Centre and café are not residential units. They have different effects to residential units (e.g. traffic including parking demand, noise, open space requirements), none of which are addressed through this application.
116. A care centre is more properly described as a community activity.⁶⁵ A café (which in this case is proposed to be available not only to residents but also visitors) falls within the definition of a 'commercial activity'. Both a care centre and a café are 'non residential activities'.
117. The NRMP specifically provides for home occupations as a permitted activity. Non-residential activities beyond home occupations are generally a discretionary activity in the residential zone (REr20.3). These activities involve considerations that are different to those for residential activities, but which are not assessed in this application.
118. Objective RE6 and Policy RE6.1 relating to Maitahi/Mahitahu Bayview Area are focused on providing for housing, with the explanation in RE6.i being that private Plan Change 28 and the Nelson Tasman Future Development Strategy have identified the Maitahi/Mahitahu 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. A retirement village with associated non-residential facilities departs from what is envisaged by those provisions.
119. The applicant has told NCC that "for the retirement village villages established in The Wood, each contain community / common buildings, and care facilities, as a part of their villages, none of which have obtained separate resource consents as non-residential activities."⁶⁶ STM does not know whether that is correct, but even if it is, that does not mean that such an approach is correct. STM is aware of a recent Tasman retirement village that was described in the consent decision as involving "a combination of a care facility (community activity) and residential development (compact density development)".⁶⁷
120. The applicant's information regarding the extent of inconsistency is itself inconsistent. The AEE says in relation to the Maitahi village subdivision that small portions of four properties extend into the Open Space Recreational Zone and two properties extend into the Neighbourhood Reserve and ten lots (Lots 109 - 118) within the Lower Density Area are partly or entirely located within the Residential Green Overlay. The Landscape report⁶⁸ says that part of three residential properties are located within the Open Space Recreation Zone, part of two residential properties are located within the Neighbourhood Reserve, a pump station is located along the southern side of the

⁶⁵ In the NRMP, this term is only defined "in relation to Schedule E (Ngawhatu Residential Area)", but the balance of the definition clearly covers a Care Centre type of facility.

⁶⁶ NCC RFI 2 Response – Attachment A – Table of Feedback

⁶⁷ RM190790 Integrity Care Group Ltd Commissioner Decision at [65]

⁶⁸ Attachment 10.1, p 11

Neighbourhood Reserve, and the water reservoir is located within the Rural Zone and Residential Green Overlay on Kākā Hill. The applicant's later response to Council⁶⁹ also accepts that Koata House is not located on the commercially zoned land but on the residential zoning (Lot 1003).

121. The Structure Plan "also provides for road, cycle and pedestrian linkages which will benefit the areas within and outside of the Maitahi Bayview Area".⁷⁰ However, the applicant does not propose to provide a linkage to Walters Bluff, with the Integrated Transport Assessment now saying "The connection of Ralphine Way to the construction of a new road to Bayview or Walters Bluff will not be provided".⁷¹ This means all traffic from the subdivision will be funnelled down Maitai Valley Road and not directly over the ridge towards Atawhai. This appears to be another departure from the Structure Plan.
122. Objective RE6 is that the Maitahi/Mahitahi Bayview Area (Schedule X) contributes positively to the social, economic, cultural and environmental wellbeing of the Nelson Whakatu community including (amongst other matters) 'development that is coordinated with transport infrastructure upgrades'. One of the reasons for this objective is that The Structure Plan also provides for road, cycle and pedestrian linkages which will benefit the areas within and outside of the Maitahi Bayview Area.'
123. Policy 6.1 is to provide for subdivision and development which is consistent with the Maitahi/Mahitahi Bayview Structure Plan in Schedule X and where it is demonstrated that clauses (a) – (i) are met. Clause (g) of this policy is that the multi-modal transport connections in the Structure Plan, in the form of roads, cycleways and pedestrian linkages, are implemented. Also relevant is clause (a) which is that it will contribute to a well-functioning urban environment.
124. The explanation and reasons to this policy as set out in RE6.1i are as follows:

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...**

(emphasis added)

⁶⁹ NCC RFI 2 Response - Attachment A – Table of Feedback

⁷⁰ NRMP RE6.1

⁷¹ Attachment 6: Integrated Transport Assessment, page 30.

125. Therefore Policy 6.1 is an enabling policy but only where development is consistent with the Structure Plan and all of the clauses are met. In this case the connections in the Structure Plan are not implemented and so this Policy is not met.

