

BEFORE THE MAITAIHILL VILLAGE EXPERT PANEL

In the matter of

the Fast-Track Approvals Act 2024 (the *FTAA*) appointed under section 50 and Schedule 3 of the *FTAA* to determine:

- (a) subdivide land at 7 Ralphine Way, Maitai Valley, Nelson to create 184 residential allotments (including one large lot for future development), one allotment for commercial use, along with roads to vest, reserves to vest, and also allotments to vest for utility / infrastructure purposes. The balance land (zoned rural) containing Kākā Hill will remain in one large title at the completion of the subdivision and development process; and
- (b) development of a retirement village containing 192 residential units, a care facility containing 36 beds, the full range of communal facilities, and a cafe; and
- (c) development of the commercial site for the cultural base for Ngāti Koata (Te Whare or Koata), containing offices, meeting rooms, function and event spaces, and a commercial kitchen.

Expert Panel

The Honourable Lyn Stevens CNZM KC
(*Chair*)

Glenice Paine
(*Member*)

Sam Flewellen
(*Member*)

Andrew Whaley
(*Member*)

Comments received under Section 53 of the FTAA:

25 June 2025

Details of any hearing under Section 57 of the FTAA:

No hearing was held.

**Record of Decision of the Expert Consenting Panel under
section 87 of the
Fast-track Approvals Act 2024**

Dated xxx

Decision: Pending receipt of responses under s 70 of the FTAA

Date of decision:

XXXX

Date of issue:

[insert date]

Draft 5 August 2025

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APPENDIX A: CONDITIONS OF CONSENT

APPENDIX B: CONSENTS REQUIRED

DECISION MADE BY THE PANEL: MAITAI VILLAGE APPLICATION FOR RESOURCE CONSENTS

EXECUTIVE SUMMARY

- i. This is an application for resource consents (**Application**) by CCKV Maitai Dev Co Limited Partnership (**the Applicant**) to develop mixed-use residential, retirement and commercial activities. This comprises:
 - a. subdivision of 184 residential allotments (including one large lot for future development), one allotment for commercial use, along with roads to vest, reserves to vest, and also allotments to vest for utility / infrastructure purposes. The balance land (zoned rural) containing Kākā Hill will remain in one large title at the completion of the subdivision and development process. Ngāti Koata are committed to between 10 and 50 houses for its iwi, and so at least 132 residential allotments will be made available for sale to the public.
 - b. two of the residential allotments to be created are to be sold to Arvida for the development of a retirement village containing 192 residential units, a care facility containing 36 beds, and the full range of communal facilities such as a residents clubhouse and pavilion. A café will also form part of this complex.
 - c. development of the commercial site for the cultural base for Ngāti Koata (Te Whare or Koata House), containing offices, meeting rooms, function and event spaces, and a commercial kitchen.
- ii. The Site comprises two parcels and will result in an eventual development of 166.89 hectares¹ located at 7 Ralphine Way, Maitai Valley, Nelson (**the Site**).²
- iii. The project is listed in Schedule 2 of the Fast-track Approvals Act 2024 (**FTAA**). On 12 May 2025 an expert panel was appointed to determine the Application (**Panel**).
- iv. The Environmental Protection Authority (**EPA**) assessed the Application under s 46 of the FTAA and decided that it related to a listed project and complied with the requirements of s 42. It was also found to be complete and within scope. The application was then forwarded to the Panel Convener who set up a panel under s 50.³
- v. The Panel received comments from 21 respondents⁴ and a response to those comments from the Applicant. The Panel has carefully reviewed all of the information presented in evaluating the Application.
- vi. The Panel has assessed whether the Application will facilitate the delivery of an infrastructure and development project with significant regional or national benefits. A factual analysis regarding such regional or national benefits is set out in Part G. The Panel has also carried out an evaluation of the extent of the regional or national benefits

¹ Section 3.3 of the Application states that Stage 0 will see the applicant's property increasing in scale from 66 hectares to 166.89-hectares (including Kākā Hill), within proposed Lot 7001.

² Schedule 2 of the FTAA lists the location of the project as 43.7 hectares within Record of Title NL11A/1012 and 103 hectares within pending Record of Title 1039028 (part).

³ FTAA, ss 42 to 44 and sch 2.

⁴ FTAA, s 53.

preparatory to its assessment of whether the approvals should be granted or declined under ss 81 and 85 of the FTAA. The analysis of extent of regional or national benefits is set out in Part L. The Panel has found that the extent of such benefits should be assessed or quantified depending on their nature as varying between modest and meaningful, substantial or of real value.

- vii. The effects of the Project have been analysed and are described in Part F of this decision. [to be completed pending receipt of comments under s 70 of the FTAA]
- viii. A summary of the relevant statutory tests for each approval sought have been outlined in the discussion in Part B. The planning context against which the Application should be assessed is described in Part C.
- ix. There is a description of the relevant iwi entities in Part D and F (cultural effects). This description includes an analysis of the extensive engagement and collaboration between the Applicant and iwi, noting that the Tangata Whenua iwi Ngāti Koata has a significant ownership interest in the Project.
- x. With respect to the nature and scope of any conditions to be imposed on the 13 resource consents sought in the Application, the Panel has considered the condition set proffered by the Applicant with the Application. It also received from the Applicant a second set of conditions (v2) which had been developed in discussion and consultation with the Nelson City Council (**NCC**) and which sought to respond to many of the comments received from the respondents who were invited to comment under s 53 of the FTAA. The Panel subsequently prepared its own draft conditions and, as required under s 70 of the FTAA, provided a copy to the Applicant, NCC and all the respondents who had provided comments. [to be completed upon receipt of comments under s 70 of the FTAA]
- xi. The Panel was also required by s 72 of the FTAA to seek comments from the Minister for Māori Crown Relations and the Minister for Māori Development. It notes that the Ministers had also been invited to provide comments under s 53 of the FTAA and had done so. The comments offered support for the Project but emphasised the need to ensure robust engagement with all relevant Māori groups. As this issue had been comprehensively addressed by the Applicant in its response to the Ministers' comments and in the proffered conditions (v2), the Panel invited the EPA to undertake the process of seeking further comments required by s 72 contemporaneously with the process of seeking comments on its draft conditions under s 70. [to be completed upon receipt of comments under s 72 of the FTAA]
- xii. With respect to its obligations to decide, for each approval sought in the Application, whether to grant the approval and set any conditions to be imposed or to decline the approval as required in s 81 and s 85 of the FTAA, the Panel concludes... [to be completed following receipt of comments under s 70 and s 72 of the FTAA]

PART A: OVERVIEW OF THE APPLICATION AND PROCEDURE

Application

Applicant

- 1 CCKV Maitai Dev Co Limited Partnership is the authorised person for the Maitahi Village as set out in Schedule 2 of the FTAA.

Site and surrounding environment

- 2 The Site is located at 7 Ralphine Way, situated in Kākā valley within the wider Maitai Valley area, and located 2.6km east of Nelson city when measured from the Nelson Cathedral. The Site comprises two titles and will result in an eventual development of 166.89 hectares⁵ located at 7 Ralphine Way, Maitai Valley, Nelson (**the Site**).⁶
- 3 The Panel has assessed the features and characteristics of the Site and surrounding area as described in the Application⁷. The Site is located within Kākā Valley comprising alluvial terraces enclosed by steeper surrounding conical volcanic forms. The terraces descend north to south, and the valley floor widens out before joining the Maitai Valley. Kākā Stream follows the toe of the Malvern Hills east facing slopes. As it moves away from this toe it bisects an upper terrace before meandering through a lower river terrace accommodating various rural drains adjoining the Maitai River.
- 4 The Site is accessed via an existing farm track from Ralphine Way. The current landcover of the Site is primarily pasture with regenerating grey scrubland, gorse and plantation pine extending into the steeper surrounding hills. Willow trees are established along the margins of the Maitai River corridor and parts of the Kākā Valley with pockets of rushes and rank grass occurring within the wetter low-lying paddocks and along the Maitai River corridor.
- 5 Kākā Hill which encloses the valley to the east is a conical landform standing 459masl and is a prominent hill that forms the wider backdrop to Nelson. Its summit is a site of cultural significance (MS57). Also, the very upper part of Kākā Hill is an area of ecological significance as its upper slopes are dominated by kanuka, with small areas of broad-leaved forest and grassland consisting of unidentified grasses with scatterings of matagouri species.
- 6 The Site is a complex mix of zones in the Nelson Resource Management Plan (**NRMP**) as shown in Figure 2. The Schedule X Structure Plan and zoning of the Site were inserted into the NRMP via Proposed Plan Change 28 (**PPC28**). The Residential Zone - Higher Density Area is located on the relatively flat terraced landforms of the valley floor and the gentle slopes on the south-east toe of the Malvern Hills. The steeper slopes on the Malvern and Kākā Hills are zoned Residential Zone - Lower Density Area and Residential Zone. Two small areas of Suburban Commercial zoning are located centrally on the valley floor, while the balance of the Site comprises Open Space

⁵ Section 3.3 of the Application states that Stage 0 will see the applicant's property increasing in scale from 66 hectares to 166.89-hectares (including Kākā Hill), within proposed Lot 7001.

⁶ Schedule 2 of the FTAA lists the location of the project as 43.7 hectares within Record of Title NL11A/1012 and 103 hectares within pending Record of Title 1039028 (part).

⁷ Section 2.2 of the Application.

Recreation Zoning primarily along the Kākā Stream corridor, and Rural Zoning across Kākā Hill.



Figure 1: Schedule X Structure plan (source: Landscape Context and Site Analysis, Rough Milne Landscape)



Figure 2: Proposed layout of the development overlying the NRMP zones

- 7 A number of District Plan overlays are located on the Site including a Flood Overlay on the southern portion, Electrical Transmission Lines, Service Overlay and Riparian Overlay River. A Landscape Overlay is located over the mid to upper portions of Botanical Hill – Malvern Hills and Kākā Hill. The Site sits entirely within Schedule X Maitahi Bayview Area, to which there is a structure plan (shown in Figure 1). The Site is located within Airshed C in terms of the Regional Plan overlays.

Overview of the Application

- 8 The Application is described in Schedule 2 of the FTAA as:

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)

- 9 More specifically, the Project includes the following components:

- a. subdivision to create 184 residential allotments, one allotment is for commercial use, along with roads to vest, reserves to vest, and also allotments to vest for utility / infrastructure purposes. The balance land (zoned rural) containing Kākā Hill will remain in one large title at the end of the subdivision and development process.
- b. two of the allotments to be created are to be sold to Arvida for the development of a retirement village containing 192 residential units, a care facility containing 36 beds, and the full range of communal facilities such as a Residents Clubhouse and Pavillion. A café is also proposed as part of this complex.
- c. development of the commercial site for the cultural base for Ngāti Koata (Te Whare or Koata), containing offices, meeting rooms, function and event spaces, and a commercial kitchen.

- 10 There are a total of 11 subdivision stages (stages 1-11), with one additional stage (Stage 0) proposed as part of undertaking an initial boundary adjustment between the applicant's title (NL11A/1012) and that adjoining title owned by Bayview Nelson Limited (RT 1039028). This will see the respective boundaries aligned so that the Site falls entirely within the ownership of the Applicant.

- 11 The Site is situated primarily in Kākā Valley, with the valley floor and lower hillslopes also identified for residential development as shown in Figure 2. The proposed Arvida Retirement Village is split into two areas by Kākā Stream. Area A is the larger area at 6.56ha on the southeast side of the stream, and Area B is the smaller area at 3.05ha on the northwest side.

Resource consents

- 12 Attachment 24 to the Application provided a detailed breakdown of all non-compliances against the various plans and rules and the Panel agrees with this updated assessment. The Panel has reviewed all the documentation and the further information provided by the Applicant and the participants and summarises the necessary consents in **Appendix B**. The Panel agrees with the Applicant that, in terms of the NRMP and its various plan changes, as well as other relevant regulatory standards (e.g. National Environmental Standard for Freshwater and National Environmental Standard for

Assessing and Managing Contaminants in Soil to Protect Human Health), overall the Application is a non-complying activity.⁸

Other approvals

- 13 While the Application has not identified any other approvals as being required, the comments from the Director-General of Conservation⁹ (**D-GC**) questioned whether an approval under the Wildlife Act 1953 (**Wildlife Act**) is required to capture, handle and relocate lizards. This is based on the information in the Ecological Impact Assessment which notes that there are seven different herpetofauna species present or potentially present on site. All seven species are absolutely protected under the Wildlife Act. Any handling, capturing and relocating lizards throughout construction will require approval under the Wildlife Act, in addition to any approvals issued under this decision.
- 14 The D-GC also observed that a complex freshwater fisheries approval is required under the Freshwater Fisheries Regulations 1983 associated with work to divert the Kākā Stream. In Minute 5 the Panel had sought further information from the Applicant concerning the fact the Application did not seek approval for a freshwater fisheries activity. In its response the Applicant confirmed its position that the Project involved a standard freshwater fisheries activity but that on its interpretation of the FTAA there was no need to apply for a separate approval for a freshwater fisheries activity, nor any ability to get one. The Applicant contended that a separate approval could only be sought for a complex freshwater fisheries activity and the Project did not entail such an activity. The Panel is satisfied on the facts that the Project does include a standard freshwater fisheries activity and not a complex freshwater fisheries activity. Hence no separate approval is required. We return to these issues later in our decision.¹⁰
- 15 In response to the comments from Minister for Arts, Culture and Heritage, the Applicant undertook to make an application for an archaeological authority under the Heritage New Zealand Taonga Pouhere Act 2014.

Procedure

- 16 The following matters of procedure are relevant for this decision.

Meetings and site visits

- 17 On 22 May 2025, the Panel held a project overview conference at the offices of the Nelson City Council with representatives from the Applicant and Nelson City Council in attendance as recorded in Minute 4.¹¹ The purpose of the conference was to familiarise the Panel with the content of the Application for consents and provide clarification of aspects of the Application. The Panel is most grateful to the attendees for assisting in the understanding of what the Proposal entails.
- 18 The Panel then visited the project site at 7 Ralphine Way. The site visit was conducted in the manner provided for in Minute 1.

⁸ Application, section 4.

⁹ Comments from Director-General of Conservation, 25 June 2025.

¹⁰ See Part J, paragraphs 575-586

¹¹ Minute 4, 26 May 2025.

- 19 Much of the Panel's correspondence, deliberations and decision-making occurred over online meetings and email following review, drafting and commenting on drafts of further information requests, this decision report and the conditions. In addition, the Panel met on [insert] occasions.¹²

Invitations to comment

- 20 The Panel invited comments on the Application by letter dated 26 May 2025.¹³ Responses to this invitation were due on 25 June 2025. Comments were received on time from the following:

- a. Rolland Dallas;
- b. Director-General of Conservation;
- c. Bayview Nelson Limited;
- d. Friends of the Maitai;
- e. Tony Hadden;
- f. Lynley Marshall;
- g. Minister for Arts, Culture and Heritage;
- h. Minister for Māori Development;
- i. Minister for Seniors;
- j. Minister for South Island;
- k. Associate Minister for Transport;
- l. Emma Morris;
- m. Nelson City Council;
- n. Ngāti Koata;
- o. Peter Olorenshaw;
- p. Royal Forest and Bird Protection Society of New Zealand;
- q. Save the Maitai Incorporated (Inc);
- r. Gary Scott and Catherine Harper;

¹² 12 May 2025, 16 May 2025, 23 May 2025, 30 May 2025, 06 June 2025, 13 June 2025, 24 June 2025, 27 June 2025, 4 July 2025, 11 July 2025, 16 July 2025, 18 July 2025, 22 July 2025, 25 July 2025, 3 August 2025. All meetings were held online via MS Teams, with the Panel meeting in person at the Project Overview Conference and during the Site visit on 22 May 2025.

¹³ Minute 4, 26 May 2025.

- s. Chris Taylor; and
- t. Megan Lewis and Timothy Williams.

21 The Panel would like to thank all parties who commented for their contributions. The following is a summary of the matters raised in the comments:

- a. Support for the development;
- b. Iwi engagement and ongoing involvement;
- c. Transport network:
 - i. the unsuitability of the cycleway locating on Ralphine Way due to topography and distance. There was support for the cycleway instead to be located around Dennes Hole;
 - ii. the ability of the single laned Gibbs Bridge to cope with the additional traffic;
 - iii. the road layout and sizing needs to accommodate the development of Bayview;
 - iv. the width of the last 300m of Maitai Valley Road, near the intersection with Nile Street, is too narrow;
 - v. resilience of the road network to slips;
 - vi. does not support alternative transport modes such as cycling or public transport;
 - vii. need for alternative road access to improve resilience and spread the increased traffic generated by the development;
 - viii. effect of additional traffic on road safety and increasing commute times;
- d. Flooding:
 - i. risk of flooding of the intersection of Maitai Valley Road and Ralphine Way which may cut off the community;
 - ii. increases the risk to people and buildings by building in a floodplain;
 - iii. development and earthworks will increase the flooding impact on neighbouring properties;
 - iv. increase in the volume, speed and flow of sediment into the downstream environment;
- e. Amenity effects:
 - i. disruption and noise for surrounding residents;

- ii. support for protecting the valley for recreational uses;
 - iii. dust impacts on adjoining residents;
 - iv. effects on the rural character of the area;
- f. Realigning Kākā Stream through the former sheep dip site:
- i. ensure that the soil contamination is addressed, preferably by its removal, remediation and appropriate disposal;
 - ii. concerns about stream water quality and effects on aquatic ecology;
 - iii. importance of ongoing monitoring of suspended sediment because dieldrin binds to soil and sediment particles;
 - iv. importance of ongoing monitoring of stream water quality;
 - v. leaching and groundwater contamination;
 - vi. need for a complex freshwater fisheries activity consent;
- g. Effects of earthworks including erosion and sediment management;
- h. Uncertainties with encapsulation cell for contamination soil;
- i. Conditions involving certification of management plans and when this occurs;
- j. Whether the benefits of the Application are significant;
- k. Landscape and visual effects;
- l. Effects on ecology, including significant natural areas, birds, lizards, wetlands and construction noise on fauna; and
- m. Alignment with objectives and policies of the NRMP.

Applicant's response to invited persons comments

- 22 On 11 July 2025 the Applicant provided a response to the comments received on the application from those persons who were invited to comment under Section 53 of the FTAA. This included, amongst other matters, an updated set of draft consent conditions identified as version 2 (**v2**).
- 23 The Panel has considered the Applicant's responses and will, as necessary, refer to the detail of those responses in other parts of this report.

Appointment of special advisors

- 24 As outlined in clause 10 of Schedule 3 of the Act, the Panel may appoint special advisors to assist with a substantive application. The Panel appointed Ms Carolyn Wratt

from Wratt Resource Management Planning Limited as a special adviser to provide the Panel with additional support for drafting documents, including the Panel's decision.¹⁴

- 25 The Panel appointed Ms Victoria Heine KC to provide legal services and advice as Counsel assisting the Panel.¹⁵ This appointment was made under clause 10(2) of Schedule 3 of the FTAA.

Appointment of technical advisor

- 26 On 7 July 2025 the Panel appointed technical advisors from Pattle Delamore Partners as a technical adviser to the Panel and assist it with issues arising from certain technical reports submitted by the applicant, namely, contaminated land, water, and ecology issues and the remediation thereof. This appointment was made under clause 10(3) of Schedule 3 of the FTAA.¹⁶

Further information

- 27 The Panel made six requests for further information in accordance with s 67 of the FTAA. The nature of those requests and responses are summarised below.

Nature of the further information requested	Information provided
RFI 1 - 28 May 2025 ¹⁷ information sought from Applicant	
Whether approval for a Standard Freshwater Fisheries Activity is required.	The Applicant confirmed that the Proposal includes a standard freshwater fisheries activity, but does not require approval in and of itself.
How the wetland restoration and enhancement impacts for Wetland 1 can be reliably concluded as positive with a 'net gain' until the findings of the hydrological assessment are fully understood.	The Applicant confirmed that even if there is an unavoidable change in water levels or flow patterns, there is ample scope to implement additional restoration measures (e.g., expanded riparian planting) to strengthen wetland function and still achieve an overall net-gain outcome.
How the construction works will comply with NZS 6803:1999 Acoustics – Construction Noise at the nearest receivers.	Styles Group prepared a noise and vibration assessment that provided this information.

¹⁴ Minute 3, 20 May 2025.

¹⁵ Minute 4, 26 May 2025 and confirmed in Minute 9, 7 July 2025.

¹⁶ Minute 9, 7 July 2025.

¹⁷ Minute 5, 28 May 2025.

Sequencing and timing of improvement works at the intersection of Maitai Valley Road and Nile Street, and Matai Valley Road and Ralphine Way.	Both the intersections of Ralphine Way/Maitai Valley Road, and Nile Street/Maitai Road, will be upgraded and completed before titles are sought for Stage 1 of the subdivision. The timing of these required works will be confirmed and secured in Version 2 (V2) of the subdivision conditions.
Maximum gradients for all internal roads.	A table of gradients was provided which demonstrates that the average gradient (local roads and residential lanes) complies with Table 4-8 of the Nelson Tasman Land Development Manual. The short lengths where grades are steeper than the maximum grade were identified.
Whether additional stormwater treatment wetlands are required.	Confirmed that no new wetland is proposed.
Use of rain tanks.	The requirement for the installation of raintanks on the medium density lots will be imposed by way of consent notice as set out in V2 of subdivision conditions.
The general location of the potential mitigations for the Western Valley slopes.	Further information provided on debris barriers and fences.
Interaction between geotechnical mitigation and impact on stormwater / overland flowpaths.	Confirmed that the stormwater assessment has taken into account the diversion of stormwater by debris bunds.
Geotechnical feasibility of steeper lots.	Explained that specific geotechnical building development recommendations for each lot will be provided at S224 stage.
Discharges to air from the wastewater pump station.	Confirmed that odour from the pump station will comply with permitted Rule AQR.22.1(a) of the Nelson Air Quality Plan.
Approximate dimensions of wastewater pump station.	Layout plan example and photographic examples provided.
Outcomes of discussions with NCC about vesting infrastructure assets.	<p>The applicant and Council discussed the proposed vesting of land and assets in the pre-application process and also in response to preparing this response.</p> <p>Updated in V2 of subdivision conditions and plans dated July 2025.</p>
Front yard setbacks.	Clarified that rule REr.25.1(b) requires that a garage located in a front yard must be setback at least 1m

	from the wall of the associated residential unit. In this case the residential unit is in the front yard but the garage is not and it was clarified that Diagram 2 on Page 22 of Section 14.2 of the Design Proposal Overview was no longer applicable.
Works and structures required for the Kākā Bridge.	Confirmed that the bridge abutments will be located outside of the bed.
Remediation action plan.	Provided further detail on the remediation action plan.
Pipe size for water supply.	Clarified that sub-mains are typically smaller than DN150.
RFI 2 - 3 June 2025 Further information requested from NCC	
More detailed outline of the findings and conclusions on each of the review topics where such a review was completed by NCC staff.	Summary of NCC technical review of substantive application provided
Who holds responsibility for the Maitai River corridor and the management of the erosion risk.	Confirmed that NCC will become responsible for the area in question when it is vested in Council as an Esplanade Reserve.
RFI 3 - 9 June 2025 Further information requested from both NCC and the Applicant	
The current status of the PC29 process and the relationship between any overlapping aspects of PC29 and PC28.	Council confirmed that PC28 and its associated provisions are ringfenced from the effects of PC29.
RFI 4 - 17 July 2025 Further information requested from NCC	
Whether the updated consent conditions are supported by NCC, or if any outstanding issues remain.	The response outlined the nature and extent of the discussions with the Applicant in consulting with NCC. It also made some helpful suggestions regarding the detail of certain conditions and in particular how engagement by the Consent Holder with NCC as regulator might occur should the consents be granted.
RFI 5 - 17 July 2025 Further information requested from the Applicant	

The presence of a 'natural inland wetland' across the lower/southern flood plain of the project site.	It does not meet the definition of a 'natural inland wetland'.
RFI 6 - 25 July 2025 Further information requested from both NCC and the Applicant	
The ability to utilise consent notices to address zoning misalignment.	<p>Council confirmed that it has utilised this approach before and can be worded to avoid any compliance or legal issues.</p> <p>The Applicant confirmed that the use of this approach is not unusual in the regional and will be workable and effective in achieving the intended outcomes. Amended relevant conditions/ consent notices were provided to improve certainty and clarity with this approach.</p>

Conditions

- 28 The Applicant included a set of volunteered conditions with the Application in Attachment 25.
- 29 A number of respondents to the invitation under s 53 of the FTAA commented on the draft conditions provided with the Application. For example, Forest and Bird Protection Society of New Zealand (**Forest and Bird**) provided helpful comments designed to assist the decision-making by the Panel and to support the development of improved consent conditions to address adverse impacts of concern. The comment suggested that the then draft of the conditions lacked specificity or the necessary rigour to manage risks associated with various adverse impacts.
- 30 The Panel considers that the Applicant responded positively to many of the constructive suggestions made by the respondents and sought in v2 of the conditions to meet best practice and provide additional detail in terms of condition design.
- 31 On 11 July 2025, the Applicant provided v2 set of conditions to the Panel. This set had been the subject of a significant amount of consultation and engagement with NCC. However, the Applicant indicated that because of the limited time available for preparation of conditions (in addition to responding to the extensive comments of the respondents) meant that some aspects of the conditions were the subject of only limited discussion with NCC. This aspect of the engagement with NCC was the subject of an RFI to the NCC which resulted in helpful additional information being provided by NCC on aspects of the v2 conditions.
- 32 The Panel has considered all comments received regarding the draft conditions in version 2. As is required under section 70 of the FTAA, the Panel has developed its own set of draft conditions and directed the EPA on [date] to invite comments on the draft conditions from the parties listed in s 70(1)(a) to (c):
- The Applicant;

b. NCC;

c. [insert the respondents who provided comments].

- 33 The Panel has provided additional commentary on, and analysis of, these comments received, as well as the response from the Applicant throughout this decision report particularly in Part K: Conditions below.

Comments from the Minister for Māori Crown Relations: Te Arawhiti and Minister of Māori Development

- 34 Under section 72 of the FTAA the Panel invited comment from the Minister for Māori Crown Relations: Te Arawhiti and Māori Development.

- 35 It is pertinent to recall that the Panel had previously invited comments from the Minister for Māori Development (who also holds the office of the Minister for Māori Crown Relations) under s 53 of the FTAA. The Panel received a reply and we have addressed this in more detail in the context of cultural effects.¹⁸

- 36 Against this background and in response to the invitation to comment under s 72 of the FTAA, the Minister has stated:

- 37 [insert reference to any comments received or note that no comments were received. Note that the Ministers have 10 working days to make comment from the date they were invited].

No Hearing

- 38 The Panel is mindful of the emphasis on time limited decision-making in dealing with applications under the FTAA. The Panel is required in the case of the listed projects to focus on the purpose of the FTAA and apply the procedural principles set out in section 10 FTAA. These require the Panel to take all practicable steps to use timely, efficient, consistent, and cost effective processes that are proportionate to the Panel's functions, duties or powers.

- 39 The Panel has exercised its discretion not to require a hearing on any issue. Under section 56 FTAA, there is no requirement for a panel to hold a hearing. In the course of considering the Application, the Panel received no requests to hold a hearing. The Panel considers it was able adequately to address all issues based on all the information available including the contents of the Application and the various reports and plans accompanying it, the comments received, the responses to comments and the further information provided by the Applicant, NCC and invited persons. The Panel is satisfied that all material issues involved have been comprehensively addressed in the documentation provided, thereby resolving any technical expert differences of opinion or disputed factual issues. Any residual or ancillary issues were sufficiently addressed for the Panel to consider and decide on the facts.

- 40 The Panel considers that, where insufficient design detail was available at the time of preparing the Application and the Panel's consideration of the Application, these matters have been appropriately addressed via updated plans. They will be further

¹⁸ Part F, paragraphs 195 - 207

dealt with by application of the processes spelled out in the conditions for post-consent certification where NCC has the authority to approve matters of detail.

Timing of the Panel decision

- 41 In accordance with the Panel Convenor Minute dated 7 May 2025, the time frame for the Panel to issue its decision documents under ss 79 and 88 was initially 23 September 2025.
- 42 Following receipt of the comments from the 21 respondents provided under s 53 of the FTAA, the Applicant would under s 55 have been required to provide a response to the comments no later than five working days from the date of the receipt of the comments. Given the extensive nature of the comments received, counsel for the Applicant applied for a suspension of processing the Application under s 64 of the FTAA. The Panel considered the application and, in its discretion, decided to grant the suspension.¹⁹ On 11 July 2025 counsel for the Applicant made a written request to resume processing the Application under s 65(1) of the FTAA. The Panel then was required under s 65(2) to resume processing of the Application and that occurred.²⁰ The practical effect of the suspension was that there was a delay of seven working days in the timetable fixed by the panel convenor. As a result of the seven day suspension, the timing of the decision (as set under s 79 of the FTAA) has moved out to 23 September 2025.
- 43 The Applicant was able to file a comprehensive response to the comments received under s 53 of the FTAA (together with v2 of the proffered conditions) on 11 July 2025.

PART B: LEGAL CONTEXT

The substantive application

- 44 The Proposal has been listed in Schedule 2 of the FTAA. It is one of the first substantive applications to be considered by an expert panel established under Sch 3 of the FTAA. If the Proposal had not been lodged by way of a substantive application under s 42, it would have been necessary for the applicant to apply for resource consents under the Resource Management Act 1991 (RMA).
- 45 Section 42 is permissive in the case of a listed project. Where a substantive application is lodged under the FTAA, s 42(4) provides that one or more of the following matters (or approvals) may be sought, namely:
- a. a resource consent that would otherwise be applied for under the RMA.²¹

¹⁹ The processing of the Application was suspended at 11.59pm on 2 July 2025.

²⁰ 11.59pm on 11 July 2025.

²¹ Section 42(4)(a) refers in parenthesis to the following "but see subsection (5)". "This in turn provides that a substantive application seeking an approval described in s 42(4)(a) – (a) may seek that approval for an activity that is a prohibited activity under the [RMA]".

- 46 As noted above, four types of approvals that would otherwise be applied for under the RMA have been sought:²²
- a. land-use consents (sections 9 and 13 of the RMA);
 - b. subdivision consent (section 11 of the RMA);
 - c. water permit (other than coastal marine area) (section 14 of the RMA); and
 - d. discharge consent (other than coastal marine area) (section 15 of the RMA).
- 47 None of the approvals sought are for a prohibited activity under the RMA. The Applicant has confirmed that the Proposal also includes a standard freshwater fisheries activity as defined in section 4 of the FTAA, in respect of which conditions in relation to some of the above consents may be appropriate.

The statutory scheme

- 48 The starting point for analysis is the purpose of the FTAA. It is set out in s 3 as follows:

Purpose

The purpose of this Act is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

This provision is written in plain, everyday language. None of the terms used are defined in the interpretation section.²³ Ms Limmer KC, for the applicant, aptly described this purpose provision as “uncomplicated and succinct”.

- 49 It is axiomatic that the purpose of the FTAA guides the interpretation and application of its provisions. As s 10(1) of the Legislation Act 2019 states: “The meaning of legislation must be ascertained from its text and in the light of its purpose and its context”. The importance of the statutory purpose is underscored in s 43(1)(b)(i) which provides that the substantive application must, inter alia, “explain how the project to which the application relates is consistent with the purpose of this Act”.²⁴
- 50 Counsel for the Applicant posited that the FTAA reflects the intent of Government to address challenges such as infrastructure deficits, housing shortages and energy needs by accelerating project approvals.²⁵ The Panel observes that the purpose of the FTAA

²² Substantive Application Form at, p 12.

²³ The only exception is the word “project” which relevantly provides that, in relation to a listed project, it means the project as described in Schedule 2.

²⁴ Another area where the legislation relates back to the purpose provision is in the criteria for accepting a referral application for the use of the fast-track approvals process: see s 22(1)(a).

²⁵ Citing the Beehive Media Release by Ministers Hon Chris Bishop and Hon Shane Jones dated 17 December 2024, when the Bill passed its third reading.

and its relevant context is conveniently summarized in the Legislative Statement outlining the Parliamentary intention for decision making by expert panels as follows:²⁶

The purpose and provisions of the Bill will take primacy over other legislation in decision making. This means that approvals can be granted despite other legislation not allowing them, such as, projects that are prohibited activities or those which are inconsistent with RMA National Direction. This approach is intended to ensure key infrastructure and other development projects with significant benefits for communities are not declined where the benefit of approving the project outweighs any issue identified.

- 51 Further reference will be made (in paragraphs 82 to 103) later to the statutory provisions dealing with the primacy of the purpose of the FTAA. The topic of regional and national benefits will also be discussed, as well as the way the Panel approaches the adjectival elements of the significance of such benefits.
- 52 Reference will also be made to the procedural steps taken by the Panel in the course of its consideration of the substantive application. For the purpose of describing the statutory scheme, a key step is the process of inviting comments on the substantive application.²⁷ Comments were invited from the persons and entities listed in s 53(2). Comments from some 21 parties were received, within the statutory timeframe of 10 working days. The applicant provided a response to the comments under s 55.²⁸
- 53 As revealed by the outline of procedural steps followed in considering the Application, the Panel used its statutory power under s 67 to request further information from various parties including the applicant and the NCC. These requests provided useful and relevant information for the Panel's deliberations. Additionally, the Panel appointed Ms Victoria Heine KC as counsel assisting. It also appointed Pattle Delamore Partners (PDP) as technical advisers under cl 10(3) of Schedule 3.
- 54 With respect to decision-making on the approvals or consents sought in the substantive application, the key provisions of the FTAA are ss 81 to 85. Under s 81(1) the Panel has the following statutory power:

- (1) A panel must, for each approval sought in a substantive application, decide whether to-
 - (a) grant the approval and set any conditions to be imposed on the approval; or
 - (b) decline the approval.

By way of elaboration, reference will be made later to the binary nature of this power.

²⁶ Legislative Statement, para 17.

²⁷ Under s 53 of the FTAA.

²⁸ The statutory timeframe under s 55 is 5 working days. During the course of this period, counsel for the applicant sought to have the processing of the substantive application suspended under s 64. The Panel granted this application in the exercise of its statutory discretion: s 64(3). The applicant requested a resumption of the processing of the substantive application under s 65. As a result the Panel resumed processing the application under s 65(2). The result was that the timeline for decision-making was extended by 7 working days.

- 55 Section 81(2) has the following requirements with respect to decision-making by the Panel:
- (2) For the purpose of making the decision, the panel-
 - (a) must consider the substantive application and any advice, report, comment, or other information received by the panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90:
 - (b) must apply the application clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision):
 - (c) must comply with section 82, if applicable:
 - (d) must comply with section 83 in setting conditions:
 - (e) may impose conditions under section 84:
 - (f) may decline the approval only in accordance with section 85.
- 56 When making its decision, the Panel is tasked by the FTAA with undertaking a broad evaluative exercise of weighing a range of matters identified in s 81 and s 85 of the FTAA. The starting point is that the Panel must consider the substantive application. The Panel must also consider any advice, report, comment, or other information it receives under various sections of the FTAA listed in s 81(2)(a). These provisions are designed to facilitate the gathering or obtaining of information relevant to the decision-making function. Where information has been sought, the Panel is not required to consider any advice, report, comment, or other information if it has been received after the applicable timeframe. Under s 81(6) the Panel may however, in its discretion, consider such information, so long as the Panel has not made its decision under s 81.
- 57 Under s 81(2)(b) the Panel must apply the applicable clauses set out in subsection (3). In this case the specified clauses are, because the substantive application is for an approval described in s 42(4)(a) (resource consent), the provisions in clauses 17 to 22 of Schedule 5. Section 81(2)(b) also provides in parenthesis a statutory reminder in the following terms: "see those clauses in relation to the weight to be given to the purpose of this Act when making the decision". The relevant clause, in relation to resource consents, is cl 17 to which reference will be made below.
- 58 Section 81(2) also requires the Panel to comply with s 82 if it is applicable and s 83 in setting conditions. Of these two sections the only one applicable to the Application is s 83. It relates, for present purposes, to the Panel's discretion ("may impose" are the words used in s 81(2)(e)) to set conditions under s 81(1)(a) or s 84. Section 83 provides that any conditions set by the Panel must be no more onerous than necessary.
- 59 Section 81(2)(f) provides that a Panel "may decline the approval only in accordance with section 85". For decision making under the FTAA, as reflected in s 85, there are limited circumstances in which an approval must, or may, be declined. The

circumstances under which an approval must be declined are stipulated in ss 85(1) and (2). Neither of these subsections is applicable in this case because:

- a. the EPA has confirmed that the approvals sought are not for ineligible activities; and
- b. the Panel will ensure that the terms of s 7 of the FTAA are not breached;²⁹ and
- c. this is not an application for a coastal permit for aquaculture activities.³⁰

60 The statutory provisions in s 85(3) to (5) provide that an approval may be declined if adverse impacts are out of proportion to regional or national benefits. Thus under s 85(3) the Panel may decline an approval if, in complying with s 81(2) – the section governing decisions on approvals – it forms the view that:

- (a) there are 1 or more adverse impacts in relation to the approval sought; and
- (b) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account-
 - (i) any conditions that the panel may set in relation to those adverse impacts; and
 - (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

61 The reference to s 81(4) in s 85(3) of the FTAA is important. There is an explicit requirement on decision makers that "when taking the purpose of this 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" [emphasis added] This evaluative exercise is thus an essential step in the overall decision-making process. Hence when the Act refers in s 85(3)(b) to the project's regional or national benefits, in the context of a weighing process against any adverse impacts, it is the extent of such regional or national benefits that must be assessed. The factual assessment of the extent of such benefits is addressed in Part L.

62 The term "adverse impact" in s85(3)(b) is defined in broad terms in s 85(5) as "any matter considered by the panel in complying with s 81(2) that weighs against granting the approval". The topic of adverse impacts is discussed further below.

63 Because the substantive application seeks approval for resource consents under the RMA, s 81(3)(a) identifies the applicable clauses for the Panel's decision-making as

²⁹ The topic of Treaty settlements and recognized customary rights was addressed in the report by the Minister for Infrastructure dated 10 April 2025 at [7]. Moreover none of the persons invited to comment under s 53(2) has raised any issue under s 7.

³⁰ To which cl 17(5) of Sch 5 applies.

clauses 17 to 22 of Sch 5. There is no dispute that clauses 19 to 22 do not apply. The relevant clauses are 17 and 18.

