

**BEFORE A HEARINGS PANEL
APPOINTED BY NELSON CITY COUNCIL**

IN THE MATTER of Private Plan Change 28 – Maitahi Bayview
AND IN THE MATTER of Clause 21 of the First Schedule of the Resource
Management Act 1991

**EVIDENCE OF KELLY JOANNE MCCABE FOR SAVE THE MAITAI INC
PLANNING
DATED 27 JUNE 2022**

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INTRODUCTION

1. My name is Kelly Joanne McCabe. I am a Senior Planner for Tektus Consultants Limited.

EXECUTIVE SUMMARY

2. I have read the s42A report and I agree that overall, there is insufficient information available to make a recommendation on Private Plan Change 28 - Maitahi Bayview by CCKV Dev Co LP & Bayview Nelson Limited ("PPC28"). Having read the applicant's evidence, I retain that view.
3. I agree that the plan change area has a challenging topography and a sensitive receiving environment, and there is potential for significant adverse effects. However, the extent of adverse effects cannot be ascertained based on the information that has been provided to date. In my view, the PPC28 request has not provided a level of detail that corresponds with the scale and significance of the actual or potential effects from the implementation of the plan change. I address each of these issues below, but by way of a summary, my detailed analyses and assessments, and that of the various experts, enable me to conclude that:
 - The applicant has heavily relied on Policy 8 of the NPS-UD and the need for Council to be responsive to unanticipated plan changes. There is a legal issue arising in relation to the application of the NPSUD to private plan changes. I have considered the applicability of the NPSUD provisions in light of case law¹ (to be addressed in legal submissions). Irrespective of the legal issue, I also do not consider PPC28 to contribute to a well functioning urban environment, as it does not- currently meet the minimum requirements set out in the NPS-UD, particularly around transport connectivity matters and stormwater management.
 - In addition to the above, I consider that the full scope of wider transport network deficiencies have not been identified through an evaluative Integrated Transport Assessment ("ITA"), and as a result PPC28 does not coordinate urban growth with the delivery of transport infrastructure. This does not align with the NPS-UD directives in this regard.

¹ Eden-Epsom Residential Protection Society Incorporated v Auckland Council (ENV-2020-AKL-079)

- It appears that not all streams and wetlands across the site have been identified on the Structure Plan (or in the plan change request documentation). These should be identified at this stage to demonstrate that the pattern of density proposed in the Structure Plan is appropriate in the context of site constraints. I consider this to have particular implications for the National Policy Statement for Freshwater Management (2020) (“NPS-FM”) and to applying the National Environmental Standards for Freshwater (2020) (“NES-F”) in latter consenting stages.
- A stream realignment is proposed for the Kākā Stream and this does not align with the NPS-FM imperative to avoid loss of stream extent and values to the extent practicable. I do not consider that the effects of the realignment have been fully demonstrated or assessed in the request documents, including whether it is practicable to avoid the realignment. I consider that PPC28 both relies on, and creates an enabling framework for, the realignment and pre-emptively creates an inability to deal with potentially significant effects during later consenting stages.
- A Stormwater Management Plan (“SMP”) has been provided in the applicant’s evidence, which in its current form, is inadequate. There is a high likelihood that the stormwater management framework proposed and relied upon by PPC28, is not adequate to protect the environmental values of the immediate and downstream receiving environments, and in this regard, they fail to meet the relevant statutory framework – including the NPS-FM and the Nelson Resource Management Plan (NRMP).
- PPC28 has not demonstrated that it will maintain or enhance the health of streams and wetlands and does not uphold the concept of Te mana o te Wai. For example, the X.9 Ecological Outcomes and freshwater Principles include a principle of “minimising” stream loss, where-as the NPS-FM directs that stream loss is to be avoided to the extent practicable - a more stringent requirement.
- Directly downstream of the PPC28 site is the Maitai River and associated recreational resources (including the swimming water holes). In its current form, the potential effects arising from PPC28 on these adjacent contact waters (including water quality and hydrology effects) have not been adequately addressed in the application documents

