

**IN THE MATTER** of the Resource Management Act 1991 (**RMA**)

**AND**

**IN THE MATTER** of **Private Plan Change 28** to the Nelson Resource Management Plan

**JOINT WITNESS STATEMENT (JWS) IN RELATION TO:**

**PLANNING (3)**

**19 & 20 May 2022**

Expert Conferencing Held on: 19 & 20 May 2022

Venue: Online

Independent Facilitator: Marlene Oliver

Admin Support: Jessica Marchbanks

**1 Attendance:**

- 1.1 The list of participants is included in the schedule at the end of this Statement.

**2 Basis of Attendance and Environment Court Practice Note 2014**

- 2.1 All participants agree to the following:
- (a) The Environment Court Practice Note 2014 provides relevant guidance and protocols for the expert conferencing session;
  - (b) They will comply with the relevant provisions of the Environment Court Practice Note 2014;
  - (c) They will make themselves available to appear before the Hearing Panel;
  - (d) This statement is to be filed with the Hearing Panel and posted on the Council's website.

### **3 Matters considered at Conferencing – Agenda and Outcomes**

#### **Submissions**

#### **3.1 F&E NZ submission**

##### **Reticulated Water Design & Reference to FENZ Code of Practice**

**Paul McGimpsey and Jennifer Beardsall** confirmed that FENZ representatives are satisfied that the reticulated water pressures to be provided to the PPC 28 area are adequate.

**Paul and Jennifer** also confirmed that there is no need to explicitly refer to the FENZ code of practice in the PPC 28 proposed planning provisions.

##### **Defensible Spaces**

FENZ submission seeks to introduce “defensible spaces” (as defined in the NRMP) into the residential zones in PPC 28, noting that the existing NRMP provisions for rural zones are not being changed through this plan change.

**Mark Lile and Gina Sweetman** do not consider it appropriate to introduce these changes to the residential zones only into PPC 28. They consider this is a plan-wide issue that is more appropriately addressed as a plan-wide change that is not specific to PPC 28.

**Paul McGimpsey** agrees with the plan-wide nature of the submission request.

**Paul McGimpsey confirmed that FENZ submission points are resolved** and they will not be pursuing their submission any further in the hearing process. Paul confirmed that this will be conveyed to the Council’s hearing administrator (Rebecca Dowling).

#### **3.2 Are the provisions sought by the Ministry of Education appropriate?**

**Karin Lepoutre** - the MOE submission seeks that:

1. Proposed Objective RE6 Maitahi Bayview Area (Schedule X) be amended to add a further clause to read:

“(j) Is supported by educational facilities where required.”

2. Proposed Policy RE6.1 Maitahi Bayview Area (Schedule X) be amended to add a further clause to read:

“\* Educational facilities where required.”

**Mark Lile and Gina Sweetman** consider that the operative NRMP already contains enabling provisions that relate to educational facilities – for example, refer to Chapter 7 Residential, RE6.5 (p.7-1); Policy RE2.8 Community Benefit (including the Explanation and Reasons) (p7-8). It is not necessary to add the additional provisions sought by the MOE as there is nothing different about the PPC28 area that would justify such area-specific provisions compared to the plan provisions applying to the whole of the district. In addition, they note that Proposed Objective RE6 already includes clause “e) Results in a well-functioning urban environment”. As defined in the NPS-UD 2020 (Policy 1) this includes areas having good accessibility for all people between housing, jobs, community

services, natural spaces, and open spaces, including by way of public or active transport. Relevantly, the NPS-UD 2020 definition of “community services” specifically includes educational facilities. Mark Lile and Gina Sweetman do not consider it appropriate to introduce these changes to the residential zones only into PPC 28. They consider this is a plan-wide issue that is more appropriately addressed as a plan-wide change that is not specific to PPC 28.

**Mark Lile** noted that the PPC 28 area has a limited area that would be suitable for a school and it is highly unlikely that there would be space available for a school in future.

**Karin Lepoutre** considers that the NPS-UD requires there to be regard to additional infrastructure which includes schools when adding additional capacity for growth. The NRMP has not yet been updated to reflect that increased focus on providing for schools. The plan change is introducing bespoke provisions into the NRMP and therefore there is an opportunity to give effect to the NPS-UD through the inclusion of the objective and policy outlined in the MOE further submission.