64 For present purposes, clause 17 relevantly provides:

17 Criteria and other matters for assessment of consent application

- (1) For the purposes of section 81, when considering a consent application, including conditions in accordance with clauses 18 and 19, the panel must take into account, giving the greatest weight to paragraph (a), -
 - (a) the purpose of this Act; and
 - (b) the provisions of Parts 2, 3, 6 and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and
 - (c) the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.
- (2) For the purpose of applying any provisions in subclause (1), -
 - (a) a reference in the Resource Management Act 1991 to Part 2 of the Act must be read as a reference to sections 5, 6, and 7 of that Act; and
- (3) Subclause (4) applies to any provision of the Resource Management Act 1991 (including, for example, section 87A(6) or any other Act referred to in subclause (1)(c) that would require a decision maker to decline an application for a resource consent.
- (4) For the purposes of subclause (1), the panel must take into account that the provision referred to in subclause (3) would normally require an application to be declined, but must not treat the provision as requiring the panel to decline the application the panel is considering.
- ...
- (6) For the purposes of subclause (1), the provisions referred to in that subclause must be read with all necessary modifications, including that a reference to a consent authority must be read as a reference to a panel.

65 With particular reference to the statutory injunction in clause 17(1) to give “the greatest weight to paragraph (a)” [the purpose of this Act], Ms Limmer submits that the purpose of the FTAA differs markedly from that of both the RMA and the most recent, historic “version” of Fast Track consenting.³¹ She contends this crucial difference permeates the decision making framework of the FTAA and results in a legislative regime that may support the grant of a resource consent, even when the traditional RMA process would not.

66 The Panel accepts that, in the context of an application for approval of a resource consent, the legislation prioritizes the purpose(s) in s 3 of facilitating significant

³¹ Contained in RMA, s 5 and COVID-19 Recovery (Fast Track Consenting) Act 2020, s 4.

regional or national benefits over other considerations.³² It is also the case that the Panel must consider environmental impacts and may decline applications where adverse impacts (not limited to “effects”) are disproportionate to the proven benefits.

- 67 The Panel received submissions³³ on section 34(1) of the Housing Accords and Special Housing Areas Act 2013 (**HASHAA**) and was referred to *Enterprise Miramar Peninsula Inc v Wellington City Council*.³⁴
- 68 The Panel did not find reference to section 34(1) HASHAA to be of much assistance. The HASHAA arises in a different statutory context and employs different language.
- 69 That said, the Panel agrees that a statutory requirement such as that in clause 17(1) Schedule 5 to give greatest weight to the purpose of an Act, does not mean that it will always outweigh other considerations.³⁵ The Panel does not understand the Applicant to be contending otherwise.³⁶

Applicable provisions of the RMA

- 70 Also under clause 17(1), the Panel must take into account:
- (a) the provisions of Part 2, 3, 6 and 10 of the RMA that direct decision making on an application for a resource consent; and
 - (b) the relevant provisions of any other legislation that directs decision making under the RMA.
- 71 Notably, clauses 17(3) and (4) provide that, where any provision of the RMA requires a decision maker to decline any application for a resource consent, the Panel must take such a provision into account, but “must not treat the provision as requiring the panel to decline the application ...”.
- 72 When clause 17(1)(b) refers to provisions in various Parts of the RMA that direct decision making, it does not specify or particularize what provisions apply. It is therefore left to the Panel to determine which such provisions ought to be taken into account.
- 73 The Applicant has submitted that, for decision making in respect of the Proposal, the most important sections of the RMA are ss 5, 6 and 7, as well as s 104. Counsel for the Applicant also noted several other provisions in Parts 3, 6 and 8 to 10 of the RMA that contain procedural requirements and direction. The Panel is minded to view these provisions as having less relevance for present purposes because they do not “direct decision making” as clause 17(1)(b) requires.

³² FTAA, cl 17(1) of Schedule 5.

³³ Save the Maitai Inc paragraphs [14] to [20]

³⁴ [2018] NZCA 541.

³⁵ Save the Maitai Inc paragraph [18].

³⁶ Applicant Table of Comments and Responses at [18].

- 74 The provisions of ss 5, 6 and 7, and s 104 are relevant because they do operate to direct decision making in the RMA context. They are also the subject of specific reference in clause 17(1) such that the Panel must take them into account.³⁷
- 75 In summary, the statutory direction for a panel to take into account key provisions of the RMA³⁸ brings into focus the question of whether the Application promotes sustainable management (s 5 of the RMA). It also requires consideration of how the Proposal recognises and provides for the matters of national importance in s 6(a) to (h) of the RMA. Decision makers must also take into account the matters referred to in s 7(a) to (j) of the RMA. Two such matters are kaitiakitanga and stewardship which are discussed next in the context of cultural values.
- 76 The matters discussed in the previous paragraph are all matters which the Panel will weigh up when it makes its decision under s 81 of the FTAA and carries out the proportionality exercise under s 85(3).

Cultural values

- 77 In supporting the Application, Ngāti Koata has directly raised the matter of kaitiakitanga.³⁹ For Ngāti Koata, kaitiakitanga is an exercise and enduring responsibility as guardians of te taiao and is a lived expression of the intrinsic connection between people and whenua. Kaitiakitanga is also an intergenerational commitment and exercise to protect and nurture the land, waters, and all taonga for the wellbeing of present and future generations.
- 78 The Panel acknowledges that kaitiakitanga is central to Ngāti Koata identity and is well captured in the following whakatauki:

Whatungarongaro te tangata, toitu te whenua

People pass on, but the land remains

- 79 In relation to cultural matters the Environment Court said in its interim decision:⁴⁰

[91] Part 2, s 7(a) RMA, directs that particular regard be given to kaitiakitanga. 'Kaitiakitanga' is defined for those purposes as:

kaitiakitanga means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship.

[92] As we have noted, PPC28 is in part designed to enable the exercise of kaitiakitanga, including by reflecting Whakatu Tangata Whenua values and ensuring Whakatu Tangata Whenua involvement through subdivision and development processes.

[93] We received only limited evidence on these matters, namely from Mr Hemi Toia, Kaiwhakahaere matua (Chief Executive) of Ngati Koata's commercial and economic arm,

³⁷ See also clause 17(2)(a).

³⁸ In addition to the purpose of the FTAA (clause 17(1)(a) and the provisions of any other legislation that directs decision making under the RMA (clause 17(1)(c)).

³⁹ Cultural Impact Assessment for Maitahi Village (CIA), January 2025, Ngati Koata Trust at 9.

⁴⁰ See interim decision fn X.

Koata Ltd. We did not receive evidence on behalf of any of the other iwi who are manawhenua. We understand those who affiliate to Whakatu Marae, in addition to Ngati Koata, are Ngati Tama, Te Atiawa, Ngati Kuia, Ngati Rarua and Ngati Toa Rangatira.

- [94] Mr Toia informed us that one kaitiakitanga purpose of Ngati Koata's involvement in the applicant's consortium is to help secure access to land to enable provision of secure long-term housing for Ngati Koata whanau within their rohe. That is in a context in which the Crown, in its Te Tiriti o Waitangi Deed of Settlement, included in its apology "to Ngati Koata for its failure to ensure Ngai Koata retained sufficient land for their future needs".
- [95] Related to that, as we have noted, Kaka Hill, a maunga of great significance to local iwi and a prominent landscape feature overlooking the Kaka Valley part of the Site, is to be gifted to Ngati Koata. We were not informed whether affiliation to this maunga extends to any of the other iwi. Furthermore, we were not informed of the affiliations held with respect to the Maitai and Kaka catchment, although we observe that the website for Whakatu marae includes the specification:

Ko Mahitahi te Awa.

- [96] As such, we make no findings on those matters other than that we accept Mr Toia's relevant explanations. On matters concerning environmental kaitiakitanga in the development, he informed us that Ngati Koata is working alongside other iwi (who will continue to take different roles) in order to meet the expectations of "all tangata whenua in Nelson/Whakatu". On matters concerning erosion and sedimentation management, he expressed confidence that these are "designed to reduce inputs into the Maitai awa" by "identifying the constraints in the form of land that is steep or close to waterways and allocating it for re-vegetation as an obligation of development. That confidence is backed by our related evidential findings.

80 Following the final decision of the Environment Court the topic of kaitiakitanga was included in the policy objectives of PPC28 and finds direct expression in Policy RE 6.2 of Schedule X discussed below. The importance of kaitiakitanga to the land, the subject of the Proposal is reinforced by the Environment Court, again in the interim decision, as follows:

- [124] In regard to the matter kaitiakitanga, policy RE6.2 expresses certain priorities whose importance was emphasized in Mr Toia's evidence. Those are, in summary, to:
- (a) ensure subdivision, use and development on the site recognizes and provides "for cultural values and matauranga Maori";
 - (b) recognize the customary interests, values, rights and responsibilities exercised by Whakatu Tangata Whenua in a manner consistent with the sustainable management of natural and physical resources; and
 - (c) ensure that subdivision and development reflects Whakatu Tangata Whenua values, and enables the exercise of kaitiakitanga.
- [125] The related method statements emphasise associated process dimensions of enabling kaitiakitanga according to the applicable tikanga, namely:

- (a) iwi involvement according to the principle of Mana Whakataere (i.e. governance, authority and mandate); and
- (b) consultation with iwi on issues relating to the relationship of Maori with their ancestral lands, water, sites, wahi tapu and other taonga.

[126] Given their important directive purposes, we find that the noted policies need to be refined so as to clearly express and reflect each of those outcome and process dimensions.

[127] In addition, given that the protection of the mauri of the noted water bodies is plainly central to the purposes of kaitiakitanga, we find it important that the noted policies plainly express bottom line protective intentions for the water bodies, according to Te Mana o Te Wai. Our present view is that this should be made explicit in each policy, rather than being simply by cross-referencing.

81 The Panel's findings on cultural values, including kaitiakitanga, are set out below.

Matters Relevant to Assessment of Proposal

Regional or National Benefits

- 82 The statutory scheme described above requires the Panel inter alia to take into account the matters in clause 17(1)(a) to (c) of Schedule 5. In this assessment, the greatest weight must be given to the purpose of the FTAA. The Panel must therefore identify, and has recorded, the Project's regional or national benefits and the significance or otherwise of them. This is essentially a forensic exercise which is undertaken below.
- 83 The Applicant's submissions suggest that the Panel can rely on the fact that the Project is listed in Schedule 2 for any finding that it has significant regional or national benefits. The Panel does not accept this submission. It is true that the Ministry for the Environment report to the Fast-Track Projects Advisory Group that the Project would provide significant regional developments.⁴¹ It is also the case that the Advisory Group placed the Project in Priority Group one – the highest tier within the housing and land development sector.⁴²
- 84 However, these findings were made by bodies other than the Panel which has statutory responsibility for making decisions on approvals sought in a substantive application under s 81. By virtue of s 81(4) it falls to the Panel, when taking the purpose of the FTAA into account, to consider the extent of the regional or national benefits. This is something the Panel itself must do in the context of its analysis of, and findings on, regional or national benefits.
- 85 The notion that a panel could rely on findings of another body is also inconsistent with the statutory requirement for the Panel to undertake a proportionality test under s 85(3). As noted above, an approval may be declined if any adverse impacts are

⁴¹ Ministry For the Environment Assessment Form – Stage 1: Application for Listed Project under Fast-Track Approvals Bill – Maitahi Village Project for Schedule 2A, 5 July 2024, Table A, at pp 4-5.

⁴² Fast-Track Projects Advisory Group: Report to Ministers, 2 August 2024, at p 11.

"sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under s 81(4) ...".

- 86 The Panel has considered the comments provided by Save the Maitai Inc (**STM**) suggesting that the statement of purpose in s 3 has the effect of imposing a "significance" gloss on the identified regional or national benefits. If these benefits are not significant, then approval cannot be granted. The Panel does not consider that the purpose statement has that effect. Plainly, the scale or extent of the identified benefits is relevant to the Panel's consideration of the approval, but not in the way of a bar on approval being granted. If the Legislature had intended that to be the case, it would have been much more explicit in the operative provisions of the legislation. STM's argument also appears inconsistent with s 81(4) which refers to extent not significance.

Adverse impacts

- 87 A further matter for the Panel is to identify any adverse impacts of the Proposal and determine whether they are "sufficiently significant to be out of proportion to the project's regional or national benefits" – s 85(3)(b). Again, this is a forensic exercise.
- 88 The term "adverse impacts" is defined in very broad terms as essentially any matter properly before the Panel which weighs against the granting of the approval. This is by way of contrast with the term "adverse effects" used in the RMA context.
- 89 The Panel assumes that the decision by Parliament to adopt the phrase "impacts" rather than "effects" was presumably deliberate, although it is by no means clear whether the two phrases are significantly different in the context of this Application. The Panel will therefore make a forensic assessment of any applicable adverse impacts of the Application on the available facts.

Binary decision making

- 90 Instead of simply conferring a discretion to determine the application as it considers appropriate, as is common in other contexts, the FTAA expressly states that the Panel must either:
- a. grant the approval with any necessary conditions; or
 - b. decline the approval.
- 91 The circumstances in which the approval may be declined are expressly limited. In particular:
- a. there are specified circumstances in which the Panel must decline (s 85(1) and (2)) FTAA. Those are not applicable here; and
 - b. the Act also confers on the Panel a discretion to decline but this is circumscribed. As already discussed, the Panel *may* decline only if it forms the view that the adverse impacts are sufficiently significant [so as] to be out of proportion to the Project's regional or national benefits that the Panel has considered under s 81(4), even taking into account conditions or modifications.
- 92 Two points arise. First, even if the factors in s 85(3) are met, the Panel can still grant the approval. In other words, even if the adverse impacts are significantly out of

proportion to the anticipated benefits, it appears that the Panel still has a discretion to allow the approval(s) to proceed. That discretion will necessarily be informed by the purposes of the Act.

- 93 Secondly, and following on from that first point, the mere fact that a project generates or may generate adverse impacts, does not mean it is not allowed to proceed. In other words, a degree of adverse impact is “hard baked” into the legislative regime. This is also reflected in s 85(4).

Conditions

- 94 As is clear from s 85(3)(b), the Panel is required to consider whether any conditions attaching to a particular resource consent are appropriate. The scope of the term “condition” is broad. Types of conditions may include any conditions that the Panel may set in relation to adverse conditions (s 85(3)(b)(i)), or conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset or compensate for any adverse effects (s 85(3)(b)(ii)).
- 95 Once appropriate conditions have been identified by the Panel, it must ensure that the requirements of s 83 of the FTAA are met. As has been noted, clause 17 of Schedule 5 relevantly imports Part 6 of the RMA which relates to conditions. Relevant sections include:
- a. Section 108 of the RMA which lists the types of conditions which may be imposed. This provision is very broad; and
 - b. Section 108AA of the RMA to the effect that any condition must be directly connected to an adverse effect. By analogy, any condition accepted by the Panel must be directly connected to any adverse impact under the FTAA.
- 96 The FTAA also has a specific provision about conditions in s 83. The section provides that, when exercising a discretion to set a condition, the Panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of the FTAA.
- 97 In this case the Panel will follow the statutory process mandated by s 70 of the FTAA.
- 98 The Panel records that, in considering the conditions, it has sought to:
- a. identify a link between the adverse impacts and the conditions which it proposes to impose; and
 - b. satisfy itself that the conditions are permitted by s 108 RMA; and
 - c. satisfy itself under s 83 that the condition is no more onerous than necessary to address the reason it is set.
- 99 Once the conditions have been determined, the Panel is required to undertake the proportionality test by taking into account the matters identified in s 85. The Panel has not treated this matter as being formulaic or mathematical, as counsel for the Applicant has suggested. Rather, because the impacts are not always such as to allow

precise quantification (particularly when taking into account conditions), the process has been treated as inherently evaluative.

The Decision on Approvals

- 100 As already described, s 81 governs the Panel's decision-making task. Clause 17 of Schedule 5 has the effect of importing several parts of the RMA, many provisions of which are irrelevant to this Proposal. Section 104 of the RMA is however directly relevant. It requires a consenting authority, inter alia, when considering an application for a resource consent to have regard to:
- a. any actual and potential effects on the environment of allowing the activity; and
 - b. any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment. The Panel will take such matters into account in its assessment of the Application.
- 101 In considering these matters the Panel records that it will confirm that each consent granted is granted under the RMA in a formal sense. It will also, when considering the matters listed in s 104, note the statutory requirement to "have regard to these matters" (and has recorded that it will do so). Moreover, when the Panel undertakes its analysis of what is a holistic evaluation, it will:
- a. give greater weight to the purpose of the FTAA; and
 - b. in applying that purpose will consider the extent of regional or national benefits.
- 102 The Panel will treat the requirement to "have regard to" as requiring it to be satisfied of any particular matters arising for consideration on the facts of the case.
- 103 Finally, it is not entirely clear how section 5 of the RMA purpose of sustainable management sits alongside the FTAA purpose statement which is intended to be enabling. Out of an abundance of caution the Panel will focus on both and will outline how the balancing has occurred. Given the legislative requirement to give the greatest weight to the purpose of the FTAA, the Panel notes that in the event of any tension between the two, the FTAA must prevail.

Decision Documents

- 104 The Panel is required to prepare a decision document under s 87 of the FTAA. Under s 87(2) the decision document must, inter alia:
- (i) state the panel's decision; and
 - (ii) state the panel's reasons for the decision; and
 - (iii) include a statement of the principal issues that were in contention; and
 - (iv) include the main findings of the panel on those.

These requirements are addressed in various parts of this report, from **Part E through to Part O**.

PART C: PLANNING CONTEXT

- 105 Although the application for resource consents for the Proposal is made under the FTAA, it is necessary to set the application in its proper planning and related regulatory context. The provisions in the NRMP which primarily manage the development of the Site were inserted via PPC28, recommended for approval by an Independent Hearing Panel, adopted by Council in September 2022, and then approved by the Environment Court in November 2024. This Site is managed by the objectives and outcomes contained within Schedule X of the NRMP, in accordance with the Maitahi Bayview Structure Plan.
- 106 The Application itself follows close on the heels of the PPC28 process, formally initiated by parties in 2021⁴³ which included the Applicant, CCKV Maitai Dev Co LP. In essence PPC28 was advanced in significant part to facilitate the Application. It is apparent from the content of the Application that it has been designed to conform to the environmental expectations of PPC28.
- 107 The NCC website describes PPC28 as involving the rezoning of 287 hectares of land located within the Kākā Valley, along Botanical Hill and Malvern Hill from Rural and Rural-Higher Density Small Holdings Area to a combination of:
- Residential (Higher, Standard and Lower Density Areas);
 - Rural;
 - Open Space Recreation; and
 - Suburban Commercial.
- 108 PPC28 is additionally described as introducing a structure plan and associated objectives, policies, rules, and other methods (such as the landscape and vegetation overlays) into the NRMP to regulate and guide subdivision, use and development of the site. Consequential changes to existing provisions were also incorporated to ensure the effective administration of the NRMP.
- 109 At a regional level, the applicable planning instrument is the Nelson Regional Policy Statement (**RPS**), made operative in 1997. Broadly speaking PPC28 was designed to give effect to elements of the NRPS such as where to accommodate urban growth. The result was that the NRMP (a combined district and regional plan) was amended to apply the higher order provisions of the NRPS at a district wide level. Another outcome applicable to the Application was that the land that is the subject of consent applications for subdivision and development is now zoned for urban development.
- 110 A key focus for the Panel in planning terms has been on relevant provisions of the NRMP which were considered by the Environment Court in its decision on PPC28⁴⁴. All changes to the NRMP mandated by the outcome of PPC28 are now operative and are

⁴³ PPC28 was lodged with the Nelson City Council on 16 April 2021. Hearings were held in July 2022 and a Council decision issued in September 2022. An appeal to the Environment Court followed with a hearing held in February 2024. An interim decision was issued in July 2024 and a final decision issued in November 2024.

⁴⁴ *Save the Maitai Inc v Nelson City Council* [2024] NZEnvC 155 (interim decision); *Save the Maitai Inc v Nelson City Council* [2024] NZEnvC 281 (final decision) and *Save the Maitai Inc v Nelson City Council* [2024] NZEnvC 290

incorporated into the NRMP. For the Application, a critical provision is Schedule X which sits within Volume 2, Chapter 7, Residential Zones of the NRMP, and gives effect various national policy directives such as the National Policy Statement on Urban Development 2020 (**NPS-UD**), the National Policy Statement for Freshwater Management 2020 (**NPS-FM**) and the National Environmental Standards for Freshwater 2020 (**NES-F**).

- 111 It is convenient to refer to several aspects of Schedule X which includes as its overarching objective the following:

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 including:

- a new mixed density residential neighborhood amongst areas dedicated to public open space and revegetated rural land; and
- a sense of place that is responsive to, and respectful of, natural character, landscape and Whakatū Tangata Whenua values; and
- development that is fully serviced with three waters infrastructure, and coordinated with transport infrastructure upgrades;
- improved freshwater quality, freshwater and terrestrial ecosystem health and biodiversity; and
- an environment where the adverse effects of accelerated soil erosion are avoided, remedied, or mitigated.

- 112 Dealing with the question of subdivision and development, Policy RE6.1 of Schedule X has direct relevance to the Application:

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;
- h. The urban environment is safe from flooding risks and is resilient from the effects of climate change; and
- i. The adverse effects of accelerated soil erosion are avoided, remedied, or mitigated.

- 113 Cultural values and mātauranga Māori are reflected in Policy RE6.2 under the heading Whakatū Tangata Whenua Values as follows:

Ensure subdivision, use and development of the Maitahi/Mahitahi Bayview area recognizes 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.

- 114 There is also a policy designed to ensure that any subdivision and development within Schedule X adopts a comprehensive and integrated management approach: Policy RE6.3. This policy addresses the integration of a wide spectrum of components including water quality, ecology and cultural values. As the explanatory notes to this policy observed:

Subdivision and development within the Maitahi Bayview area needs to be undertaken in an integrated manner, with priority given to water quality outcomes in the Maitahi/Mahitahi River and Kaka Stream, and associated cultural, recreational and ecosystem values. 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.

- 115 Policy RE6.3 is a good example of how Schedule X has incorporated important elements such as Te Mana o te Wai. This is about restoring and preserving the balance between water, the wider environment and the community which is a fundamental concept at the heart of the higher order policy instrument, namely, the NPS-FM. Another such policy instrument which finds expression within Schedule X is the National Policy Statement on Urban Development (**NPS-UD**) which came into force on 20 August 2020.⁴⁵

- 116 The topic of indigenous biodiversity (Policy RE6.4) is provided for in Schedule X as follows:

Ensure that indigenous terrestrial and freshwater biodiversity is restored, protected and enhanced as an integral part of subdivision and development, including by:

⁴⁵ The relevance of the NPS-UD to the new growth opportunity in Maitahi/Mahitahi Bayview Area encompassed by Schedule X was considered during the PPC28 process as illustrated by the recommendations of the Independent Hearings Panel at paras 264 to 187.

- 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 neighboring Schedule X;
- d. Protecting and enhancing threatened species habitats within Kākā Stream;
- e. Providing significant areas of "Residential Green Overlay" and "Revegetation Overlay" requiring indigenous plantings; and
- f. Prioritising the mauri, health and wellbeing of local waterbodies.

- 117 Preference is also made to the provisions of Schedule X which deal with earthworks, erosion and sediment control: Policy RE6.5. Also applicable to the Application is Policy RE6.6 concerning specific heritage elements such as the shearing shed and chimney near the farm house currently on site. Ultimately PPC28 included consideration of relevant iwi management plans. It is apparent that all eight iwi in the area were directly involved in the process leading up to PPC28.⁴⁶
- 118 It follows from the above that PPC28 resulted in a change of zoning for the land the subject of the Application to being suitable for urban development. It also achieved, through Schedule X, a comprehensive set of policies designed to ensure any development of the site contributed positively to the social, economic, cultural and environmental well-being of the Nelson Whakatū community. The policies in Schedule X seek to implement the objectives of various national environmental standards and national policy statements. Central to the latter was the NPS-UD which aspires to achieve a well-functioning urban environment.
- 119 The Panel has also noted the references in Schedule X to various rules and requirements at X1 to X16. These provisions set out the status of various activities and provide the relevant means of control or the scope of any discretion applicable to each topic.
- 120 As already noted, the changes to the NRMP, including Schedule X, received extensive consideration in the Environment Court. The Panel agrees with the submission of Ms Limmer KC for the Applicant that PPC28 established through its bespoke Objectives, Policies, Structure Plan and Special Information Requirements, a planning framework that (a) carefully identified areas appropriate for urban development and (b) articulated clear performance expectations and outcome-based thresholds for determining when effects are acceptable.
- 121 The above planning provisions from the NRMP provide some important regulatory context to the issues which fall to be considered by the Panel arising from the Application. In this regard the Panel notes that it is required, when considering an application for a resource consent, to take into account, inter alia, the provisions of

⁴⁶ Te Tau Ihau Iwi Engagement and Consultation: PPC28 Maitahi Village 2020-2025 filed with the Proposal as Attachment 2.

Parts 2, 3, 6 and 8 to 10 of the RMA that direct decision making in respect of resource consents.⁴⁷

Contextual Material Arising from Comments

- 122 As noted, some 21 comments were filed in response to the Panel's invitation to comment on the substantive application under s53 of the FTAA. A number of these made statements suggesting that the Panel's assessment of the Application was an opportunity to reopen the issues considered during the PPC28 process. This is not the case: the essential task for the Panel is to make a decision on the approvals sought in the substantive application, as described in the Legal Context section above.
- 123 The necessary contextual response is that the zoning of the Site is now operative as set out in the NRMP Planning Maps and Schedule X including the Structure Plan. The choice between status quo or change, was made during the PPC28 process. The PPC28 process was open to the public. People had their say and were heard. The decision was to change the zoning. This decision was made having full regard to all submissions in opposition. A comprehensive hearing process was undertaken by the Independent Hearings Panel, followed by an appeal hearing in the Environment Court.
- 124 For clarity in terms of zoning, prior to PPC28 of the 287 hectares, the total area zoned for Rural- Lower Density Small Holdings subdivision was 44 hectares while the balance (243 hectares) was within the Rural Zone. PPC28, as approved by the Environment Court, and now being the subject of Schedule X, includes:
- 131 hectares of Rural land;
 - 38 hectares of Open Space and Recreation land;
 - 16.2 hectares of Residential – Higher Density land;
 - 21.3 hectares of Residential – Standard Density land;
 - 38.77 hectares of Residential Lower Density land;
 - 32 hectares of Residential Lower Density (Backdrop Area) land
 - 1500m² of Suburban Commercial land
- Of the 107 hectares zoned residential, 21 hectares within that Zone is located within the Revegetation Overlay.
- 125 STM also commented that it was that it 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 said to be no mention in the PPC28 process of the proposal for a retirement village to take up a large part of the site. The Panel has reviewed relevant material considered during the PPC28 process which contains various references to the presence of a HAIL site (sheep dip). In particular the matter was the subject of a report under s42A of the RMA and was also acknowledged in a joint witness statement from the planning experts.

⁴⁷ CI 17(1), Sch 5 of the Act

126 With respect to the comments about lack of knowledge about a retirement village, the Panel notes that PPC28 includes the provision for land zoned for Residential - Higher Density Area purposes, as well as Rule X.2 (Schedule X) that provides specifically for comprehensive housing development. The Panel considers that the construction of a retirement village within the area zoned Residential - Higher Density is consistent with the activities permitted by such zoning. Moreover, the specific use of the land for a retirement village certainly falls within the uses envisaged by the term comprehensive housing development.

127 STM has also made comments about erosion and contamination as follows:

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...

The PPC28 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

128 The Applicant, in its response, acknowledged that the Site posed some challenges in terms of clay soils, steep slopes, as well as discharging water into a sensitive receiving environment. The wider context is important.

129 Policy RE6.i of Schedule X - The Plan Change and the Nelson Tasman Future Development Strategy 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. Moreover, in its decision on erosion and sediment control considerations regarding PPC28, the Environment Court found (at [3]):

- The PPC 28 site is relatively low risk from an erosion and settlement control perspective; and
- There remains erosion and sediment risk associated with development on the site, but the magnitude of this risk is small and it is appropriate to manage that risk by way of plan provisions.

130 The Panel also observes that the Environment Court gave detailed consideration to the topic of erosion and sediment risk. Because of its relevance to a number of topics discussed later, the Panel cites the following paragraphs by way of important context:

[12] The IHP report was extensive and comprehensive. Many of the findings of the commissioners have not been challenged on appeal and the refined and focused case put forward to us by the appellant. We are also able to have confidence in the findings of the commissioners because we were provided with the evidence that was in front of the IHP and upon which they relied. We refer to findings of the commissioners where necessary and this decision.

...

[20] The approach of identifying areas for zoning in a structure plan incorporated in a schedule is consistent with how other site specific rezonings are dealt with in the NRMP. We comment that the proposed structure plan for PPC28 is in considerably more detail than the other examples in the NRMP.

...

[89] We make the following findings on the technical evidence and submissions before us concerning erosion and sediment control:

- (a) the Mahitahi / Maitai River and Kaka Stream are important and sensitive receiving environments. The Mahitahi is highly valued as a recreational resource close to Nelson city. It has significant value from a cultural perspective;
- (b) we accept the evidence of Mr Foley that the PPC28 site is significantly geologically different from many other areas in New Zealand. Clay content is one of the main drivers of sediment risk. Clay makes up a relatively small proportion of the PPC28 soil. We accept the applicant's evidence that the PPC28 site is relatively low risk from an erosion and sediment control perspective;
- (c) The PPC28 structure plan has been developed by the applicant's consultants incorporating a risk-based approach to the determination of appropriate zoning and overlays. We find that a high level sediment risk analysis has been undertaken by Tonkin + Taylor and Mr Foley and that this has been reflected in elements of the structure plan;
- (d) there may be benefit in undertaking a settlement risk modelling analysis. However, we accept that undertaking the exercise now as part of PPC28 would involve a significant element of speculation. The exercise might ultimately have to be re-done once the more detailed planning is undertaken in the context of resource consenting. In terms of our assessment under s32 we find that such an approach would be neither efficient nor effective, and there will be costs of proceeding in this way but little or no benefit;
- (e) the intended direction of the policy package as we understand it is the most appropriate way to manage the erosion and sediment control risks of the development of the PPC28 site. The provisions placed the onus of managing the detail of erosion and sediment control risks on the resource consenting process. Given the relatively lesser erosion and sediment risk associated with the PPC28 site, and the approach already taken by the applicant to developing the structure plan, it is appropriate to manage residual risk in this way;
- (f) we do not accept Ms Gepp's submission that adopting PPC28 rules (and other plan provisions) would be a breach of s76(3) of the RMA. It is not correct, in our assessment, to view the proposed PCC28 rules as "deferring" the assessment of erosion and sediment effects to the resource consenting stage. We have found that the PPC28 structure plan has been developed incorporating a risk-based approach to the determination of appropriate zoning and overlays;
- (g) we accept that there remains erosion and sediment risk associated with development on the site. However, we assess the magnitude of this risk as small. This residual risk is appropriate to be managed by way of plan provisions which, amongst other matters, govern further resource consenting. Section 76(3) is an obligation to have regard to actual and potential effects on the environment of activities including, in particular, any adverse effect. We have extensive regard to the potential adverse effects of erosion and sediment generation in this decision. Section 76(3) does not impose any threshold that must be met before a rule can be adopted;

- (h) we accept Ms Gepp's submission that NPS-FM cl 1.3(1) - Te Mana o Te Wai - requires a high degree of confidence that land use changes will not result in the loss of freshwater values. We are satisfied that the combination of the process that has adopted by the applicant and developing PPC28 and the proposed plan provisions (*provided* these provisions can be modified as we indicate in this decision) will achieve this high degree of confidence.

- 131 A number of respondents suggested that urbanisation of the Kākā Valley has been strongly opposed by the local community. The Panel has reviewed the report of the Independent Hearing Panel and notes that it received a large number of submissions on PPC28 both in support and in opposition. The Applicant has drawn the Panel's attention to the comprehensive review by the Independent Hearing Panel of all submissions on PPC28, both in support and opposition. PPC28 was approved by NCC and then subsequently by the Environment Court. In short, the Site has now been rezoned with subdivision and development being required to be in accordance with Schedule X as discussed above. Urban development of the land according to the provisions of Schedule X is now enabled.
- 132 By way of an additional contextual aspect to the Application, the Panel refers to several extracts from the Independent Hearing Panel's Recommendation Report regarding amenity and construction effects concerns. In terms of amenity, the Report stated:
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.
- ...
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 activities⁶. 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*.
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.

133 With respect to construction, the Report added:

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

...

934. 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.
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.

134 Further matters raised in the comments by the respondents will be addressed when specific topics are dealt with later.

Plan Change 28 and Plan Change 29 Context

- 135 The Panel considers it appropriate to comment briefly on the recent decision on Plan Change 29 (Housing and Hazards) noting that significant portions of PC29 were ultimately declined by Council on 5 July 2025. The primary basis for declining the change was that PC29 did not give effect to the amenity outcomes sought under the NRPS, particularly where there was debate as to whether the projected demand for new dwellings had been over estimated in PC29.
- 136 The PC29 decision⁴⁸ confirmed that PC28 was ringfenced, meaning that it would not be directly impacted by the decision on PC29. The Panel has also received communication

⁴⁸ Section 15.7, paragraphs 240-241

from both the Applicant and NCC confirming this position.

- 137 In addition to the comments received from the respondents and responded to by the Applicant, and the operative zoning has already been enabled by PPC28, the Panel considers that Policy 2 of the NPS-UD remains relevant as set out in paragraph 167 of the PC29 decision. Policy 2 of the NPS-UD requires Councils to provide 'at least' sufficient capacity to meet expected demand for housing and business over the short, medium and long term. This indicates a policy intent to enable greater development capacity than is necessary to meet demand as a means of improving housing affordability and competitive land and development markets' and enabling more people to living close to centres, public transport and areas of high demand (as set out in Objective 1 – 3 of the NPS-UD). Therefore, the proposed development of the project area established under PPC28 is considered to align with the NPS-UD regardless of any debates with regard to the 'need' for this development to help address housing demand.

PART D: IWI AUTHORITIES

Section 18 Report for a Listed Project

- 138 The Ministry for the Environment provided a report under s 18 in accordance with s 49 of the FTAA.⁴⁹ The report identified the following Treaty settlement Acts as being relevant to the Application:
- a. the Ngāti Toa Rangatira Claims Settlement Act 2014;
 - b. Ngāti Koata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Maui Claims Settlement Act 2014; and
 - c. Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014.
- 139 The Report authors have not identified any documents that the Panel must give the same or equivalent effect to under s 82. Nor are there any procedural requirements that the Panel must comply with under schedule 3, clause 5 of the Act.⁵⁰
- 140 The Report identified the following as being both iwi authorities and Treaty settlement entities:
- a. Te Rūnanga o Toa Rangatira Inc, representing Ngāti Toa Rangatira
 - b. Te Ātiawa o Te Waka-a-Māui Trust, representing Te Ātiawa o Te Waka-a-Māui
 - c. Ngāti Apa ki Te Rā Tō Charitable Trust, representing Ngāti Apa ki Te Rā Tō
 - d. Rangitāne o Wairau Settlement Trust, representing Rangitāne o Wairau

⁴⁹ Treaty settlements and other obligations (Section 18) report, Ministry for the Environment, 10 April 2025.

⁵⁰ Treaty settlements and other obligations (Section 18) report, Ministry for the Environment, 10 April 2025, paragraph 9.

- e. Te Rūnanga o Ngāti Kuia Trust, representing Ngāti Kuia
- f. Ngāti Rārua Settlement Trust, representing Ngāti Rārua
- g. Te Pātaka a Ngāti Kōata, representing Te Ngāti Kōata
- h. Ngāti Tama ki Te Waipounamu Trust, representing Ngāti Tama ki Te Tau Ihu

141 Seven of the eight relevant Treaty settlement entities identified above have a statutory acknowledgement over the Maitai River and its tributaries. The exception is Ngāti Apa ki te Rā Tō.⁵¹ In addition to a statutory acknowledgement, Ngāti Toa Rangatira, Ngāti Koata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, Te Ātiawa o Te Waka-a-Maui, Ngāti Kuia, and Rangitāne o Wairau also have a deed of recognition over the Maitai River and its tributaries.⁵²

Substantive Application Information

- 142 The Applicant outlined the consultation undertaken with Te Tau Ihu iwi authorities through both the earlier PPC28 process, as well as in the course of developing this Application. Also, recorded was all the consultation and engagement with Te Tau Ihu iwi from 2020-2025. The form of engagement included written correspondence, hui, site visits and circulation of draft plan change information for PPC28. In regards to iwi involvement with the Application, further hui and written communication provided opportunities for iwi to raise any concerns. Key documents are the cultural impact assessment by Ngāti Koata, and a statement of cultural values from Ngāti Tama.
- 143 The Panel recognises the deep involvement of Ngāti Koata with the Application and acknowledges that it is a majority shareholder. The Panel accepts from the material supplied by the Applicant in support of the Application that the requirements of clause 5 of Schedule 5 of the FTAA has been complied with. Indeed, none of the iwi entities suggested otherwise.

Comments Invited under s 53

- 144 The Panel invited comments from the following iwi authorities and Treaty settlement entities under s 53(2)(b) – (g):⁵³
- a. Te Rūnanga o Toa Rangatira Inc;
 - b. Te Ātiawa o Te Waka-a-Māui Trust;
 - c. Ngāti Apa ki Te Rā Tō Charitable Trust;
 - d. Te Pātaka a Ngāti Kōata;
 - e. Te Rūnanga o Ngāti Kuia Trust;

⁵¹ Treaty settlements and other obligations (Section 18) report, Ministry for the Environment, 10 April 2025, paragraph 34.

⁵² Treaty settlements and other obligations (Section 18) report, Ministry for the Environment, 10 April 2025, paragraph 42.

⁵³ Minute 4, 26 May 2025.

- f. Ngāti Rārua Settlement Trust;
- g. Ngāti Tama ki Te Waipounamu Trust; and
- h. Rangitāne o Wairau Settlement Trust.

145 Comments were received from Ngāti Koata, which advised that most of the matters raised by the Ngāti Koata Trust have been addressed by the Applicant. One residual matter of concern was the contaminated nature of the soil present in the vicinity of the former sheep dip. The comments considered that leaving it in its present condition, contaminated by arsenic and dieldrin, would not be a responsible option. Accordingly, Ngāti Koata seeks that the Applicant ensures that the issue of soil contamination is addressed, preferably by its removal, remediation and appropriate disposal of any HAIL site contamination. Such an outcome would achieve an environmental benefit considerably better than the status quo.