- In terms of effects on landscape character and natural features, these matters are framed in the RPS with strong directive language and should be accorded high weighting. The evidence of Ms. Steven has concluded that broadly the PPC28 development would result in adverse effects on landscape character and visual amenity of a Moderate-High to High, would undermine the site's function as a gateway landscape, and would not maintain the Maitai Valley greenbelt function. Overall PPC28 will not "preserve or enhance" the recognised landscape and visual amenity values.
- Similarly under the RPS, amenity values are highly valued in the region. The documentation provided with the PPC28 request to date has not satisfactorily demonstrated that it will "preserve or enhance" the recognised amenity values of the area. My particular emphasis here is on the surrounding rural sites and the recreational reserves/areas, and the change from status quo (i.e, the existing environment). There has been no acoustic assessment undertaken, and in my view the existing NRMP does not provide a framework that addresses these changes in potential noise effects arising from the PPC28 development, particularly from vehicles. There are adverse visual effects and potential reverse sensitivity effects, that have not been addressed sufficiently.
- PPC28 has not sufficiently demonstrated that it will 'give effect' to the NPS-UD, the NPS-FM, the NES-F, the New Zealand Coastal Policy Statement ("NZCPS"), and the Regional Policy Statement ("RPS").
- The PPC28 request states that the Future Development Strategy (2019) ("2019 FDS") has *'highlighted the suitability and importance of the Kākā Valley to provide an opportunity for urban expansion' ("build out")*. As assessed in my evidence, the preparation of the 2019 FDS did not follow a transparent and robust process. I give no weight to the 2019 FDS in terms of the 'Kākā Valley' being identified as an opportunity for urban expansion.
- The Housing and Business Capacity Assessment (2021) ("HBA (2021)") prepared in line with the National Policy Statement – Urban Development ("NPS-UD"), states that Nelson has adequate housing supply enabled through the current planning framework to meet demand until 2039. This 'pinch point' could potentially extend out until beyond 2051, if the draft Whakamahere Whakatū Nelson Plan ("WWNP") framework is adopted. The s32 evaluation

report states that the key issue that PPC28 is addressing *‘is that of providing for residential land to meet demands in the short, medium and long term for the benefit of both Nelson and Tasman.’*² Based on the HBA forecasts for housing, I do not find any compelling reason that identifies a ‘critical’ need for the housing that would be supplied by PPC28, if authorised.

- In my view, the objectives of the request (in this case, the stated purpose of the request and the proposed new objective RE6) are not the most appropriate way to achieve the purpose of the Resource Management Act (1991) (“RMA”). The provisions in the plan change are not the most appropriate way to achieve the objectives of the NRMP and the purpose of the request. The plan change has not demonstrated that it meets Part 2 of the RMA, and based on the current information there are elements that likely contravene Part 2 of the Act.

QUALIFICATIONS AND EXPERIENCE

4. I hold a Bachelor of Science from the University of Auckland (2006).
5. I have over 13 years of experience as an environmental planner, through roles in both the local government and consultancy sectors in New Zealand. In my current role, as a Senior Planner, I have been employed by Tektus Consultants Limited since 2018. I currently both prepare resource consent applications and process resource consent applications on behalf of Auckland Council, for projects of varying scale and complexity. While I am based in Auckland, I am and have been involved in a number of projects over New Zealand and I have had previous involvement in the Nelson area.
6. Prior to my current role, I was employed by Auckland Council as a Senior Planner for four years. I was involved in plan change areas, and in that capacity, I was also part of a team that was involved in the implementation of plan changes (i.e., the subsequent consenting stages specific to plan change areas). Prior to that, I was employed by the Auckland Regional Council for six years in a regulatory role. I processed regional plan resource consents for earthworks, streamworks, stormwater, coastal, water allocation, wastewater and air discharges. During my time at the regional council, I was predominantly involved in earthworks and streamworks consents.

² Section 2.1, page 7 of Section 32 Evaluation, prepared by Landmark Lile, dated August 2021

CODE OF CONDUCT FOR EXPERT WITNESSES

7. Although this is not an Environment Court process, I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. I have complied with the Code of Conduct in preparing this statement of evidence. Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