In relation to the duplication of objectives and policies, Karin Lepoutre is of the view that there are already new policies and objectives that are proposed to be introduced through PPC 28 that are already provided for in the NRMP. For example, objective RE 1.0 and Policy RE 1.1 which provide for the option of a diversity of residential styles and choice of building densities (repeated in proposed objective RE 6. (a) and (e)) and objective RE 3. Which provides for attractive streetscapes and the maintenance and enhancements of those significant public view, natural features and landscapes that contribute to Nelson’s character (repeated in proposed objective RE 6 (h)).

**Note: this matter is not agreed and will proceed to hearing.**

### 3.3 **Are the amendments to wording sought by Iwi appropriate?**

**Mark Lile and Gina Sweetman** agree with the proposed changes to PPC 28 provisions requested by Ngāti Koata Trust and Te Rūnunga o Ngāti Rārua. Mark Lile confirmed that the changes requested are being incorporated into a tracked change version of the provisions integrated with the other work ongoing.

## **Planning Documents**

### 3.4 **What is the relevant weighting that should be afforded to higher level documents?**

**The planning experts** acknowledged that the original NRMP was first notified in 1996 and although there have been some plan changes, it has not been updated to recognise significant recent higher order statutory provisions such as NPS-FM, NPS-UD and amendments to section 6 (h) RMA. This is relevant to the statutory assessment under section 74 when assessing PPC 28.

Gina Sweetman considers that this will affect the weighting to be given to the NRMP.

### **General**

#### **3.5 Is the site, or any part of the site, located in the coastal environment?**

**The planning experts agree** that the PPC 28 area is not within the Coastal Environment as defined in the NRMP.

The planning experts referred to the Landscape JWS dated 11 May 2022 where alternative boundaries to the Coastal Environment were discussed but the Landscape experts did not reach agreement. Based on the current information, the planning experts are unable to conclude whether an alternate definition of the Coastal Environment to that in the NRMP is appropriate.

**Mark Lile and Gina Sweetman** also noted that any formal change to the identified location of the Coastal Environment area would require a formal Schedule 1 process, and most likely be considered comprehensively through the draft Nelson Plan.

#### **3.6 Has the Council identified in any proposed or present strategic documents a need to increase residential development capacity?**

The planning experts addressed the following question in the JWS Planning (2) dated 26 April 2022:

***“What is the relevance of the Nelson Tasman FDS 2019 and draft FDS 2022 and what weight should be attributed to them?”***

*These documents were required to be produced under the NPS-UDC 2016 and NPS-UD 2020 respectively. The FDS 2019 was adopted by NCC and TDC while the draft FDS 2022 is still proceeding through the public consultation process (the submission period closed on 14 April 2022). The Council’s website currently states that the Council will meet on 27 July 2022 to consider adopting the FDS 2022.*

***All planning experts agree*** that these documents are relevant and shall be had regard to. As at this date (26 April 2022) more weight should be given to the FDS 2019. This position will need to be reviewed prior to the close of the hearing depending on the progress of the draft 2022 document.

*The planning experts acknowledge that a considerable amount of relevant work has been carried out since the FDS 2019. This more recent research and analysis (required under the NPS-UD) provides updated information particularly on the housing sector and the planning experts consider that this more recent information (where it is verified) should be given more weight than the equivalent information in the FDS 2019.”*

**The planning experts agree** that the Council has identified that there is a need to increase residential development capacity. The PPC 28 area is identified in both the FDS 2019 and the draft FDS 2022 as an area for future residential development.

#### **3.7 Will there be an unacceptable loss of productive values?**

**Mark Lile** noted that the productive values assessment is attached to PPC 28 and that assessment concludes that there will not be an unacceptable loss of productive values. This matter has not been challenged by any other expert involved in the process.

Based on this situation, **Mark Lile and Gina Sweetman** agree that there will not be an unacceptable loss of productive values.