Treaty Settlements and Recognised Customary Rights

- 146 Sections 7 and 8 FTAA provide inter alia that all persons performing or exercising its role under the FTAA must act in a manner that is consistent with the obligations arising under existing Treaty settlements. Section 82 of the FTAA applies if a Treaty Settlement or other customary rights apply to an approval sought in an application. The Panel notes that the report prepared by the Ministry for the Environment relating to the Application under section 18 of the FTAA posits that the process of inviting comments from iwi and Treaty settlement entities under section 53(2) (which is comparable to the related process under the RMA) would ensure that the Panel was meeting any obligations under section 7.
- 147 As noted in Part B, the Panel directed the EPA to seek comment from the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development under section 72 FTAA. The Minister for Māori Development provided comments that supported the Application subject to any comments received from the relevant Māori groups identified in both the section 18 report developed by the Ministry for the Environment and the list of persons invited to comment attached to Minute 4 from the Panel.
- 148 The significance of the Maitai (Mahitahi) River and its tributaries to iwi of Te Tau Ihu are formally recognised in the Te Tau Ihu Statutory Acknowledgements 2014. All of the iwi of Te Tau Ihu are part of these Statutory Acknowledgements over the Maitai River and its tributaries. The recommendations from the Independent Hearings Panel acknowledged the consultation undertaken with all iwi in recognition of the Statutory Acknowledgements as a part of PPC28:⁵⁴

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:

⁵⁴ The Panel notes that the PPC28 decision report listed Ngāti Apa ki te Rā Tō as having a statutory acknowledgement. However, the Section 18 report prepared by the Ministry for the Environment (10 April 2025) stated that Ngāti Apa ki te Rā Tō does not have a statutory acknowledgement over the Maitai River and its tributaries.

- Ngāti Kuia
- Rangitāne o Wairau
- Ngāti Koata
- Ngāti Rārua
- 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 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.

- 149 Of note, Policy RE6.2 has direct relevance to Māori, including the iwi of Te Tau Ihu that have actively taken the opportunity to provide input over the last 5 years of consultation:

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.

- 150 The Cultural Impact Assessment accompanying the Application clearly demonstrates that the Application is consistent with this policy. Further analysis of cultural effects are addressed in paragraphs 190-207 of this decision report. Suffice to say that the Panel considers the Application will deliver on the matters of importance to iwi including remediation of the contaminated land, ecological restoration, improvement in mauri of waterbodies, opportunity to reconnect with whenua, housing opportunities for Ngāti Koata and creation of a cultural hub to call their own. The conditions proffered go further to ensure that iwi and their values are at the core of the Project and are delivered.

PART E: PRINCIPAL ISSUES IN CONTENTION

- 151 The principal issues in contention are:

- a. proof of regional or national benefits and whether they are significant;
- b. the extent of the regional or national benefits;
- c. nature and scope of any adverse impacts;
- d. requirements around remediation of contaminated soil;
- e. inclusion of a landfill (with encapsulation cell) within the Site;
- f. addressing issues concerning freshwater fisheries activities;
- g. existence of additional wetland area;
- h. nature of any conditions to be imposed on the consents; and
- i. application of proportionality test in s 85 of the FTAA.

- 152 Each of these issues has been addressed in the appropriate sections of the decision and not exclusively in the order listed above.

Inclusion of a Landfill within Scope

- 153 STM in its comments⁵⁵ stated that there was no reference to a "landfill" in the listed application on the basis that the landfill/encapsulation cell component was not specifically mentioned in the overall project description which they cited as follows:

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

⁵⁵ Paragraph 94.

units, a clubhouse, and a pavilion)

- 154 STM noted that a person may lodge a substantive application for consent for a “project” which means the project as described and any activity that is involved in, or that supports and is subsidiary to, the project. STM argues that the limits to which an activity “supports or is subsidiary to a listed project” should not extend to the landfill/encapsulation cell component of this project. It considers that a “landfill” is an industrial activity and not covered by the scope of the approval sought in the application. The Panel addresses the questions raised by these comments below.

Is the activity really a “landfill”?

- 155 The Applicant has applied for this in relation to both the NRMP, and the National Environmental Standards for Contaminated Sites, both which fall under the RMA.
- 156 Under the NRMP, the definition of landfill is relatively general and means:

a waste disposal site used for the controlled deposit of solid materials onto or into land.

There are no permitted standards for landfills in the NRMP. Under Residential Zone Rule REr.61A.3, the most lenient standard is for a restricted discretionary activity if criteria are met. Otherwise, the activity falls to a fully discretionary status. Rule REr.61A.3 is set out below:

REr.61A.3

Landfill activities are restricted discretionary activities if:

- a. the maximum height of the landfill does not exceed 2m, and its total volume is less than 2,000m³; and
- b. the landfill accepts only cleanfill material.

- 157 The Panel considers that as there is no dispute that the soil is contaminated, it cannot be classified as “cleanfill” and is properly classed as a discretionary activity as proposed by the Applicant.
- 158 While the activity broadly fits under the definition of a “landfill” under the NRMP, in reality the activity is the relocation and retention of primarily surplus clean soil as well as accommodating an encapsulation cell for contaminated soil within the Site. On this basis it is not a typical landfill which would potentially be subject to other legislation and regulation e.g. the Waste Minimisation Act 2008.

Is the activity in support or subsidiary to the listed project?

- 159 The Applicant has been clear in the Application and its activity status table that it is applying for the deposition of contaminated soil which will be managed in an encapsulation cell and has provided an assessment including a remediation action plan which specifically discusses this activity.
- 160 This encapsulation cell is part of the remediation and mitigation of the contaminated HAIL area, which is required to enable the realignment of Kākā Stream and the wider development to proceed. Therefore, the Panel is satisfied that it is an activity that is in support or subsidiary to the wider development.

- 161 The Panel also notes that retaining contaminated soil on a site in some form of encapsulation cell or other method to manage the risk is common. It is in fact directed by the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NES-CS**) as a preference (by way of more permissive limits) to removing contaminated soil off-site. Where it must be removed off-site, then it must go to a facility with the appropriate consents to receive that level of contaminated material.
- 162 The Panel finds on the facts that the retention of contaminated soil onsite is not an industrial activity and does not accept this interpretation as advanced by STM. Based on STM's argument, any retention of contaminated soil on a residential site would be an industrial activity. This cannot be correct and is not how the Panel understands councils around the country apply this regulation. It would be different if the underlying activities were industrial in nature e.g. whereby material was being deposited onto the site from other sites more akin to a traditional landfill, but this is not the case here.

Overall Conclusion

- 163 Based on the information before the Panel, it considers that the "landfill/encapsulation cell" proposal is clearly within scope of the approvals being sought by the Applicant.

PART F: EVALUATION OF EFFECTS

- 164 Schedule 5 clause 5(4) requires a consent application to provide an assessment of an activity's effects on the environment covering the information in clauses 6 and 7. These matters include:
- (a) an assessment of the actual or potential effects on the environment:
 - (b) if the activity includes the use of hazardous installations, an assessment of any risks to the environment that are likely to arise from such use:
 - (c) if the activity includes the discharge of any contaminant, a description of—
 - (i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
 - (ii) any possible alternative methods of discharge, including discharge into any other receiving environment:
 - (d) a description of the mitigation measures (including safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect of the activity:
 - (e) identification of persons who may be affected by the activity and any response to the views of any persons consulted, including the views of iwi or hapū that have been consulted in relation to the proposal:
 - (f) if iwi or hapū elect not to respond when consulted on the proposal, any reasons that they have specified for that decision:
 - (g) if the scale and significance of the activity's effects are such that monitoring is required, a description of how the effects will be monitored and by whom, if the activity is approved:
 - (h) an assessment of any effects of the activity on the exercise of a protected customary right.

...

- (a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects:
- (b) any physical effect on the locality, including landscape and visual effects:
- (c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity:
- (d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations:
- (e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants:
- (f) the unreasonable emission of noise:
- (g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.

165 The Applicant's Assessment of Environmental Effects provided a summary of the effects at section 5, derived from the various supporting technical documents. Participants who commented also raised a range of actual and potential effects.

166 The following main categories of actual and potential effects on the environment will be considered:

- a. remediation of contaminated land
- b. cultural
- c. three waters infrastructure and servicing
- d. transport network
- e. historic heritage
- f. earthworks, reclamation and geotechnical
- g. economic
- h. social
- i. noise and vibration
- j. landscape, visual amenity and natural character
- k. ecology
- l. air quality; and
- m. flooding.

167 The Panel has addressed these effects thematically throughout the discussion below. The Panel has also had regard to the relevant planning provisions in evaluating the effects of the Project, as noted in Part I: Regional and District Planning Framework.

168 In terms of the relevant receiving environment, the Panel has applied the test in

Hawthorn.⁵⁶ The environment includes that which presently exists. It also

...embraces the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity under a district or regional plan or by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.⁵⁷

Remediation of Contaminated Land

- 169 The Site has three areas that are listed on the Hazardous Activities and Industries List (**HAIL**), including a wool shed and sheep treatment area, runout area (referred to as the 'southern paddock') and former homestead. Previous investigations undertaken by Envirolink concluded that contaminants in soil at the site pose a potential risk to human health and the environment and that remediation would be required to facilitate the proposed development.
- 170 The key indicator contaminants are arsenic and dieldrin, with the dieldrin concentrations in topsoils at the dip being so high that, when excavated, they will be considered persistent organic pesticide wastes under the Stockholm Convention.⁵⁸ Soil samples undertaken by Envirolink indicate that dieldrin (and the related compounds aldrin and endrin) have the highest concentrations in silty topsoil around 0.3 m in depth at and immediately around the dip. Arsenic is also high in these soils, and even higher in the underlying silt. Dieldrin concentrations generally appear to decrease rapidly with depth and with distance from the sheep-dip, but arsenic attenuates more slowly.
- 171 The report by HAIL Environmental considered that the woolshed area will merit further investigation, at least for contaminants from building materials such as arsenic (treated timber), lead (paint) and zinc (galvanised iron).⁵⁹
- 172 The issue that attracted the most attention from those invited to comment was the proposed remediation of the former sheep dip and woolshed and the redirection of the Kākā Stream through this area. The approach proposed by the Applicant is as follows:
- a. Soil dieldrin source removal and isolated;
 - b. Additional soil and groundwater investigation to:
 - i. Delineate impact to more accurately define the volumes of soil requiring remediation and management;
 - ii. Determine a methodology for groundwater remediation if deemed necessary;
 - c. Excavation and disposal of contaminated soil from within the proposed esplanade

⁵⁶ *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 at [84].

⁵⁷ *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 at [84].

⁵⁸ Report following Comments and Responses, HAIL Environmental, 16 July 2025, paragraph 4.

⁵⁹ Report following Comments and Responses, HAIL Environmental, 16 July 2025, paragraph 17.

- reserve;
- d. Dewatering and treatment where encountered;
 - e. Where unsuitable for re-use in the wider development (e.g. recreational reserves), contaminated soil will either be:
 - i. Disposed of at a facility authorised to accept it, or;
 - ii. Placed within a suitably located, on-site, engineered, encapsulation cell; and
 - f. Site validation and reporting, including a site validation report and long-term management plan.
- 173 It is proposed that the new stream channel will pass within about 15 m of the sheep-dip location, and will provide a variety of in-stream and riparian habitats that may include meanders, riffles, pools, boulders, riprap and pinned logs. These works will be done "offline" – the excavation and reinstatement will be completed before the stream is redirected into the new channel. The sheep-dip footprint is within the proposed footprint of one of the stormwater basins, these works are expected to remove the bulk of the dieldrin contamination, likely more than 99 % of it by mass, and to cover over the remainder with the impermeable clay liner. Much of the arsenic contamination will also be removed.
- 174 HAIL Environmental consider there is little risk of the contamination affecting the stormwater wetland for the following reasons:
- a. The residual contamination beneath the wetland will be covered by clean material;
 - b. The stormwater basins will necessarily be engineered to prevent groundwater ingress (both by lining and by setting the base above seasonal groundwater maximum); and
 - c. It is an artificial stormwater control wetland rather than a natural wetland serving ecological purposes.
- 175 The Remediation Action Plan (**RAP**) states that in addition to the excavations for the channel and wetlands, the immediate vicinity of the dip will be further excavated to 2 m depth. The RAP requires soil validation of the entire excavated area by sampling and analysis for arsenic and dieldrin. Arsenic and dieldrin remaining within the new stream channel must meet the ANZG default sediment quality guidelines, which respectively are 20 mg/kg and 0.0028 mg/kg per 1 % of organic carbon. The RAP requires (conservatively) that arsenic within the wetland area meet the Soil Contaminant Standards protective of commercial outdoor workers, 70 mg/kg, and dieldrin must meet the Stockholm low content limit of 50 mg/kg. If these criteria are not met there is provision to remove additional material to a further 0.5 m depth. Reinstatement can then begin.
- 176 Stream realignment will not occur until remedial monitoring confirms that the contaminated soils have been removed (i.e. remedial targets have been met) and therefore HAIL Environmental are satisfied that more than minor adverse effects are

unlikely.

- 177 The RAP provides that excavated soil exceeding the Stockholm low content limit for dieldrin will be stored on site in accordance with hazardous substance regulations, pending EPA approved disposal. The usual solution for such waste for New Zealand is disposal to high temperature incinerator in France, although there may be other solutions within New Zealand. Excavated soil that meets generic managed fill guidelines will be moved to a containment cell within the development, further up the catchment. The containment cell will sit within a much larger volume of excess excavated material from uncontaminated areas of the site, with monitoring of water levels inside and outside to confirm its integrity.
- 178 Turning to groundwater, testing has confirmed that arsenic is almost absent from the groundwater and it meets the drinking water standard of 10 µg/L. HAIL Environmental attributes this to arsenic strongly binding to iron oxides in the subsoil and the Site soils have high levels of iron. Dieldrin is poorly soluble and has a high affinity for organic matter, which accounts for its strong retention in the topsoil. However, groundwater around the sheep-dip currently exceeds the ANZG criterion for dieldrin (by some margin as the ANZG criterion is 0.01µg/L), and the groundwater flow direction at the time of monitoring events has been toward the stream.
- 179 The most effective solution is removal of the majority of the dieldrin which will ensure groundwater concentration diminish over time. In addition, dilution with groundwater from the opposite bank and with whatever surface water comes from upstream as well as the behaviour of dieldrin which is poorly soluble will further lower the risk. With a 9,000 ha catchment and a mean annual flow of 2,350 L/s, the Maitai typically offers a dilution factor of over 50 for inflow from the Kākā Hill Tributary. HAIL Environmental accordingly considers that the risk of effects on the Maitai River itself appears negligible.⁶⁰
- 180 The RAP requires that new groundwater monitoring bores will be installed between the former dip location and the stream, and monitoring undertaken regularly to confirm that contaminant concentrations in groundwater are no higher than before excavation.
- 181 On the basis of the information obtained and the planned remediation actions, HAIL Environmental considers that more than minor adverse effects arising from contamination are unlikely.⁶¹ In addition it notes that the construction period will allow for further monitoring and additional intervention if required.

Comments Received

- 182 As noted, many of the comments expressed concern at the presence of the contaminated soil, the proposed management of it and the risk to water quality and the ecology. Many comments sought a monitoring regime with water and sediment testing. Ngāti Koata stated that it is one residual matter of concern is that that the soil contamination is addressed, preferably by its removal, remediation and appropriate disposal of any HAIL site contamination. This would achieve an environmental benefit considerably better than the status quo.

⁶⁰ Report following Comments and Responses, HAIL Environmental, 16 July 2025, paragraph 32.

⁶¹ Report following Comments and Responses, HAIL Environmental, 16 July 2025, paragraph 44.

- 183 STM filed a technical review of the contaminated land issues by EHS Support. The technical review considered that a significant amount of additional investigation, assessment and design work is needed before the RAP can be finalised and cited the following key issues of concern:
- a. the spatial distribution of contamination (both horizontally and vertically) is not fully documented. This may have implications on the scale and effects of the remedial works and the associated.
 - b. only a crude groundwater investigation has been undertaken, and so the level of contamination is currently not fully documented.
 - c. the ecological sediment cleanup values appear not to consider contaminant bioaccumulation. Consequently, the extent of remediation may be greater than initially projected. This situation has been exacerbated by the choice of detection limit for organochlorine pesticides used in the Detailed Site Investigation relative to the ecological cleanup criteria that will be required.
 - d. the location of the contaminated soil repository has not been investigated, nor has a detailed design been prepared.
 - e. resilience issues (due to climate change and geologic hazards), particularly with the residual contamination left in place within the Kākā Stream and Linear Reserve alignment (which may be subject to erosion) and the repository (which may be subject to geologic hazards), have not been considered.
 - f. only a high-level RAP has been prepared and will need to be updated and made more prescriptive once additional investigation/design information is available.
- 184 Forest and Bird expressed concern that the extent of highly contaminated area had not yet been determined. The effectiveness of removal in ensuring the remediated site safe for human and ecological health appears uncertain with consent conditions lacking detail on monitoring requirements and response. It also considered that there were uncertainties with encapsulation cell including location, long-term integrity, monitoring and maintenance. Forest and Bird considered that groundwater contamination and continual leaching is a material risk. The potential role of the old stream channel beneath the woolshed as a preferential pathway for contaminant migration was also raised as needing further investigation, as recommended by HAIL and acknowledged by Envirolink.

Applicant's response to comments

- 185 The Applicant responded to the comments by updating the RAP (to version 4) to address many of the matters identified in EHS Support's review. The Applicant made the point that any contaminated soil will only remain in situ if there is no appreciable risk to human health or ecology. The contaminant mass in the source areas will be removed. Soil source removal will address the risk to groundwater, the proposed stream and all downstream watercourses. This will be confirmed through a remedial works monitoring protocol during and following soil remediation. The scope of such remediation will include soil validation sampling, physical survey, groundwater sampling and seepage water sampling within the proposed stream once constructed. No diversion of water into the newly aligned Kaka stream tributary shall occur until a Site Validation Report has been certified by Council. The design of the new streambed

will also minimise the potential for the stream channel to intercept underlying natural groundwater levels in most conditions.

- 186 The Panel acknowledges that the exact volumes are not known at this stage for each disposal option i.e. treatment disposal for dieldrin off site, encapsulation cell, York Valley disposal, reuse onsite. An ongoing site management plan for the encapsulation cell will provide ongoing monitoring requirements covering all contaminated material retained on site.

Conditions

- 187 The Panel, in developing the condition set for the consent relating to the remediation of contaminated land, has focused closely on the enhancement of the conditions proffered by the Applicant in v2. While these were an improvement on the initial version, the Panel considers they did not go far enough.

Panel Findings

- 188 The Panel accepts that the Site is highly contaminated at present and the proposed removal will inevitably have a positive effect on the receiving environment. Various reports on this topic demonstrate that the Applicant has considered a wide range of options and the removal of all contaminated soil is the most appropriate course of action. The proposal is to continually remove contaminated soil until testing confirms any residual concentrations of contaminants meet appropriate guideline values or until the risk to the environment is negligible. The Panel is satisfied that the realigned stream course will not become "live" until the prescribed (and very low) contaminant concentrations are reached and certified via a Site Validation Report process undertaken by suitably qualified experts.
- 189 With respect to the draft conditions provided by the Panel under s70 of the FTAA, the Panel will await responses from those invited to comment. **[comments to be included]**

Cultural

- 190 Ngāti Koata is a 35% shareholder in the project together with three other families. The significance of this Site and its development is indicated by the fact that the ownership interest of the tangata whenua iwi in the Maitahi Village development was facilitated by the sale of 4,500ha of forestry land. The lack of housing for whanau in Nelson was described by Mr Toia in his presentation at the overview conference and is the motivation for this development:

The important historical context, the real and tangible lost opportunity for Ngāti Koata whanau and their descendants with us today, fuels the aspiration, the inspiration, the determination Ngāti Koata have for this whenua and its development.

- 191 Mr Toia described the strong sense of "coming home" associated with this development and the fact that it will enable Ngāti Koata whanau and other families a healthy, affordable and secure home base. It also provides housing for every stage of life from a first home to a final home. Koata House will be critical to the identity of Ngāti Koata as they do not have a marae of their own, although they share Whakatū Marae. Mr Toia opined that this development provides a tangible way of connecting the local Maitahi Village community to Ngāti Koata and each other. He described it as "te hapori hononga, he kāinga whakatipuranga - a connected, intergenerational community designed with nature, culture and people at its heart." Central to this generational

connection is the fact that the Maitahi area was historically inhabited by Ngāti Koata through take tuku (rights through gifting), take tupuna (ancestral rights) and take ahi kaa roa (rights of continuous occupation).⁶²

- 192 Kākā Hill is part of the 112ha which will be gifted by the developers to Ngāti Koata and this site has significant cultural and historic values for iwi. It will be an opportunity for Ngāti Koata to reconnect with this site and lead the revegetation efforts.
- 193 Ngāti Koata prepared a Cultural Impact Assessment (**CIA**) to support the Application which identified the following effects:⁶³
- a. positive effect on Ngāti Koata exercise of rangatiratanga – the process has allowed kaumatua to co-design the Ngāti Koata Cultural Design Framework which reflects iwi values, aspirations and tikanga. Design features such as pou, cultural wayfinding markers and native planting ensures Ngāti Koata’s cultural identity and historical narrative is embedded in the design. As 35% shareholders, Ngati Koata are key decision-makers.
 - b. positive effect on Ngāti Koata exercise of kaitiakitanga – the development strongly aligns with Ngāti Koata values, and actions such as the revegetation and remedying of contaminated land will restore the mauri of wai māori. Ngati Koata Pou Taiao influenced the ecological and environmental aspects of the project. There will be a strengthened connection between people and the environment.
 - c. positive effect on water quality – engaging water-sensitive design principles in the design aligns with Ngāti Koata IEMP Objective 9.20 which seeks the higher purity and restoration of waterways. Treating stormwater before it reaches the receiving environment will enhance the mauri of the Kākā Stream.
 - d. giving effect to Te Mana o te Wai – the measures such as realignment of the Kākā Stream, stabilisation and native planting along stream banks and stormwater treatment wetlands will restore the health of wai māori for present and future generations.
 - e. positive future effect on biodiversity – creating ecological corridors and restoring habitats for native flora and fauna supports the aspirations of Ngati Koata to restore taonga species.
 - f. positive future effect on mahinga kai – extensive restoration initiatives, including riparian and wetland planting with native species provides habitat for mahinga kai species such as tuna, inanga and kokopu. The realignment of the Kākā Stream to its historical course further supports mahinga kai by improving water flow and creating stable habitats for native species. The integration of cultural markers allows the transfer of knowledge about mahinga kai practices.
 - g. effective and meaningful alignment with cultural values – the restoration of the natural and cultural integrity of Kākā Stream and its surrounding environments provides a tangible expression of mana taurite.

⁶² Cultural Impact Assessment, Ngāti Koata Trust, January 2025, section 2.6.1.

⁶³ Cultural Impact Assessment, Ngāti Koata Trust, January 2025, section 5.

- 194 Ngāti Tama prepared a Statement of Cultural Values which described its relationship with the area and affirmed the enduring cultural, historical, and environmental significance of ngā taonga in the affected and wider area and the exercise of Ngāti Tama kaitiakitanga. While the report did not explicitly set out cultural effects, it helpfully identified the applicable principles of Ngāti Tama values, tikanga and matauranga Māori:⁶⁴
- a. Kaitiakitanga - as kaitiaki, Ngāti Tama hold an enduring and intrinsic connection to the natural landscapes of the Maitahi catchment, including rivers, wetlands, maunga, whenua, and coastal environments. Therefore the restoration and enhancement of Maitahi awa and tributaries is integral.
 - b. Mauri - maintaining water quality, preserving biodiversity, and ensuring sustainable land-use practices uphold the mauri of all natural taonga. The integration of cultural health indicators into environmental management supports the vitality of the land and waterways for future generations.
 - c. Ngā awa rivers and freshwater environments - Ngā awa are central to the identity and wellbeing of Ngāti Tama. Ngāti Tama cannot overstate the importance of maintaining and improving the mauri of awa and tributaries such as Kākā stream through sustainable management of wai, riparian restoration, and ensuring adequate water flow levels to support native fish species such as tuna and īnanga.
 - d. Mahinga kai and taonga species - all activities must support the restoration of traditional food and resource harvesting practices. The preservation and restoration of mahinga kai includes maintaining healthy riparian margins, protecting and restoring the biodiversity of sites, and use of cultural health indicators to measure the impact of activities.
 - e. Wai - Ensuring the health of freshwater systems requires integrated water management approaches that prioritise minimum flow levels, sustainable allocation limits, and the restoration of wetlands and floodplains.
 - f. Wahi tapu and wahi taonga - Protection of maunga and wāhi tapu is paramount and requires appropriate recognition within environmental planning and land-use frameworks, with many significant locations being undocumented.
 - g. Coastal and estuarine environments - The principle of 'Ki uta ki tai' must be well understood in catchments such as Maitahi. Restoration, enhancement, and protection effects must be considered within the wider context. A thoughtful and cohesive all-of-catchment approach ensures that activities such as indigenous species planting and water quality improvements support the health of coastal waterways and associated biodiversity and ecosystems.
 - h. Wairepo wetlands and floodplains - restoring wetland areas and preventing further drainage is a priority for Ngāti Tama.
 - i. Whenua and maunga - the landscape of the Maitahi catchment, including Maungatapu, is rich in cultural and ecological significance. The mauri of these landscapes must be protected through sustainable land-use practices, reforestation

⁶⁴ Cultural Values, Ngati Tama, January 2025, section 3.

initiatives, and the avoidance of activities that degrade the ecological integrity of the maunga and surrounding whenua. Ngāti Tama seeks active participation in land management planning to ensure the enduring protection of these significant places.

- j. Biodiversity and ecological integrity - biodiversity restoration efforts must incorporate mātauranga Māori and be led by iwi priorities. Strengthening ecological corridors, enhancing native species populations, and enforcing conservation protections are required to contribute to the resilience of these taonga.

Comments Received

- 195 The comments from the Minister for Māori Development support the Application subject to any comments received from the relevant Māori groups. The comment also encouraged the Panel to receive comment from both Ngāti Apa ki te Rā Tō Post Settlement Trust and Wakatū Incorporation and have regard to the relevant statutory acknowledgements of the seven PSGEs. The Panel sought advice from the EPA as to the identity of all relevant iwi authorities and Treaty settlement entities and invited comments accordingly. Those identified included the Ngāti Apa ki Te Rā Tō Trust and seven other regional Māori entities. None of these entities provided comments.
- 196 As outlined above, comments were received from Ngāti Koata which primarily raised concerns about the contaminated land on the Site in the vicinity of the former sheep dip.

Applicant response to comments

- 197 The Applicant helpfully provided the Panel with details of its extensive engagement with all eight PSGEs, including Ngāti Apa ki te Rā Tō, over a five-year period (2020–2025) in relation to both PPC28 and the Maitahi Village project.
- 198 The Applicant submitted that the Minister's expectation of engagement with both Ngāti Apa ki te Rā Tō and Wakatū Incorporation has been met, and the statutory obligations under the FTAA and RMA have been meaningfully addressed throughout the PPC28 process and preparation for the FTAA application. Additionally, the proposed consent conditions (V2) require that iwi continue to be kept informed during the construction process and ensure that cultural values and Mātauranga Māori are recognised and provided for.
- 199 The Applicant agreed with Ngāti Koata that remediation of the site (as proposed) represents a positive environmental outcome, and pointed to the RAP as containing the remedial methodology to address risks to human health and the environment.

Conditions

- 200 The Panel notes that the second condition set included specific conditions requiring iwi engagement and reporting. For example contractors and subcontractor engaged in the implementation of various consents are required to participate in a cultural induction delivered by Ngāti Koata or their nominated representatives. Another example is the provision for iwi engagement and reporting in relation to the land use consent – housing development requires the development of a site specific erosion and sediment control plan (**SSESCP**). There follows a specific condition requiring the consent holder to provide the SSESCP to iwi prior to the commencement of any site works. Moreover the consent holder is required to establish and maintain monthly communication with

iwi for the duration of the works. [discussion to be completed following receipt of any comments under s70 of the FTAA]

Panel Findings

- 201 The Panel accepts that this development is important to Ngāti Koata in a number of ways. It secures for mana whenua a home base alongside a maunga and awa that has cultural and historical significance. The development will be important in allowing whanau to reconnect with the area and for the Ngāti Koata to have their own space with Koata House.
- 202 The Panel acknowledges that kaitiakitanga is central to Ngāti Koata identity and is well captured in the following whakatauki⁶⁵

Whatungarongaro te tangata, toitu te whenua
People pass on, but the land remains

- 203 For Ngāti Koata, kaitiakitanga is an exercise and enduring responsibility as guardians of te taiao and is a lived expression of the intrinsic connection between people and whenua. Kaitiakitanga is also an intergenerational commitment and exercise to protect and nurture the land, waters, and all taonga for the wellbeing of present and future generations.⁶⁶
- 204 In part of its interim decision relating to cultural matters the Environment Court said:

[91] Part 2, s7(a) RMA, directs that particular regard be given to kaitiakitanga. 'Kaitiakitanga' is defined for those purposes as:

kaitiakitanga means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship.

- [92] As we have noted, PPC28 is in part designed to enable the exercise of kaitiakitanga, including by reflecting Whakatū Tangata Whenua values and ensuring Whakatū Tangata Whenua involvement through subdivision and development processes.
- [93] We received only limited evidence on these matters, namely from Mr Hemi Toia, Kaiwhakahaere matua (Chief Executive) of Ngāti Koata's commercial and economic arm, Koata Ltd. We did not receive evidence on behalf of any of the other iwi who are manawhenua. We understand those who affiliate to Whakatū Marae, in addition to Ngāti Koata, are Ngāti Tama, Te Ātiawa, Ngāti Kuia, Ngāti Rārua and Ngāti Toa Rangatira.
- [94] Mr Toia informed us that one kaitiakitanga purpose of Ngāti Koata's involvement in the applicant's consortium is to help secure access to land to enable provision of secure long-term housing for Ngāti Koata whanau within their rohe. That is in a context in which the Crown, in its Te Tiriti o Waitangi Deed of Settlement, included in its apology "to Ngāti Koata for its failure to ensure Ngāti Koata retained sufficient land for their future needs".
- [95] Related to that, as we have noted, Kākā Hill, a maunga of great significance to local iwi and a prominent landscape feature overlooking the Kākā Valley part of the Site, is to be gifted to Ngāti Koata. We were not informed whether affiliation to this maunga extends to any of the other iwi. Furthermore, we were not informed of the affiliations held with respect to the Maitai and Kākā catchment, although we observe that the website for Whakatū marae includes the specification:⁶⁷

⁶⁵ Cultural Impact Assessment, Ngāti Koata Trust, January 2025,, section 2.4

⁶⁶ Cultural Impact Assessment, Ngāti Koata Trust, January 2025, section 2.4.2

⁶⁷ Whakatumarae.co.nz

Ko Mahitahi te Awa.

- [96] As such, we make no findings on those matters other than that we accept Mr Toia's relevant explanations. On matters concerning environmental kaitiakitanga in the development, he informed us that Ngāti Koata is working alongside other iwi (who will continue to take different roles) in order to meet the expectations of "all tangata whenua in Nelson/Whakatū". On matters concerning erosion and sedimentation management, he expressed confidence that these are "designed to reduce inputs into the Maitai awa" by "identifying the constraints in the form of land that is steep or close to waterways and allocating it for re-vegetation as an obligation of development". That confidence is backed by our related evidential findings.⁶⁸

- 205 The Panel has reviewed the nature and scope of the iwi engagement by the Applicant as set out in the attachments to the Application. This includes:
- a. direct engagement with all eight PSGEs: Ngāti Koata, Ngāti Rārua, Ngāti Apa ki te Rā Tō, Ngāti Toa Rangatira, Rangitāne o Wairau, Ngāti Tama ki Te Waipounamu, Te Ātiawa o te Waka-ā-Māui, and Ngāti Kuia; and
 - b. recognition that four of these iwi (Ngāti Rārua, Ngāti Koata, Te Ātiawa, Ngāti Tama) are represented collectively by Wakatū Incorporation in commercial matters; and
 - c. Te Tau Ihu Statutory Acknowledgements (2014) have been actively referenced and integrated throughout the planning and engagement process, and specific regard has been given to those with interests in the Maitahi Awa and surrounding rohe.
- 206 The Panel is satisfied that the engagement processes were thorough and comprised:
- a. ongoing correspondence, hui, site visits, and information-sharing with Pou Taiao representatives of the eight iwi of Te Taihū; and
 - b. development of CIAs, Cultural Values Statements, Cultural Design Frameworks, and consideration and integration of elements of the Iwi Environmental Management Plans; and
 - c. formal submissions and feedback incorporated into the Independent Hearing Panel and Environment Court decisions.
- 207 The Panel has considered the cultural evidence contained in the CIA, the Statement of Cultural Values, the substantive application, the PPC28 recommendation and the Environment Court decisions. The principles of the Treaty, kaitiakitanga, mātauranga Māori and Te Ao Māori have been central considerations in the design of the Application and intended to remain so throughout its implementation. Although Ngāti Koata as owner is the lead iwi, importantly the project is broadly supported by all iwi of Te Tau Ihu. This reflects a high level of cultural responsiveness and partnership. The Panel considers that all cultural effects arising from the development are positive.

Three waters infrastructure and servicing

Water supply

- 208 A new reservoir to service the proposed development is proposed to be situated at RL

⁶⁸ Decision No. [2024] NZEnvC 155, paras 91 – 96

123 m, along with a new water main from Nile Street East to the proposed reservoir. The pipe sizes will be calculated during detailed design to ensure supply pressures and hydrant flows are achieved as well as ensuring maximum permissible head losses are not exceeded. Pipes will be no smaller than DN150 in line with the Nelson Tasman Land Development Manual and hydrants will be positioned around the site to meet all requirements as per SNZ PAS 4509:2008.

- 209 For the retirement village, watermains and rider mains will be a minimum of DN150 and DN50 (ID), respectively. The reticulation for both parts of the retirement village will follow a ring-main layout with valves located at all junctions.
- 210 The Panel sought further information about the pipe sizing as the drawings attached to the Application indicated pipe sizes down to 32mm (outside diameter). The Applicant responded that water mains would be a minimum of 150mm whereas submains and laterals can be smaller.

Wastewater

- 211 Two wastewater servicing strategies for the residential portion are set out in the Application⁶⁹ with the chosen servicing strategy being confirmed during detailed design. The first option is that the residential development will be gravity reticulated, while the retirement village will be serviced by low pressure reticulation. All residential lots will be serviced by DN100 laterals. The gravity reticulated network will drain to a new wastewater pump station, which will be constructed at the low point of the site. Flows will then be pumped via a new rising main, and/or swallow main down Maitai Valley Road, before connecting to existing NCC reticulation in Nile Street East.
- 212 The alternative to gravity reticulation is low pressure sewer reticulation if it is proven to be the best engineering solution and that would negate the need for the wastewater pump station. A low-pressure wastewater network would still discharge to the existing NCC network in Nile Street East. All lots would be serviced by a single lateral with boundary kits installed at the lot boundary, with pump and storage chambers being installed within each lot as per NCC requirements.
- 213 The retirement village will be serviced by low-pressure wastewater reticulation⁷⁰, with low pressure pump chambers strategically positioned around the site, each servicing a cluster of buildings. Flows from each building will drain to the low-pressure pump chambers by gravity reticulation, designed in accordance with NZBC Clause G13 Foul Water, and other applicable standards. The low-pressure networks servicing Areas A and B will be independent of one another and will discharge to the wider network.

Stormwater

- 214 The focus of this section is management of stormwater following construction. Although related, we have addressed elsewhere the issues of flooding and the management of stormwater and sediment through the earthworks stage.
- 215 While a stormwater management plan was prepared to support PPC28, a stormwater assessment further refines the concept and provides more detailed on stormwater

⁶⁹ Maitahi Servicing Report, Davis Olgilvie, February 2025, section 3.

⁷⁰ Arvida Maitahi Servicing Report, Davis Olgilvie, February 2025, section 4.

management to support the Application. The Panel understands the main elements of the stormwater management approach are:

- a. a piped primary stormwater network, sized to convey the 21301 SSP5-8.5 6.67% AEP flow in accordance with the Nelson Tasman Land Development Manual;
- b. three stormwater treatment wetlands that are co-located within the blue-green corridor along the Kākā Stream sized to treat the 80-85% of mean annual volume (first-flush) or stormwater resulting from a 3-month ARI rainfall event;
- c. detention tanks on some private lots, where space allows, to retain rainwater from roofs and reuse for toilet flushing;
- d. vegetation improvements to approximately 50% of the Kākā Stream Catchment, including within the blue-green corridor and significant areas outside Maitahi Village, from brush and grassland into native forest; and
- e. overland flow paths from the smaller undeveloped tributaries above the developed areas are provided by open channel to maintain connection to Kākā Stream and to avoid routing these through the treatment wetlands.

216 An increase in impervious surfaces from the proposed subdivision will result in a minor increase in post-development peak flows of $0.2 \text{ m}^3/\text{s}$ (+1.2% increase). This scenario assumes no vegetation improvements. The more realistic scenario where the development is fully constructed and full vegetation improvements results in a change in flow of $-0.5 \text{ m}^3/\text{s}$ for the 1% AEP and a $-0.4 \text{ m}^3/\text{s}$ change for a 10% AEP. This scenario includes climate change.⁷¹ This indicates the effectiveness of the hydrological planned vegetation improvements in compensating for the effects of the proposed increase in impervious surfaces. Because vegetation will take time to establish, the stormwater attenuation will not meet clause 5.4.13 of the Nelson Tasman Land Development Manual for the short-term as post-development will exceed pre-development peak flows. This exceedance is calculated as being small at $+0.2 \text{ m}^3/\text{s}$. As the vegetation becomes established, clause 5.4.13 will be exceeded in that the peak flows match or fall below pre-development flows or from the Kākā catchment.

217 Water sensitive design principles have informed the following stormwater management techniques:⁷²

- a. capture and reuse of roof runoff at lot scale. This will be achieved through rainwater reuse tanks plumbed for internal non potable reuse (toilet flushing) to replicate natural interception and evapotranspiration for medium density dwellings in the western and central catchment. Installing a rain tank which varies in size depending on the roof area (up to 5000L for a roof area of greater than 200 m^2) will have the effect of reducing the runoff from the roof areas by approximately 25%.⁷³ The Applicant clarified that 90 lots will have raintanks;
- b. treatment of all road and hardstand (driveways) and untreated roofs (where rainwater reuse not adopted) runoff before discharge to receiving environment

⁷¹ Maitahi Village Stormwater Assessment Report, T+T, February 2025, section 6.2.4.4.