126. In approving PPC28, the Environment Court recorded a pertinent passage from the developers' traffic evidence:

[127] Mr Clark ... provided expert evidence on traffic matters including network constraints. His evidence was that the Walters Bluff Connection would provide an important link to the hill sections of PPC28 **and reduce traffic flows into Bayview and Maitai Valley Road.**

127. The traffic effects of a large subdivision in Kākā Valley that relies exclusively on Maitai Valley Road were not anticipated when the site was rezoned, and are likely to be significantly worse.

Community Opposition

128. Urbanisation of Kākā Valley has been strongly opposed by the community from the outset.⁷²

- a. Ninety percent of respondents strongly opposed urbanisation in the Maitai Valley in the Nelson City Council's 2006 Nelson Urban Growth Strategy consultation. As a result, Nelson City Council took a stance to "Not provide for any future residential zoning in this (Maitai) area" because "submissions on the Maitai were very strongly opposed to any residential zoning, based on loss of open space, conflicts with recreation values, and the effects of more traffic and noise".
- b. Thirteen thousand people petitioned Nelson City Council to protect the existing rural zoning in 2020 after Nelsonians were shocked when the proposal for a private plan change was announced in the media. The level of concern was reflected in the rapid collection of signatories. This is probably the largest petition ever presented to Nelson City Council, representing very strong community desire to protect the rural nature of the Maitai Valley.
- c. Consultation on the Future Development Strategy 2019 was flawed due to the failure to refer to "Maitai Valley" and use of the little known name Kākā Valley, resulting in very few submissions on that document. By the point that the 2022 FDS was consulted on, this site had been "locked in".
- d. At the 2021 RMA Hearing, 628 submitters strongly opposed PC28. In comparison, the RMA hearing for a similar-sized subdivision in the less recreationally popular Marsden location attracted only 19 submitters.

⁷² See www.savethemaitai.nz

129. Despite the outcome of PPC28, a large number of people in Nelson continue to oppose urbanisation of this important area of the Maitai. The application does not note the strength of opposition.

Relief / conclusion

130. The landfill / encapsulation site is outside the scope of the listed project and no approval may be given for it.
131. The project's regional benefit does not reach the threshold of a "significant" benefit.
132. The project will have significant adverse effects:
- a. On amenity and open space values for those who live or recreate in the Maitai Valley.
 - b. Of construction noise on Ralphine Way residents and others who use Maitai Valley for recreation.
133. Many other potential effects are too uncertain or poorly assessed for the Panel to be able to form a clear conclusion on their magnitude:
- a. Effects on amenity values from earthworks and construction.
 - b. The risk of new residents being cut off by flooding.
 - c. Stormwater (flow) management for the Arvida development.
 - d. Post-development stormwater quality.
 - e. Cumulative effects of sediment discharges.
 - f. Effects on birds and their habitats, both within the site and in adjacent SNAs.
 - g. Contaminated land effects.
134. The application has failed to address important "threshold" provisions in planning instruments such as the requirement to establish a functional need for reclamation of a riverbed. The project is inconsistent with relevant and directive provisions of the NPSIB, NES Freshwater, RPS and NRMP, including NRPM provisions inserted by PPC28. Elements of the Project are inconsistent with the Schedule X Structure Plan.
135. For those reasons, it is appropriate to decline the approvals under s 85(3).
136. If the Panel does not consider that it is appropriate to decline the project in its entirety, STM considers that the Panel should decline approvals for:
- a. The reclamation of Kākā Stream, its relocation to the contaminated site, and the containment facility/landfill.

- b. The retirement village, in particular components for which no assessment has been provided (Pavilion, Club house, care centre, café).
 - c. Elements that are inconsistent with the Structure plan, including encroachment of housing into green overlays.
137. If the project is approved, conditions should be more specific and enforceable as to the outcomes/standards to be achieved, including by:
- a. Limiting construction noise to weekdays between 8 am and 4 pm and specifying an appropriate noise limit to protect amenity values.
 - b. Requiring that any future contamination-related matters that need to be signed off by a Suitably Qualified and Experienced Practitioner require a dual sign-off / peer review approach.
 - c. Setting out specific requirements that the project must achieve for all impacts. STM intends to address this in its response to draft conditions, but notes the conditions are particularly deficient in relation to:
 - i. Effects of noise, and human and animal disturbance on SNAs.
 - ii. Protecting Dennes Hole.
 - iii. Protecting the water quality and aquatic ecology of the Maitai River and all downstream swimming holes.
 - iv. Post-development stormwater quality.
 - v. Peak flow stormwater attenuation.
 - vi. The commercial/community elements of the Arvida development.
138. STM has not provided a copy of all documents referred to in this Comment. All documents can be provided if requested by the Panel.