INFORMATION RELIED UPON

8. I became involved with the plan change request in February 2022 when I was asked by Save The Maitai Group Inc. ("STM") to review the request and relevant supporting documents, and to prepare evidence in relation to the planning effects of the proposed plan change. I have undertaken a site visit on 28 April 2022.
9. I have considered the following planning instruments in my assessment of effects:
 - a. National Policy Statement for Urban Development (2020);
 - b. National Policy Statement for Freshwater Management (2020);
 - c. New Zealand Coastal Policy Statement (2010);
 - d. Draft National Policy Statement for Indigenous Biodiversity (2019);
 - e. National Environmental Standards for Freshwater Management (2020);
 - f. Nelson Regional Policy Statement (1997); and
 - g. Nelson Resource Management Plan (2012): Objectives and Policies.
10. For context, I have also reviewed the following documents that are either non-statutory or prepared under legislation other than the RMA:
 - a. Housing and Business Capacity Assessment (2021)
 - b. Future Development Strategy (2019) and the draft Future Development Strategy (2022)
 - c. Council Long Term Plan (2021), Infrastructure Strategy, and Financial Strategy
 - d. Nelson Intensification Action Plan (September 2020)
 - e. Nelson Biodiversity Strategy (2007)
11. I have also reviewed the draft Whakamahere Whakatū Nelson Plan.
12. In accordance with the Panel's direction, expert conferencing was undertaken between the applicant's, Council's and submitters' experts. I attended a number of these conferencing sessions, as outlined below

- Planning (2) – 26 April 2022;
- Economics – 27 April 2022;
- Flooding – 29 April 2022;
- Water Sensitive Design – 02 May 2022;
- Transport (1) – 04 May 2022;
- Erosion and Sediment Control – 05 May 2022;
- Water Sensitive Design/Water Quality and Flooding – 06 May 2022;
- Transport – 10 May 2022;
- Landscape – 11 May 2022;
- Planning (3) – 19 May 2022 & 20 May.

13. I am a signatory to the Joint Witness Statements (“JWS”) that were prepared for those abovementioned conferencing sessions.

14. I have reviewed the s42a report and the applicant’s evidence. The information presented in the applicant’s evidence has changed in order to address matters that were raised in the expert conferencing and submissions. I have also reviewed the notified version of the plan change request, and responses to requests for further information. I confirm that my evidence is generally based on the latest iteration of information that was provided in the applicant’s evidence.

OVERVIEW OF THE SAVE THE MAITAI INC SUBMISSION

15. The submission by Save the Maitai Inc presented a substantial number of submission points. These are summarised as follows, and form the basis for my assessment that follows:

- a. The framework approach being used is too uncertain with a high risk of uncertainty in terms of environmental outcomes.
- b. Concerns around the proposed non-notification clauses.

- c. Effects on the rural character and amenity values, including adverse effects on nearby recreational values.
- d. Adverse effects on the Maitai River and highly valued swimming holes nearby and downstream (including Dennes Hole, Block Hole and Girlies Hole).
- e. The irrevocable loss of rural land and associated greenspace that the rural environment provides. The degradation of the existing green belt.
- f. The floodplain loss and flooding risk due to the proposed floodplain works and development. Concerns around the modelling and information provided relating to sedimentation runoff and climate change effects on the Kākā Stream and Maitai River and that it does not uphold Te Mana o te Wai.
- g. Concerns raised around the realignment of the stream, and direct and downstream effects. There are also concerns raised around claims that the Kākā Stream is manmade. Overall, the proposed realignment is discordant with the NPS-FM and the NES-F.
- h. The impacts of PPC28 on the significant efforts that have been undertaken to date to restore the Maitai Valley. The PPC28 proposal contravenes the Nelson City Council's strategy of ecological restoration of the Maitai's tributaries which seeks "protecting and restoring alluvial riparian and coastal ecosystems of the Maitai Valley".
- i. Assessment of wastewater flows for the Kākā Valley has been based on 350 lots, when the application states that approximately 750 houses will be achieved via PPC28.
- j. Traffic impacts and the trip generation figures in the PPC28, are significantly underestimated. Concerns over increased congestion of traffic and parking pressures. The additional air pollution and carbon emissions and the lack of any detailed assessments.
- k. Concern that, if authorised, PPC28 will have significant adverse effects and the loss of landscape and visual amenity of the area. That the magnitude of change proposed by PPC28 is extreme and would result in major and permanent changes to the key characteristics of the landscape, including significant aesthetic and perceptual

elements. Concerns are raised around the ridge top buildings and the adverse effects on the city's skyline.