⁷² Maitahi Village Water Sensitive Design Report, Morphem Environmental, March 2024, section 1.3.

⁷³ Maitahi Village Water Sensitive Design Report, Morphem Environmental, March 2024, section 2.1.

through mix of biological, chemical and physical processes in constructed stormwater treatment wetlands and isolated proprietary devices where necessary. The development area has been divided into three hydrological sub catchments which will drain into separate treatment trains prior to discharge to Kākā Stream; and

- c. discharge of treated flows from wetlands to areas of constructed ephemeral channels and soakage wetlands to buffer the stream from hydrological changes and support groundwater recharge.

- 218 The Panel understands that due to capacity and site constraints, stormwater catchments 'B2' and 'B3' are unable to be treated by the proposed identified wetlands servicing the wider site and that treatment for catchments 'B2' and 'B3' will be designed during detailed design, and will likely comprise proprietary devices, rain gardens, or an additional wetland. In its response to the RFI, the Applicant clarified that the use of a proprietary device or rain garden in areas B2 and B3 has been factored into the wider stormwater assessment, and in particular, the consideration of Water Sensitive Design options.⁷⁴
- 219 No stormwater detention is required to be provided for the retirement village. Runoff from roofs, and small courtyards and patios will be managed by reticulation designed in accordance with NZBC E1/AS1. Runoff from all carriageways will be conveyed via kerb and channel before discharging into piped reticulation via roadside sumps, roof runoff will discharge via direct connections. This reticulation will be designed in accordance with the NTLDM with capacity for up to and including the 15-year ARI event. Secondary flows throughout the site will be managed overland for up to and including the 100-year ARI event and this will be determined through detailed design. The treatment of stormwater will be through wetlands, and they have been designed to accommodate the retirement village site where possible.

Servicing

- 220 The design of the power and telecommunications network will be carried out during detailed design.
- 221 The retirement village will generate both solid and liquid waste, primarily from the care building and facility buildings. Liquid trade waste will be as a result of food production and will be directed to the sewer network via appropriately sized grease traps. Ongoing maintenance of these grease traps will be needed on a regular basis to ensure maintenance requirements of the low-pressure sewer and wider network are not above the normal requirements.
- 222 Solid wastes are likely to be hazardous materials such as those used in healthcare and will be separated into tamper-proof containers and collected and disposed of by appropriately licenced entities.

Comments Received

- 223 The comments received from Bayview Nelson Limited sought assurance that the sizing of the wastewater and stormwater pipes have sufficient capacity to include Bayview. It

⁷⁴ Maitahi Village Water Sensitive Design Report, Morphem Environmental, March 2024, page 8.

requested that civil engineering drawings show services to the boundary to ensure future connection to Bayview and that the Kākā Tributary be designated as a reserve and be available to receive stormwater flows.

- 224 Forest and Bird supported the adoption of water sensitive design with rain tanks, treatment wetlands and soakage areas but questioned the long term effectiveness of these systems in protecting Kākā Stream and the Maitai River from urban contaminants and altered flow regimes. It noted that the success of this approach depends on appropriate sizing, construction quality, and, crucially, ongoing diligent maintenance. It noted the sub-sized wetland for the western catchment and questioned why that wetland is not being increased to at least 4% of the contributing impervious catchment as recommended to ensure stormwater capacity. The comments observed that if development outpaces vegetation establishment, then the Kākā Stream could be subject to increased peak flows of 0.2m³/s. It considered that potential instream erosion and ecological impacts during this interim period must be carefully considered and mitigated, and this must be included in conditions of consent.
- 225 STM claimed that stormwater management for Arvida is missing, and that it is not consistent with the requirements of NRPM Schedule X.13 Stormwater Management Plan. If the consent is granted, STM sought specific and enforceable conditions around post-development stormwater quality and peak flow stormwater attenuation.
- 226 Tony Hadden sought that the Nile Street wastewater be upgraded before adding extra load. He considered that it is impractical to require rainwater tanks and then unenforceable to require their use. He expressed a desire not to connect his property to any of the services or have street lighting.
- 227 Chris Taylor expressed support for the extension of any services further up the Maitai Valley Road that the Kākā Valley development may allow. In particular the provision of town water and sewage together with fiber internet could be installed cost effectively during the development phase.

Applicant's response to comments

- 228 The Applicant responded to the comments from Bayview Nelson Ltd by clarifying that the stormwater treatment system within the proposed roading network is designed only for the CCKV development. The treatment wetland similarly is only designed for this Application and is not intended to accommodate or treat flows from the Bayview development area. Stormwater from the Bayview development which drains to the Kākā catchment will need to be treated within the Bayview site. Once treated, it will be conveyed via the open swale network (including within the CCKV development) which will be discharged directly to Kākā Stream. The final design and capacity of the stormwater swales will be confirmed during the detailed design phase and documented within the required engineering design report. This process will ensure the swales are appropriately sized to manage anticipated flows, including those conveyed from the developed Bayview catchment. The wastewater network within the CCKV development has been designed to accommodate flows from up to 200 residential lots within the Bayview development. Condition 10(g)(vi) of the subdivision consent requires that all network utilities be extended to the boundary of Lot 7000 in Road 1.
- 229 The Applicant acknowledged the proposed stormwater management devices will require reactive and proactive maintenance in order to be effective. Monitoring for blockages and preventing invasive weeds will be important tasks for maintaining the

effectiveness of the wetlands. A detailed maintenance plan with maps and clear explanations of requirements for each feature will be prepared and provided prior to construction. This document can be used to inform contractor engagement for maintenance works after establishment and vesting.

- 230 The Applicant acknowledged the apparent under-sizing of the overall stormwater wetland system capacity but explained that the sizing reflects the distribution of impervious areas within each catchment. The Applicant noted that detailed design will confirm the level of impermeability and therefore the appropriate sizing.
- 231 The Applicant rebutted STM's claims that there is no stormwater management for Arvida, as it is contained in the Servicing Report. stormwater treatment will be provided for the wider site via wetlands. Where possible, these wetlands have been sized with sufficient capacity to treat the Arvida site. The entirety of Area A will receive stormwater treatments from the proposed wetlands mentioned above. Catchment A1 will discharge to the proposed "Central Wetland" when Catchments A2 and A3 will discharge to the proposed "Southern Wetland." For Area B, stormwater runoff from Catchment B1 will be treated by the proposed "Western Wetland." Due to capacity and site constraints, Catchments B2 and B3 are unable to be treated by the proposed wetlands servicing the wider site. Treatment for the Catchments B2 and B3 will be designed during detailed design and will likely comprise proprietary devices, rain gardens or an additional wetland, where the treatment performance will meet the requirements as set out in the Stormwater Management Plan, and Schedule X.
- 232 The Applicant clarified that the proposed stormwater management includes measures to address stormwater effects such as magnitude, duration and timing of peak flows. It mitigates the effect of additional runoff potential through offset vegetation increases, rather than through traditional detention ponds.
- 233 While the Nile Street sewer is outside this Application, the Applicant noted that NCC have identified and budgeted for upgrades in the Long Term Plan. The upgrades to the existing reticulated wastewater network are necessary irrespective of this Proposal. While Tony Hadden considered that rainwater tanks are impractical, the Applicant responded that they are easy to maintain and provide a wide range of other benefits in addition to the primary hydrological benefits. While the upkeep of on-site rainwater reuse tanks will be the responsibility of the property owner, a consent notice will ensure this responsibility is properly administered.
- 234 With regards to the extension of services, the Applicant explained that a resource consent issued in March 2025 approved the extension of reticulated water and wastewater mains from Nile Street to the site at 7 Ralphine Way. These services are expected to become available to the residents of Ralphine Way, as well as other landowners between Ralphine Way and Nile Street. It is also planned to extend the Chorus fibre from Nile Street to the project site. Any neighbour wanting to connect would need to apply to Chorus. In response to the comments stating the properties did not want to connect to wastewater services, any requirement to connect is outside the scope of this Application. Similarly street lighting on Ralphine Way is not part of this Application.

Conditions

- 235 The v2 conditions proffered by the Applicant require the subdivision and development to be carried out in general accordance with the Stormwater Assessment Report (dated

February 2025) prepared by Tonkin & Taylor Ltd.

- 236 Conditions require the internal piped primary stormwater network to be capable of conveying the 6.67% AEP storm event. Secondary flow paths will be via the internal roading network and must be capable of conveying the 1% AEP storm event. If the Stormwater Management Area serving the overall Maitahi development does not have sufficient capacity to provide stormwater treatment, on-site treatment shall be provided using proprietary devices or rain gardens, in accordance with the Stormwater Management Plan (Tonkin & Taylor Limited, August 2022).
- 237 For the comprehensive housing development, water supply and wastewater must be installed prior to the occupation of any building on-site. All engineering works including water, stormwater and wastewater shall be shown on engineering drawings in accordance with the NTLDM to be submitted to NCC for approval prior to the issue of a building consent. The conditions rely on servicing in accordance with the detailed design drawings.
- 238 It is intended that telephone/broadband and electric power connections will be provided to all residential lots of facility.

Panel Findings

239 Pending receipt of responses under s70 of the FTAA

Transport Network

- 240 An integrated transport assessment (**ITA**) was prepared by Traffic Concepts Ltd which set out the approach to managing transport (of all modes) associated with the proposed development and the effects of that. The ITA helpfully explains that Schedule X of the NRMP sets out a number of specific projects that are required to be completed before titles can be issued for the new development. These works are already progressing with preliminary designs completed for the shared path, traffic signals and changes to the intersection of Ralphine Way and Maitai Valley Road intersection. These improvements are part of a separate resource consent for works within the road reserve and are not on the subject Site.
- 241 The proposed roading layout is broadly consistent with the Structure Plan contained in Schedule X and comprises a main spine road with a number of cul-de sac reflecting the valley topography. The eastern side of the retirement village is proposed to be accessed via a new roundabout which is also close to the care facility and forms a loop road. The western side of the retirement village is accessed via a central road. Access for Koata House will be from Road 2.
- 242 Given the proximity to Nelson city and the high usage of the area for recreational activities, significant improvements to the cycle and walking infrastructure along the lower section of Maitai Valley are proposed including a 3 metre wide shared path along Maitai Valley Road and Maitai Road from Ralphine Way to Nile Street East. These works will also include two new separate cycle bridges.
- 243 Trip generation rates are estimated as 1,100 vehicles per day associated with the residential development, 480 trips per day from the retirement village and 47 from the care facility (although likely to be outside peak commuter periods). The vehicle movements from Koata House is harder to predict as it depends on what functions are

being undertaken.⁷⁵ The transportation analysis completed as part of developing Schedule X identified an existing safety deficiency with the intersection of Nile Street East and Maitai Road. The sight lines for drivers exiting out of Maitai Road are obstructed by the guardrail and fence on the one lane bridge and the increase in traffic numbers will increase the safety risk for the right turn out of Maitai Road. After consideration of a number of solutions, traffic signals are the most economic and effective treatment.⁷⁶ The impact of the additional traffic on the Nile Street East / Maitai Road intersection and the installation of traffic signals will result in delays of up to 22.5 seconds. The ITA concluded that the effects of the traffic signals in terms of Level of Service are minor when balanced against the noticeable improvement in the safety of the intersection.⁷⁷

- 244 The roading design does not comply with the following provisions of the NRPM, Schedule X and the Nelson Tasman Land Development Manual:⁷⁸
- a. the bus stops that are steeper than 1 in 15;
 - b. shared path that is steeper than 1 in 12;
 - c. a sight line from Road 11;
 - d. intersection separation for Road 8 and Road 9; and
 - e. legal width of Road 2, 3 and Road 11.
- 245 The ITA considers that the non-compliance due to the steep grade is unavoidable because of topography. The ITA observed that buses can kneel and there are bus stops in NZ with an even steeper grade. An alternative solution to the shared path was considered which involved removing the off-road path and instead providing for those transport modes within the carriageway of the road. This would still be a reasonably steep grade and increases the safety risk to users from moving traffic. For these reasons, the off-road path was preferred due to it being a safer environment for users.
- 246 The sight line from Road 11 is ten metres shorter than required. The ITA considered that the safe stopping distance which takes into consideration the travelling speed is sufficient for any approaching vehicle to be able to stop should a conflict situation arise. The reduced separation distance has been forced by the hillside topography and the ability to develop land on either side of Road 1. Due to the low number of vehicle movements, a staggered tee arrangement and the operating speeds being around 40 km/h, any effects of this non-compliance are considered to be less than minor, with no safety or efficiency impacts on other road users.
- 247 The road design complies with the design requirement of the Nelson Tasman Land Development Manual except for Roads 2 and 3 which do not comply with the road width of 19 metres.⁷⁹ The ITA considers that the reduced legal width for Roads 2, 3

⁷⁵ Integrated Transport Assessment, Traffic Concepts Ltd, February 2025, sections 12.1-12.5.

⁷⁶ Integrated Transport Assessment, Traffic Concepts Ltd, February 2025, sections 12.14.

⁷⁷ Integrated Transport Assessment, Traffic Concepts Ltd, February 2025, page 66.

⁷⁸ Integrated Transport Assessment, Traffic Concepts Ltd, February 2025, sections 12.8.

⁷⁹ Integrated Transport Assessment, Traffic Concepts Ltd, February 2025, Table 3.

and 11 will have no functional or operational effects as the available carriageway width of 7.5 metres and footpaths will accommodate the expected demands.

- 248 Schedule X and NRMP require a number of external mitigation measures to address potential effects arising from the development. Consequently, a resource consent for the following was sought separately to this Application:
- a. the installation/construction of a 3.0 metre wide shared path on Maitai Road and Maitai Valley Road from the development along Ralphine Way to Nile Street East.
 - b. construction of two cycle/pedestrian bridges across the river.
 - c. the installation of traffic signals at the intersection of Maitai Road and Nile Street East for safety reasons.
 - d. installation of an off-road separated path on the eastern side of Ralphine Way.
 - e. installation of a crossing refuge over Maitai Valley Road on the eastern side of Ralphine Way.
- 249 These measures address the potential adverse effects of the development as required by Schedule X and will be completed before any titles are issued for the development. The ITA considers any residual impacts are considered to be less than minor.⁸⁰
- 250 The capacity of the one land Gibbs Bridge was recognised as an issue in PPC28, although the inconvenience effects of an average delay of 3 seconds per vehicle were accepted through the hearing process and expert conferencing with the effects being no more than minor. The actual predicted traffic generation numbers of this Application are only 40% of the numbers used for PPC38 and therefore the average delays will be less.⁸¹

Comments Received

- 251 The proposed transport network and effects of additional vehicle numbers attracted a number of comments. Issued raised included:
- a. the cycle track is too steep up Ralphine Way and would be better located on the track to Dennes hole;
 - b. the inability of one-lane Gibbs Bridge to handle the additional traffic;
 - c. increased queues at intersections;
 - d. increased safety risk at intersections;
 - e. additional parking for recreational users; and

⁸⁰ Integrated Transport Assessment, Traffic Concepts Ltd, February 2025, section 12.13.

⁸¹ Integrated Transport Assessment, Traffic Concepts Ltd, February 2025, page 67.

- f. duration of traffic management and construction traffic affecting access to other properties.
- 252 Bayview Nelson Limited supported a connected road network that enables future connections with Bayview. This was reflected in the comments from Tony Hadden and STM who enquired as to a connection between Ralphine Way to Walter's Bluff / Bayview Road which was a condition of the Environment Court decision.
- 253 The Minister for Seniors requested consideration be given, where practical, to suitable linkages between the retirement village and the subdivision, as well as the reserves and walking and cycling network with Nelson.
- 254 STM observed that 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. Lewis and Williams sought confirmation of a bus route from the city centre.

Applicant's response to comments

- 255 The Applicant acknowledged that a 110 m section on Ralphine Way will be more difficult for non-powered cycles, but considered it is not so difficult to deter cyclists. E bikes will have no problems with the grade. The difference in distance to Trafalgar Street via Ralphine Way versus Dennes Holes is 500 m. The Dennes Hole route is still available but is likely to be less desirable for commuting due to its formation and risk of flooding.
- 256 The Applicant explained that the one-lane bridge has an operational capacity of 1,900 vehicles per hour. The peak flows from the proposed development are likely to be in the order of 110 vehicles per day which is well below the operating capacity. A number of comments expressed concern at the safety of intersections and increase in queues. The Application responded that the sight lines at the intersection of Nile Street East and Maitai Road were identified as substandard in the existing environment and needed to be addressed regardless of this Application. The works to improve this intersection, being part of this Maitahi Village Project, will be completed as a part of Stage 1 of the subdivision. The Level of Service for each of the intersections will be within the accepted operational capacity of an urban intersection.
- 257 Regarding parking associated with recreational users, the Applicant observed that it does not have the ability to regulate parking in these areas. Instead, the NCC will be required to manage parking as part of its normal day-to-day requirements in these areas. Linkages between the retirement village, the subdivision and neighbourhood are provided for and are shown on the master plans. As well as a series of linked accessible pathways, there are at least four proposed connections shown between the Arvida village and the public reserves.
- 258 The Applicant advised that preliminary stages of construction may involve up to approximately six heavy vehicle movements daily (three inbound and three outbound) along Ralphine Way as heavy machinery is brought to the site on low loaders. The peak volumes of heavy vehicles required to import gravel/ engineered fill is generally not expected to exceed 12 daily movements (six inbound and six outbound movements).
- 259 The Applicant explained that alignment of Road 1 has been specifically designed to

enable the indicative road corridor shown in the Structure Plan. Preliminary design work has been undertaken for the extension of Road 1 through the Bayview land to the ridgeline, to ensure that Bayview can continue the formation of Road 1 in a manner consistent with the CCKV development. This includes maintaining a maximum road gradient for Road 1 of 1 in 8 and providing for the continuation of the shared path connection, thereby supporting integrated and accessible transport links between the two developments.

- 260 The Applicant is unable to commit to providing public transport, but notes that Arvida will have a village bus, which will provide transport services to village residences, including trips to Nelson CBD. NCC has required the design of the development to include future public transport initially for the Maitahi subdivision and a future link to Bay View Road.

Conditions

- 261 Version 2 of the conditions requires a number of matters to be addressed in the detailed design drawings for each stage of the subdivision consent including:
- a. a Road Safety Audit report (detailed design audit), to review the upgraded intersection of Nile Street East and Maitai Road and transport infrastructure within the stage;
 - b. a traffic signal peer review for the Nile Street East / Clousten Terrace / Maitai Road intersection;
 - c. bus Stops and the roundabout design to provide for buses;
 - d. deflection is provided in the roundabout intersection design for northbound vehicles;
 - e. road layout and design;
 - f. bridge design;
 - g. linking walkways;
 - h. cycle crossings; and
 - i. street trees

Panel Findings

- 262 Pending receipt of responses under s70 of the FTAA

Historic Heritage

- 263 Through the PPC28 process the Cultural Heritage Consultant Amanda Young undertook a heritage and archaeological assessment of the Site, dated December 2020. A more specific investigation into selected heritage structures, namely the timber woolshed/darn, concrete chimney and concrete stone wall remnants was subsequently completed by Origin Consultants in April 2022 of the shearing shed / possible hop-kiln and chimney on the Site.

- 264 The background to the structure is that an original cob cottage named 'Edendale' was reputedly constructed in 1842 on a terrace overlooking the Maitai River, and then expanded to become a more substantial dwelling. The cottage was restored in 1962 and burned down circa 1991. Historical descriptions of the history of the area state that below Edendale was an old hop-kiln which serviced the adjacent hop-garden, and this evolved into a shearing shed. The Richardson family, who owed the land from around 1914-1969, recalled the hop-kiln turning into the shearing shed. The shearing shed does not appear to have changed in size or appearance, and in 1948 there were holding pens visible in front of the shed indicating it had already changed use by this time.
- 265 Investigations of the chimney indicated that it is not related to the original cottage due to its concrete composition and when it was cast, the chimney was associated with a timber-framed structure clad with rusticated weatherboards, not a cob (earth)-type building.⁸² Similarly the wall remnants appeared to be mid-20th century or later, as a style, rounded stones/boulders cast into the face of concrete walling was quite popular in the 1960s/1970s period.
- 266 The oldest elements of the shearing shed are pre-1900 (or border 1900), but these have been heavily modified since with changes to the roof, fitout of the interior as a woolshed, installation of glass and addition of a lean-to. Accordingly, the shearing shed is described as "an old building at its core, [but] there is much about the woolshed that is only of low constructional or technological significance".⁸³
- 267 Rule X.8 of Schedule X classed the demolition of the existing "shearing shed" and "chimney" as a controlled activity. Control is reserved over:
- a. 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;
 - b. 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
 - c. Recording the existing shearing shed and chimney by digital 3D scanning inside and outside and a 3D model produced.
- 268 This Application proposes to salvage the shearer's graffiti on the walls and sliding door, and shearing equipment for use within the Arvida retirement village café or clubhouse.⁸⁴ Any of these items not reused will be stored for future reuse elsewhere. The Application states that the majority of the 3D scanning has also been undertaken, and this will be completed prior to these structures being removed.
- 269 An Archaeological Authority has already been sought by the Applicant and granted by Heritage New Zealand Pouhere Taonga. It permits clearance of all above-ground structures and features within the subject area plus the removal of foundations

⁸² Investigations into selected heritage structures, Origin Consultants, 14 March 2022, page 5.

⁸³ Investigations into selected heritage structures, Origin Consultants, 14 March 2022, page 8.

⁸⁴ Arvida Maitahi Village (Attachment 14.2 to the AEE), RMM, 4 February 2025, page 19.

involving excavations of up to 2m in depth at 7 Ralphine Way, Nelson.⁸⁵ The Archaeological Authority requires works to be in accordance with a management plan commissioned, or prepared with archaeological advice, by the authority holder. The management plan shall provide operational guidelines and procedures for day-to-day activities that may affect archaeological sites during the proposed works. The plan must be submitted to the Heritage New Zealand Pouhere Taonga Archaeologist for approval prior to the commencement of any earthworks. No earthworks shall commence until Heritage New Zealand Pouhere Taonga has given its written approval of the plan.

Comments Received

- 270 Comments received from the Minister for Arts, Culture and Heritage observed that the archaeological authority 2024/332 does not encompass the entire proposed development area. The Minister recommended further archaeological assessment be undertaken to ensure coverage across the full project area as the archaeological authority focuses solely on historic sites associated with European settlement and does not address Māori occupation and use of the Site.

Applicant response to comments

- 271 The Applicant advised that archaeological authority 2024/332, under the NZHPT Act, includes the land surrounding the historic shearing shed, particularly the area that involves the remediation of the contaminated soil. An archaeological authority for the total project area has not been sought or obtained as there are no known Māori occupation sites within the area proposed for the physical construction of the Maitahi Village. The Applicant acknowledged that potential for Māori archaeological values being discovered cannot be ruled out and accordingly has volunteered iwi monitoring during the activity of earthworks in recognition of this potentiality. Obtaining a second Authority, although not mandatory, would therefore be prudent and the Applicant undertook to make that application following consultation with iwi.

Conditions

- 272 The relevant conditions proffered by the Applicant are primarily contained within Set C of v2 and these squarely address the heritage items including:
- a. 3D scanning and modelling of the shearing shed and chimney prior to demolition;
 - b. salvage of the shearers' graffiti on the rusticated weatherboard clad walls and sliding doors to Woolshed Part A1 and Part B for adaptive reuse and presentation;
 - c. salvage of the shearing equipment and the ground floor windows to Part A1 including any timber and building materials that are recoverable and reusable; and
 - d. photographs of the salvaged items, along with information as to their storage.
- 273 Also within these proffered conditions is an advice note for the consent holder to be reminded of the obligations under Archaeological Authority 2024/332.

⁸⁵ Archaeological Authority number 2024/332, Heritage New Zealand Pouhere Taonga, 16 February 2024.

- 274 Although not reflected in the comments from the Minister for Arts, Culture and Heritage, there is a condition, within Set B – Earthworks and Vegetation Clearance, for discovery of Māori archaeological material. The Consent Holder is required to immediately advise the office of Te Rūnanga o Ngāti Kuia Trust, Ngāti Apa ki te Rā Tō Trust, Te Rūnanga a Rangitāne o Wairau, Ngāti Koata Trust, Te Rūnanga o Ngāti Rārua, Te Rūnanga o Toa Rangatira, Ngāti Tama ki te Waipounamu Trust, and Te Ātiawa o te Waka-ā-Māui Trust of the discovery. Work may recommence if Heritage New Zealand Pouhere Taonga (following consultation with rūnanga if the site is of Māori origin) provides a statement in writing to the Council that appropriate action has been undertaken in relation to the discovery.
- 275 The conditions require similar actions in the event of any discovery of archaeological materials in that works must cease and Council and Heritage New Zealand Pouhere Taonga must be advised.

Panel Findings

- 276 The Panel considers that the actual and potential effects on heritage values are less than minor, and that the conditions proposed appropriately reflect the conditions relating to Rule X.8 in the NRMP.
- 277 It is noted that within the above conditions, there is limited direction as to how and where the adaptive reuse and presentation of salvage items will occur. While the final details of this is a matter for the applicant, the panel does consider that these conditions would benefit from a small amendment to stipulate that any adaptive reuse and presentation of salvaged items should be undertaken 'within the development site' to ensure these items are retained and remain within the heritage context of the site.
- 278 The granting of an Archaeological Authority for the proposed works requires additional steps. While there is no mention of a management plan required by the Archaeological Authority, the Panel acknowledges that that is part of a process separate to the resource consent and it is common for these authorities to follow the substantive consent processes.
- 279 With regard to the potential for additional archaeological authority for the wider site, as raised in the comments from the Minister for Arts, Culture and Heritage, the Panel is satisfied with the Applicant's response as summarised above. It considers that an additional advice note is appropriate to ensure that the consent holder remains aware of its obligations under the New Zealand Heritage Pouhere Taonga Act for the wider Site.

Earthworks, Reclamation, and Geotechnical

- 280 Analysis of the geology and geomorphology indicated modest natural hazard risks. The most significant slope instability features in Kākā Valley are dominated by translational soil slide/debris flows (generally less than 2 m deep although locally up to approximately 6 m deep) within the gullies (e.g. the Eastern Debris Fan). These areas are limited in extent and mainly associated with slopes steeper than 30° within the headscarp areas and flatter slopes that have been disturbed by past land management, including cutting tracks.⁸⁶ The slope above the proposed residential allotments and the commercial lot on the east side of the valley, and lots downslope of Gullies 5 and 6 on

⁸⁶ Geotechnical Assessment Report, T+T, February 2025, section 5.2.2.

the west side of the valley are a potential rock fall hazard simply due to the presence of boulders and rock debris. Other characteristics of geology that need to be considered in terms of detailed design are liquefaction in isolated pockets, high groundwater levels and erosion by flood waters.

- 281 Some of the proposed residential lots are to be situated in areas that have the potential to be subject to geotechnical hazards and present a High and Moderate geotechnical risk. This can be mitigated through detailed design and construction methods such as removing or stabilising weak soils and replacing them with engineered fill, planting areas to improve stability of slopes and installation of subsoil drains where seepage is encountered.
- 282 The proposed construction works will involve bulk earthworks across large areas of the Site to prepare for future civil infrastructure (including roads) and subsequent built development. The total volumes are in the order of approximately 600,000m³ cut and 670,000m³ fill. The Application states that there will be a balance of cut and fill earthworks, with all excavated rock and soil being retained on Site and used beneficially for roading, three waters infrastructure, flood mitigation works and the creation of allotments. Fill not required for the lots to be created as part of the subdivision will be placed under engineering management and control to form a stable landform within Area 7 to allow for potential future residential lots or other land use. This area is oversized to allow for a contingency. The Unsuitable Disposal Area at the northeastern extent of the Site is nominated to receive unsuitable fill materials.
- 283 Changes in gradient will be separated by battered faces that generally have a gradient of 1:2 and are up to 18m high. There are three surplus disposal sites for the excess cut material. A debris bund will be located immediately north of the residential properties within the Residential Zone. The bund stands 1.5m above existing ground level, will have a 2m wide top, and will have battered slopes of 1:2. The majority of the earthworks for Stages 1 – 10 (including the Arvida Village) will be undertaken at the outset of the Project. They are anticipated to be completed within the first 18 months.

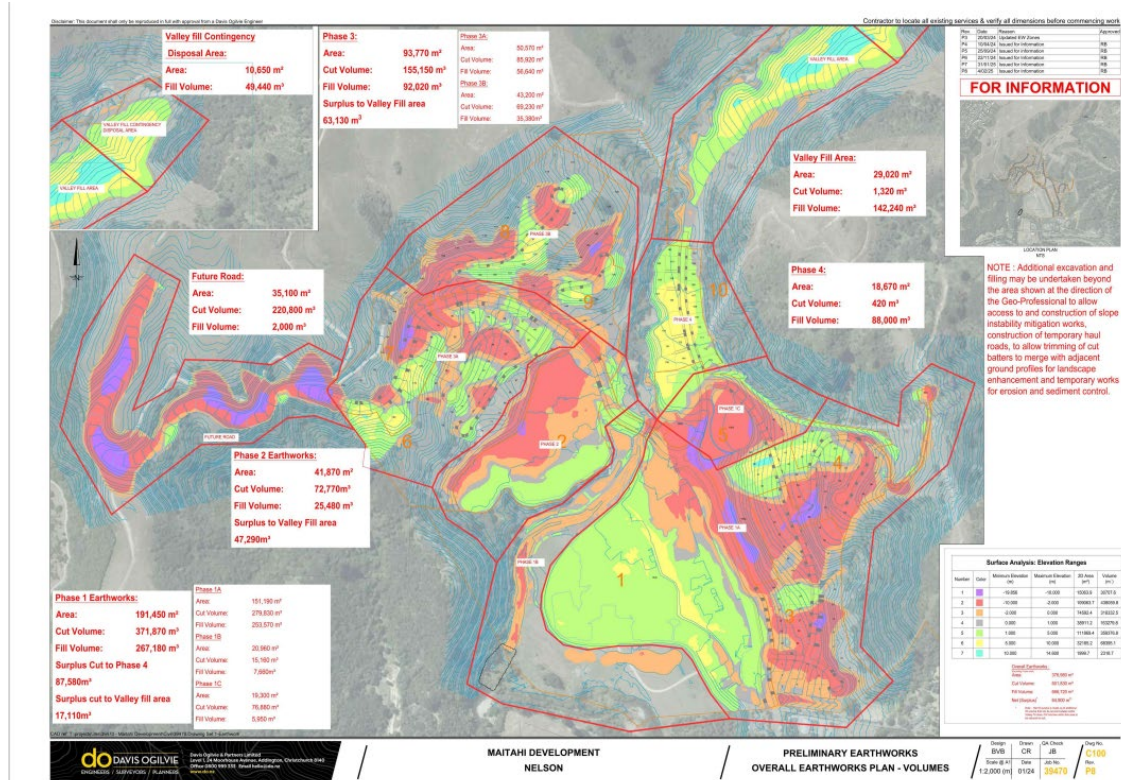


Figure 3: Preliminary earthworks prepared by Davis Olgilvie showing the extent and location of cut and fill

- 284 Significant earthworks are required to realign the Kākā Stream as well as removing all contaminated soil (addressed elsewhere in this decision).

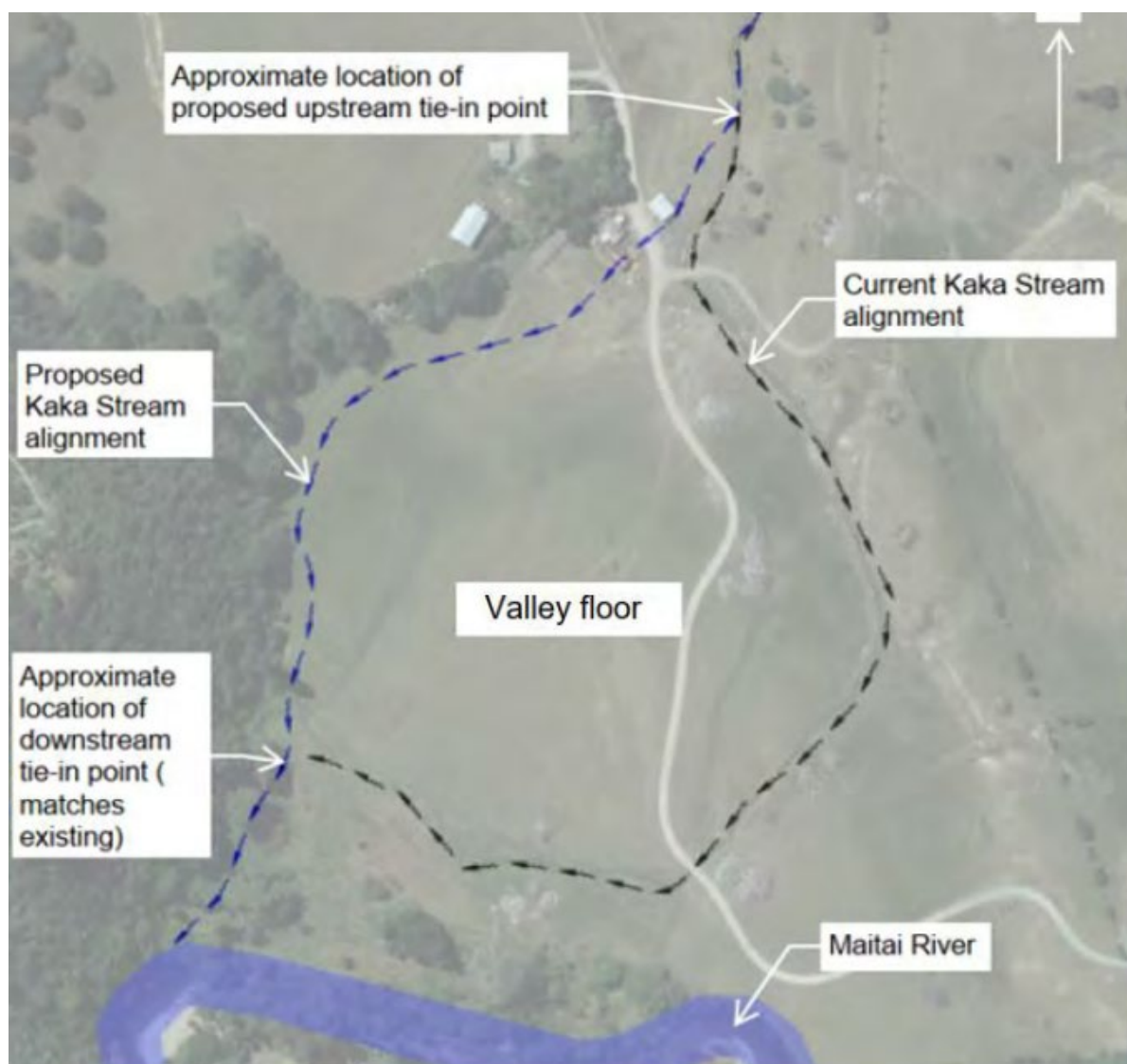


Figure 4: Proposed realignment of the Kākā Stream

- 285 The new stream reach will be established in stages, offline, so that the works are separated from the existing alignment. Once the new reach is completed and stabilised, the upstream section will be diverted into the new channel. After that, the previous channel that is now isolated from the new alignment will be reclaimed and incorporated into the general earthworks activities.
- 286 The main effects of earthworks are dust and runoff of sediment laden water. The Panel has addressed dust effects elsewhere. The Application proposes the following methods for controlling sediment and runoff from earthworks:⁸⁷
- a. earthworks and construction activities will be staged and sequenced in order to minimise open areas at any given time to the greatest extent practicable. Open earthworks areas will be progressively stabilised to reduce the potential for erosion to occur.

⁸⁷ Erosion and Sediment Control Assessment Report, Blue Skies Environmental, January 2025, section 4.3

- b. diversion channels or bunds will be used to divert dirty (construction) water runoff from the earthwork areas to the appropriate sediment control measures. The largest dirty water catchment area will be 5ha.
 - c. diversion channels or bunds will divert clean water runoff away from and around the earthwork areas from the undisturbed catchment above the works from entering the construction area.
 - d. sediment retention ponds will be impoundment devices that provide time for suspended solids to settle out before the runoff is discharged to the receiving environment. These are sized in accordance with the Nelson/Tasman erosion and sediment control guidelines.
 - e. decanting earth bunds will be utilised to treat sediment laden runoff from areas of up to 3,000m².
 - f. chemical flocculant will be added to the inflow of all sediment retention ponds and decanting earth bunds using a rainfall activated or flow activated system.
- 287 Gravity flow into various sediment retention devices will be used in preference to pumps.
- 288 Site Specific Erosion and Sediment Control Plans will contain the detail of measures to manage sediment and erosion, and these require certification by NCC prior to any works occurring. The information contained in the management plans includes the area of earthworks to be undertaken, duration of works, stabilisation methods and chemical treatment with flocculants. The management plan will also set out a programme and methodology for monitoring including targets for pH and clarity. If erosion control measures and practices are deemed effective, then sediment generation will be minimised and the primary reliance on the sediment control measures is reduced.
- 289 The Universal Soil Loss Equation calculations indicate that the proposed earthworks will result in a small increase in sediment yield to the Kākā Stream and Maitahi River during the earthworks phase. With the implementation of best practice erosion and sediment control measures, the calculations predict minor estimated increase of sediment yield, assuming the earthworks are completed in a staged and progressive manner in accordance with the proposed staging.⁸⁸ While the effects of sediment can include smothering and deterioration of habitat, the Erosion and Sediment Control Assessment considers that adverse effects are anticipated to be temporary and minor. There are no unusual or specifically high-risk elements of the Proposal and erosion and sediment control management can be designed and operated in accordance with the best-practice requirements of Nelson Tasman Erosion and Sediment Control Guidelines.⁸⁹

Comments Received

- 290 Forest and Bird pointed to an uncertainty in the sediment yield predictions. The comment suggested that relying on a potentially inflated baseline of sediment to

⁸⁸ Erosion and Sediment Control Assessment Report, Blue Skies Environmental, January 2025, section 7.2.5.

⁸⁹ Erosion and Sediment Control Assessment Report, Blue Skies Environmental, January 2025, section 7.3.

calculate a percentage increase could underrepresent the actual volume and impact of discharged sediment if the true baseline is lower. The actual tonnage discharged is critical for the receiving environment.