3.8 **Do the proposed floodplain works and stream realignments achieve Nelson City Council's Biodiversity Strategy aims, in particular 'protecting and restoring alluvial, riparian and coastal ecosystems of the Maitai Valley'?**

**The planning experts** are unclear about the status of the Council's Biodiversity Strategy.

**Mark Lile** referred to the Ecology JWS dated 13 May 2022 at 3.5, which states that:

*"All ecologists agree that the water quality and ecology of the lower reaches of the Kāka Stream are highly modified and are currently impacted by existing land use. There is potential to achieve positive outcomes through PPC 28 with respect to the water quality and ecology for either the current alignment or a proposed realignment of the lower reaches of Kāka Stream."*

**Mark Lile** also notes that PPC 28 provides for an enhancement opportunity that could see the ecological restoration of the Kāka Stream and water quality in Maitai River. Because of this, Mark Lile considers that PPC 28 could contribute towards achieving the outcomes sought by the Council's Biodiversity Strategy. The extent to which PPC 28 achieves the ecological outcomes provided for will be determined during subsequent resource consent processes once a final design and technical reports are submitted.

**Gina Sweetman and Kelly McCabe** reserve their position on this item, in particular awaiting the further information relating to the draft Stormwater Management Plan and revised Structure Plan (Schedule X).

3.9 **Is there a need for an assessment of effects of the rezoning on noise?**

**Mark Lile** considers that the nature of PPC 28 is such that the noise effects associated with the urban development proposed are adequately addressed within the current provisions of the NRMP and the RMA. Furthermore, the current zoning provides for rural small holdings development which could see a further 40 residential units developed in the Kāka Valley site, and combined with other changes such as the Council's Mountain Bike Hub, the receiving environment will change over time.

**Mark Lile and Gina Sweetman agree** that construction noise conditions are commonplace on consents issued within Nelson City for large scale developments.

**Gina Sweetman** considers that there is nothing unusual or unique about what is proposed in PPC 28 that would be any different to any other residential zone within the city in terms of noise effects. In terms of traffic noise effects, while she considers that there will be additional traffic generated by the future development of PPC 28 on the roads, that traffic would be within the carrying capacity of those roads, subject to the identified upgrades required. Gina does not consider that there is anything unusual in the type of traffic movements that would be generated that necessitates an assessment of noise effects. **Mark Lile** agrees with Gina Sweetman's comments.

**Kelly McCabe** considers that the provisions of the NRMP do not sufficiently address noise effects associated with the increased traffic movements arising from PPC 28, particularly on the properties fronting Ralphine Way. Kelly McCabe considers that a noise assessment should be provided at this stage.

**3.10 Is it likely that future urbanisation of the site will be at a higher density than proposed in PPC 28?**

The planning experts agree that they have no basis on which to speculate about the density and yield of dwellings beyond that indicated in PPC 28 as notified.

**3.11 Are any new rules required in respect to air quality to not allow the installation of solid fuel burners, as requested by David Jackson (and others)?**

All planning experts agree that no additional rules are required as sought by David Jackson. The planning experts discussed this matter in paragraph 3.13 of the Planning (2) JWS dated 26 April 2022.

**3.12 Does the NRMP explicitly require the provision of an Integrated Transport Assessment (ITA) with an application for subdivision or comprehensive development?**

All planning experts agree that the NRMP does not refer to the term “Integrated Transport Assessment” and does not explicitly require the provision of one.

All planning experts agree that in combination, Schedule 4 RMA and NRMP Appendix 14 (Information Requirements) would allow the Council to request an ITA or similar transport assessment where relevant and that such an assessment could include area wide transport matters outside of the PPC 28 area.

This was discussed at the Transport expert conferencing and in the JWS Transport dated 10 May 2022 at 3.1.

All planning experts (except Mark Lile) agree that the matters of discretion in Schedule X (Services Overlay) are not sufficiently robust to consider the wider transport effects, particularly in relation to the timing and provision of upgrades to address transport deficiencies in the wider area as a result of PPC 28 development.

All planning experts (except Kelly McCabe) agree this could be resolved by amendments to Schedule X that provide certainty that already identified upgrades to address deficiencies occur in advance of development and, require the provision of an ITA with any subdivision application and, that any upgrades identified through an ITA are also implemented to mitigate those transport issues identified.

Mark Lile confirmed that as a result of the JWSs that the Applicant’s experts are revising Schedule X and amended wording will be provided with the Applicant’s evidence, or before. All other experts reserve their final position until they have had an opportunity to review the proposed amendments to Schedule X.