- l. Concerns with the loss of visual amenity and the impacts to the surrounding recreational areas, and effects from public vantage points, given the importance of these view shafts, and that such visual changes will be widely visible and permanent.
- m. That the extent of earthworks will likely involve significant modifications to the landform, and there will be adverse visual effects of the earthworks and construction phase of PPC28.
- n. Geotechnical risks have not been adequately identified and should not be left to the subdivision stage.
- o. Air pollution arising from traffic, solid fuel burners, dust (associated with the earthworks and construction) have not been modelled.
- p. Adverse noise effects including the loss of tranquillity and rural/open space. Noise arising from construction traffic and earthworks, future urban traffic movements and future residential noises.
- q. Concerns over the carbon emissions and development not being consistent with general decarbonisation pathways prescribed under the Zero Carbon Act.
- r. Terrestrial biodiversity and the significant adverse impacts for wildlife. PPC28 does not protect at-risk vegetation, wetlands and native species. The proposal lacks ecological corridors to facilitate uninterrupted movement by a range of species, including the connection of the SNA on the upper eastern boundary of Kākā Valley with the Kākā Stream corridor.
- s. Concerns over historical and cultural significance impacts.
- t. The intensity proposed is the “best case scenario”, with the likelihood being that a higher density of development will occur within this plan change area through various legislation changes.
- u. Concerns regarding the stated predictions in housing supply and demand, and the overall need for housing through PPC28 when the HBA shows that Nelson has sufficient capacity to meet demand until

at least 2039, and the HBA expects that changes to the planning framework will enable sufficient housing until beyond 2051; and

- v. Nelson City Council policies prioritise intensification over greenfield development (as per the Nelson Urban Growth Strategy and the Future Development Strategy).
- w. PPC28 does not give effect to the Nelson Regional Policy Statement, in particular the provisions around urban expansion. Along with additional matters, there are concerns that it does not align with the community expectations.
- x. Concerns over other sections of the RPS, including PPC28 being contrary to the outcomes sought for amenity, landscape values and natural features, natural streams.
- y. PPC28 is discordant with the NRMP due to the loss of character, the loss of the defined rural greenbelt, the degradation of natural watercourses and their functions (including recreational uses). PPC28 directly contrives objectives of the NRMP that specifically seek the improvement of these sections of the Maitai River; and
- z. The plan change does not align with the current draft district plan provisions.

The STM submission seeks that PPC28 be declined in the first instance.

EVIDENCE

Introduction

16. PPC28 seeks to enable urban development of land within a sensitive receiving environment in the Kākā / Maitai Valley, along Botanical Hill and Malvern Hill through:

- a. Rezoning approximately 287 ha of land from Rural and Rural-Higher Density Small Holdings Area to Residential, Rural-Higher Density Small Holdings Area, Open Space Recreation and Suburban Commercial.
- b. Introduction of a new Schedule X to the NRMP with an accompanying Structure Plan. The Schedule would provide for Comprehensive Housing Developments in the Residential Zone –

Higher Density Area and subdivision in the Residential Zone as non-notified restricted discretionary activities.

- c. Amendments to Chapter 7 – Residential Zone.
- d. Amendments to Chapter 9 – Suburban Commercial Zone.
- e. Amendments to Chapter 12 - Rural Zone
- f. Proposed realignment of Kākā Stream, to be authorised in future through a separate resource consent application.
- g. Amendments to the Road Hierarchy Planning Maps.
- h. Amendments to the Planning Overlay Maps.

17. PPC28 does not propose amendments to any regional plan provisions.

PPC28 site and receiving environment

18. Both the plan change request (Section 3.3) and the Section 42A Report (Page 17) provided detailed descriptions of the PPC 28 area. I have not repeated that in any detail in my evidence.
19. By way of summary, PPC28 site incorporates the Maitai Valley, the lower slopes of ‘Kākā Hill’ and along Botanical Hill and Malvern Hills, from Rural and Rural-Higher Density Small Holdings Area. The subject site contains areas of steep topography, streams, wetlands, floodplains, noted landscape values, and is located adjacent to a Significant Natural Area (“SNA”) and the Maitai River and recreational areas. The site has a challenging topography, with sensitive receiving environments and highly valued amenity areas and recreational areas directly adjacent to the plan change site. These matters are all identified and discussed in my evidence, where relevant.

Scope of evidence

20. My evidence assesses:
- a. The adequacy of information provided to support PPC28.
 - b. Effects of PPC28 in relation to housing affordability, stormwater management, earthworks management, landscape and amenity matters, ecology (waterways), and transport matters. Some of these topics are discussed in a high-level commentary, rather than any technical assessment. I have stated in my evidence below where this

is the case. I have referred to non-statutory documents to understand the strategic context of the region.