- 291 Forest and Bird also commented on the effectiveness of flocculation and dosing systems. It considered that consistent field performance at this level across variable storm conditions, diverse soil types encountered during bulk earthworks, and over a multi-year construction period requires exemplary site management and robust, adaptable chemical dosing, and without this there is a risk of changing the pH downstream. It observed that fine clays are often the hardest to capture and these can be particularly damaging ecologically. Any failure or mishap during diversion or tie-in phases could result in substantial direct sediment discharge. It concluded that it would be desirable for management plans for these works (e.g. ESCP-SW-001 for Kākā Stream Diversion) to be detailed and rigorously implemented. While the development aims to minimise its sediment contribution, Forest and Bird considered that any increase would add to the existing sediment load from the Kākā Stream and the wider Maitai River catchment, and would impact the Nelson Haven. The cumulative impact needs to be considered and reflected in any eventual consent conditions.
- 292 Respondent Gary Scott expressed concern that earthworks will be within 100m of the wetland, which will change the ecology that absorbed water and captured silt deposits during severe rain.
- 293 STM observed that the Site has many challenges for erosion and sediment control, associated with clay soils, steep contour in some locations and the sensitive receiving environments.

Applicant's response to comments

- 294 The Applicant responded that many of the concerns raised have been addressed by the Application and Erosion and Sediment Control Assessment Report. It acknowledged that this is a large earthworks project, but not unusually so. While the overall earthworks footprint is large, it is the area open/exposed to erosion at any one time that is the most relevant to the potential sediment related effects. The Applicant stated that as part of the earthworks, best practice erosion and sediment control will be implemented to minimise the discharge of sediment to the receiving environment. The Application is supported by the assessment report, draft Site-Specific (staged) Erosion and Sediment Control Plans, a Chemical Treatment Management Plan and an Erosion and Sediment Control Monitoring Plan. The Applicant explained that the objective of the proposed erosion and sediment control approach is to minimise sediment yields during construction such that off-site effects on water quality, habitat and amenity are minor and temporary i.e. limited to the duration and period immediately after rainfall. Those effects will coincide with elevated sediment loads within the Kākā Stream and Maitahi River. The proposed best practice erosion and sediment control methods, including staging, are assessed as appropriately minimising sediment yield during the development phase of the project.
- 295 The Applicant acknowledged the erosion issues within the Kākā Stream. The lower section of the Kākā Stream will be redirected by establishing a new naturalised stream channel offline before directing the flows to the new channel. Completing the relocation first (post contamination removals) will simplify the erosion and sediment control methodology for the balance of the earthworks in the lower catchment and further reduce of risk of sediment discharge to the stream. The new stream channel will

reduce the sediment load when compared to that arising from the existing eroding channel, as the new channel will be designed and constructed to be erosion resilient and will be stabilised before water is diverted into it.

- 296 The Applicant noted the predicted sediment loads will be less than that currently generated from the existing land use. This benefit will be achieved progressively through staged development. Overall there will be an improvement in sediment-related water quality and that improvement will occur earlier than post-development.
- 297 With regards to chemical flocculant treatment, the Applicant agrees with Forest and Bird that active site management and monitoring of the chemical dosing systems (including pH monitoring) should be undertaken throughout the duration of earthworks. Monitoring and maintenance requirements are detailed in the Chemical Treatment Management Plan. The critical element is that dosing rates will be set within a neutral pH range to ensure that the flocculant will not result in a biotoxicity effect. Much of the chemical is bound to the sediment retained in the sediment retention pond which ensures environmental safety. The Applicant explained that dose rates can and will be revised if necessary in response to the results obtained from monitoring.
- 298 The Applicant agreed that best practice sediment control measures do still have residual sediment discharge i.e. none of them are 100% efficient in retaining all sediment. This explains why the erosion and sediment control measures proposed have such a significant focus of erosion control at source (e.g. minimising open areas), so as to minimise the amount of sediment that enters the sediment control devices.

Conditions

- 299 The Panel notes that the v2 condition set proffered by the Applicant concerning earthworks and vegetation clearance contained specific conditions directed towards managing site specific erosion and sediment control. There were also provisions concerning the erosion and sediment control monitoring plan. The Panel also notes that in the conditions regarding the disturbance of, and deposition in, the bed of Kākā Stream and its tributaries, there is also provision for a site specific erosion and sediment control management plan.
- 300 The Panel acknowledges that these conditions were an improvement on the original set proffered and notes that further enhancements are contained in the Panel's set of conditions issued under s 70 of the FTAA.

Panel Findings

- 301 As observed by the comments from Forest and Bird and the observations of Panel members during the site visit, the Kākā Stream and catchment has known erosion issues. The Panel observed slumping of the streambanks in a number of places. However, there is nothing novel or unusual about the earthworks proposed or the methods proposed to manage sediment and runoff. Having seen the current sediment situation, the Panel considers that the new streambed to be established through the realignment of the Kākā Stream will increase stability, as will the revegetation proposed for the streambanks. Both of these measures will reduce the risk of erosion and reduce the amount of suspended sediment available to enter the Kākā Stream and the downstream waterways.
- 302 The Panel acknowledges that use of erosion and sediment control plans and other

plans are well known methods for mitigating construction earthworks and stormwater runoff.

303 Pending receipt of responses under s70 of the FTAA

Economic

- 304 Property Economics undertook an economic assessment to support the Application which evaluated construction, operation indirect and induced economic benefits. The original total economic impact on business activity within Nelson as a result of the Application over a 7-year period was assessed to be just over \$356 million net present value. Of this, increased local spend by residents, employees, construction workers and additional local business spend through the different stages of development accounts for \$9.3 million over 7 years. Employment multipliers (which include indirect and induced employment activity) were considered to contribute 660 jobs during the peak development and operation year within Nelson, with a total of 2,737 job years over the 7-year development period.⁹⁰ This report has recently been updated to calculate the economic impacts over a 9 year construction period, to which reference will be made later.
- 305 Direct employment generation in the construction sector is estimated as the largest portion at 1,366 jobs, but the indirect employment generation is almost equivalent but spread across a wider range of sectors.⁹¹
- 306 The economic assessment identifies a number of other economic benefits which are not able to be easily quantified:
- a. increased land and dwelling supply: this will supply the market with an additional 374 dwellings increasing capacity and increases the competitiveness.
 - b. more affordable housing: the potential provision of additional feasible residential development will have an impact on land values. The proposed provision for Ngāti Koata housing is likely to have a direct, rather than market led, impact on the supply of housing at an affordable and social level.
 - c. decreased marginal infrastructure costs: economies of scale will mean lower marginal infrastructure costs.
 - d. increased local economic activity and local employment opportunities through the increase in the number of full-time equivalent employees able to work within Nelson. There will be a net gain for the local economy and stimulate further growth.
 - e. increased local amenity: master-planned developments are able to provide high amenity, master planned environments with purpose built, and targeted amenity values.

⁹⁰ Economic Impact Assessment, Property Economics, February 2025, section 2.

⁹¹ Economic Impact Assessment, Property Economics, February 2025, section 4.3.

- f. greater levels of investment in the local market: the proposed development can contribute to the overall development and revitalisation of the surrounding community, attracting investment and fostering local entrepreneurship. This can in turn provide significant impetus for growing the local economy.
- g. impact on current employment levels through generation of new employment opportunities.

307 The Panel notes that this economic analysis focuses on this Application within the context of PPC28 and the detailed economic assessment that occurred through that plan change process. The Panel is particularly mindful that PPC28 not only involved Mr Tim Heath on behalf of the Applicant, but also Mr Kirden Lees who represented STM. Of note, the joint witness statement produced by the economic experts in PPC28 agreed a number of matters including:⁹²

- a. from an economic perspective the development of the plan change area would result in significant benefits to Nelson and the region;
- b. that it is an appropriate location for urban residential development from an economic perspective. There is a need for additional housing in Nelson and the region and the PPC28 area is a good geo spatial location close to the Nelson CBD;
- c. 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;
- d. the quantification of the benefits of the construction phase lie somewhere between the cost of construction and the multiplier number provided by Property Economics (Tim Heath) of \$170 million (2019 NZD); and
- e. that these benefits (of the construction phase) are substantive.

Comments Received

308 The comments from STM expressed concern with the economic effects of the Application including:

- a. 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.
- b. affordability is improving in Nelson without the addition of any major subdivisions increasing supply; and
- c. this subdivision will be expensive for ratepayers and purchasers.

309 STM also observed that the costs associated with environmental effects have not been estimated. It considered that 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

⁹² PPC28 Joint Witness Statement for Economic experts, 27 April 2022, paragraph 3.2.

likely to be significantly negative. The economic impact assessment acknowledges that these effects may result in economic impacts, they have not been addressed.⁹³

- 310 The Associate Minister of Transport considered that the Application will support the Government's priorities for housing, infrastructure and economic growth. It presents a significant opportunity to unlock development and economic growth, to benefit the portfolios for which they have Ministerial responsibility and New Zealand overall.

Applicant response to comments

- 311 The Applicant responded by clarifying that the economic assessment did not identify the 'main' economic benefit being employment. However it considered that generation of 2,700 job years to a region that experienced an employment fall in the March 2025 quarter is significant, particularly in relation to a total construction sector of some 6,000 jobs. The economic benefits of this Application manifests in positive economic impacts through improving housing market and land use efficiencies, catalytic impacts on development in the Region (residential consents fell 2.8% last year), as well as improving overall affordability. The Applicant considered that context is important for economic effects and observed that \$340m GDP estimated for this Project represents a significant contribution to the Nelson Region in the context that over the last 3 years (to March 2025) the regional economy grew \$196m.
- 312 In response to the criticism that construction will take longer and reduce the economic benefit, the Applicant commissioned an updated economic impact assessment for a 9-year period which predicted a slightly reduced GDP from \$354m to \$342m and a reduction in approximately 37 employee years.
- 313 In terms of existing subdivisions, the Applicant noted that the potential for residential and non-residential development elsewhere does not necessarily dilute or alter the benefits of this Proposal. The Panel accepts this contention.
- 314 With regards to dis-benefits, the Applicant explained that it would be double-counting to attribute economic impacts to environmental impacts.
- 315 Arvida responded to the comments around provisions of retirement accommodation. WEBSTER Research were engaged by Arvida in October 2021 to provide an overview of the primary demographic and economic factors within the Nelson and Richmond market.

Panel Findings

- 316 The Panel is aware that the Independent Hearing Panel for PPC28 considered this issue previously and agreed with the expert witnesses for economics that the Project would result in substantial economic benefit to the region, including from the construction phase.⁹⁴

⁹³ Economic Impact Assessment, Property Economics, February 2025, section 3.

⁹⁴ Recommendations from the Independent Hearing Panel following the hearing of PPC 28, 9 September 2022, paragraph 992.

- 317 The Panel is satisfied that these economic benefits qualify as significant regional benefits and will address this topic in more detail in Part G.

Noise and vibration

- 318 Construction and earthworks inevitably create noise and, as recognised by the Application, construction is unlikely to comply with the permitted activity standards for noise in Rule REr.43. In this regard the activity status is discretionary. Construction noise is proposed to be managed primarily through compliance with the NZS603: 1999 Acoustics – Construction Noise. The Application does not seek to depart from Rule REr.45 Vibration and considers that construction can comply with those standards.
- 319 The other source of noise arising from the development is likely to occur from usage of Koata House. The Application states that the Koata House activities will need to be operated in accordance with the noise performance standards in Rule SCr.R36 Noise and SCr.37 Noise - At residential boundary.
- 320 The Panel noted that the initial Application did not contain a specialist noise and vibration assessment, and sought further information by way of RFI on noise and vibration effects on sensitive receivers. A report from Styles Group set out the upper noise limits in NZS6803 for construction noise received in residential zones and dwellings in rural areas.⁹⁵ The noise levels from construction work are required to be assessed 1m from the façade of any occupied building and typically over a 15-to-60 minute period. The assessment set out noise limits that could be applied as project noise standards and are an abbreviated form of the guideline noise limits in NZS6803:

Time period	Maximum noise levels	
	L _{Aeq} (15 min)	L _{AFmax}
7:30am- 6:00pm, Monday to Saturday	70 dB	85 dB
All other times and on Public Holidays	45 dB	75 dB

- 321 Styles Group considered that light civil works and construction of dwellings could still occur when the 45 dB noise limit applies, provided the work is well separated from the Ralphine Way Receivers by distance and / or topography.
- 322 In terms of vibration, the report recommended adopting a limit of 5mm/s PPV measured on the foundation of any receiving building (occupied or not). This will ensure that cosmetic damage to buildings will not occur. The vibration generating works that that may be perceptible to neighbours is limited to works generally within 50-100m of the receivers. The report observed that communication with properties close-by will go some way towards mitigating potential annoyance effects.
- 323 The nearest buildings to where earthworks are being undertaken is 14 Ralphine Way where the dwelling is 15m from the boundary where there will be earthworks, and 5 Ralphine Way is 12m from where there will be earthworks. Each of these properties is

⁹⁵ Construction noise and vibration assessment, Styles Group, June 2025, pages 3-4.

50m and 17m respectively from the construction access road.⁹⁶ The noise level predictions demonstrate that there are some construction activities that have the potential to exceed the Project Noise Standards if mitigation is not implemented. There is potential for the Project Noise Standards to be exceeded when works are within approximately 50-100m of the Ralphine Way Receivers. If the Application is to comply with the Project Noise Standards at all times, then all construction activity within 100m of the Ralphine Way receivers will need to be carefully managed. The Construction Noise and Vibration Management Plan will be the main means of managing construction noise and vibration and ensuring the Project Noise Standards are not exceeded.

- 324 To minimise potential noise effects of heavy vehicles, Styles Group recommended that the Construction Noise and Vibration Management Plan includes prescriptive requirements to preclude any heavy vehicles queuing or idling on Ralphine Way 7:30am, and to ensure that heavy vehicles do not access the site via Ralphine Way before 7:30am. Styles Group also recommended a condition requiring reduced hours of construction work for works after 1pm on Saturday that are within 100m of any occupied dwelling on Ralphine Way. This recommendation is designed to ensure that the Ralphine Way receivers are provided with respite from works that may generate higher construction noise levels (60-70dB L_{Aeq}) from 1pm on Saturday, with no works occurring on Sundays and Public Holidays.

Comments Received

- 325 Concerns about the generation of noise (both duration and scale) were raised by respondents Lynley Marshall, STM and Gary Scott. In summary, the concerns were that the scale of earthworks would result in a considerable number of trucks which will create noise, and that the natural topography of the valley acts as an amphitheatre for noise particularly for trucks in lower gears.
- 326 STM considered that the noise associated with construction 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, and would be contrary to RPS objective NA1.2. STM also expressed concern that the effect of construction noise on fauna in nearby significant natural areas has not been assessed, and neither has post-development noise. Consequently, STM sought inclusion of conditions to:
- a. limit construction noise to weekdays between 8 am and 4 pm
 - b. specify an appropriate noise limit to protect amenity values; and
 - c. manage effects of noise on significant natural areas.

Applicant's response to comments

- 327 The Applicant referred to the recommended construction noise limits developed by Styles Group noting that these have been adopted in the conditions. With regards to the concerns of STM around rock breaking, the Applicant confirmed that some rocks in Gully 11 (upslope of Pylon Track) may require fracturing or removing to prevent them

⁹⁶ Construction noise and vibration assessment, Styles Group, June 2025, pages 8.

rolling in a seismic event, and this may require excavators or a chemical fracturing process. Styles Group consider that the process is significantly different to traditional blasting and that the noise and vibration effects are likely to be very infrequent, (probably only several events required), will easily comply with the relevant noise limits and will likely be unnoticeable at any existing receiver given the significant separation distances. Styles Group opined that no specific conditions are necessary to manage the effects of the rock fracture or removal.

- 328 The Applicant acknowledged that the noise environment will change from rural to urban and this was anticipated by the rezoning in PPC28. Paragraph 881 of the Hearing Panel's Recommendation for PPC28 recorded:

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.

- 329 The Applicant outlined the various conditions which will manage construction noise, including the timing, level and the requirement for construction work to be undertaken in accordance with a Construction Noise and Vibration Management Plan.

Conditions

- 330 The key mechanism for managing noise generated by construction is the Construction and Environmental Management Plan which must be certified by Council prior to commencement of any site development works. The proffered conditions include the following parameters:

- a. the construction vibration does not exceed 5mm/s PPV when measured within 500mm of ground level on the foundation or structure of any building on another site.
- b. noise limits for each day and time which must be complied with when measured 1m from the façade of any occupied dwelling or building on any other site.
- c. permitted days and hours of construction, but no construction work is allowed on Sundays or public holidays.
- d. heavy vehicle movements using the Ralphine Way access are limited to between 0730 and 1800 Monday to Friday and 0800 and 1700 on Saturdays.
- e. operation noise levels from non-residential activities within the retirement village.

Panel Findings

- 331 The Panel notes that any issues arising from noise will be able to be addressed through suitable conditions, in particular the inclusion of a construction noise and vibration construction plan will mitigate any adverse impacts, particularly in relation to neighbouring residents on Ralphine Way.

332 To be completed following receipt of responses under s70 of the FTAA

Landscape, visual amenity and natural character

- 333 The current environment is that of a working farm so it is unavoidable that there will be a change in the landscape and character of the Site. The question therefore is

whether the landscape and visual effects are acceptable in the context of the proposed development. The landscape assessment which accompanied the Application takes the approach of assuming an urban development in accordance with the zones currently applying to the Site. The assessment therefore focuses on the visual and landscape effects where there is a non-compliance with the primary purpose of each zone or a non-compliance with standards. Given the context of the zones within the Site and the anticipated development associated with those zones, the visual and landscape assessment has focused on the visual effects on the receiving environment and whether the landscape values attributed to this setting are retained or whether, if adversely affected, effects can be satisfactorily avoided, remedied, or mitigated.⁹⁷

- 334 The Panel considers this approach to be reasonable particularly given the outcome of the PPC28 process as endorsed by the Environment Court and embodied in the NRMP and Schedule X. The Panel observes that the landscape effect of residential development was already assessed through PPC28 and determined by the Independent Hearing Panel to be appropriate.
- 335 While the zoning of PPC28 anticipates urban development with open space areas, planting native vegetation, the management of wastewater and undertaking stream work (earthworks and planting) to enhance the landscape values of Kākā Stream and maintain the values of the Maitai River, the landscape values of Kākā Stream and Maitai River are to be maintained and / or enhanced.
- 336 It was agreed through the expert conferencing for landscape in PPC28 that the landscape include Skyline Areas and the Maitai River and its margins are a significant feature/landscape.⁹⁸ The Maitahi and Bayview Private Plan Change Assessment outlined that development within these areas on the valley floor and hillslopes is not readily visible from most public places. The visual effects assessment accompanying the Application therefore focuses on the visibility and visual effects from the surrounding public places. Most of the residential development is located in its respective residential zones, three properties extend into the Open Space Recreational Zone and two properties extend into the Neighbourhood Reserve in the order of 2 – 10m. The Landscape Assessment considers that the view of these will be blocked by dwellings, structures and vegetation and will not result in any visual effects.⁹⁹
- 337 The Panel records that the retirement village is located entirely within the Residential Zone. For this reason the proposed landscape assessment considers it will not result in any adverse visual effects or reduce the visual amenity of the wider development when experienced from the surrounding public or private viewing points.¹⁰⁰
- 338 The water reservoir and 45m of its access track will be situated within the Rural Zone, on Kākā Hill's lower slopes, some 55m outside the Residential Zone. This location is relatively low down at RL123m, and with a dark recessive finish. The colour and the revegetation of native shrubs and trees will make it difficult to see and therefore will have a very low degree of adverse visual effects when seen from the surrounding public places. The 2m tall proposed rockfall bund will be located immediately north of

⁹⁷ Landscape Assessment Report Maitahi Village, Rough Milne Mitchell, February 2025, section 5.2

⁹⁸ PPC28 JWS for landscape, 11 May 2022.

⁹⁹ Landscape Assessment Report Maitahi Village, Rough Milne Mitchell, February 2025, page 16.

¹⁰⁰ Landscape Assessment Report Arvida Maitahi Village, Rough Milne Mitchell, February 2025, section 5.2.

the residential properties within the Residential Zone, but will be screened by further development from the surrounding public places and therefore will not result in adverse visual effects.

- 339 Kākā Stream will sit within an approximate 50m wide open space area that will contain the realigned stream, numerous storm water basins, a network of cycling / walking trails, extensive areas of native vegetation along the steeper hillslopes and stream edge, and open grassed areas for active and passive recreation. The landscape assessment considers that the screening effect of the planting will positively contribute to the vegetated character of the Maitai Valley, retaining a more scenic outlook from this nearby area, and assist in visually separating this development from people recreating. Due to this, the enhancement of Kākā Stream and its surrounding environment is said to positively contribute to the amenity that people experienced from the surrounding public places.¹⁰¹
- 340 In terms of landscape effects, the small encroachment of residential properties into the Open Space Recreation Zone and Neighbourhood Reserve, and future dwellings on the toe of the Residential Green Overlay is considered to have a very low degree of effect on the landscape values of Kākā Valley, including the lower slopes of Kākā, Botanical and Malvern Hills.¹⁰² Further to this, the landscape values of the Kākā Stream and its corridor are assessed as being positively enhanced.
- 341 The baseline development for the retirement village as enabled by the zone is a node of high-density residential development with commercial and open space development. An indicative layout for this area could include a series of 300-400m² lots with both detached and attached housing typologies lining an irregular local roading network, with buildings up to 7.5m in height. By comparison, what is proposed is a comprehensive development with a variety of housing typologies. The landscape assessment considers that the quality of the architecture, and consistency of the landscaping throughout the village and the connectedness and accessibility that the village will have with its surroundings will have a positive outcome.

Comments Received

- 342 Comments from STM considered that 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 Application, in particular through development (earthworks, vegetation clearance and buildings) in backdrop and skyline areas. STM contended that the development does not achieve objectives DO15.1.3 or DO14.2. STM also observed that 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. STM considers that the development is not consistent with the outcomes directed by the Regional Policy Statement.

¹⁰¹ Landscape Assessment Report Maitahi Village, Rough Milne Mitchell, section 5.2.2.

¹⁰² Landscape Assessment Report Maitahi Village, Rough Milne Mitchell, section 5.3.1.

- 343 The comments from NCC considered that the proposed development responds positively to key matters of Schedule X, including:
- a. X.4 and X.5: Managing development within the Backdrop and Skyline Areas to protect visual amenity and landscape character through design controls, planting requirements, and location-sensitive building regulation; and
 - b. X.6: Prohibiting buildings within the Kākā Hill Skyline and Backdrop areas, and within identified Significant Natural Areas, to safeguard key landscape and ecological values.
- 344 NCC also states that the Application achieves the provisions of Schedule X which seek to ensure development in the Kākā Valley and Bayview area achieves high-quality environmental, landscape, and urban outcomes. NCC considers that the Application appropriately protects areas of landscape sensitivity.

Applicant response to comments

- 345 In response to the comments from NCC, the Applicant confirmed that the Maitahi Village does not involve any development within the Backdrop or Skyline areas, being bespoke landscape controls shown on the Structure Plan. No buildings are proposed within the Kākā Hill Skyline or Backdrop Areas.
- 346 The Applicant responded to STM by noting that the operative underlying Zoning enables residential development. PPC28 dealt with the landscape changes and the Independent Hearing Panel made the following findings:¹⁰³

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.

- 347 In respect of the STM claims that the Proposal does not achieve DO15.1.3 and DO14.2, the Applicant drew attention to the decision of PPC28 which accepted that there will be an element of rural character lost, but that in and of itself is not necessarily adverse:¹⁰⁴

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.

Conditions

- 348 The Panel observes that provisions for landscape requirements are contained within

¹⁰³ PPC28 Hearing Panel recommendation report, paragraph 14.

¹⁰⁴ PPC28 Hearing Panel recommendation report, paragraph 467.

the v2 condition set as part of various land use resource consents. It is unnecessary to discuss these specific conditions in any detail other than to observe that they seek reasonably to implement the approach to landscape design and amenity described above.

Panel Findings

- 349 The Panel is satisfied that the Applicant has ensured to the extent possible that the landscape features of this major development create a desirable urban environment which all residents and those using the area can enjoy. This development will sit in a large valley setting surrounded on three sides by natural hillsides, including the Kākā Hill. On the lower edge sits the Maitai River into which the realigned Kākā Stream will flow. In a sense, these natural features provide the canvas on which the landscape features described above will be imprinted. It is evident to the Panel that these natural landscape features have led the overall design and layout in which the residential and other buildings will sit.

350 To be completed following responses under s70 of the FTAA

Open space and recreational values

- 351 The structure plan for Maitahi identified large areas for open space and recreation. The Open Space Recreation Zone follows the Kākā Stream, and also forms the western and southern edge of the structure plan area. A proposed neighbourhood reserve is located at the intersection of Road 1 and Road x, immediately alongside the Kākā Stream. Additional land is also to be vested as reserves, in accordance with the Maitahi Bayview Structure Plan. PPC28 anticipated a commercial area, the ecological enhancement of Kākā Stream as well as open space areas for informal recreational, and a network of roads and walkway / cycleway links for transportation and leisure.
- 352 Small portions of four properties extend into the Open Space Recreational Zone and two properties extend into the Neighbourhood Reserve. These relatively small areas of residential development will result in a slight loss to the amount of exotic vegetation that is located on the lower slopes of Kākā Hill and the amount of open space within the Neighbourhood Reserve.
- 353 As discussed in **paragraph 339**, the realigned Kākā Stream and its numerous storm water basins, a network of cycling / walking trails, extensive areas of native vegetation along the steeper hillslopes and stream edge, and open grassed areas for active and passive recreation will positively contribute to the amenity that people experienced from the surrounding public places.¹⁰⁵
- 354 As noted, the landscape assessment goes further and considers that the landscape values of the Kākā Stream and its corridor will be positively enhanced through:
- a. enhancing the natural character of the in-stream ecology by lining the stream with native vegetation.

¹⁰⁵ Landscape Assessment Report Maitahi Village, Rough Milne Mitchell Landscape Architects, February 2025, section 5.2.3.

- b. enhancing the natural character of the valley floor within the Open Space Zone by replacing the pasture grass with riparian vegetation alongside the stream and around the water retention basins, and swathes of indigenous shrubs and trees throughout the remainder of the 50m wide corridor.
 - c. creating a comprehensive network of public walking / cycling trails along the length of the stream, including up to four bridges of the stream, with the trail network connecting into the neighbouring residential networks, neighbouring open spaces (Botanical Hill, Maitai Valley etc) and the wider trail network within Nelson.
 - d. creating multiple public open space areas for passive and active recreation including playgrounds, parks and seating areas.
- 355 A 2.2m wide designated pathway provides a direct pedestrian/cycle linkage between Areas A and B of the retirement village, that is completely separated from the road reserve. Five pathways provide strategic pedestrian/cycle access links between the village and Open Space Recreational Zone Associated with Kākā Stream and Botanical Hill. These pathways are strategically placed to provide all residents with as direct access to these areas as possible.

Comments Received

- 356 Comments received from Lynley Marshall outlined the range of recreation opportunities in the Maitai Valley and considered it to be an important recreation area close to the city centre, that leads up into the mountains. It is used for recreation daily, year-round by users of all ages and for a wide variety of recreational activities. She expressed concern that the reserve area is currently a floodplain for the Maitai River and will be subject to future flood damage. She considered that lay out of the proposed reserve area and paths must be done in such a way to deter users from thinking they can walk through this area alongside the river as it is private property.
- 357 She noted that during times of peak use in the recreational areas of the lower Maitai Valley there is a shortage of parking. She considered that parking needs to remain on the side of the road for recreation users in the lower Maitai Valley using Brandford Park and the Maitai Cricket Ground and the three popular swimming holes. Waahi Taakaro Reserve / Sunday Hole has traffic parking on Maitai Valley Road and Ralphine Way in summer as the carpark becomes full.
- 358 Bayview Nelson Limited requested that if there is a reduced reserve on Maitahi side of the Kākā Stream within Lot 6000, it will not result in increasing the reserve width on the Bayview side.
- 359 The comments from the Minister for Seniors observed that the seating pictured in the landscape design report is not considered age friendly as lacks backs and arms.
- 360 NCC commented that the proposal responds positively to X.7: Requiring esplanade reserves along the Maitahi River and Kākā Stream to support ecological restoration and recreational connectivity, including the use of an approved indigenous planting palette.

Applicant's response to comments

- 361 The Applicant confirmed that reserve corridors provide continuous public access along the Kākā Stream, linking the esplanade and open space recreation zones identified in

the Structure Plan and ensuring landscape and ecological connectivity between the Maitahi and future Bayview developments. A centrally located neighbourhood park provides open space and recreation opportunities for both the CCKV and Bayview communities.

Conditions

- 362 The v2 condition set contained conditions for land use relating to open space and recreation areas (set G). These conditions concerned the activity of establishing an open space, recreation corridor and neighbourhood reserve with integrated stormwater management and recreation features. The Panel has reviewed the various landscape design documents referred to by the Applicant and observes that the development will proceed in general accordance with the information contained in these plans.

Panel Findings

- 363 The Panel considers that the design and location of the reserves will contribute significantly and positively to the open space and recreation values by providing additional recreational opportunities with the Maitai Valley catchment.

364 Pending receipt of responses under s70 of the FTAA

Ecology

- 365 There are two environments where ecological effects must be considered – terrestrial and freshwater. Ecological effects are also relevant to water quality, cultural effects and remediation of contaminated land, all of which the Panel has addressed elsewhere.
- 366 In order to understand the potential ecological effects, the Panel considers it is important to first understand the current ecological environment of the Site. An ecological impact assessment was lodged with the Application and described the current environment of the tributaries of Kākā Hill Tributary, along with the adjacent lowland and hillslope areas as being highly modified and holding limited ecological value. No significant or indigenous habitat types are known to occur within the Project Area. The Site and its zone of influence is predominantly (77.15%) pasture with occasional rushes, shrubs and trees.¹⁰⁶ While the Upper Kākā Hill Tributary is vegetated with a mix of native and exotic shrubland, the lower reaches are characterised by rank pasture and boggy lowlands. Water quality in the stream is compromised with high levels of *E. coli*, nitrogen-nitrate levels and suspended solids. Four species were present, with one of those being īnanga which have a conservation status of At Risk (Declining). Two degraded wetlands are located within the Site, although they lack any notable riparian vegetation. No significant natural areas are located within the Site, although SNA 166 is located approximately 500m away. The Site was deemed unsuitable for long-tailed bats and bird diversity is low. A targeted lizard survey indicated that grass skink is likely to be the only lizard species present.

Freshwater ecology

- 367 There are a number of proposed works that will result in positive ecological effects for

¹⁰⁶ Ecological Impact Assessment, Robertson Enviro, February 2025, page 20.

freshwater ecology, such as:

- a. naturalised channel and substratum heterogeneity via channel reshaping and substrata addition using natural materials and 'alternatives' that provide further ecological benefit (e.g. improve bank stability through planting);
- b. enhanced riparian margins with the removal of stock access will improve and maintain connectivity and provide stream shade, with improved biodiversity;
- c. improved fish passage along the length of the Kākā Stream; and
- d. improving the functioning of the two wetlands and enhancing biodiversity.

368 The construction phase has the potential to cause temporary effects through loss of in-stream habitat, mortality of species and increased suspended sediment. The proposed rerouting of the Kākā Stream will result in temporary habitat and streambed disturbance. There are a number of mitigation methods proposed to reduce any effects such as timing the streambed works to avoid critical fish migration and spawning periods, and establishing the new channel before diverting flows.

369 Temporary loss of permanent and intermittent stream habitat will result due to the realignment of approximately 1,410 m² of channel. This is a more than moderate effect and therefore is offset by the creation, restoration, and enhancement of approximately 2,085 m². The ecological function and habitat diversity will be improved through increased sinuosity, instream habitat complexity and enhancement planting along the stream banks. Rule X.15 requires a detailed Ecological Restoration Plan includes an Offset Stream Restoration Plan, which outlines the appropriate types and quantities of offsets, locations, and management interventions required to ensure, at a minimum. The residual adverse effects on streams are assessed as being moderate, but the implementation of the Offset Stream Restoration Plan will adequately mitigate those.

370 Potential hydrological impacts on the two small exotic wetlands which may lead to loss of wetland extent and values is classified as a moderate effect. To address this, a Wetland Hydrology Assessment for the subject wetlands is required as a condition of consent. Mitigation measures include native wetland plantings within a 10-20 m buffer, using species that promote hydrological retention and improve habitat complexity. Erosion control measures will be implemented to prevent sedimentation and nutrient loading from upslope land use. Implementation of these measures and the Wetland Hydrology Assessment to identify measures to protect existing hydrological inputs and minimise alterations from earthworks will reduce the effects on wetlands to low.

371 The ultimate downstream receiving environment (Maitahi/Maitai River and Whakatū/Nelson Haven) will be unaffected, provided the volunteered conditions regarding adequate stormwater and erosion and sediment control measures are effectively implemented.

Terrestrial ecology

372 The adverse effect on terrestrial ecological features can be reduced to low to very low with the implementation of mitigation measures and reflecting the Site's modified nature and existing disturbance levels. This includes retaining a high level of taller native shrubs and trees including kanuka. The retained native vegetation will continue to provide habitat for birds. Habitat creation and restoration (e.g. through native

planting and stabilisation) will enhance ecological value, thereby increasing biodiversity.¹⁰⁷

373 Ecological management proposed during construction includes:

- a. a Native Fish Salvage and Management Plan;
- b. an Erosion and Sediment Control Plan;
- c. a Lizard management Plan;
- d. considerations of timing and staging of works;
- e. stream offset; and
- f. riparian and amenity planting.

374 The Application affords opportunities for significant ecological gain through revegetation of the Kākā Stream (and associated enhancement of aquatic habitat) and the replanting of indigenous vegetation. Accordingly, the ecological assessment anticipates the overall ecological effect as being very low, with a positive net gain expected over a 5-10 year period.

375 The Wildlife Act 1953 must be complied with, as such management measures must still be implemented to ensure that any activities do not injure or kill native wildlife. Those measures include:¹⁰⁸

- a. a Lizard Management Plan to outline measures to ensure native lizards are protected; and
- b. seasonal constraints for vegetation clearance activities across the higher quality native dominant areas to reduce impacts on birds, particularly outside the peak breeding season.

Cumulative effects

376 The ecological impact assessment considered that the buffering effect of terrestrial and freshwater habitat protection, restoration and enhancement is expected to improve ecological values both within the Site and in adjacent areas. The Application provides an opportunity to reverse historical impacts caused by land conversion to agriculture, thereby addressing associated cumulative effects in the long term. Consequently, cumulative adverse effects are not anticipated.¹⁰⁹

Comments Received

377 The D-GC raised a number of concerns, including:

¹⁰⁷ Ecological Impact Assessment, Robertson Enviro, February 2025, section 5.2.3.

¹⁰⁸ Ecological Impact Assessment, Robertson Enviro, February 2025, section 6.3.

¹⁰⁹ Ecological Impact Assessment, Robertson Enviro, February 2025, section 7.

- a. inadequate information on freshwater values;
- b. lack of baseline monitoring of freshwater fauna;
- c. no Wildlife Act approval to capture, handle and relocate lizards. Seven species are absolutely protected under the Act and will need a lizard management plan;
- d. no complex freshwater fisheries associated with work to divert the Kākā Stream has been sought;
- e. tightening of consents;
- f. with a baseline survey there could be a net gain of indigenous biodiversity but this has not been demonstrated;
- g. needs a certification process for every management plan;
- h. disjunct between ecological impact assessment and conditions which states there will be several management plans developed, but these have not been carried through into conditions; and
- i. the conditions relating to a Lizard Management Plan should include a requirement for an accidental discovery protocol in case Threatened or At-Risk – Declining species are discovered within the Site.

378 Forest and Bird commented on the need for conditions that ensure that there will be a net gain as claimed. Forest and Bird sought inclusion of a management plan for birds and sought amendments to conditions to require a process for, and enhanced content of, management plans. Forest and Bird expressed concern that effects on nearby significant natural areas had not been fully addressed, including construction noise.

379 Forest and Bird considered that the commitment to a Wetland Hydrology Assessment for Wetland 1 is critical, and that this assessment must occur before final design of adjacent earthworks, and its recommendations must be binding to prevent adverse hydrological changes. There must be a minimum 10m riparian buffer between treatment devices and the stream to protect their ecological and functional integrity.

380 Comments from respondent Gary Scott noted that earthworks will be within 100m of the wetland which will change the ecology that absorbed water and captured silt deposits during severe rain. Respondents Megan Lewis and Timothy Williams expressed concern that there will not be sufficiently high standards of ecological protection.

Applicant response to comments

381 With regards to the adequacy of information on freshwater values, the Applicant considers that the required information on freshwater ecological values has been provided to support a robust assessment of effects. The Ecological Impact Assessment and Stream Mitigation Assessment include detailed field survey data, SEV assessments, and ecological significance evaluations in accordance with accepted good practice. The Applicant considers that the conclusions of the Ecological Impact Assessment are based on a thorough technical assessment using recognised methodologies and supported by enforceable conditions to ensure ecological outcomes

are achieved.

- 382 The Applicant has made a number of changes to the v2 set of proffered conditions in response to the issues raised in the comments, including the Ecological Restoration Plan which now requires explicit ecological objectives, performance standards, monitoring, and adaptive management for all terrestrial, riparian, stream, and wetland restoration areas, including the 120 ha Kākā Hill site. The Stream Restoration Plan requires detailed SEV-based confirmation of offset adequacy, alongside five-year performance standards and triggers for remedial action. A Fish Salvage and Relocation Plan is also required. The Lizard Management Plan includes pre-clearance surveys, active translocation, and an Accidental Discovery Protocol for Threatened or At-Risk–Declining species. The conditions setting out the process for management plans have been amended to ensure they are approved by NCC prior to relevant works commencing.
- 383 To comply with the Wildlife Act, the Applicant confirmed that approvals will be applied for as required separate to the FTAA process. The Applicant confirmed that the Project does not involve a Complex Freshwater Fisheries Activity. This issue is addressed in Part J below.
- 384 In relation to the comments from Forest and Bird, the Applicant considers that net gain is assured through the following conditions:
- a. clear ecological objectives are set (clause a), including ecosystem resilience, biodiversity enhancement, and ecological process restoration;
 - b. measurable, performance standards are defined (clause b), such as survival rates, canopy closure, and habitat-specific targets;
 - c. site-specific planting plans and eco-sourcing are required (clause d), appropriate to the Bryant Ecological District;
 - d. a structured monitoring and adaptive management framework is established (clause h), with defined indicators and triggers for remedial action; and
 - e. legal protection and long-term management.
- 385 The Applicant agreed that a Wetland Hydrology Assessment for Wetland 1 is critical and it will be undertaken prior to final design of adjacent earthworks, with implementation of its recommendations secured via conditions. The placement of the wetlands will generally achieve the 10m buffer (as per NRMP RE6.3 (M)) from the realigned Kākā Stream low flow channel but the exact placement will be determined during detailed design.
- 386 The Applicant has also amended the conditions in v2 to address the other concerns raised by Forest and Bird.