**3.13 Are the provisions in the NRMP relevant to the Services Overlay robust enough to ensure that identified necessary new and upgrading works and services are undertaken prior to subdivision and or development occurring on the site?**

All planning experts agree that the comments made in 3.12 above apply to this matter in respect of the Services Overlay.

**3.14 Is infrastructure funding a relevant consideration at this stage and is it determinative as to whether the PPC28 is approved?**

**All planning experts agree** that infrastructure funding is not determinative as to whether PPC 28 is approved. The key consideration is the integration and coordination of infrastructure and development to ensure that services are available prior to or at the time of being required to support development. These matters are appropriately addressed through the resource consent process. The comments recorded earlier in this JWS in relation to the adequacy of Schedule X are relevant to this matter.

Details relating to the funding of development are considered through the Council's LTP process and specifically the Council's revenue and financing policy.

**Landscape**

**3.15 Should the coastal environment and landscape overlays as defined and mapped in the NRMP be relied on, or is it appropriate to rely on the more recent Boffa Miskell reports and the information provided in PPC28?**

This item relates to the situation where there is an operative NRMP which contains a definition of the Coastal Environment and provides landscape overlays which are different to the same values identified in more recent studies, commissioned by the Council, which have not been the subject of any public consultation and approval processes.

The Landscape JWS dated 11 May 2022 at item 3.3 addresses this information. Reconciliation between these different documents will be the subject of evidence from Landscape experts.

**3.16 Should the skyline provisions in Schedule X be amended as per Shelagh Noble 5.2.3?**

Note: this matter was considered in the Landscape JWS dated 11 May 2022 at item 3.6 and is the subject of further revision of the Structure Plan and Schedule X.

**Open Space Zone**

**3.17 Should there be a prohibited activity rule for development in the Open Space Zones? (Shelagh Noble submission 5.2.2)**

**Mark Lile and Gina Sweetman** do not consider there is justification for a prohibited activity status applying to any development in the Open Space Zones in PPC 28.

**Kelly McCabe** reserves her position on this matter.

**3.18 Are the proposed provisions and those in the NRMP adequate to ensure that impacts of PPC28 on open space and recreation areas are effectively managed?**

**Mark Lile and Gina Sweetman** note that the existing Open Space & Recreation Objectives, Policies and Rules in the NRMP will apply to the areas zoned Open Space & Recreation in PPC 28. They do not consider any further provisions are required to apply specifically to the PPC 28 Open Space & Recreation zoned areas.

This addresses the question raised in the Landscape JWS dated 11 May 2022 item number 3.7 relating to the Botanical Hill Backdrop and Skyline Areas.

**NPS-UD**

**3.19 Does the proposal propose to achieve a well-functioning urban environment as described under Policy 1 of the NPS-UD, taking into account 3.7 of the Urban Design JWS?**

**Mark Lile** considers that PPC 28 will contribute to a well-functioning urban environment as described in Policy 1 NPS-UD and as agreed with the Urban Design experts. Further improvements to the proposed planning provisions in PPC 28 (Schedule X, including the Structure Plan) are being made which further enhance the urban environment proposed, but irrespective of that, Mark Lile considers that approving PPC 28 will achieve Policy 1.

**All other experts reserve** their final position until they have had an opportunity to review the proposed amendments to Schedule X.

**3.20 NPS-UD Relevant Objectives and Policies**

In the JWS (Planning 2) dated 26 April 2022 the planning experts recorded the following:

***“What are the relevant objectives and policies of the NPS-UD?***

*Nelson City Council is classified as Tier 2, therefore any provisions in the NPS-UD specifically relating to Tier 1 urban environments are not relevant.*

***All planning experts consider that the NPS-UD should be read as a whole.***

*The planning experts are aware of the Environment Court decision (Eden-Epsom Residential Protection Society Inc v Auckland Council [2021] NZEnvC 082). The planning experts propose to review this decision individually before identifying particular objectives and policies in the NPS-UD that they considered to be particularly relevant to the assessment of PPC 28. This matter may be reconsidered in a later expert conference.”*

**Kelly McCabe** now considers that based on the case law (*Eden-Epsom Residential Protection Society Inc v Auckland Council [2021] NZEnvC 082*) only Objectives 2, 5 and 7 and Policies 1 and 6 of the NPS-UD are relevant to considering PPC 28.