- c. To the extent relevant to these same topics under b above, whether PPC28 assists the Council to carry out its functions under ss 30 and 31 and accords with and gives effect to relevant national policy statements and the Nelson RPS.
- d. Whether the objectives of the request (in this case, the stated purpose of the request and the proposed new objective RE6) are the most appropriate way to achieve the purpose of the RMA.
- e. Whether the provisions in the plan change are the most appropriate way to achieve the objectives of the NRMP and the purpose of the request.

21. The RMA sets out the statutory framework within which resources are managed in New Zealand. The following section analyses the relevant statutory provisions that apply to private plan change requests changes to district plans.

22. Section 73(2) of the RMA allows for any person to request that a change be made to the District Plan, in accordance with the process set out in Part 2 of Schedule 1.

23. Clause 21(2) of Part 2 of Schedule 1 requires that the plan change request: explain the purpose of, and reasons for, the proposed change; contain an evaluation report prepared in accordance with section 32 of the RMA; and where environmental effects are anticipated, describe those effects in such detail as corresponds with the scale and significance of the actual or potential environmental effects anticipated from the implementation of the change.

24. The tests to be applied to the consideration of PPC28 under Schedule 1 Part 2 of the RMA are summarised below and include whether:

- It accords with and assists the Council to carry out its functions (s74(1)(a) and s31).
- It accords with Part 2 of the Act (s74(1)(b)).
- It accords with a national policy statement, a national planning standard and any regulation (s74(1)(ea) and (f)).
- It will give effect to any national policy statement, national planning standard or operative regional policy statement (s75(3)(a)(ba) and (c)).

- The objectives of the request (in this case, being the stated purpose of the request) are the most appropriate way to achieve the purpose of the RMA (s32(1)(a)).
- The provisions in the plan change are the most appropriate way to achieve the objectives of the District Plan and the purpose of the request (s32(1)(b)).

25. In evaluating the appropriateness of PPC28, the Council must also:

- Have particular regard to an evaluation report prepared in accordance with s32 (s74(1)(d) and (e)).
- Have regard to any proposed regional policy statement, and management plans and strategies prepared under any other Acts and consistency with the plans or proposed plans of adjacent territorial authorities (s74(2)).
- Take into account any relevant planning document recognised by an iwi authority (s74(2A)).
- Not have regard to trade competition or the effects of trade competition (s74(3)).
- Not be inconsistent with a water conservation order or regional plan (s75(4)).
- Have regard to actual and potential effects on the environment, including, in particular, any adverse effect in respect to making a rule (s76(3)).

26. The functions of Council set out in s31 of the Act that are required to be maintained when evaluating the appropriateness of PPC28 include the establishment, implementation and review of objectives, policies, and methods to:

- Achieve integrated management of the effects of the use, development and protection of land and associated natural and physical resources (s31(1)(a)).

- To ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district (s31(1)(aa)).
- Control any actual or potential effects of the use, development, or protection of land (s31(1)(b)).

27. I have considered PPC28 against the various statutory documents that it is required to have regard to is set out in my evidence that follows. I have generally identified where my assessment differs from the applicant's or from the s42A report.

Adequacy of information

28. I understand that at the stage of a plan change to rezone an area and include new plan provisions specific to that area, the information that is provided in support of the application must be in such detail as corresponds with the scale and significance of the actual or potential environmental effects anticipated from the implementation of the change. I am aware that additional assessments will occur through resource consents to undertake activities anticipated by the PPC28 rezoning, although I observe that a number of those assessments are proposed to exclude public input (through provision for applications not to be publicly or limited notified).
29. In my opinion, the information provided by the applicant is inadequate. I consider that the following information should have been provided:
- a. A comprehensive SMP to address the effects of stormwater runoff on receiving environments;
 - b. Plans and details that demonstrate the anticipated location and extent of earthworks necessary to support the plan change outcomes. This would have informed both the practicality of stormwater management and other functions of the PPC28 proposal;
 - c. All streams, wetlands, and waterways should have been classified and identified on the Structure Plan to accurately depict the constraints on the site and provide clarity on what habitats would remain through the development process. There is generally insufficient information presented to date to assess the effects associated with the proposed realignment of the Kākā Stream;
 - d. An ITA should have been undertaken to robustly evaluate whether PPC28 will be well connected to the existing environment via multi-modal means of transportation. This would have addressed all

deficiencies in the wider transport network that will be impacted by PPC28 to a significant effect, and that require PPC28 to mitigate its own effects. This should include an assessment of traffic from SH6 using the route through Bayview and Kākā Valley and from there passing Nelson Central School and continuing into central Nelson;