Conditions

- 387 The Panel is satisfied that the conditions discussed above broadly address many of the concerns raised by the respondents. A Wetland Restoration Plan will contain details of the wetlands and this must be submitted for approval by Council. The conditions (see Condition 51 of Set B – Earthworks and Vegetation Clearance) outline the matters that

need to be addressed in that Plan. These include the objectives of: achieving no net loss in wetland extent or ecological value; restoring or maintaining wetland hydrological function and indigenous plant dominance; and enhancing wetland habitat diversity and resilience to edge effects.

- 388 The Panel has noted areas where enhancements would be appropriate to the v2 set of conditions and has included changes to achieve this outcome in its draft conditions for the purposes of s 70 of the FTAA.

Panel Findings

- 389 The Panel is satisfied that the ecological assessment properly considered the overall magnitude of the potential effects for the whole Application, both direct and indirect. The Panel finds that the effects are likely to be low or very low, and the resultant significance of the potential adverse effect (in the absence of any mitigation measures) is generally very low. With the volunteered integration of impact mitigation and development (during detailed design) and implementation of appropriate ecological restoration and enhancement of terrestrial, in-stream, wetland and riparian habitats, the Panel is satisfied that there will be significant Net Gain outcomes for local ecology in the medium to long term.
- 390 In response to the comments received, the Panel finds that the manner in which the Applicant has tightened up the conditions is appropriate and responsive to the concerns raised. The resulting enhancements will be clearly established in the management plans required, with the objectives of each articulated and a process for certifying them included. Notwithstanding the short term adverse effects on ecology as a result of realigning the Kākā Stream, the Panel is satisfied that there will be a net ecological benefit over time as the revegetated areas become established.

391 Pending receipt of responses under s70 of the FTAA

Air quality

- 392 There are two aspects to air quality – smoke from solid fuel burners and dust generated through the construction phase.
- 393 The Applicant does not support use of solid fuel burning and the prohibition of solid fuel burning is volunteered as a consent notice to be included on future titles. They will also be the subject of restrictive covenants.
- 394 Dust is often an inevitable outcome of earthworks with the effects being a nuisance to site workers and residents from airborne dust and dust on local roads. Deposition of dust to surrounding terrestrial and aquatic habitats can contribute to sediment loads. To minimise potential dust nuisance, the Applicant proposes the following approach:¹¹⁰
- a. earthworks will be staged (as far as practicable) so as to minimise the length of time that areas are exposed to drying;

¹¹⁰ Erosion and Sediment Control Assessment Report, Southern Skies, January 2025, section 4.3.9.

- b. the route and speed of vehicles working on the site will be controlled appropriately; and
- c. surface layers of exposed soil will be dampened (with water) to minimise dust generation.

- 395 If the above measures prove to be inadequate (due to high winds etc), works will be ceased until conditions are favourable. In addition, the geology of the Site does not lend itself to the creation of dust due to the particle size. The Panel requested by way of RFI information on compliance with the Nelson Air Quality Plan (**NAQP**) in terms of any potential discharge to air (dust) associated with the construction earthworks at the nearest sensitive receivers. The Applicant responded that the Construction Management Plan and Erosion and Sediment Control Plans are the key mechanisms for managing dust. The Applicant explained that the NAQP only triggers the need for resource consent approval if the dust effects are offensive or objectionable.
- 396 The Panel also inquired what level of compliance there is with the NAQP and any potential discharge to air (odour) associated with the wastewater pumpstation at the nearest sensitive receivers including those within the development such as the Arvida complex. The Applicant responded that the proposed pump station will include a proprietary odour unit to ensure the activity does not discharge offensive or objectionable odour and therefore does not require a discharge consent.

Comments Received

- 397 Both respondents Lynley Marshall and Gary Scott expressed concern at the potential for dust which is a health concern for neighbouring properties. Lynley Marshall stated her support for the imposition of covenants to prevent fires for heating and to ensure clean air.

Applicant's response to comments

- 398 The Applicant responded by explaining that dust mitigation measures will be employed during the earthworks phase to prevent off-site dust migration. Section 4.3.9 of the ESCAR provides details regarding the management of dust, which includes (but is not limited to), weather and dust monitoring, limiting the amount of exposed/bare soil and time of which it is exposed for and restricting vehicle speed. A water cart will be made available to dampen surfaces and prevent dust from migrating beyond the site boundary.
- 399 Mitigation measures will also be used to prevent the tracking of silt onto the public roads. These include aggregate haul roads, washing of wheels, rumble strips or a combination of these. By adopting these mitigation measures, the Applicant considers that environmental effects from dust are no more than minor.

Conditions

- 400 The Site Specific Erosion and Sediment Control Plans are key for setting out management of dust and require the following details:
- a. identification of potential dust sources on the site;
 - b. methods to suppress or control dust (e.g. use of water carts, chemical dust

suppressants, stabilisation of exposed surfaces);

- c. monitoring procedures, including daily site inspections and weather condition assessments;
- d. response procedures for dust complaints or exceedances; and
- e. identification of a site representative responsible for implementing the dust management plan.

401 The Traffic Management Plan also requires identification of measures to prevent dust being carried onto the public road network.

402 In addition, conditions require avoidance of visible dust beyond the boundaries of the site. No visible dust must be discharged beyond the boundary that causes an offensive or objectionable effect. Weather forecasts must be monitoring and additional dust suppression measures implemented in dry and/or windy conditions. This can include additional application of watering or temporarily suspending earthworks if the dust cannot be adequately suppressed. A complaints register for dust-related complaints must also be held.

403 In the event of any unanticipated dust, erosion or sediment effects occurring beyond the boundaries of the site, all earthworks will cease until the breach has been remedied to the satisfaction of the Monitoring Officer. Earthworks are required to be staged to minimise the area of land exposed at any time. If works stops for longer than 14 days, the area must be stabilised or covered to prevent dust. These same conditions apply when earthworks are completed.

404 The subdivision conditions do not permit the discharge to air from any small-scale solid fuel burning appliance (including any small scale ultra-low emission or pellet burning appliance) installed within a building and this is to be registered on the titles.

Panel Findings

405 The Panel is satisfied that the conditions proffered by the Application in the v2 set are generally satisfactory to meet the key concerns expressed by respondents. The Panel has included enhancements in its section 70 draft conditions set which will be the subject of further comment.

406 Pending receipt of responses under s70 of the FTAA

Flooding and Erosion of Maitai River

407 Arising from the proposed activities associated with the development on the Site there are four primary issues regarding flooding and erosion:

- a. risk to the structures to be built and the people who will reside there resulting from this development;
- b. the loss of flood storage (for the Maitai River) in the lower floodplain of the Kākā Stream where land is filled to enable the Arvida Village to be constructed above predicted flood levels, with the corresponding risk of increased flood levels for the

Maitai River both upstream and downstream of the site;

- c. the potential for additional stormwater runoff being discharged off the site during and post construction potentially increasing the flood level downstream of the site in the Maitai River; and
- d. erosion of the Maitai River bank within the site boundary.

408 The Panel has noted the various references to flooding in the Geotechnical Assessment Report. The topic is dealt with in some detail in Section 3.1 dealing with proposed earthworks, and section 6.2.1.2 dealing with Kākā Lower Reach earthworks and building foundations. In the latter reference it provides:

earthworks to create building platforms in this area will include placing typically up to 4.5 m of fill to build up the area above flood levels. Localised cuts up to a maximum 2.0 m depth are proposed on the eastern part of the area where land levels are higher.

409 For ease of reference the Panel refers to Figure 3 above. The areas shaded green indicate proposed filling of between 1 m to 5 m in depth.

410 The Applicant has outlined in the Application and associated reports and plans detailed stormwater assessment and flood modelling. This includes assessment of anticipated peak flows before, during construction and post development scenarios.

411 The development includes mitigation measures to provide improved attenuation of stormwater flows post development. These measures include:

- a. the revegetation of 50% of the catchment from the existing pasture and scrub to native forest the upper catchment
- b. a holistic whole-of-catchment water sensitive design approach which includes:
 - i. retention tanks on individual lots which will collect runoff from roof surfaces in rain tanks and re-use of this water for toilet flushing. Retention tanks are planned for those lots where space allows (medium and low-density areas).
 - ii. infiltration of stormwater into the ground during small rain events. Infiltration is planned in three proposed new soakage basins that would sit behind the western and central wetland. Treated flows from the wetlands will overflow into the soakage basins before infiltrating to ground until the soil is fully saturated or the maximum infiltration rate is exceeded. In these instances, treated flow will overflow into the Kākā Stream.

412 The Application has undertaken modeling of flooding for the Matai River to determine the effects of the development. This has utilised the NCC Maitahi/Mahitahi River flood model (DHI Mike model MaiBkYk_202103_v089) to assess the combined effects of both the changes in flow and the proposed filling within the lower Kākā Valley.

413 The 2130 SSP5-8.5M 1% Annual Exceedance Probability (AEP) and Present Day 6-hour events, inclusive of climate change considerations, were modelled for the proposed earthworks scenario, and results compared to the pre-development scenario. The 6-hour storm was used for assessment rather than the 12-hour storm, as it was shown to be critical for the Kākā Catchment and below peak for the Maitai Catchment, giving

the largest overall difference.

- 414 The modeling completed included the future landform which the Applicant advised was developed iteratively to ensure that the offsite flood effects are not exacerbated as a result of the filled platform. The modelled scenario includes the flow increases in the Kākā Catchment from the site development.
- 415 The Applicant has taken a conservative approach to the modeling future scenarios with the following having been assumed:
- a. revegetation of 50% of the catchment from the existing pasture and scrub to native forest the upper catchment has not yet occurred, noting it will take a period of years for this vegetation to be sufficiently established, including under-storey vegetation for benefits to be realized.
 - b. no attenuation from retention tanks. In larger storms, modeled as the 1% (AEP) 6-hour event, retention tanks are likely to fill capacity early within a storm event and thus provide little to no attenuation.
 - c. no infiltration from attenuation ponds and wetlands. In the larger storms it is likely that ground will be saturated early within a storm event limiting the potential for stormwater attenuation.

Additional stormwater discharged from the site.

- 416 Modelling by the Applicant of the Kākā Catchment indicated an increased peak flow from the present day 6-hour 1% AEP flow of 0.2 m³/s (no vegetation establishment) and a change on flow in the 2130 SSP5-8.5m 6-hour 1% AEP flow of 0.1 m³/s (partial vegetation establishment), with a minor peak flow reduction when modelled assuming fully established vegetation.

Flooding impact from the loss of storage, and additional stormwater discharge

- 417 Modelling of the Maitai River by the Applicant, including the proposed landform, assumed the more conservative increase of 0.2 m³/s. This has shown that increases in flood depths caused by the development are local and substantially contained within the CCKV boundary.
- 418 The modelled off-site effects for increases in flood depth arising from the development indicate less than 0.05 m. This is within the accuracy of the model.

Erosion of the Maitai River bank within the site boundary

- 419 The Panel observed during its site visit that the Maitai River has eroded on part of the true right bank, at the river bend adjacent to the boundary of 5 Ralphine Way and the Site. The river continues to erode into an area of the site identified as 'Local Purpose Reserve to vest in NCC' which includes the eastern stormwater attenuation ponds.
- 420 In respect of the riverbank, the Applicant has not included any erosion protection measures. The Panel issued an RFI to obtain the NCC's understanding of the erosion issue, whether there were planned mitigation measures and who would be responsible for any implementation. NCC responded by letter dated 17 June 2025 in summary as follows:

Council will assume ownership and ongoing management responsibility for the area shown as "Local Purpose Reserve to vest in NCC," including any future erosion protection measures.

Council has commissioned an Options Report addressing scour protection in this location exists and this is under internal review.

Council is not yet in a position to confirm a preferred option for intervention or timing thereof.

Comments Received

- 421 The comments received on this topic were primarily from those parties with an interest in the Maitai River or residents living on or in the proximity of Ralphine Way.¹¹¹
- 422 One of the key concerns expressed was allowing subdivision at a location with recurring flooding at the Maitai Valley Road/Ralphine Way intersection and Maitai Valley Road at Ralphine Way. The concerns raised related to the potential for the proposed village to be cut off for access, including for emergency services. The other issue raised related to the proposed landform filling the floodplain in the lower Kākā catchment, exacerbating potential flooding issues and levels.
- 423 NCC¹¹² confirmed that the flooding assessment was carried out on a "worst case scenario" basis and there is no reliance on the establishment of the vegetation to mitigate the increased run off from the Site. It will as regulator ensure that revegetation of the wider catchment is staged so that the right level of mitigation is in place for any newly created impervious surfaces for each stage. NCC advised it considers that these matters can appropriately be addressed via conditions of consent.

Applicant's response to comments

- 424 The Applicant provided comment that the flooding effects had been assessed as part of the PPC28 process and also specifically in relation to this application for resource consent. The Applicant stated that the NCC controls Maitai Valley Road which links the development site to Nile Street. This area is known to be prone to flooding, as indicated by NCC's flood modelling for the Kākā / Maitahi River floodplain. The Applicant contends that any effects of the development will not be exacerbated by the proposed development.

Conditions

- 425 As part of the v2 conditions set, the Applicant included specific conditions regarding the requirement for NCC to approve the detailed design of the subdivision. These include the on-site design of stormwater management and attenuation. These conditions also provide clarification on the timing of the works as part of the subdivision staging. NCC confirmed this is approach is acceptable.
- 426 No other specific conditions are proposed associated with flooding effects off-site.

Panel Findings

¹¹¹ E Morris, L Marshall, G Scott and C Harper, Save The Maitai.

¹¹² NCC RFI 2 Response Section 4.1 – NCC RFI 2 Response – Attachment A – Table of Feedback.

- 427 The design of earthworks and the resulting lifting of the ground levels will reduce risk to structures in the development or to people residing or visiting there from flooding. The overall risks from flooding are assessed as no more than minor. Flood modelling of all scenarios, even the conservative scenario resulting in a minor increase in peak flows, results in no discernible increase in flood depths or extents downstream.
- 428 This assessment takes into account that the on-site stormwater management plans have been completed in accordance with NCC's NTLDM and Schedule X.13. This approach has been reviewed and agreed by NCC, subject to further review and agreement of detail design as required by the conditions. The Panel is satisfied that the planned on-site stormwater management approach and design will meet the requirements of NCC's NTLDM.
- 429 The Panel is also mindful of the requirements of Schedule X.13 and considers that the off-site flood effects as assessed and described by the Applicant, assuming a 'worst case scenario', and reviewed and accepted by NCC, are no more than minor.
- 430 The Panel notes that parts of the Site, identified on the plans as "*Local Purpose Reserve to vest in NCC*", will include relevant portions of the Maitai River on which erosion has been observed. The NCC has acknowledged and accepted that it will become responsible for any on-going maintenance, including the provision of any mitigation or protection works. On this basis, the Panel considers the issue does not require any further specific conditions.

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PART G: SIGNIFICANT REGIONAL OR NATIONAL BENEFITS

- 431 A principal issue in contention with this Proposal is whether the Applicant has established that this is a project with "significant regional or national benefits". If it is the case, as noted above in Part B, s 81(4) of the FTAA specifically requires the Panel to consider the extent of the project's regional or national benefits.¹¹³
- 432 Section 3 of the FTAA states that the purpose of the Act is to "facilitate the delivery of infrastructure and development projects with *significant regional or national benefits*." [emphasis added]
- 433 There is no specific definition of the term significant regional or national benefits in relation to listed projects. However, s 22 of the FTAA, which relates to the criteria for assessing a referral application, identifies in s 22(1)(a), the first of the relevant criteria as being that "the project is an infrastructure or development project that would have significant regional or national benefits". The wording of this description is consistent with the purpose provision in s 3.
- 434 The significance of this similarity is that s 22(2) provides that, for the purposes of subsection (1)(a), there is a range of matters which the Minister may consider. These include, inter alia:

¹¹³ If the application was a referral application – the panel must treat the stage of the project to which the application relates as constituting the project; but may consider the regional or national benefits of the whole project, having regard to the likelihood that any later stages of the project will be completed (section 81(5) FTAA).

- (2) For the purposes of subsection (1)(a), the Minister may consider—
- (a) whether the project—
 - (i) has been identified as a priority project in a central government local government, or sector plan or strategy (for example, in a general policy statement or spatial strategy), or a central government infrastructure priority list:
 - (ii) will deliver new regionally or nationally significant infrastructure or enable the continued functioning of existing regionally or nationally significant infrastructure:
 - (iii) will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment (within the meaning of policy 1 of the National Policy Statement on Urban Development 2020):
 - (iv) will deliver significant economic benefits:
 - (v) will support primary industries, including aquaculture:
 - (vi) will support development of natural resources, including minerals and petroleum:
 - (vii) will support climate change mitigation, including the reduction or removal of greenhouse gas emissions:
 - (viii) will support climate change adaptation, reduce risks arising from natural hazards, or support recovery from events caused by natural hazards:
 - (ix) will address significant environmental issues:
 - (x) is consistent with local or regional planning documents, including spatial strategies:

435 This list of factors which may be taken into account by the Minister in assessing the criteria for accepting a referral application provides some useful guidance to a panel as to the nature of a project which falls within the purpose section of the FTAA. However, at best for a panel deciding whether a particular project is a project with significant regional or national benefits, s 22(2) can only provide a flavour of what is required. The question of whether a project is in fact one with significant regional or national benefits remains an intensely factual determination turning on the particular circumstances of the Application.

436 According to the Shorter Oxford Dictionary, the word “significant” lists two relevant meanings. The adjective involves something that is:

- a. full of meaning or import; and
- b. important, notable.

For present purposes, the Panel is content to use the meaning as “sufficiently great or important to be worthy of attention; noteworthy” as a working definition.

Economic and social context

437 Any factual assessment of regional or national benefits, particularly in relation to infrastructure or development projects, will be informed by related economic and social factors. The relevant regional context will therefore be important. Because this is a housing and building project, the needs of the Nelson City and the surrounding area are central to the factual assessment.

438 The Application refers to the importance of economic benefits to Nelson City and cites its low economic ranking and performance.¹¹⁴ Specifically the ASB recently released a regional economic scoreboard for the September 2024 quarter in which Nelson ranked

¹¹⁴ This has been reported nationally and has been publicly acknowledged by the Mayor.
<https://www.thepress.co.nz/nz-news/360520173/nelson-economy-facing-long-hard-haul>

last / lowest at 16th for the fourth quarter in a row.¹¹⁵

- 439 In terms of increased land or dwelling supply, the current market commentary relating to the Nelson region suggests that, like the rest of New Zealand over recent times, there has been a substantial increase in house prices.¹¹⁶ During this period the rest of New Zealand has seen a 2.1% decrease in house prices to March 2025, whereas in Nelson there has been a continued rise in house prices. Against such a background it is material that the region has a ten-year residential consent average of 165 per year. The development provides for the construction of 374 dwellings, suggesting that even over an extended time frame, there is the potential to have a material impact on the market. The Panel was also referred to data relating to the Nelson region suggesting that, while housing affordability nationally has improved, housing affordability in the region continues to be lower.¹¹⁷
- 440 The Panel is also mindful that this project was identified as a significant feature in the Nelson Tasman Future Development Strategy in 2019 and also in the most recent Nelson Tasman Future Development Strategy 2022 (**FDS**). The FDS was officially adopted on 29 August 2022 and a Future Development Strategy Implementation Plan was adopted on 19 November 2024.

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¹¹⁵ AEE, page 7.

¹¹⁶ <https://rep.infometrics.co.nz/nelson-city/income-and-housing/house-values>

¹¹⁷ <https://rep.infometrics.co.nz/nelson-tasman/income-and-housing/housing-affordability>

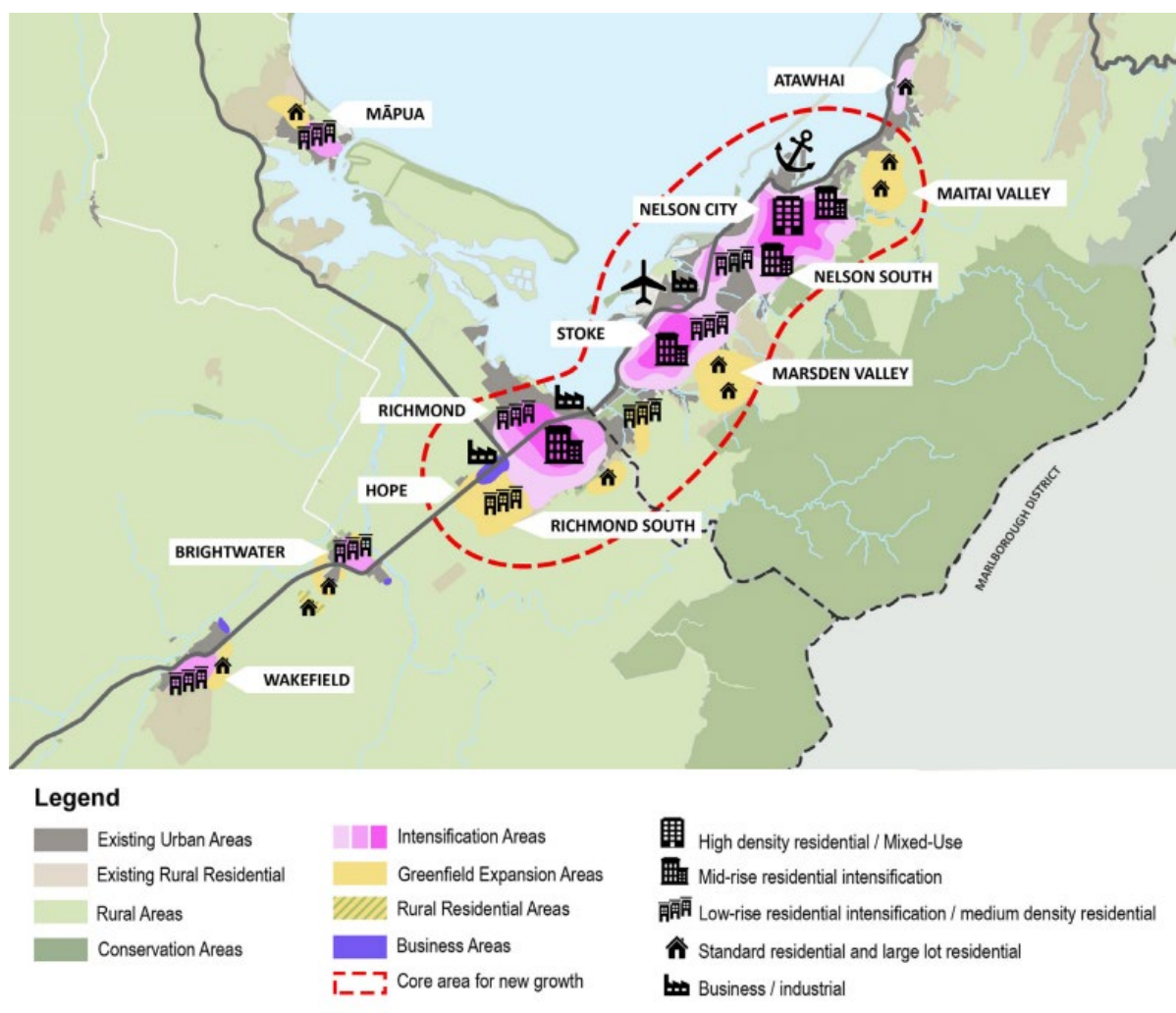


Figure 5: Future development strategy 2022-2052

- 441 Of the 25,000 houses to be provided in the next 30 years, the FDS identifies 900 to be provided by Maitahi and Bayview.¹¹⁸ Placed in the context of the development of the region for the next 30 years, the Panel concludes that the Project has considerable regional significance for contributing to growth.
- 442 The Panel was informed that Arvida engaged WEBSTER research in 2021 to provide an overview of the primary demographic and economic factors within the Nelson and Richmond market. The report estimated that the population aged 70+ years within the Nelson, Tasman, and Marlborough Regions is forecast to increase from 24,060 in June 2020 to 48,210 in 2048. Some 33 per cent is forecast to occur within Nelson. To meet this demand, an additional 44 independent units and 73 care units are required each year within the primary study area. The findings remain relevant as no new retirement village complexes have been constructed in the area covered in the report since the report was published. Developments such as this enable older people to remain in a community setting in their local environment near to where their social and cultural connections are.

¹¹⁸ Nelson Tasman Future Development Strategy 2022-2052, 20 September 2022, Table 1.

Evidence of Significant Regional Benefits

- 443 The Applicant has provided an Economic Impact Assessment. It was authored by expert economists from the firm Property Economics Limited.¹¹⁹ As discussed in the section on economic effects in Part F, this development provides additional housing capacity across a range of typologies, providing more choice in the market in relation to price points and location. The Application supports the significant direct impact on the construction sector (as well as related construction services). Direct employment measures approximately 1,462 job years with the remaining around 1,275 job years resulting from indirect and induced activity.¹²⁰
- 444 The Applicant contends that the development will contribute to a well-functioning urban environment, not only due to the makeup of the Maitahi Village, but also because of its proximity to Nelson City, and the enhancements proposed to the receiving environment. This construction project will create 182 residential sections that will be available for the general population to help meet the demands of forecasted population growth. Moreover, the development integrates a retirement village to serve New Zealand's aging population. The Arvida Village contains an additional 192 residential units (on two allotments), with not only a diverse range to meet a range of types, prices and different household needs, but also a 36-bed care facility for those who require 24-hour residential care. The retirement village will enable older people to remain within a community but have increasing levels of care as and when they need it.
- 445 The Project is also seen as delivering regionally significant infrastructure in the form of upgrades to downstream wastewater pipe infrastructure which will increase the capacity. The transport infrastructure includes a new shared commuter path along a portion of Maitai Valley Road and two new shared path bridges to cross the Maitai River. While these are undoubtedly benefits of the development, arguably they do not classify as being of regional significance. They are amenities which will serve to enhance the environment for those who live there. At best the benefits will accrue to visitors who seek to enjoy the environment and amenities associated with proposed walking tracks and cycleways.
- 446 The comments from STM suggest that the Applicant's evidence as to the Project's regional benefits is sparse, vague, and significantly overstated and does not meet that threshold of "significant" for the following reasons:
- a. while construction jobs benefit the region, it is doubtful that they reach the threshold of a significant regional benefit;
 - b. the assessment does not take into account development and construction jobs that will be provided via future stages in existing subdivisions;
 - c. the economic dis-benefits of the project are likely to be significantly negative;
 - d. existing plan enabled capacity exceeds demand as set out in the PC29 decision report;

¹¹⁹ Economic Impact Assessment, Property Economics, February 2025.

¹²⁰ Economic Impact Assessment, Property Economics, February 2025, section 4.2.

- e. affordability is improving in Nelson without the addition of any major subdivisions increasing supply;
 - f. this subdivision will be expensive for ratepayers and purchasers; and
 - g. there is no evidence of a lack of retirement village accommodation in Nelson.
- 447 The Panel does not agree with these criticisms as to the factual weighting of the various aspects of economic benefits. They are not borne out by the evidence contained in the Application and related reports and plans. Moreover, they are inconsistent with many of the findings discussed above, including findings of the Independent Hearing Panel when considering PPC28.
- 448 The Panel appreciates that not all benefits can be assessed in monetary terms. For example, the Panel considers that the Application is significant to Māori in the region, not just Ngāti Koata, and evidenced by the support from other iwi for the Application. The importance to Ngāti Koata can be inferred by the sale of 4500ha of Ngāti Koata iwi forestry to fund this development. Ngāti Koata do not currently have a marae of their own and share the Whakatū Marae. This Proposal will provide them an opportunity to reconnect with their whenua and have their own space.
- 449 Although the criteria spelled out in s 22 of the FTAA are not directly applicable to the assessment by the Panel whether the development is a project with significant regional or national benefits, the Panel nevertheless refers to the criteria listed there for guidance on relevant considerations. In the paragraphs that follow, the Panel addresses each of the relevant criteria.
- 450 For example s 22(2)(a)(iii) refers to the issue of increasing the supply of housing, addressing housing needs, or contributing to a well-functioning urban environment (within the meaning of policy 1 of the National Policy Statement on Urban Development 2020). It is undeniable that the Proposal will increase the supply of housing given that it is primarily a housing development. In determining whether the Application will contribute to a well-functioning urban environment, the Panel has been guided by Policy 1 of the National Policy Statement on Urban Development 2020 which sets out the meaning of a “well-functioning urban environments” as follows:
- urban environments that, as a minimum:
- i. have or enable a variety of homes that:
 - 1. meet the needs, in terms of type, price, and location, of different households; and
 - 2. enable Māori to express their cultural traditions and norms; and
 - ii. have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and
 - iii. 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
 - iv. support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
 - v. support reductions in greenhouse gas emissions; and
 - vi. are resilient to the likely current and future effects of climate change.
- 451 The Panel has considered each of the clauses in the above definition. The proximity of the Site to the Nelson CBD and the variety of housing types means it will meet the

needs of not only different households, but a range of demographics. The involvement of Ngāti Koata means that the Proposal will provide housing and opportunities to express their cultural values through the development of the commercial site. In addition, the Resident's Clubhouse and Pavillion will create a focus for the retirement village and provide a space for social opportunities. The development will have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport given the proximity to the Nelson CBD and existing recreational opportunities.

- 452 The Panel is satisfied the development is surrounded by quality open space, all of which will be easily accessible. The cycle trails support alternative transport modes. The development will support a competitive housing market by adding to the housing stock and offering a variety of housing types to complement existing developments. The Application supports reductions in greenhouse gas emissions through its close proximity to Nelson CBD as well as supporting cycling and walking. Similarly, the conditions proffered to avoid solid fuel heating will reduce the potential for greenhouse gas emissions to be generated. The effects of climate change are most relevant to the management of stormwater and flood risk impacts, and as outlined above. The Panel is satisfied that the development responds appropriately to climate change.
- 453 With respect to the subsection (iv) of s 22(2)(a), the Panel is satisfied that the development will deliver significant economic benefits for the reasons outlined elsewhere in this decision. The analysis does not need to be repeated.
- 454 The Panel also considers that the development will support development of natural resources in subsection (vi). If a broad definition is applied to this term, then it follows that the Kākā Stream and surrounding corridor will be improved. Additionally the removal of soils contaminated by dieldrin and arsenic will greatly enhance the natural resources of the area. The proposed remediation of contaminated soil also addresses a significant environmental issue (subclause ix).
- 455 As canvassed in Part F, the Application will reduce the risks arising from natural hazards such as reducing the risks associated with flooding and erosion (subclause viii).
- 456 As addressed in Part I, the Application is consistent with local or regional planning documents, including spatial strategies (subclause x).
- 457 Having considered all of the information before it, the Panel considers that the above benefits are indeed regionally significant and clearly meet the definition outlined in the Purpose provision of the FTAA. The Panel also finds that many aspects of the Application meet the criteria described in s 22 FTAA as set out above, even though this section relates to a different context of accepting a referral application.
- 458 Moreover, the Panel is satisfied that the evidence of regional and related benefits is credible and the arguments in support of the significance of such regional and related benefits is persuasive. The Panel finds on the facts that in the context of the needs of the Nelson region, these benefits are very significant. It is noted that these findings are also consistent with the findings in the report of the Independent Hearings Panel

which considered PPC28.¹²¹

PART H: STATUTORY DOCUMENTS

- 459 The Application addressed the relevant statutory documents and identified relevant provisions. Rather than repeat all of that, this section addresses the documents of particular relevance to the Application (particularly relevant provisions) and any comments received. The Panel also relies on its conclusions on effects and the conditions we have decided to impose in support of the conclusions reached on relevant planning provisions (including Part H: Regional and District Planning Framework as relevant to the topic area).

National Policy Statements

- 460 The relevant National Policy Statements were addressed in section 6.1 of the Application and include:
- a. National Policy Statement for Freshwater Management 2020 (**NPS-FM**);
 - b. National Policy Statement on Urban Development 2020 (**NPS-UD**); and
 - c. National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**).
- 461 While the recent consideration of PPC28 assessed the proposal against the national policy statements, the test is different for plan changes. While s 75(3)(a) of the RMA requires district plans (and hence applications for private plan changes) to *give effect* to national policy statements, s 104(b)(iii) of the RMA requires the consent authority to *have regard* to national policy statements for resource consents. Consequently, while the analysis for PPC28 is certainly relevant, further assessment is required to reflect the statutory tests in the FTAA and the increased detail provided in the Application.

National Policy Statement for Freshwater Management 2020

- 462 The NPS-FM sets out a framework under which local authorities are to manage freshwater (including groundwater).¹²² The single objective of the NPS-FM is to ensure that natural and physical resources are managed in a way that prioritises the:¹²³
- a. health and well-being of water bodies and freshwater ecosystems;
 - b. health needs of people (such as drinking water); and
 - c. ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future¹²⁴.

¹²¹ Recommendations from the Independent Hearing Panel following the hearing of PPC 28, 22 June 2022, paragraphs 222-223, 230-232, 243-262.

¹²² NPS-FM clause 1.5.

¹²³ NPS-FM clause 2.1.

¹²⁴ The Panel is cognisant of the provisions of s 104(2F) which provides "When considering an application and any submissions received, a consent authority must not have regard to clause 1.3(5) or 2.1 of the

This objective also reflects the hierarchy of obligations in Te Mana o te Wai.¹²⁵

463 The NPS-FM is of particular relevance to this Application given that two wetlands meeting the definition of the NPS-FM have been identified within the Site,¹²⁶ together with the presence of the Kākā Stream and other waterways. The Application posits that the fundamental concept of Te Mana o te Wai (and its stated principles), along with the stated objective and principles, are delivered through the planning provisions encapsulating Schedule X. This is said to be achieved through the fully integrated set of provisions relating to stormwater management (including water sensitive design), cultural values, ecology, and landscape.¹²⁷ More specifically, the stormwater assessment report considers that the stormwater management approach is well aligned with the intent of the NPS-FM which includes improvement of degraded water bodies (Kākā Stream natural channel design) through water quality treatment, protection and enhancement of aquatic habitats through water quality flows and avoiding further degradation of natural wetlands.¹²⁸

464 The Panel requested further information¹²⁹ from the Applicant on clause (c) of the definition of “natural inland wetland” in the context of the constructed wetland. The Applicant responded¹³⁰ that:

- a. the southern floodplain area does not include a wetland, as defined by the RMA; and
- b. even if there was a wetland in that area, it would be excluded from the definition of “natural inland wetland” in the NPS-FM, by virtue of clauses (c) and (e).

Clause (c) depends on there being a water body that has been deliberately constructed. In the absence of a definition in the NPS-FM or NES-F for “deliberately constructed”, the Applicant considers that the historic re-alignment activities satisfy that aspect of clause (c) such that any features that have appeared subsequent and because of the realignment means that the definition of “natural inland wetland” does not apply. The Panel returns to this issue in Part J below.

465 Policy 2 of the NPS-FM seeks to involve Tangata whenua in freshwater management and Māori freshwater values are identified and provided for. Iwi (and in particular Ngāti Koata) have been an integral partner in the development of the Application, as evidenced by the input into the design, comments on key components and its significant majority shareholding. The CIA notes the emphasis of the Application on

NPS-FM 2020 (which relates to the hierarchy of obligations in the NPS-FM 2020)”. If this provision were given a strict interpretation, it would appear that the Panel should ignore consideration of the primary objective in the NPS-FM. Out of an abundance of caution the Panel is nevertheless chosen not to apply such an interpretation but rather to have regard for the objective which has some applicability in the context of this Application. The objective of NPS-FM 2020 was raised directly by the Applicant in its Application.

¹²⁵ NPS-FM clause 1.3.

¹²⁶ Erosion and Sediment Control Assessment Report, Southern Skies Environmental Ltd, page 9.

¹²⁷ Application, pages 94-95.

¹²⁸ Maitahi Village Stormwater Assessment Report, T + T, February 2025, page 47.

¹²⁹ Request for information #5, 17 July 2025.

¹³⁰ Memorandum of Counsel, 24 July 2025.

restoring the health of wai māori through:¹³¹

- a. the realignment of Kākā Stream to its natural course, improving flow and ecological function;
- b. stabilisation and native planting along stream banks to reduce erosion and sedimentation, ensuring the stability and health of the streambed; and
- c. stormwater treatment wetlands, which act as buffers to protect the downstream receiving environments, contributing to improved water quality in the Maitahi awa.

These initiatives address the historical degradation of Kākā Stream and its tributaries, supporting the aspirations of Tiaki Taiao to restore wai māori for present and future generations.

466 Policy 5 seeks to improve the health of degraded waterbodies, while Policy 12 seeks to achieve the national target for water quality improvement. The E. coli measurements of Kākā Stream currently exceed the NPS-FM bottom line value by some margin. Similarly nitrate-nitrogen and turbidity levels are elevated above the guideline.¹³² This policy will be achieved through the retirement of the Site from farming, as well as stabilisation of the banks with revegetation. In addition, the complete removal of contaminated soil will prevent any future leaching of contaminants such as arsenic and dieldrin into the groundwater and ultimately into the waterways.

467 Policy 6 seeks to avoid further loss of extent of natural inland wetlands, protect their values and promote their restoration. The two wetlands on the Site meet the NPS-FM definition of a natural inland wetland. The wetland habitats within the Site are dominated by exotic plant species and have been significantly degraded due to vegetation removal, livestock grazing, and pugging. The Application proposes to protect, restore, and enhance the ecological values of these identified wetland features. Conditions require a wetland hydrology assessment which will provide recommendations to avoid potential adverse effects on wetland hydrology, aiming for No Net Loss or preferably Net Gain outcomes for wetland ecology.

468 Policy 7 seeks to avoid the loss of river extent and values to the extent practicable. The realignment of Kākā Stream and enhancement works will lead to the loss of 1,110 m of highly degraded riparian and in-stream habitat along the Lower Kākā Hill Tributary and intermittent reaches associated with two tributaries. The Application is therefore inconsistent with Policy 7. Because potential impacts on the streams are inconsistent with the NPS-FM, biodiversity offsetting through stream reinstatement (via a new alignment), and restoration will be undertaken to compensate for the loss of river extent and values. Key offsetting measures include:¹³³

- a. creation of new habitat features to support aquatic recolonisation and improve fish passage;
- b. enhanced riparian buffers to stabilise banks, provide shading, and contribute

¹³¹ Cultural Impact Assessment, Ngāti Koata, January 2025, section 5.4.

