

Factual findings from the Environment Court regarding erosion and sediment risk

Save the Maitai Inc v Nelson City Council [2024] NZEnvC 155

[12] The IHP report was extensive and comprehensive. Many of the findings of the commissioners have not been challenged on appeal in 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 in 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 the Kākā 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 sediment 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 would 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 place 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 PPC28 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 future 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 in 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.