- e. A noise assessment should have been prepared to quantify the noise effects arising from PPC28 (including vehicles), given the high level of amenity that is sought under the RPS – being, to maintain and enhance amenity values. As a secondary matter, a noise assessment would have considered reverse sensitivity effects;
- f. A master plan and/or staging plan would have assisted in understanding the potential extent of effects associated with the implementation of PPC28.

30. Because that information has not been provided, it is not possible to assess the effects relevant to a number of topics. I outline these matters in my assessment of effects below.

Strategic Context

Nelson Housing and Business Capacity Assessment (2021)

31. The Council adopted the Nelson City Council Housing and Business Capacity Assessment Report (HBA) on 12 August 2021. The HBA has been promulgated under the NPS-UD, with a purpose of informing Council on whether it has sufficient housing and business land capacity to meet anticipated population demands for the Nelson urban environment.
32. Table 1 of the HBA report sets out projected demand for housing by household for each of the short, medium, and long-term periods in comparison to the City's capacity to provide for future dwellings in Nelson to 2051. There is sufficient housing capacity in the short term. In the medium term (4-10 years), there is a projected shortfall of demand of dwellings; however, this is provided for by a surplus of capacity of dwellings in the short term. Long term (11-30 years) the HBA is showing that there is a deficit of 864 dwellings overall.
33. The projected forecasts for capacity in the HBA exclude the Kākā Valley area (i.e., the PPC28 area) for the reason that *“it does not fully meet the NPS-UD definition of plan enabled and infrastructure ready, i.e., infrastructure projects required to support it are not identified in the 2021 LTP or Infrastructure Strategy.”*

34. The HBA identifies that, under current resource management plan settings and planned infrastructure roll-out, demand is expected to exceed supply in around 2039. If PPC28 is granted, the point at which demand exceeds supply moves out to around 2043.³
35. Projections have also been stated in the HBA in reference to the draft Whakamahere Whakatū Nelson Plan (“WWNP”), which seeks to allow for smaller lot sizes, higher maximum site coverage, removal of outdoor living spaces or changes to maximum building heights - which has the effect of enabling additional capacity through intensification to a level where supply is expected to exceed demand until beyond 2051.⁴
36. The draft WWNP district plan provisions incorporate residential zones: - a General Residential Zone and a Medium Density Residential Zone, with proposed allotment sizes of 300m² and 200m² respectively. The proposed change in intensification is a shift from the current zoning under the NRMP, which includes allotment sizes ranging from 300m² to 1500m² for residential zones. While currently bearing no statutory weighting, I have considered this in relation to the HBA forecasts, which have identified potential capacity that may be enabled through the WWNP. I consider this ability to meet capacity through intensification is particularly relevant given the outcome proposed through PPC28 is greenspace development in a sensitive receiving environment.
37. Clause 3.11(b) of the NPS-UD directs local authorities to, when making plan changes, use evidence – *“particularly any relevant HBAs, about land and development markets”* to assess the impacts of regulatory and non regulatory options for urban development and their contribution to achieving well-functioning urban environments and meeting sufficient development capacity. This links the importance of the HBA in informing decisions on plan changes.
38. In my view, there is no compelling information that suggests that the supply of housing is ‘critical’ at this point in time, with adequate urban zoned land in the NRMP for at least the next 10 years (and additional capacity for the next 29 years anticipated in the future district plan provisions) to service residential demand for the short and medium term.

The Future Development Strategy (2019)

39. The NPSUD 2020 includes a direction for Tier 1 and Tier 2 local authorities to prepare a FDS, and provides that those local authorities must have regard to the

³ Section 4.16 “Alternative scenarios” of the HBA, page 55

⁴ Page 5 of the HBA (Nelson) 2021

relevant FDS when preparing or changing RMA planning documents. The NPSUD 2020 includes particular directions on content of FDSs and stringent consultation requirements including a requirement to use the special consultative procedure in section 83 of the Local Government Act 2002. The Nelson Tasman Future Development Strategy July 2019 (2019 FDS) was not prepared under the NPSUD 2020, but rather under the National Policy Statement for Urban Development Capacity which did not contain those directions. Accordingly, I consider there may be a legal question as to whether the Clause 3.17 requirement to “have regard to the relevant FDS” applies to the 2019 FDS.