¹³² Ecological Impact Assessment, Robertson Enviro, February 2025, pages 26-27.

¹³³ Ecological Impact Assessment, Robertson Enviro, February 2025, section 6.1.3.1.

organic inputs; and

- c. reconfigured flow paths to maintain water transport capacity while optimising ecological value.

- 469 Policy 9 seeks to protect the habitats of indigenous freshwater species. While there will be a temporary loss of habitat as a result of the realignment of Kākā Stream, the restoration of the habitat will result in a net gain.
- 470 Policy 13 of the NPS-FM requires the condition of water bodies and freshwater ecosystems to be systematically monitored over time and action taken where freshwater is degraded. The Independent Hearing Panel for PPC28 considered that there will need to be a requirement to address water quality monitoring in future stormwater consenting processes. The monitoring should be undertaken 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. The Panel appreciates that monitoring of water quality is required by a number of the conditions, including groundwater bores. This will enable the collection of data and remediation actions to be undertaken when necessary, in accordance with the requirements of the conditions relating inter alia to remediation of contaminated soil.
- 471 As already noted, the Application proposes the realignment (including widening and deepening), protection, restoration and enhancement of several existing stream reaches. This includes the proposal to realign the Lower Kākā Hill Tributary back to its original course. Additionally, the protection, restoration, and enhancement of two existing wetlands and two intermittent streams, both of which are currently degraded and dominated by exotic vegetation is an essential part of the Application. These initiatives are designed to improve the ecological integrity and functionality of the aquatic and wetland habitats within the project area, aligning with relevant Schedule X provisions of the NRMP and the NPS-FM.
- 472 Having had regard to the NPS-FM, and having worked through each of the provisions in the NPS-FM, the Panel is satisfied that the Application will manage freshwater in a way that gives effect to Te Mana o te Wai and is consistent with the policies. The Panel accepts that there may be temporary effects on water quality, particularly arising from construction activities and works in the streambed to realign Kākā Stream. However, over the lifespan of the development and in the longer term there will be substantial improvements in water quality. This will see the retirement of the Site from farming (the likely source of the elevated E. coli and nitrate-nitrogen levels), the extensive revegetation of the riparian margins and within the wider catchment, stabilisation of the stream banks and the removal of contaminated land. Management of stormwater will be by way of wetlands, riparian planting and overland flow paths that support filtration and reduce sedimentation. As stated by Ngāti Koata in its CIA, these measures ensure that stormwater runoff is treated before reaching the receiving environments, thereby mitigating adverse effects and enhancing the mauri of Kākā Stream.¹³⁴ Further, the CIA states that development places significant emphasis on restoring the health of wai māori through the realignment and enhancement of Kākā Stream. This prioritises maintaining and enhancing freshwater ecosystems for their

¹³⁴ Cultural Impact Assessment, Ngāti Koata, January 2025, section 5.3.

cultural and ecological integrity.

- 473 The Panel is satisfied that the proposed erosion and sediment management approach will minimise sediment yield and that any adverse sediment-related effects will be temporary and minor, and consistent with the NPS-FM. The Panel is conscious of the importance of the waterbodies in and near the Site for recreation and considers that the Application will improve the water quality and freshwater habitats. Overall, the Panel is satisfied that the Application will result in communities being enabled to provide for their social, economic, and cultural wellbeing in accordance with Policy 15.

National Policy Statement on Urban Development

- 474 The Panel considers that the project will improve housing affordability by supporting competitive land and development markets (Objective 1). It will contribute to a well-functioning urban environment by enabling a variety of homes. It is in a location that has good access to public open spaces, town centres and transport services (Policy 1). It will also provide urban development benefits and release significant development capacity (Policy 6). STM commented that this Application does not support a reduction in greenhouse gases in terms of Policy 1. The Applicant pointed out the close proximity of this site to Nelson City as being relevant to the consideration of those vehicle emissions generated from providing for urban growth in more locations from employment opportunities. The provisions of a shared pathway linkage to Nile Street East will also support alternative transport modes (i.e. cyclists) that do not generate emissions. It will also facilitate travel on foot to the City Centre.
- 475 NPS-UD seeks to provide well-functioning urban environments, and NPS-UD Policy 1 sets out what constitutes a 'well-functioning urban environment' and requires that planning decisions contribute to such environments. The Panel has assessed the Application against NPS-UD Policy 1 in Part G and is satisfied that the Application is consistent with NPS-UD Objective 1 and Policy 1.
- 476 The increase in housing enabled by the Application will improve housing affordability simply through increasing the supply, as reflected in the economic assessment report. In addition, the approach of Ngāti Koata to be able to help whanau into a home improves affordability. The proposed provision for Ngāti Koata housing is likely to have a direct, rather than market led, impact on the supply of housing at an affordable and social level. The Panel consider that the Application achieves NPS-UD Objective 2.¹³⁵
- 477 The zoning of the Site in Schedule X does or can satisfy all of the Objective 3 clauses, as found by the Independent Hearing Panel for PPC28, and has little relevance to the Application.¹³⁶
- 478 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". While not an urban environment at present, the Site has a pattern of urban zoning which enables the form of development proposed by the Application. In accordance with NPS-UD Policy 6(d) the Application will increase the supply of housing and realise additional development capacity. The likely current and future

¹³⁵ Economic Impact Assessment, Property Economics, February 2025, page 10.

¹³⁶ PPC28 Recommendations, paragraph 171.

effects of climate change have been considered in accordance with Policy 6(e) especially in the management of stormwater and the assessment of flooding.

- 479 Objective 5 (and Policy 9) of the NPS-UD address the Treaty of Waitangi (Te Tiriti o Waitangi). Given the central involvement of Ngāti Koata in this Application and the support from Te Tauihu iwi for PPC28, the Panel is satisfied that the Application is consistent with these provisions.
- 480 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. The Panel is satisfied that this Application will supply significant development capacity and is well integrated with infrastructure planning.
- 481 Having considered each of the provisions, the Panel finds that the elements of the Application are consistent with the NPS-UD.

National Policy Statement for Indigenous Biodiversity 2023

- 482 The objective of the NPS-IB is:
- (a) to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and
 - (b) to achieve this:
 - (i) through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and
 - (ii) by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and
 - (iii) by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and
 - (iv) while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.
- 483 The Application states that the development is consistent with the NPS-IB as it involves a net gain in biodiversity values. In addition, and with regard to policies 1 and 2, this project has been planned with iwi so that cultural values are enhanced.¹³⁷
- 484 Policy 1 seeks to manage indigenous biodiversity that takes into account the principles of the Treaty of Waitangi, while Policy 2 relates to Tangata whenua exercising kaitiakitanga. The Application has been prepared in close partnership with Ngāti Koata and this is reflected in the CIA. The CIA states¹³⁸ that the Application actively promotes biodiversity by creating ecological corridors and restoring habitats for native flora and fauna. Native vegetation, including harakeke and kahikatea, is being planted throughout the development, which will support biodiversity restoration and provide

¹³⁷ Application, section 6.3.

¹³⁸ Cultural Impact Assessment, Ngāti Koata, January 2025, section 5.5.

resources such as harakeke and rongoā. These plantings support the aspirations outlined in the Ngāti Koata Cultural Design Framework, which emphasises restoring taonga species to enable sustainable use for present and future generations. Biodiversity initiatives include:

- a. the revegetation of 50% of the catchment with native forest, creating green corridors that connect fragmented habitats and support the movement of taonga species such as birds, bats, and lizards;
- b. riparian and wetland planting to provide habitats for aquatic and terrestrial species, enhancing ecological connectivity across the development; and
- c. predator control measures, enabling the reestablishment of birdlife and protecting nesting sites, which aligns with the iwi aspiration to create bird corridors and restore native habitats.

485 Policy 3 supports adoption of a precautionary approach. The Panel notes that the Application does not explicitly adopt such an approach in its analysis of any environmental detriments and benefits of the Project. This is understandable as the policy mandating a precautionary approach pervaded the whole of the PPC28 process before the Independent Hearings Panel and the Environment Court. As noted the result was the integration of Schedule X into the NRMP. What is significant with the Application, and any analysis relating to it, is that the Applicant and its expert advisers have sought assiduously to reflect the provisions in, and policies behind, Schedule X. In this way a precautionary approach is necessarily infused into the key elements of the Application.

486 Policy 7 seeks to protect significant natural areas by avoiding or managing adverse effects from new subdivision, use and development. While there are no significant natural areas within the Site, the comments from STM drew attention to the presence of a significant natural area approximately 500m from the Site, and the potential for construction noise to effect fauna within the significant natural area. The ecological impact assessment acknowledged that highly mobile indigenous fauna may inhabit areas extending beyond significant natural area boundaries, and earthworks within the catchment could affect downstream environments, such as coastal wetlands. Because the Site has been significantly modified and the exotic vegetation consists of a low diversity of species and is simple in structure, it is unlikely to provide habitat for Threatened or At Risk species. This assessment is also relevant to Policy 15 which relates to highly mobile fauna outside significant natural areas. Potential effects on birds and significant natural areas are addressed through multiple conditions, including vegetation clearance restrictions during the bird nesting season and ongoing pest and weed management programmes.

487 Policy 8 recognises the importance of maintaining indigenous biodiversity outside significant natural areas, while Policy 13 promotes restoration and Policy 14 promotes increased indigenous vegetation cover. All three policies are achieved by the extensive revegetation proposed by the Application, and this is ensured through management plans and conditions. Conditions in V2 require restoration and enhancement objectives that explicitly include "achieving no-net-loss of indigenous biodiversity values" and "re-establishing self-sustaining, resilient native ecosystems representative of the Bryant Ecological District".

488 Having considered the Application against the policies in the NPS-IB, the Panel is

satisfied that the proposal is consistent with the objectives of this instrument. The various aspects of the Application described above coupled with specific conditions will assist in achieving the various policies which the NPS-IB supports.

National Environmental Standards

489 The National Environmental Standards relevant to this Application are:

- a. Resource Management (National Environmental Standards for Freshwater) Regulations 2020, and Amendment Regulations (No 2) 2022 (**NES-F**); and
- b. Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NES-CS**).

490 Each National Environmental Standard is addressed below.

National Environmental Standards for Freshwater

491 The NES-F set out requirements for carrying out certain activities that pose risks to freshwater and freshwater ecosystems. The Application contends that the proposed activities comply with the rules relating to:

- a. Restoration, wetland maintenance, and biosecurity of natural inland wetlands (Regulations 38 and 39);
- b. Construction of wetland utility structures (Regulation 42); and
- c. Landfills and cleanfill areas (Regulation 45B).

492 Non-compliance with the following regulations in the NES-F triggers the need to obtain resource consent approval:

- a. Urban development (Regulation 45C):
 - i. vegetation clearance within, or within a 10 m setback from, a natural inland wetland is a restricted discretionary activity if it is for the purpose of constructing urban development;
 - ii. earthworks or land disturbance within, or within a 10 m setback from, a natural inland wetland is a restricted discretionary activity if it is for the purpose of constructing urban development;
 - iii. earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural inland wetland is a restricted discretionary activity if it is for the purpose of constructing urban development and results in, or is likely to result in, the complete or partial drainage of all or part of the wetland;
 - iv. the taking, use, damming, or diversion of water within, or within a 100 m setback from, a natural inland wetland is a restricted discretionary activity the activity is for the purpose of constructing urban development, there is a hydrological connection between the taking, use, damming, or diversion and the wetland and the taking,

use, damming, or diversion will change, or is likely to change, the water level range or hydrological function of the wetland;

- v. the discharge of water into water within, or within a 100 m setback from, a natural inland wetland is a restricted discretionary activity if the discharge is for the purpose of constructing urban development, there is a hydrological connection between the discharge and the wetland and the discharge will enter the wetland; and (d) the discharge will change, or is likely to change, the water level range or hydrological function of the wetland.

b. Drainage of natural wetlands:

- i. earthworks outside, but within a 100 m setback from, a natural inland wetland and the taking, use, damming, or diversion of water outside, but within a 100 m setback from, a natural inland wetland is a non-complying activity (Regulation 52(1) and (2)).

- c. The reclamation of the bed of the Kākā Stream requires consent as a discretionary activity (Regulation 57).

493 The effects of non-compliance with these regulations have already been assessed elsewhere in the decision and is not repeated.

National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011

494 The NES-CS serves to ensure soil contamination is identified so that human health and the environment is not adversely affected at the time that the use of land changes, subdivision or soil disturbance. The historical use of a sheep dip as a part of farming activities has resulted in part of the site being a HAIL site, with resource consent required for change of use, subdivision and earthworks.

495 The Application therefore requires resource consent under the following NES-CS regulations:

- a. Subdivision of land, part of which is a HAIL site, with the soil contamination exceeding the standard in Regulation 7 is a restricted discretionary activity (Regulation 10);
- b. Changing the use of the land, part of which is a HAIL site, with the soil contamination exceeding the standard in Regulation 7 is a restricted discretionary activity (Regulation 10)
- c. Disturbance of soil, part of which is a HAIL site, with the soil contamination exceeding the standard in Regulation 7 is a restricted discretionary activity (Regulation 10).

496 The effects of non-compliance with these regulations have already been assessed elsewhere in the decision and is not repeated.

PART I: REGIONAL AND DISTRICT PLANNING FRAMEWORK

- 497 An assessment of the relevant statutory plans has been included within the Application as is required by Schedule 5, clause 5(1)(h).
- 498 The Panel has reviewed and considered the assessment provided by the Applicant and the comments provided by the NCC and any other commentators. The Panel outlines the key matters in the following sections (as well as adding further considerations and assessment).
- 499 With regards to the Nelson Regional Policy Statement (**RPS**) provisions, the Applicant contended that the wider-regional resource management issues that were applicable to the Plan Change process, such as where to accommodate urban growth, have little relevance to the assessment of this application for subdivision and development on land now zoned for urban development.¹³⁹ The Panel however notes as Schedule 5, clause 17 sets out the criteria and other matters for assessment of consent applications. This provision states:

(1) For the purposes of section 81, when considering a consent application, including conditions in accordance with clauses 18 and 19, the panel must take into account, giving the greatest weight to paragraph (a),—

(a) the purpose of this Act; and

(b) the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and

(c) the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.

- 500 Section 104(1)(b)(v) of the RMA (which sits within Part 6 as referred to above) requires the consent authority to have regard to a regional policy statement or proposed regional policy statement. Similarly section 104(1)(b)(vi) of the RMA requires decision makers to have regard to a plan or proposed plan. Based on this requirement, the Panel has considered the Application against each of the relevant RPS and NRMP provisions.
- 501 For ease of navigating the assessment, the analysis is structured around themes to avoid duplication. This section is not intended to be a comprehensive analysis of all the objectives and policies relevant to the Application but is intended rather to provide confirmation of the Panel's consideration of the plans in accordance with s 104(1)(b).

Regional Policy Statement and Nelson Resource Management Plan Themes

Underlying Philosophy

- RPS Chapter 4 – UP2.2, UP2.3, UP2.4, UP3.2, UP3.3, UP3.4

- 502 The most relevant objectives and policies in this chapter relate to significant adverse environmental effects as a result of incomplete information (Objective UP2.2 and

¹³⁹ Application, section 6.4.

Policies UP2.3). In particular, Policy UP2.3.2 seeks to only grant resource consents where the consenting authority is confident that potential adverse effects on the environment can be avoided, remedied, or mitigated. Having considered the information included with the Application, responses to the Panel's requests for further information, technical advice, responses to comments and further information which will be obtained through monitoring (as required by conditions), the Panel is satisfied that it has sufficient information on which to base its decision. Subject to completion of the processes under s 70 of the FTAA, the Panel is confident that potential adverse effects on the environment can be avoided, remedied, or mitigated through the measures proposed by the Applicant and the conditions imposed.

Treaty of Waitangi and cultural matters

- RPS Chapter 5 – TW1.4, TW1.5, TW1.6
- NRMP DO1 Tangata Whenua – DO1.1, DO1.1.1, DO1.1.2, DO1.1.3, DO1.1.4, DO1.1.5, DO1.1.1.6

503 The objectives and policies of this section of the RPS address the relationship of the Māori and their culture with their ancestral lands, water and sites, wāhi tapu, urupā, and other taonga.

504 The overarching objective of this chapter of the NRMP is:

Management of natural and physical resources that recognises the needs of Māori communities and enables them to provide for their social, economic, and cultural well being and their health and safety.

505 Ngāti Koata is central to this Application. The development will provide housing for their whanau, a cultural centre of their own and an ability to reconnect with the awa and whenua. The Application provides for the relationship of Ngāti Koata with their culture, traditions and ancestral taonga. The Panel considers that this Application is an opportunity to achieve the cultural aspirations and tikanga of Ngāti Koata. The values of Ngāti Koata have guided the Application such as improving the mauri of the awa and removing heavily contaminated soil.

Urban Development

- RPS Development and Hazards Chapter 6 – DH1.2, DH1.3, DH1.4
- NRMP DO14 Subdivision and development – DO14.1, DO14.1.1, DO14.1.2, DO14.1.3, DO14.3, DO14.3.1, DO14.3.2, DO14.3.3, DO14.4, DO14.4.1, DO14.4.2, DO14.4.3, DO14.5, DO14.5.1
- NRMP DO15 Peripheral urban expansion – DO15.1, DO15.1.1, DO15.1.2, DO15.1.3

506 RPS Chapter 6 seeks to address the effects of urban expansion and achieve sufficient development capacities. The absence of a definition for "urban expansion" means that these objectives and policies could be interpreted two ways – as applying to rural zoned land that is yet to be rezoned for urban purposes, or to urban zoned land that is yet to be developed. In an abundance of caution the Panel has considered the Application against the provisions in this chapter. However, RPS Policy DH1.3.3. is more targeted towards rezoning and is less relevant to this Application.

- 507 It is accepted that the Application will result in additional residential capacity which will assist in achieving the capacities set out in RPS Objective DH1.2.2. Policy DH1.3.1 requires features or values of significance to be identified and protected. The Application considers all of the matters in clauses (i)-(vi) and manages any adverse effects of the proposed development, with a net improvement likely for aspects such as culturally significant features, water quality and biodiversity. RPS Policy DH1.3.4 relates to proposals for urban subdivision and/or development include adequate and appropriate provision of services including waste disposal, stormwater, water supply, electricity and other network services. Having considered the proposed servicing for the Site, the Panel are satisfied that the Application will achieve RPS Policy DH1.3.4.
- 508 The NRMP provisions in the DO14 Subdivision and development chapter traverse a number of matters including:
- a. recognise the natural characteristics;
 - b. retain existing landscape features;
 - c. the types and intensity of subdivision reflects the natural and physical capabilities of the land;
 - d. adopt the principles of high quality urban design;
 - e. orderly development of land;
 - f. coordination of infrastructure with development;
 - g. appropriate infrastructure to service development;
 - h. efficient use of infrastructure;
 - i. management of the effects of infrastructure;
 - j. management of effects of development on infrastructure such as high voltage transmission lines; and
 - k. providing appropriate community services and facilities.
- 509 The Panel is satisfied that the Application achieves all of these elements. The layout and form of the residential development responds to the natural characteristics of the Site, particularly the valley topography and the Kākā Stream forms a central feature. The proposed infrastructure is sized to service this development as well as connect to future development like Bayview. Koata House is not only important to Ngāti Koata but will also provide an important community facility, providing somewhat of an anchor to the development.
- 510 NRMP Policy DO15.1.3 Rural greenbelt seeks to avoid, remedy or mitigate adverse effects on existing rural character and amenity values in the Maitai Valley. This issue was addressed in the PPC28 process and the operative zoning pattern supports this policy. It is therefore not relevant to this Application.

Natural hazards

- RPS Chapter 6 – DH2.2, DH2.3, DH2.4

- NRMP DO2 Natural hazards – DO2.1, DO2.1.1, DO2.1.2, DO2.1.3, DO2.1.4

- 511 The key natural hazards of relevance to this Application are geotechnical, erosion and flooding. The Site comprises a range of geotechnical risks, from low to high, as shown in the geology and Geotechnical Assessment Report. This range of risks are typical of most hillside residential land in Nelson City, including a lot of residentially zoned land above the valley floors. Any geotechnical issues can be addressed through detailed engineering design, and consequently there will not be a significant risk of geotechnical hazards arising from or affecting the subdivision.
- 512 The Stormwater Assessment Report calculates that all increases in flood depths caused by the development are local and contained within the Site boundary and off-site effects are negligible. The assessment demonstrated that the proposed mitigation measures are sufficient for mitigating this risk by reducing post-development flow rates and velocities to pre-development levels, across the range of design events. Increases in modelled flood depth are less than 0.05 m, which is within the tolerance of model error.¹⁴⁰ Calculation of the on-site effects and flooding risks to the proposed new urban development indicates that the Kākā Stream flows will be contained within the proposed new stream channel.¹⁴¹ The technical information indicates that the objectives and policies in both the RPS and NRMP regarding natural hazards will be achieved.
- 513 The banks of the Kākā Stream in its present location are prone to erosion and slumping. The design of the newly aligned section of the stream will prevent this occurring and the revegetation of the streambanks for the rest of the stream will increase the stability.
- 514 The Application contends that any natural hazards can be appropriately mitigated to a point where human health and safety is not endangered in accordance with the NRMP objectives and policies in the DO2 section. The Application will not aggravate or exacerbate the flooding risk.

Amenity values

- RPS Chapter 7 Natural and amenity values – NA1.2, NA1.3, NA1.4
 - NRMP DO14 Subdivision and Development – DO14.2, DO14.2.1
- 515 The Application acknowledges that there will be a change in amenity from the current farming uses to an urban development. However, mitigation measures such as the enhancement of Kākā Stream, extensive revegetation, and creation of recreation spaces will positively contribute to the amenity that people experience from public spaces. An extensive network of pedestrian / cycle pathways that access the length of Kākā Stream including multiple (four) bridges over it are proposed. The other factor is that the Site is now zoned for residential uses and thus it can be expected that the amenity of the development will be that of urban residential. The layout of the residential subdivision and design of the retirement village buildings are intended to provide a high level of amenity through access to sunlight and outlooks.

¹⁴⁰ Stormwater Assessment Report, Tonkin + Taylor, August 2022, section 6.4.1.

¹⁴¹ Stormwater Assessment Report, Tonkin + Taylor, August 2022, section 6.4.2.

Landscape values and natural features

- RPS Chapter 7 Natural and amenity values – NA2.2, NA2.3, NA2.4
 - NRMP DO5 Natural Values – DO5.1, DO5.1.1, DO17.1.2
- 516 RPS Objective NA2.2 seeks to preserve and enhance the character of the natural setting and protect significant natural features. Given the current farming uses of the Site, the Application will result in enhanced natural character through:
- a. lining the stream with native vegetation that will shade the stream that assists with creating habitats for aquatic organisms and stabilises the stream banks;
 - b. replacing the pasture grass with a plethora of riparian vegetation alongside the stream and around the water retention basins, and swathes of indigenous shrubs and trees throughout the remainder of the 50m wide corridor; and
 - c. extensive planting of native species within the Revegetation Overlay.
- 517 The location of the development within the valley formation will preserve the landscape values of the surrounding hills and ridgelines.

Ecology

- RPS Chapter 7 Natural and Amenity Values – NA3.2, NA3.3, NA3.4, NA4.2, NA4.3, NA4.4
 - NRMP DO5 Natural Values – DO5.1, DO5.1.2
- 518 While there are no significant natural areas within the Site, the Application is cognisant of the presence of SNA 166 located 500m away. In response to the comments from Forest and Bird, the Applicant agrees that the native forest restoration is important for strengthening ecological connectivity, buffering significant natural areas, and supporting native flora and fauna over the long term. Potential effects on birds and significant natural areas are addressed through multiple mechanisms, including vegetation clearance restrictions during the bird nesting season and ongoing pest and weed management. The management of pests and weeds through the conditions is consistent with the objectives and policies in RPS Section NA4.2.
- 519 There are likely to be ecological effects associated with the Application. After mitigation, the level of effect ranges from low to very low for loss and modification of in-stream habitat, through to a net gain for:
- a. in-stream and riparian enhancement of Kākā Hill Tributary;
 - b. wetland restoration and enhancement; and
 - c. revegetation with indigenous species.

Beds of rivers and wetlands

- RPS Chapter 7 Natural and amenity values – NA6.2, NA6.3, NA6.4

- NRMP DO17 Activities in the beds or rivers and lakes, and in wetlands – DO17.1, DO17.1.1, DO17.1.2, DO17.1.3, DO17.1.4, DO17.1.6, DO17.1.7, DO17.1.8, DO17.1.10, DO17.1.11, DO17
- 520 The proposed realignment of the lower reach of the Kākā Hill Tributary involves redirecting the existing channel westward to its original alignment within an enhanced stream corridor. This will require the infilling of approximately 630 m² of the existing channel (~400 metres of intermittent stream and ~230 metres of permanent stream) and the establishment of approximately 920 m² of new watercourse with increased sinuosity. The proposed channel will incorporate natural stream features, including widened and deepened sections, meanders, rock riffles, and pool habitats. Elements such as embedded boulders, riprap, and pinned logs will enhance habitat complexity and stabilise the channel. Riparian restoration will include native plantings supported by coco matting or similar to promote vegetation establishment and long-term bank stability. The realignment will be established in stages, offline from the existing stream, ensuring hydrological continuity until the new channel is stabilised, at which point the flow will be diverted into its new alignment. The former stream channel will then be decommissioned as part of the broader earthworks programme.
- 521 RPS Section NA6 relates to beds of rivers and lakes. Due to the realignment of the Kākā Stream and works such as culverts, disturbance of the Kākā Stream and its tributaries are proposed as a part the Application. The design of the streambed and banks will enhance the instream habitat and prioritise to the natural functioning of the river including the ecosystems they contain, consistent with RPS Policy NA6.3.1 and NA6.3.2. Other than the realignment of the Kākā Stream, minimal structures are proposed within the beds of rivers, meaning the Application is consistent with the objectives and policies in RPS Section NA6.
- 522 Works are proposed in the riverbed associated with the realignment of Kākā Stream as well as habitat enhancement activities. NRMP Policy DO17.1.1 adopts a stringent policy position which seeks to avoid activities which disturb the bed of a river or a wetland, unless the disturbance is for (b) the restoration or enhancement of any in-stream or out-of-stream values. The disturbance is for this purpose and is therefore consistent with this policy. There is an emphasis throughout the chapter on avoiding, remedying or mitigating adverse effects on freshwater bodies and their associated uses and values. NRMP Policy DO17.1.11 requires the effects of realignment and piping to avoid, remedy or mitigate the effects. The explanation to this policy promotes that realignment should mimic the natural form for a watercourse of that type.
- 523 An additional 300 m of intermittent stream will be reclaimed along the entire length of the Unnamed Tributary on Eastern Hillslope (KHT2) stream. Other minor channel (intermittent reaches of KHT3 and KHT4), overland flow path works and temporary culverts will be required that will also adopt the off-line methodology.
- 524 The Application is generally consistent with the objectives and policies in NRMP DO17. The emphasis is on restoration and enhancement of the in-stream values, particularly in light of the degradation of the stream in its current location.

Riparian margins

- RPS Chapter 7 Natural and Amenity Values -
- NRMP DO6 Riparian and coastal margins – DO6.1, DO6.1.1, DO6.1.2, DO6.1.4
DO17 Activities in the beds of rivers and lakes, and in wetlands - DO17.1.5,

525 RPS Section NA.5 relates to the management of riparian and coastal margins. The revegetation of the banks of the Kākā Stream is a key feature of the Application and will achieve RPS Objective NA5.2.1 which seeks to protect and enhance significant habitats, natural features, natural functions, natural character, landscape, amenity, cultural features and water quality. The transformation from a working farm to a revegetated riparian area will have a positive effect on all the matters listed in RPS Objective NA5.2.1. In addition, the management of stormwater and the removal of contaminated soil will improve water quality. The Application will increase the opportunities for public access and recreation opportunities along the riparian margins and is therefore consistent with RPS Objective NA5.2.3. Reserve corridors will provide continuous public access along the Kākā Stream, linking the esplanade and open space recreation zones identified in the Structure Plan and ensuring landscape and ecological connectivity.

526 Works and structures are proposed in the riparian edges associated with bridges and infrastructure.

Water Quality

- RPS Chapter 9 Water – WA1.2, WA1.3, WA1.4,
- NRMP DO18 Freshwater Abstraction and instream Flows – DO18.1, DO18.4, DO18.4.1
- NRMP DO19 Discharges to freshwater and freshwater quality – DO19.1, DO19.1.5, DO19.1.6, DO19.1.17, DO19.1.8, DO19.1.10, DO19.1.11, DO19.1.12, DO19.2, DO19.2.1
- NRMP DO20 Freshwater management – DO20.1, DO20.1.1, DO20.1.3,

527 RPS Objective WA1.2.1 seeks to maintain and enhance water quality to protect the life supporting capacity of aquatic ecosystems and in specific areas, for urban water supply. While there is the potential for short term and minor effects on water quality arising from construction activities, the mechanisms outlined in the erosion and sediment control plan will be key to minimising any adverse effects. The water quality of the Kākā Stream is already degraded as evidenced by elevated levels of E. coli, suspended sediment and nitrates / nitrogen. The retirement of the Site from farming, revegetation of the riparian margins, effective control of stormwater and removal of contaminated soil all will have a positive effect on water quality. Removal of the contaminated soil will address the risk to groundwater, the proposed stream and all downstream watercourses. This will be confirmed through a remedial works monitoring protocol during and following soil remediation. The scope of which will include soil validation sampling, physical survey, groundwater sampling and seepage water sampling within the creek. Stream realignment will not occur until remedial monitoring confirms that the contaminated soils have been removed (i.e. remedial targets have been met) and the risk to the stream is negligible. NRMP Policy DO19.1.6 promotes taking opportunities to enhance existing water quality and the Application is consistent with this.

528 Another outcome of the Application will be the enhancement of the mauri of the water, a matter which is significant to Ngāti Koata.

529 NRMP Policy 19.1.8 seeks to avoid or remedy the contaminants in point source stormwater discharges. The proposed stormwater management system exceeds the

standards required by the Nelson Tasman Land Development Manual 2020. The Application has been designed to accord with the water sensitive design provisions that it volunteered as a part of Schedule X (PPC28). A water sensitive design approach has been adopted, which targets runoff from impervious surfaces to avoid negatively impacting the health of receiving freshwater environments including Kākā Stream and Maitai River. The Application proposes treatment of runoff from all road and hardstand (driveways) and untreated roofs (where rainwater reuse is not adopted) before discharge to the receiving environment. Treatment will be provided through a mix of biological, chemical and physical processes in constructed stormwater treatment wetlands and isolated proprietary devices where necessary. Discharge of treated flows from wetlands to areas of constructed ephemeral channels and soakage wetlands is proposed to buffer the stream from hydrological changes and support groundwater recharge.

- 530 The combination of the proposed stormwater treatment for the urban areas and wider vegetation improvements in the catchment are expected to improve downstream water quality and manage contaminants and hydrologic changes to a high standard.

Soils, erosion and sediment

- RPS Chapter 10 Soils – SO1.2, SO1.3, SO1.4
 - NRMP DO13 Soil erosion and sedimentation – DO13.1, DO13.1.1, DO13.1.2, DO13.1.3
- 531 By necessity earthworks will be required to create geotechnically stable areas for development. As outlined in the Geotechnical Assessment Report, there are a range of mitigation options, such as ground improvement works where weaker soil is excavated and replaced with engineered fill, slope instability mitigation using retaining walls, earth bunds and barriers and planting, and installation of rock bolts and mesh on high cut slopes in rock. Detailed design of slope geotechnical hazard mitigation will be undertaken as part of the detailed design process. At present the banks of the Kākā Stream are prone to instability and erosion, however the riparian planting proposed and the design of the realigned portion of stream will go some way towards stabilising this and retaining the soil.
- 532 It is intended that there will be a balance of cut and fill earthworks meaning that all soil can be retained onsite.

Contaminated soil and hazardous substances

- RPS Chapter 10 Soils – SO1.3.3, SO1.2.4, SO1.3.4,
 - NRMP DO3 Hazardous substances and waste – DO.1, DO3.1.1, DO3.1.2, DO3.1.3, DO3.1.4, DO3.1.5
- 533 The presence of contaminated soil was one of the more significant issues addressed by the Application, and it is proposed to remove the contaminated soil completely until testing confirms any residual concentrations of contaminants meet relevant and appropriate guideline values or that risk to the environment is negligible. As discussed, conditions provide for management and disposal options for contaminated soil, such as the requirements for all soils containing dieldrin above 50mg/kg to be securely stored in sealed containers on an impervious surface in a bunded area at least 25m from any water body and certification of a Hazardous Waste Management Plan. The approach of

the Application to contaminated soils is entirely consistent with RPS Objective SO1.2.4 and Policy SO1.3.4 and NRMP Policy DO3.1.3.

- 534 The use of flocculants and coagulants are classed as hazardous substances and will be stored in accordance with the Hazardous Substances procedure, with bulk flocculant material being held in secure storage. Chemical Spill Contingency Procedure Spills will be managed in accordance with the Emergency Spill Response Procedure. Conditions cover the situation of spills.

Discharges to air

- RPS

- 535 The single objective regarding air quality is:

DA1.2.1 Improvement in Nelson's ambient air quality

- 536 The Applicant has proffered a condition which does not allow the discharge to air from any small-scale solid fuel burning appliance (including any small scale ultra-low emission or pellet burning appliance) installed within a building.
- 537 Policy DA1.3.7 seeks to minimize emissions from motor vehicles. While this matter is more relevant to the consideration of PPC28, the Panel is mindful of the proximity of the Site to Nelson city centre. The transport network proposed by the Application will further support the use of alternative transport modes.
- 538 This section of the RPS also addresses noise, and Objective DA2.2.1 seeks to avoid, remedy or mitigate unreasonable noise. The Applicant has volunteered conditions that will control the timing and level of construction noise, including the requirement for all construction work to be undertaken in accordance with a Construction Noise and Vibration Management Plan. The Construction Noise and Vibration Management Plan will prescribe the noise mitigation measures that will be adopted to ensure compliance with the construction noise standards at all receivers on Ralphine Way. The matters relating to noise have been discussed above in Part F.
- 539 The Panel is satisfied that the Application will support the objectives and policies of this section of the RPS.

Energy

- RPS

- 540 The most relevant aspect of the Application to this section of the RPS is energy conservation and methods for reducing greenhouse gas emissions. In a similar response to the section on air emissions, the proximity of the Site to Nelson city centre and the transport network proposed by the Application will further support the use of alternative transport modes.

Transport

- RPS Infrastructure Chapter 14 – IN2.2, IN2.3, IN2.4
- NRMP DO10 Land Transport – DO10.1, DO10.1.1, DO10.1.2, DO10.1.3, DO10.1.4, DO10.1.5, DO10.1.6, DO10.1.7, DO10.1

541 RPS Objective IN2.2.1 seeks to achieve:

a safe and efficient land transport system that promotes the use of sustainable resources, whilst avoiding, remedying or mitigating its adverse effects on human health and safety, and on natural and physical resources.

542 NRMP Objective DO.10.1 contains many of the same elements, particularly a safe and efficient transport system:

A land transport system that is safe, efficient, integrated and context responsive, and that meets the needs of Nelson in ways that are environmentally, socially and economically sustainable.

543 The overall concept of the Application for transport is to facilitate easy access to and within the Site by vehicle, as well as providing a connected and safe network for pedestrians and cyclists. A mixture of road types is proposed that accommodate a range of traffic volumes, speed environments, functions and users. The transport network has been designed to accommodate public transport should it become available. For example, Road 1 has been designed to accommodate a 12-metre bus, consistent with public transport requirements. The key design focus is the roundabout at the intersection of Road 1 and Road 3, which has been identified as a critical location to ensure safe and uninhibited bus movement through the network.

544 The transport network has been located with an eye to the future development of Bayview to achieve integrated and connected developments. In this respect, it is consistent with Policy DO10.1.13 which supports the integration of new roads and intersections with the adjoining road network.

545 The Integrated Transport Assessment five non-compliances of the proposed transport network with the NRMP. The assessment of these non-compliances shows the overall effects are less than minor. The analysis and assessment of the adjacent road network shows that it will support the future traffic from the proposed subdivision area. The Panel considers that any effects are no more than minor.¹⁴²

Heritage

- RPS Chapter 7 Natural and Amenity Values – NA1.3.4, NA1.3.5
- NRMP DO4 Heritage – DO4.1

546 While the shearing shed and chimney remnants are not scheduled in the NRMP as historic heritage features, these structures are recognised in the provisions for Schedule X as having heritage value. While the structures will be largely demolished, materials will be salvaged for adaptive reuse and presentation. This is consistent with Objective DO4.1 which supports the retention and enhancement of heritage items that contribute to the character, heritage values, or visual amenity of Nelson. In addition, the retention and display of these items in the area where they stood will retain their heritage significance.

¹⁴² Integrated Transport Assessment, Traffic Concepts Ltd, February 2025, section 13.

Schedule X

547 The Applicant considered that the most relevant provisions of the NRMP are those are provided within the Environment Court Decision, with those all now operative and incorporated into the NRMP. The Applicant therefore has focused on those provisions that relate to Schedule X of the NRMP.¹⁴³ While the Panel agrees that those provisions are highly relevant to the Application, it has necessarily been required to look wider and consider all relevant provisions in the NRMP in accordance with s104(1)(b)(vi) of the RMA.

548 The overarching objective for Schedule X is:

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 including:

- a new mixed density residential neighbourhood amongst areas dedicated to public open space and revegetated rural land; and
- a sense of place that is responsive to, and respectful of, natural character, landscape and Whakatū Tangata Whenua values; and
- development that is fully serviced with three waters infrastructure, and coordinated with transport infrastructure upgrades;
- improved freshwater quality, freshwater and terrestrial ecosystem health and biodiversity; and
- an environment where the adverse effects of accelerated soil erosion are avoided, remedied, or mitigated.

549 The Applicant considered that each of the above listed outcomes are achieved by the Maitahi Village as demonstrated in the supporting technical reports and plans.