**Gina Sweetman, Lea O’Sullivan and Mark Lile** consider that the *Eden-Epsom* case is not directly comparable to this PPC 28 proposal and are not satisfied that the relevant provisions of the NPS-UD are limited to those identified in the *Eden-Epsom* case.

**3.21 Does the proposal meet the Policy 8 test under the NPS-UD?**

**Does PPC28 meet the requirements of providing significant development capacity under the NPS-UD when the RPS has not yet been updated to give effect to Clause 3.8(3) of the NPSUD –i.e. to set a criterion of what constitutes as adding significantly to development capacity?**

Given **Kelly McCabe’s** comment in 3.20 above, she does not consider that Policy 8 is relevant and the criteria for adding significant development capacity is not applicable.

**Mark Lile** considers that PPC 28 would meet the “significant development capacity” test pursuant to Policy 8. He considers that the NPS-UD needs to be read as a whole and considers Policy 8 directly supports private plan changes that add significant



development capacity and contribute to well-functioning urban environments, etc, irrespective of whether the RPS has been updated.

**Gina Sweetman** notes the point 3.3 of the Economics JWS dated 27 April 2022 where they agreed that the proposed development would meet the significant development capacity test. She also referred to her earlier position with respect to well-functioning urban environments. Gina agrees with Mark that Policy 8 is relevant to plan changes, including private plan changes. She does not believe that the lack of criteria in an RPS is a veto on consideration of private plan changes in advance of RPSs being updated. Subject to the matter of well-functioning urban environment being satisfied, she generally is of the view that PPC 28 can be considered under Policy 8 of the NPS-UD.

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

All planning experts agree that the NPS-UD does not prioritise intensification over greenfield development.

All planning experts agree with paragraph 2 of point 3.3 of the Economics JWS dated 27 April 2022 with respect to sequencing of development.

**NPS-FM and NES-F**

**3.23 Is the extent of stream realignment shown in the Structure Plan map and the proposed policies for the stream works (including RE6.3 which refers to the realignment as enhancing the environment) giving effect to the NPS-FM; including by upholding Te Mana o Te Wai?**

**Kelly McCabe and Gina Sweetman** consider that at this point in time there is insufficient and incomplete evidence which would enable them to conclude that PPC 28 gives effect to the NPS-FM.

**Kelly McCabe** considers that the NPS-FM contains a management hierarchy that in the first instance seeks to avoid adverse effects where practicable.

**Gina Sweetman and Mark Lile** note that any stream realignment will be subject to a separate resource consent process and the Structure Plan in itself would not enable that stream realignment to occur.

**Gina Sweetman** notes that based on the construct of Schedule X, any stream realignment would not be subject to the principles in X.9.

**Mark Lile** summarised the approach taken by the Applicant in preparation of the Structure Plan, with the appropriate input from environmental specialists such as Morphum. The Structure Plan combined with the provisions of Schedule X and the new objectives and policies in Chapter 7 were prepared in recognition of the important provisions of the NPS-FM. This set of provisions within PPC 28 enable the achievement of those relevant provisions within the NPS-FM, in the absence of the draft Nelson Plan progressing on a district wide basis.

- 3.24 **Have the effects on the natural wetlands been adequately assessed in the context of the NPS-FM and NES-F? Should further detail be provided at this stage to address whether future development and earthworks will drain or partially drain these wetlands?**

**Mark Lile** has noted the identification and inclusion of two natural wetlands within the Structure Plan. Further amendments to the Structure Plan are being made which will provide additional protection to the identified wetlands. Further assessment work is not precluded at a later stage and those assessments will ultimately determine whether resource consents are required under the NES-F.

**Kelly McCabe and Gina Sweetman** question whether there are any more natural wetlands in the PPC 28 area in addition to the two that have been identified and shown on the Structure Plan and if any further wetlands are identified, will they be subject to the same protection measures.

**Gina Sweetman** notes that natural wetlands are subject to the rule framework under the NES-F which will apply irrespective of PPC 28.

**Kelly McCabe** reserves her position on the adequacy of the protection of natural wetlands until the further information has been made available and assessed.