40. The 2019 FDS is a high-level strategy that identifies potential housing and business growth areas and their phasing to meet housing demands over the next 30 years (2018-2048). The 2019 FDS identified capacity for housing through a mix of intensification and greenfield expansion. It has identified the “*Kākā Valley Area*” as a potential area for expansion, during the period from 2028 to 2048. PPC28, as proposed by the requestor, is intended to bring forward the phasing of any potential development of this area.
41. Prior to the FDS, the outcome directed by NCC’s Urban Growth Strategy was “Do not provide for any future residential zoning in this area [Maitai Valley]”. Accordingly, the FDS represented a significant change in direction for Maitai Valley, which was of concern to Save the Maitai Inc because residents and others with an interest in the Maitai Valley were not aware of the potential for the FDS to result in urban development in the Maitai Valley due to deficiencies in the consultation process. A complaint was lodged with the Ombudsman regarding the preparation of the 2019 FDS. A decision has recently been released, in which the Ombudsman partially upholds the complaint. The Ombudsman found that overall the consultation process was not unreasonable. However, the complaint was partially upheld, with the decision concluding that ‘*a member of the public reviewing the FDS 2019 consultation brochure would not have clearly understood that the Council proposed development should occur in areas of the Maitai Valley.*’ I have appended a copy of the decision to my evidence.
42. Based on that decision, I place no weight on the 2019 FDS and the inclusion of the Kākā Valley as an identified expansion area.
43. The Nelson Tasman 2022 – 2052 Draft FDS (“draft FDS 2022”) has recently been through a consultation process, with decisions expected to be released in August 2022. As this strategic document is a draft at this point in time, I have afforded no weight to it.

Council Long Term Plan (2021), Infrastructure Strategy, and Financial Strategy

44. The requirement for Long Term Plans (“LTP”) are derived from central government recognising the need for longer term planning of infrastructure through the requirements for all councils to develop 30-year infrastructure strategies as part of the financial strategy of their long-term plans. Nelson Council adopted the LTP (2021-2031) on 24 June 2021. I consider the LTP is a document to have regard to under s 74(2)(b)(i).
45. Section 2.8 of the Infrastructure Strategy refers to “Future Development”. Council has identified six intensification areas that will be focussed on in the provision of infrastructure over the next twenty years. As explained in the Infrastructure Strategy, community feedback supported growth through intensification of existing urban areas, with limited expansion onto rural land.
46. The PPC28 project is not provided for in the LTP in terms of any bulk programming of infrastructure investment to enable the capacity for growth expansion, with Council’s focus seemingly on planning and supplying infrastructure for intensification.

Nelson Intensification Action Plan (September 2020)

47. Nelson’s Intensification Action Plan (NIAP) provides a guiding framework for Council’s actions to enable housing intensification. This supports the LTP. At the time of developing this action plan, the regulatory methods that are discussed in the NIAP involve a range of planning methods that are proposed in the draft WWNP to align it with the NPS-UD and to enable greater residential intensification of the Nelson area.
48. The NIAP currently contains no direct relevance to the expansion into greenfield areas that is sought under PPC28.

Nelson Biodiversity Strategy

49. The Nelson Biodiversity Strategy (“NBS”) was adopted by Nelson City Council on 1 May 2007. The purpose of the strategy is to create a biologically rich and sustainable future for Nelson through aligned action on biodiversity. Some of the actions that are sought through the biodiversity strategy relate to the Maitai Valley, and Maitai River (and its tributaries).