550 This objective is delivered by six policies. Policy RE6.1 Maitahi/Mahitahi Bayview Area provides for subdivision and development that is consistent with the Structure Plan. The policy sets out nine matters of importance to development including accommodating a range of housing densities and forms, implementing the multi-modal transport connections identified in the Structure Plan and creating recreational opportunities. The Panel is satisfied that the Application is largely consistent with the Structure Plan (and this was confirmed by the comments received from NCC), although the Panel notes that:¹⁴⁴

- a. part of three residential properties are located within the Open Space Recreation Zone;
- b. part of two residential properties are located within the Neighbourhood

¹⁴³ Application, section 6.5.

¹⁴⁴ Landscape Assessment Report, Rough Milne Mitchell, February 2025, section 3.1.

Reserve;

- c. a pump station is located along the southern side of the Neighbourhood Reserve;
- d. the water reservoir is located within the Rural Zone and Residential Green Overlay on Kākā Hill; and
- e. the main road is not entirely located within the Indicative Road alignment.

551 In response to comments, the Applicant contends there will be consistency with the Structure Plan in that:

- a. the Maitahi Village has been designed to be consistent with the Maitahi Bayview Structure Plan within Schedule X;
- b. Schedule X has also provided for Suburban Commercial land as a part of the Maitahi Bayview Structure Plan;
- c. the proposed walkway/pathway linkages are also entirely consistent with the indicated walkways shown in the Maitahi Bayview Structure Plan;
- d. the Maitahi Village also proposed to development the first section of subcollector road, in accordance with the indicate road shown on the Maitahi Bayview Structure Plan; and
- e. the proposed Maitahi Village subdivision is also in accordance with the enabled density within Schedule X.

552 The Applicant considers that the overall development is in accordance with what is anticipated by the Maitahi Bayview Structure Plan including the enhancement of Kākā Stream. The Panel agrees. Comments received from NCC acknowledge that the Application achieves high-quality environmental, landscape, and urban outcomes.

553 Policy RE6.2 Whakatū Tangata Whenua Values supports the recognition of cultural values and mātāuranga Māori. The Panel appreciates the involvement of Ngāti Koata as a cornerstone and the expression of their values in the design of the Application. This is confirmed by the CIA. The Panel considers that the Application is consistent with this Policy.

554 Policy RE6.3 Integrated Management is highly detailed and sets out sixteen policies, which are generally focused on the water quality / quantity and stormwater. The Applicant explained that improvement of water quality was a driving force in the process that developed this provision and that this will be delivered by the Application. While there is the potential for short term and minor effects on water quality arising from construction activities, the mechanisms outlined in the erosion and sediment control plan will be key to minimising any adverse effects. The retirement of the Site from farming, revegetation of the riparian margins, restoration of wetlands, effective control of stormwater and removal of contaminated soil all will have a positive effect on water quality.

555 Policy RE6.4 Indigenous Biodiversity seeks to restore, protect and enhance indigenous terrestrial and freshwater biodiversity as an integral part of subdivision and

development. As set out in the Application, there will be a net gain of biodiversity values in the medium term including for stream features and wetlands.¹⁴⁵ Short term and minor effects may arise from construction runoff although industry standard best practice measures will be adopted to remove or reduce contaminants to acceptable levels prior to discharge into any waterway within or adjacent to the proposed works area. There will be a loss of permanent and intermittent stream habitat but works will be undertaken during low flow periods to reduce the effects on fish. The creation of a new length of Kākā Stream will result in an improvement in freshwater habitat, especially when coupled with the riparian revegetation proposed.

- 556 Policy RE6.5 Earthworks, and Erosion and Sediment Control requires subdivision, development and earthworks does not accelerate soil erosion or mobilisation. Earthworks are a necessary step in enabling development, and the erosion and sediment control plan required by the conditions will be critical to minimising sediment runoff and dust during construction. The proposed best practice erosion and sediment control methods, including staging, will minimise sediment yield during the development phase of the project. The erosion issues within the Kākā Stream have been acknowledged by the Applicant. The lower section of the Kākā Stream will be redirected by constructing a new naturalised stream channel offline before directing the flows to the new channel. Completing the relocation first (post contamination removals) will simplify the erosion and sediment control methodology for the balance of the earthworks in the lower catchment and further reduce of risk of sediment discharge to the stream. The new stream channel will reduce the sediment load when compared to that arising from the existing, eroding channel, as the new channel will be designed and constructed to be erosion resilient and will be stabilised before water is diverted into it.
- 557 Policy RE6.6 Heritage Structures requires that the values of the shearing shed and chimney are recorded and recovered prior to their demolition. This is ensured through appropriate conditions.

Nelson Resource Management Plan Zones

- 558 The Site comprises a pattern of zones, and the Panel has had regard to the objectives and policies of each of the zones in the context of the activity proposed within them and any non-compliances with standards.

Residential Zone

- 559 The proposed residential development is located within various residential zones. The Application requires resource consent due to a number of rules and non-compliances including noise, vegetation clearance, earthworks, landfill, works within the Riparian Overlay, earthworks within a Flood Overlay and subdivision within the Flood Overlay. The retirement village does not comply with some of the bulk and location standards such as front yards and daylight admission.
- 560 Objective RE1 Living style supports a diversity of residential styles, and the attendant policies seek to provide a choice of building densities and flexibility of design. The Application provides a range of housing types and will support a full profile of the community. The retirement village will provide options as people's needs change and a higher level of support is needed. Policy RE1.2A Comprehensive housing encourages

¹⁴⁵ Ecological Impact Assessment, Robertson Enviro, February 2025, section 5.1.

and promotes higher density development, a policy that is satisfied by the retirement village. Policy RE1.4 Lower density areas seeks to maintain open spaciousness of development which will be achieved by the larger lot size of development proposed in those areas.

- 561 Objective RE2 Residential character supports a principally residential character, and this will be achieved by the Application. Policy RE2.1 seeks to limit noise consistent with a predominantly residential environment. While there will be increased noise during the construction phase (with the levels and hours of activity are managed by conditions), the ultimate environment will be residential and noise will need to comply with the standards. Policy RE2.2 Nuisances relates to glare, light spill, dust, vibration and odour. Of these, the most relevant is dust and vibration during construction. To minimise potential dust nuisance, the Applicant proposes to stage earthworks to minimise the period that areas are exposed to drying, controlling speed of vehicles onsite and dampening with water. In terms of vibration, the report from Styles Group recommended adopting a limit of 5mm/s PPV measured on the foundation of any receiving building (occupied or not and this is enforced through conditions. The Panel consider that these methods will control dust and vibration to an appropriate level to be consistent with the policy.
- 562 Policy RE2.3 relates to daylight and sunlight and protects adjoining sites from undue shading. Policy RE2.4 seeks to protect the outlook and privacy of adjoining development. The Landscape and Visual assessment does not assess the effect of non-compliance with the design standards for daylight angles and outlook and privacy, but these matters can be addressed by NCC in its role as regulator.
- 563 Policy RE2.7 avoids activities breaking up community and neighbourhood coherence. Because this Application is a comprehensive development for the entire Site, it enables a cohesive development.
- 564 Objective RE3 relates to streetscape, landscape and natural features. The location of the development and the proposed layout enhances the natural features particularly the Kākā Stream, and the backdrop of the surrounding hills. While Policy RE3.3 and RE3.4 seeks to retain trees, vegetation and indigenous vegetation which contributes to the amenity values, there is very little in the way of valuable vegetation onsite.
- 565 Policy RE3.5 supports an open landscape character with minimised hard landscaping and safer streets, The Landscape and Visual Assessment Report proposes that the entrance to the two village precinct be open treed street character with planting and trees making up a significant portion of the streetscapes. The absence of internal fencing and boundary definition, and the limited visual infrastructure within the landscape of the village creates a sense of open space.
- 566 Policy RE3.9 is specific to Maitahi and protects 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. The Application achieves all the clauses in the policy, including protecting the ridgelines from development, long term management and protection of indigenous vegetation in the Revegetation Overlay and protecting the natural character of the Open Space zones.

Suburban Commercial Zone

- 567 Koata House is proposed to be located within the Suburban Commercial Zone and requires consent for exceeding the maximum floor space and building height. As a

focal point for Ngāti Koata and a multi-purpose space for the community, the Panel consider that Koata House will help reinforce community identity and focal points in accordance with Objective SC1 and Policy SC1.1. The proposed design of Koata House will reflect the cultural identity of Ngāti Koata. The policies regarding daylight and sunlight (SC2.4) and scale of buildings and visual appearance (SC2.5) are relevant, given that the proposed building will infringe those standards.¹⁴⁶

Rural Zone

- 568 The proposed water reservoir is to be located in the Rural Zone, and requires resource consent for vegetation clearance, soil disturbance and earthworks. Many of the objectives and policies for the Rural Zone are not relevant for the activities proposed by the Application as they relate to protecting the life-supporting capacity of soil and other resources, rural amenity and rural character through controlling development density. While the objectives and policies are not especially relevant, the Application is not contrary or inconsistent with them.¹⁴⁷

Open Space and Recreation Zone

- 569 The Open Space and Recreation Zone is located through the centre of the Site and largely follows the Kākā Stream. A number of activities are proposed in this zone which requires resource consent including fencing as part of the wastewater pump station, underground network utilities, vegetation clearance, soil disturbance to create the new Kākā Stream corridor, earthworks and aboveground network utilities (wastewater pump station, water main, gravity sewer and bridge). Although not requiring resource consent, the restoration and revegetation of the riparian banks are an important feature of the Application. Kākā Stream is important for amenity and recreation opportunities as well as biodiversity and cultural values. The enhancement of the Kākā Stream and making it available for public access will achieve Objective OS1 and its associated policies.¹⁴⁸

Panel Finding

- 570 To be completed following responses under s70 of the FTAA

Planning documents recognised by a relevant iwi authority and lodged with the Council

- 571 An application for a resource consent must include an assessment of the activity against any relevant provisions of a planning document recognised by a relevant iwi authority and lodged with a local authority.¹⁴⁹ It is the Panel's understanding that the following planning documents recognised by relevant iwi authorities have been lodged

¹⁴⁶ SC4 Maitahi/Mahitahi Bayview (Schedule X). This provides: "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." The Panel has not interpreted this provision as indicating that other objectives and policies for the Suburban Commercial Zone do not apply.

¹⁴⁷ RU5 Maitahi/Mahitahi Bayview Development (Schedule X). This provides: "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." See footnote above.

¹⁴⁸ OS3 Maitahi/Mahitahi Bayview Development (Schedule X). This provides: "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." See footnote above.

¹⁴⁹ Schedule 5, clause 5(1)(h) and clause 5(2)(g).

with the Council:

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

- 572 The CIA and Statement of Cultural Values provided by the Applicant clearly communicate the values and directions that arise out of these iwi management plans. Given the broad support received from iwi, the Applicant submitted that no further consideration of the iwi management plans is required.¹⁵⁰ The Panel considers this approach is somewhat simplistic and requires further analysis.
- 573 The Panel appreciates the identification of relevant parts of the iwi management plans in both the CIA prepared for Ngāti Koata and the statement of cultural values prepared by Ngāti Tama. It was particularly helpful for the Panel to see where the Application aligns with the issues, objectives and policies in the Ngāti Koata Iwi Management Plan.
- 574 The Panel is satisfied that the Application is consistent with the Ngāti Koata Iwi Management Plan. The Panel also notes that the remaining Te Taihi iwi have given broad support for the Application. Moreover, the conditions sets volunteered by the Applicant as v2 included specific conditions acknowledging cultural values and providing for iwi engagement and reporting. As no explicit concerns have been raised with respect to particular issues in individual iwi management plans, the Panel considers no further matters remain to be addressed.

PART J: OTHER CONSIDERATIONS

Freshwater fisheries activity

- 575 When summarising the comments from parties invited to comment on the Application, reference was made to the comments of the D-GC on the proposed freshwater fisheries

¹⁵⁰ Application, section 6.6.

activity on the Site as part of the project. Without making any reference to the definition of standard freshwater fisheries activity in the FTAA, the D-GC argued that the realignment of the Kākā Stream involves a “permanent stream diversion” and requires the “construction of a permanent dam or diversion structure...to stop the stream following its current course.” The comment cited the definition of a “complex freshwater fisheries activity” but made no reference to the various conditions that had been proffered by the Applicant to minimize any adverse effects on aquatic life and fisheries under the heading “Ecology” in the Water Permit (section K) in Attachment 25 at page 38.

576 In its response to the comments received from the D-GC, the Applicant maintains that a complex freshwater fisheries approval is not required because:

- a. the realignment of the Kākā Stream does not involve any culvert or ford that might permanently block fish passage; and
- b. the re-alignment does not involve a “permanent dam or diversion structure”.

577 The Applicant referred to the definition of the term “diversion structure and dam” in the FTAA which in turn draws on the definition in the Freshwater Fisheries Regulations 1983 (**FFR-1983**) where the emphasis is on the word “structure” and what such structure is designed to do. The word “structure” is not separately defined under the FFR-1983 but it is defined in the RMA as “...any building, equipment, device, or other facility made by people and which is affixed to land...”. While the realigned stream will inevitably have some geographic form or shape to it, the Panel considers on the facts that it is not a “structure” captured by the definition.

578 The Applicant submits, correctly in the Panel’s view, that the Application involves the natural re-alignment of Kākā Stream. To complete the re-alignment to what is thought to be its original path, it is not proposed that any structure such as a building, device, or other facility made by people) be fixed either within, or in close proximity to, Kākā Stream.

579 The Panel is satisfied that neither a dam nor a diversion structure is proposed in this case. Neither the expert reports filed by the ecologists concerning the re-alignment of the Kākā Stream, nor any of the plans or maps suggest that the work associated with the re-alignment will involve such structures. In any event the gravamen of the definition of complex freshwater fishery activity focusses on whether what is proposed is either a culvert or ford that permanently blocks fish passage, or a permanent dam or diversion structure. To suggest that works of that nature are required to align the stream from its current course (and in its present degraded condition) is both artificial and contrary to the facts.

580 The matter is put beyond doubt when the provisions of regulation 43 of the FFR-1983 are considered. These usually apply to the obtaining of an approval for a complex freshwater fisheries activity and relate to the possible requirement by the D-GC to include a fish facility where a dam or diversion structure is proposed to manage the passage of fish. Such an issue simply does not arise in the circumstances of this case because the proposed re-alignment is a natural one, without structures as defined. The Applicant is not proposing a “dam” or “diversion or other structure” that will impede the natural movement of fish either up or down the Kākā Stream. The possible requirement of whether a fish facility should be installed does not arise.

581 For the above reasons, the Panel is satisfied that the proposal to re-align the Kākā Stream does not involve any activity which falls within the definition of complex freshwater fisheries activity. The legal analysis does not support the view of the D-GC, nor is it an available interpretation on the facts presented in the Application, the expert reports or any related plans and maps.

582 The Panel agrees with the submissions of the Applicant that what is proposed with the re-alignment of the Kākā Stream involves a standard freshwater fisheries activity. The facts before the Panel inevitably drive such a conclusion in the light of the definition of such an activity that applies under the FTAA. In section 4 of the FTAA the term is defined as follows:

Standard freshwater fisheries activity means an activity that includes construction of any of the following:

(a) a culvert or ford that could impede but not permanently block fish passage:

(b) weirs that comply with the conditions of regulation 72 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020:

(c) works—

(i) that require active disturbance to a water body, including diversions, in-stream operations, and removal of gravel, that does not persist for more than 3 months; or

(ii) that are within 500 m of the coast and do not occur during the whitebaiting season; or

(iii) that are in an area known to be used for trout, salmon, or native fish spawning and do not occur during the spawning season; or

(iv) that require repeated disturbance to a water body and are temporary works for which there is a period of more than 6 months between each period of work

583 The Panel is satisfied that the proposed activity falls with this provision. The definition is broad and the emphasis is on an activity that could impede, but not permanently block, the passage of fish. The Panel has considered the full scope of works required for the re-alignment of Kākā Stream and finds on the material available that an activity falling within this definition is clearly involved.

584 The only remaining issue is whether, if this is a standard freshwater fisheries activity, it is necessary for the Applicant to obtain a separate approval for a standard freshwater fisheries activity as it would if a complex freshwater fisheries activity were involved. The Panel agrees with the Applicant that the answer is no. It is unnecessary to burden this decision by providing further legal analysis to support what is a clear position. In short, the Applicant accepts that the Proposal involves a standard freshwater fisheries activity, and where that is the case Checklist A2 of the EPA's application form requires certain information to be provided. The Applicant has provided such information to the EPA on 13 June 2025 in response to an RFI issued to it.

585 Finally, the Panel notes that, even if it is wrong in its legal analysis and factual findings, and the Project somehow involves a complex freshwater fisheries activity, the Applicant has proffered a set of conditions designed to mitigate or remove any adverse

effects to fisheries in the Kākā Stream, most notably the requirement for a Fish Salvage and Relocation Plan. These have been expanded on by the Panel and can be found in sections XX of the Panel's condition set. In developing these conditions the Panel has had regard to the provisions of clause 19 of Schedule 5 of the FTAA. If these conditions are applied to the proposed realignment of the stream then the Panel finds the effects on fish life would be minimal.

Natural Inland Wetlands

- 586 When discussing the NPS-FM above the Panel noted (at paragraphs 463-464) the presence of two wetlands on the Site which had been referred to in the Application as "natural inland wetlands." The decision addresses above the key features of these wetlands and how the Applicant proposed to ensure the features of them were preserved and indeed enhanced through the various stages of the development. There is no dispute on the facts that these two wetland areas fall within the definition of "natural inland wetland" as defined in the NPS-FM.
- 587 In the course of their comments on the Application two responders, Gary Scott and Catherine Harper questioned whether there was in fact a third wetland in the area of the lower or southern part of the Site. In response to this comment the Applicant confirmed, citing the ECIA, section 3.1.3, that the "southern area is not classified as a natural inland wetland."
- 588 The Panel decided to seek further information from the Applicant on this issue and in particular:
- a. the nature and scope of any expert assessment made concerning the southern part of the Site, and
 - b. whether any of the proposed activities would be occurring in an area that fell within the definition of natural inland wetland.

The EPA issued an RFI to the Applicant for this purpose.

- 589 In response the Applicant contends that the southern floodplain does not include a wetland as defined as defined in the NPS-FM and the RMA. In the NPS-FM the definition is as follows:

means a wetland (as defined in the Act) that is not:

- (a) in the coastal marine area; or
- (b) a deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural inland wetland; or
- (c) a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or
- (d) a geothermal wetland; or
- (e) a wetland that:
 - (i) is within an area of pasture used for grazing; and

- (ii) has vegetation cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species using the Pasture Exclusion Assessment Methodology (see clause 1.8)); unless
- (iii) the wetland is a location of a habitat of a threatened species identified under clause 3.8 of this National Policy Statement, in which case the exclusion in (e) does not apply

590 The Act referred to in the above definition is the RMA which defines “wetland” as:

includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions

591 The Applicant refers to the factual findings outlined in a technical memorandum prepared by the ecologist, Dr Ben Robertson. He confirms that the floodplain area was visually assessed during the ecological fieldwork. While a formal delineation was not undertaken, due to an absence of indicators such as wetland hydrology or wetland vegetation, the area was evaluated in accordance with standard ecological field practice and with reference to the definitions referred to above. Importantly the area is highly modified, elevated above the main valley floor, actively grazed and dominated by exotic pasture species typical of an environment that is well drained. On this basis further investigation was not warranted.

592 Dr Robertson also cited the Tonkin & Taylor (2021) report in relation to the PPC28 Ecological Constraints Assessment. This explicitly considered the potential wetland constraints under NPS-FM 3.22. While wetlands 1 and 2 were identified elsewhere on the Site, no other putative wetlands were mapped or recorded within the southern floodplain. It is also relevant that the statutory mapping carried out by the NCC under the NPS-FM 3.8 of the area in question did not identify any confirmed or potential wetland.

593 Having considered the above information and other material relied upon by Dr Robertson, the Panel is satisfied that no part of the southern floodplain on the Site could be classified as falling within the definition of natural inland wetland. On the facts there are only two wetlands on the Site, namely, the two areas identified by the Applicant in the Application as discussed elsewhere.

594 The Applicant further submitted that, even if the area in question were to be found to meet the definition of wetland in the RMA, it would still not qualify as a natural inland wetland under the NPS-FM due to the exclusions in (e) and (c) of the definition.

595 Dealing first with exclusion (e), it involves a wetland that “is within an area of pasture used for grazing.” The Panel is satisfied on the facts that this exclusion would apply because the southern floodplain area of the Site is actively grazed and dominated by exotic pasture species listed on the pasture exclusion list and there is no known habitat or threatened species present that would override this conclusion.

596 With respect to the exclusion in (c), this would apply if there is a body of water that has been deliberately constructed. The factual situation here is that the Kākā Stream has in the past been intentionally realigned through its current course, with associated excavation and accessway changes altering the original floodplain topography. The evidence provided by the Applicant in the expert ecological reports filed with the Application provide some support for the proposition that the present course of the

Kākā Stream is not where it flowed historically. On the basis that it was realigned as Dr Robertson stated, a wetland in the southern part of the Site would have developed in or around the realigned stream since the construction work was completed.

- 597 The Applicant's counsel helpfully provided legal submissions in support of the factual findings, together with an analysis of related provisions concerning the definition of construction and deliberate. The Panel accepts these submissions provide some support for the proposition that it is reasonable to conclude that the historic realignment exercise would have required work of a similar kind to those now proposed by the Applicant, to effectively reverse the historic realignment. However, the Panel considers it is unnecessary to resolve either these legal or factual issues because the issue is resolved by the other factual findings above.
- 598 The primary finding the Panel has found that the southern part of the Site does not contain a natural inland wetland. Even if this conclusion were wrong, the exclusion in (e) applies because it is a wetland within an area of pasture used for grazing. Accordingly, there is no need to make further findings on the submission concerning the application of the second exclusion contended for by the Applicant.
- 599 It follows from the above that the Site contains only two wetland areas as contended for by the Applicant. In short the Panel agrees with the assessments in the technical memorandum of Dr Robertson.

PART K: CONDITIONS

FTAA General Requirements for Conditions

- 600 In the course of the outline of the statutory scheme in Part B, the Panel referred to the power in s 81(1)(a) to grant an approval sought in a substantive application and set any conditions to be imposed on the approval. The statutory requirements on what conditions are set will be determined by what approvals are being sought.
- 601 When exercising the discretionary power to set a condition, a panel must comply with s83 of the FTAA which provides:

83 Conditions must be no more onerous than necessary

When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.

- 602 The Panel will discuss later how this section has been complied with.

Conditions for Resource Consents

- 603 As the Application seeks approval for resource consents, clause 18 of Schedule 5 applies:

18 Conditions on resource consent

When setting conditions on a consent, the provisions of Parts 6, 9, and 10 of the Resource Management Act 1991 that are relevant to setting conditions on a resource consent apply to the panel, subject to all necessary modifications, including the following:

- (a) a reference to a consent authority must be read as a reference to a panel; and

- (b) a reference to services or works must be read as a reference to any activities that are the subject of the consent application.

604 As part of several resource consents, particularly those relating to the Kākā Stream, the Applicant has referred to a standard freshwater fisheries activity. There is a definition of this term in s 4 of the FTAA which is referred to in the above discussion about freshwater fisheries activities. Clause 19 of Schedule 5 provides:

19 Conditions on resource consent may deal with standard freshwater fisheries activity

- (1) A panel may set conditions on a consent in respect of a standard freshwater fisheries activity for which approval, dispensation, or authorisation is required, or for which a requirement may be imposed, under the following provisions:
 - (a) regulation 42 of the Freshwater Fisheries Regulations 1983:
 - (b) regulation 43 of the Freshwater Fisheries Regulations 1983:
 - (c) regulation 65(2) of the Freshwater Fisheries Regulations 1983:
 - (d) section 26ZM(2)(a) or (3)(b) of the Conservation Act 1987.
- (2) If the panel sets conditions under subclause (1), they must be the conditions the panel considers necessary to manage the effects of the activity on freshwater fish species, taking into account—
 - (a) best practice standards; and
 - (b) the New Zealand Fish Passage Guidelines.
- (3) The provisions referred to in subclause (1)(a) to (d) do not apply to the holder of a resource consent issued under this Act who complies with the relevant conditions imposed under this clause.

605 The Panel has, in setting conditions regarding the standard freshwater fisheries activity taken into account the provisions of the New Zealand Fish Passage Guidelines.¹⁵¹

606 With respect to resource consent conditions generally, the Panel notes that a resource consent condition must:¹⁵²

- a. be for a resource management purpose, not an ulterior one; and
- b. fairly and reasonably relate to the development authorised by the resource consent or designation; and
- c. not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties could not have approved it.

607 Moreover, the underlying purpose of the conditions of a resource consent is to manage environmental effects by setting outcomes, requirements or limits to that activity, and how they are to be achieved.¹⁵³ Furthermore conditions must also be certain and

¹⁵¹ available at <https://niwa.co.nz/freshwater/new-zealand-fish-passage-guidelines>

¹⁵² *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL), at 739.

¹⁵³ *Summerset Village (Lower Hutt) Ltd v Hutt City Council* [2020] MZEnvC 31 at [156].

enforceable.¹⁵⁴

608 It is axiomatic that a condition must also not delegate the making of any consenting or other arbitrary decision to any person, but may authorise a person to certify that a condition of consent has been met or complied with or otherwise settle a detail of that condition.¹⁵⁵ Such authorisation is subject to the following principles:

- a. the basis for any exercise of a power of certification must be clearly set out with the parameters for certification expressly stated in the relevant conditions; and
- b. this power of certification does not authorise the making of any waiver or sufferance or departure from a policy statement or plan except as expressly authorised under the Act (s 84 of the RMA); and
- c. this power of certification does not authorise any change or cancellation of a condition except as expressly authorised under the Act (s 127 of the RMA).

609 The Panel also notes that s 220 of the RMA specifies the conditions that may be imposed on a resource consent relating to a subdivision.

Observations on Conditions

610 On 11 July 2025, the Applicant and NCC provided a largely agreed set of conditions to the Panel. The Panel used this agreed set as a base to develop the draft conditions circulated on 5 August 2025 for comments pursuant to s 70 of the FTAA.

611 The Applicant filed with the substantive application a set of proffered conditions (sets A to M) as Attachment 25. At the Project overview conference, counsel for the Applicant advised that the conditions proffered with the Application were still a work in progress. The Panel was advised that the Applicant was in ongoing discussions with NCC regarding both the content and wording of these conditions. The Applicant also advised that a further set (version 2) would be filed with the EPA by 11 July 2025.

612 The Panel also received comments on the draft conditions from:

To be completed once comments are provided under s70

Consent notices pursuant to s221 of the RMA

613 Consent notices are required in respect of resource consents to undertake a subdivision. Such consent notices are necessary to require conditions to be complied with on an ongoing basis. In this case, provision is made for consent notices in clause 43 of the conditions for subdivision (set I) released by the Panel under s70 of the FTAA.

To be completed once comments are provided under s70

614 The consent notices must be targeted and appropriate to ensure that there is ongoing

¹⁵⁴ *Bitumix Ltd v Mt Wellington Borough Council* [1979] 2 NZLR 57.

¹⁵⁵ *Turner v Allison* (1970) 4 NZTPA 104.

compliance with these requirements beyond the completion of the relevant stage of subdivision and that all future owners of each residential lot are fully informed as to their obligations with respect to these matters.

Conclusion regarding conditions

615 To be completed once comments are provided under s70

616 Should the final set of conditions (to be released with the decision) contain minor errors or omissions, the Panel notes it has powers under s 89 of the FTAA to make minor corrections.

PART L: EVALUATION OF EXTENT OF BENEFITS

The Statutory Test

617 When discussing the decision-making aspects of its task¹⁵⁶, the Panel referred to the statutory requirements of ss 81 and 85 of the FTAA. Under s 81(4), when the statutory purpose is being taken into account, the Panel must consider the extent of the Project's benefits. These may be regional or national, but to qualify within the purpose provision they must be significant, as already discussed.

618 The Panel considered the regional or national benefits in Part G and concluded that the Applicant had in this case demonstrated on the facts that such benefits were significant, and by a considerable margin. So when the Panel is evaluating the project's regional or national benefits for the purpose of s 85(3)(b), those benefits are by definition significant.

619 The inquiry, when evaluating the extent of the project's regional or national benefits, is different. It is seeking to place a measurement on, or provide a quantification of, the benefits as found.

620 The word "extent" is not defined in s 4 of the FTAA. The dictionary definition refers variously to terms such as "assessment" or "assessed value" or degree, size, magnitude, dimensions or breadth of the thing being measured.¹⁵⁷ This is the approach the Panel has taken to its evaluative task, bearing in mind that not all benefits are able to be calculated in precise financial or monetary terms. Sometimes expression of quantification or value in absolute terms may simply not be possible. The context in which any regional or national benefits occur will undoubtedly be relevant.

Types of benefits

621 The Panel summarised the evidence of the economic and other regional benefits in Part F¹⁵⁸ and Part G¹⁵⁹. What is required now is an evaluation of the extent of such regional benefits. The Panel's finding (at paragraph 317) was that the Project would (broadly speaking) result in substantial economic benefit to the region, including from the

¹⁵⁶ At paragraphs 54 to 62.

¹⁵⁷ Shorter Oxford Dictionary.

¹⁵⁸ Paragraphs 304-317.

¹⁵⁹ Paragraphs 431-458.

construction phase. In terms of extent, the Panel accepts the evidence in the updated economic report (at paragraph 311) of an impact on GDP of around \$340 million and an impact on employment activity of some 2700 FTEs. The Panel considers these numbers are robust and credible, particularly having regard to the economic and social needs of the Nelson region. In economic terms the consequential benefits described in the reports show material gains to the Nelson City and its surrounding region to a high degree. Employee opportunities and the construction industry will receive a material boost.

- 622 The Panel also is satisfied that the Project will result in an increase in housing supply.¹⁶⁰ As to the extent of this benefit, the Panel assesses that its value to the region will be significant, particularly given the housing needs described in the Nelson - Tasman Future Development Strategy 2022.¹⁶¹ The Maitahi Village development will have an immediate impact on housing supply to a significant extent. Given the economic conditions nationally, the willingness of a motivated developer to start project works now is a positive benefit, albeit one that is difficult to quantify in monetary terms. Such benefit extends to housing across a range of typologies with additional choice and location features soon to become available to residents.
- 623 In the context of housing availability, the Panel accepts the evidence provided by Arvida concerning the demand for retirement village complexes. The Panel finds there will be a real need for new units in the Nelson region (discussed at paragraph 441) in the short term. The extent of this benefit is also assessed as significant, especially as a retirement complex on the Site could be constructed commencing in 2031.
- 624 With respect to housing affordability, the Panel accepts as credible the proposition that the development will increase the availability of housing (of various types) with a consequential impact on affordability. While the extent of any improvement in affordability can be difficult to assess, because of the vagaries of market conditions, nevertheless the Panel assesses this benefit as being likely to be positive and meaningful.
- 625 Cultural benefits arising from the Project have been identified (at paragraphs 191-193). The Panel's findings are at paragraphs 201- 207 and 448. The benefits include restoration of wai Māori and the presence of mahinga kai through the improvement of water quality, as well as the enhancements from a realigned Kākā Stream. The exercise of rangatiratanga and kaitiakitanga opportunities will be enhanced for mana whenua. This will occur through the development of an iwi-led housing project, the provision of land for Koata House and the regeneration and preservation of Kākā Hill. While such benefits to Māori and local iwi may be difficult to quantify in monetary terms, the Panel is satisfied in terms of extent that the benefits are positive to a material extent.
- 626 With reference to the amenities that will result from the development, these are referred to in various parts of the decision, including the effects section and Part G. They include improved opportunities for the wider community to enjoy enhanced recreation both onsite and in the neighbouring areas. There will be improved traffic safety for residents and the wider community. This benefit is also related to greater linkages to multi-modal transport options for the wider community. It is axiomatic that

¹⁶⁰ This is consistent with its finding at paragraph 439.

¹⁶¹ Discussed at paragraphs 440-441.

such benefits are difficult to quantify. However the Panel assesses them as being real, meaningful and positive for the community.

- 627 The development will result in new infrastructure discussed at paragraph 445 and many enhancements to the environment. A range of ecological benefits will flow from a net gain in ecological values identified in the reports of ecology experts. Long-term improvements to water quality will occur. Importantly in ecological terms, the removal of risks from contaminated soil from the HAIL site will benefit the community. There will also be an improvement in landscape features, plus upgraded natural character values for the Kākā Stream and the associated corridor.
- 628 Undoubtedly these ecological benefits qualify as regional benefits, although in most cases are not capable of measurement in monetary or financial terms. In terms of extent, they are important to those who will live in the housing generated by the development and others in the wider region. The Panel assesses these benefits as material and of high importance.
- 629 The purpose of the Act refers to national as well as regional benefits. With the nature and scope of this development, any national benefits are likely to be indirect. The Panel assesses the extent of such benefits as likely to be modest in the form of increased economic activity, primarily in the Nelson-Tasman region but with flow on impacts to those supplying materials and services from beyond the immediate area. Inevitably the Government will benefit (again indirectly) from such increased economic activity in monetary terms.
- 630 Taking all these benefits from the development into account, the Panel assesses the overall value as high in economic, monetary or financial terms. Where the benefits are not of this type, the Panel considers the extent of the benefits, when viewed as a whole, to be material, and positive. These benefits will flow both to the environment and the amenities in the area. Finally, they have been robustly established in the Application and related reports and in other material presented. The Panel finds on the facts that the regional or national benefits, when viewed in totality, will be substantial.

PART M: ASSESSMENT OF ADVERSE IMPACTS

- 631 In s 85(3) of the FTAA reference is made to any "adverse impacts in relation to the approval sought". This reference begs the question as to whether the term "adverse impacts" is the same as "adverse effect" being the term used in the RMA. The Panel has already considered in Part F the nature of any adverse effects of the Application in relation to subjects arising under the RMA. There is no need to repeat the analysis here. The legislation contains no guidance as to the equivalence or otherwise of adverse effects in an RMA context and adverse impacts under the FTAA. In these circumstances the Panel proposes to treat any adverse effects as found under the RMA as being the same as adverse impacts for the purposes of its evaluation and decision-making under the FTAA.
- 632 However it is important to note that the existence of any adverse impacts may be determined after having taken into account "any conditions that the panel may set in relation to those adverse impacts".¹⁶² Moreover the Panel is also required under s 85(3)(b)(ii) to take into account "any conditions or modifications that the applicant

¹⁶² S 85(3)(b)(i) of the FTAA.

may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts". Therefore, the critical analysis, in the Panel's assessment, is what effect will any conditions set or agreed to under these provisions, have on the nature and scope of any adverse impacts that are found to exist. That is where the Panel will focus its attention when the responses to s 70 of the FTAA are available.

- 633 In terms of the facts in relation to adverse impacts, the counsel for the Applicant has helpfully provided the Panel with a summary table describing adverse impacts arising from the Application for the purposes of s 85(3). The same table also provided a summary of the benefits claimed to be available from the development. A copy of this table is attached as Appendix C.
- 634 To assist the Panel with its evaluation under s 85(3) counsel for the Applicant also provided table 2 comprising a comparison of adverse impacts and regional benefits. A copy of this table is attached as Appendix D. It is noted that the columns list the various impacts and also the potential impact where impacts after avoidance, remediation, mitigation, offsetting or compensation are taken into account as required under s 85(3)(b)(i) and (ii). Helpfully the Applicant also included references to the source materials including evidence, reports, plans and tables.

PART N: OVERALL ASSESSMENT

- 635 As noted in Part C, the Panel may decline an approval if, in complying with s 81(2), the panel forms the view that:—
- (a) there are 1 or more adverse impacts in relation to the approval sought; and
 - (b) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account—
 - (i) any conditions that the panel may set in relation to those adverse impacts; and
 - (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.¹⁶³
 - (4) To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).
- 636 This test is different from the test developed over the years under the RMA¹⁶⁴. In contrast the FTAA envisages an overall evaluation or balancing approach to decision making. The Panel must balance the adverse impacts against the regional or national benefits of the project in the manner discussed in the legal context section above.
- 637 The Panel will of course consider all responses received from those invited to comment on its draft conditions under s70 of the FTAA. This will include any necessary commentary on compliance with s 106 of the RMA and Part 2 of the RMA (but excluding s 8 of the RMA).

¹⁶³ Section 82 FTAA

¹⁶⁴ *Environmental Defence Society v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38

PART O: FINAL DECISION

638 The Panel will complete this section following receipt of comments under s70 of the FTAA.

Draft 5 August 2025

APPENDIX A: CONDITIONS OF CONSENT

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APPENDIX B: CONSENTS REQUIRED

Land Use Consent (Section 9) for:

- a. To undertake a Comprehensive Housing Development (residential retirement village) as a discretionary activity;
- b. To undertake earthworks and clear vegetation as a discretionary activity;
- c. To demolish the existing shearing shed and chimney as a controlled activity;
- d. To construct a commercial activity (Koata House) as a discretionary activity;
- e. To establish and operate a wastewater pump station as a non-complying activity
- f. To construct a temporary water reservoir as a discretionary activity;
- g. To form the new Open Space and Recreation (zoned) corridor and neighbourhood reserve, with the integration of stormwater management and recreational features, as a non-complying activity;
- h. To establish and operate a landfill operation as a part of disposing of surplus material, including as a part of disposal of material from the Remediation Action Plan as a discretionary activity.

Subdivision Consent (Section 11) to subdivide land as a part of undertaking a comprehensive and fully integrated urban development, as a discretionary activity.

Land Use Consent (Section 13) for:

- a. Disturbance of the bed of rivers for construction related activities as a discretionary activity;
- b. Disposition of material in the beds and on the banks of rivers as a non-complying activity.

Water Permit (Section 14) to temporarily dam and divert water for the purpose of, and in association with construction activities, as a discretionary activity.

Discharge Permit (Section 15) for discharge of construction phase stormwater (including from dewatering, sediment and flocculant) to land and surface water as a discretionary activity.

National Environmental Standards for Freshwater 2020 Consent for:

- a. Reclamation of rivers (including Kākā Stream) as a discretionary activity;
- b. Urban development within 10m of a natural urban wetland as a restricted discretionary activity;
- c. Earthworks and the diversion of water within 100m of a natural inland wetland as a non-complying activity.

National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 Consent for:

- a. Subdivision of land as a restricted discretionary activity;
- b. Change of use of land as a restricted discretionary activity;
- c. Soil disturbance of land as a restricted discretionary activity.

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APPENDIX C: SUMMARY TABLE FOR S 85(3) EVALUATION

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APPENDIX D: COMPARISON OF ADVERSE IMPACTS AND REGIONAL BENEFITS

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