#### **Schedule X**

- 3.25 **At the time of expert conferencing (19 May 2022) the Applicant's experts are actively reviewing the content and mechanics of Schedule X and as this revised material is not available, the other experts have reserved their positions until they have an opportunity to consider revised material. For this reason, detailed assessment of Schedule X wording and functionality is not addressed in this JWS.**

- 3.26 **Are the non-notification clauses appropriate?**

**Mark Lile supports** the non-notification clauses in PPC 28. He clarified that the current NRMP provides for non-notification of comprehensive housing developments located within the higher density area of the residential zone. This rule is enabling. PPC 28 used the same enabling provisions within X.2 of Schedule X for its proposed higher density area. In order to qualify as a restricted discretionary activity and benefit from the non-notification provision, a comprehensive housing development must first comply with rules a) to d) of X.2. A similar explanation applies to X.3 Subdivision – General (Residential Zone) where to qualify as an RDA, a proposal needs to comply with X.3 subclauses a) – g). This is the same approach already used in the NRMP Subdivision provisions.

**Gina Sweetman, Kelly McCabe and Lea O'Sullivan agree** that use of non-notification clauses in rules X.2 and X.3 is consistent with the construct used in the NRMP. However, they are of the view that there is currently insufficient information to determine that the non-notification clauses are appropriate in respect of PPC 28.

**3.27 How would the X.9 principles be triggered through a resource consent process? Is the proposed approach the most appropriate, and if not, what would be most appropriate?**

**Mark Lile** confirmed that the mechanics of the rules in Schedule X are being reviewed and in particular, to ensure the “information and design requirements” (X.8 and X.9) are clearly part of the planning framework applicable to Schedule X.

**3.28 Are the densities and zones shown on the Structure Plan appropriate?**

**Mark Lile** has confirmed that the Structure Plan is currently being reviewed and in places revised to better communicate the intentions of PPC 28 and this will result in some changes to the zoning pattern. A revised Structure Plan will be circulated either before or within hearing evidence.

**3.29 Is there policy support for the prohibited activity rules? Is the activity status appropriate in the circumstance?**

**Gina Sweetman and Mark Lile** consider that the prohibited activities (rule X.6) are not supported by objectives and policies in the NRMP or PPC 28 and is not justified through the section 32 evaluations accompanying PPC 28. They consider that non-complying activity status is more appropriate.

**Kelly McCabe** would like to consider this matter further before confirming her position.

**3.30 Should the subdivision rule be amended to exclude use of zincalume or bare corrugated iron roofing, and testing of stormwater detention areas for heavy metals and other contaminants?**

**All experts agree** that this matter is more appropriately considered at a district-wide level and through Stormwater Management Plans and any associated consents or rules.

**Mark Lile** confirmed that these matters are being addressed with the draft Stormwater Management Plan being circulated on 20 May 2022.

## **4 PARTICIPANTS TO JOINT WITNESS STATEMENT**

**4.1** The participants to this Joint Witness Statement, as listed below, confirm that:

- (a) They agree that the outcome(s) of the expert conferencing are as recorded in this statement; and
- (b) They have read Appendix 3 of the Environment Court’s Practice Note 2014 and agree to comply with it; and
- (c) The matters addressed in this statement are within their area of expertise; and
- (d) As this session was held online, in the interests of efficiency, it was agreed that each expert would verbally confirm their position to the Facilitator and this is recorded in the schedule below.

**Confirmed online on 19/20 May 2022:**

<b>EXPERT'S NAME</b>	<b>PARTY</b>	<b>EXPERT'S CONFIRMATION REFER PARA 4.1</b>
Lea O'Sullivan (P)	Waka Kotahi	Yes for items 3.4, 3.6, 3.10, 3.12 – 3.14, 3.19 – 3.22 and 3.25 – 3.28 only
Kelly McCabe (P)	Save the Maitai	Yes
Mark Lile (P)	Applicant	Yes
Gina Sweetman (P)	S42A NCC	Yes
Paul McGimpsey (P) Jennifer Beardsall (P)	Fire & Emergency (FENZ)	Yes for item 3.1 only
Karin Lepoutre (P)	Ministry of Education (MOE)	Yes for item 3.2 only