Action 2.1.1 *Protect and restore existing alluvial, riparian, and coastal ecosystems of the Maitai Valley and the urban area of the city, Wakapuaka Valley and Delaware Bay including Paremata Flats, and Whangamoa Valley including the Kokorua dune complex;*

Intermediate Outcome 4.2 *seeks that ecological functioning, water quality, habitat, flows, and amenity values are progressively restored in all streams, rivers, wetlands, and estuaries.*

Action 4.2.1 *Continue ecological restoration of the Maitai River and its tributaries;*

50. A Council review of the actions concluded that between 2013 to 2017 some actions were substantially progressed in the Maitai environment, including pursuing ecological restoration of the Maitai River and protecting and restoring alluvial, riparian, and coastal ecosystems of the Maitai Valley
51. For reasons set out in my evidence below, the information presented to date is inadequate to form a clear understanding of the scale and significance of adverse effects on the Maitai River and its tributaries. I am therefore unable to conclusively determine whether PPC28 will impact on the relevant actions and outcomes that are sought under the NBS.

Assessment of effects

52. Having reviewed the PPC28 request and relying on supporting specialist reports whose assessments I have adopted, the following summarises my conclusions on the assessment of environmental effects. Following this assessment of effects, I provide an analysis of PPC28 in the context of statutory requirements.

Housing Affordability

53. Mr. Lile has considered housing affordability in his evidence and he considers that greenfield land provides a more affordable option than a townhouse or apartment, to the majority of the housing sector.⁵
54. I do question housing affordability with respect to PPC28, and recognise it as being an area that is outside of my area of expertise as a planner. My evidence here is more akin to a high level question, rather than any assessment or view as such. Simply put, I am unsure whether beneficial competitive effects would be increased in the wider Nelson context, when this particular site will require substantial infrastructure upgrades to support development (including wastewater, water supply and transport infrastructure). Furthermore, the topographical challenges of the site will likely require substantial earthworks with geotechnically engineered elements, in order to facilitate the future development. These will be costly works, and will be factored into the final housing price.

⁵ Para 192 – Evidence of Mr. Lile

55. It is also challenging to ascertain whether beneficial competitive effects would be increased in the wider Nelson context, compared to housing through existing (or future) urban zoned but undeveloped land.
56. Broadly, I do agree that a key to addressing the affordability problem is through increasing supply, but the investment necessary to develop this PPC28 site would impact on housing prices.

Stormwater and Flooding

57. Stormwater management was a large topic of contention in expert conferencing sessions, with general agreement that the applicant would provide a Stormwater Management Plan (“SMP”) to demonstrate the stormwater management could be achieved on the PPC28 site.
58. The SMP has been presented in the applicant’s evidence. I have reviewed the information by experts (including that of the applicant, the Council experts, and the submitter experts). I acknowledge those concerns that have been raised in the Council s42a evidence, which I have also considered as a guideline to my own review of the SMP presented in the applicant’s evidence. I note that there are some considerable gaps in terms of what the other experts have considered necessary to provide at this plan change stage, compared with that which has been provided in the applicant’s SMP. For that reason, I prefer the evidence of Mr. Suljic, who has based his assessment on the latest iteration of information, which includes the SMP.
59. For the purpose of brevity of this evidence, I summarise as follows. Mr. Suljic considers there to be insufficient information presented in the context of the understanding of the sensitivity of receiving environments, the existing site hydrology and its relationship to ecology, geology, and topography.⁶ The SMP fails to demonstrate that those principles that are proposed and set out in Schedule X are in fact achievable. Mr. Suljic has particularly identified concerns around the ability to achieve hydraulic neutrality, protection of streams and waterways from the effects of erosion and other effects on values, including those downstream recreational uses.⁷ In the capacity of a planning oversight, I agree with these concerns.
60. Mr Suljic considers that there is a high likelihood that the stormwater management framework proposed and relied upon by PPC28 is not adequate to protect the environmental values of the immediate and downstream receiving environments.
61. The evidence of Mr. Suljic discusses the potential impacts through the creation of impervious surfaces, and the effects of cut to fill operations, particularly the placing

⁶ Para 40 Evidence of Mr. Suljic

⁷ Para 48, 50, 60 Evidence of Mr. Suljic

of engineered fill material, which reduces the soil infiltration capacity due to the level of soil compaction required to create stable developable land.

62. Cumulatively, these modifications to the land can lead to impacts on the groundwater recharge of wetlands and streams. In my view, the location and extent of earthworks remains unclear, and mapping does not appear to have been undertaken of all streams and wetlands on the site. It is near impossible to determine anticipated effects on the streams and wetlands. There is also uncertainty that the 'principles' are achievable for the pattern of zoning proposed in the Structure Plan.
63. Increases in surface water runoff volumes, durations and frequencies have the potential to result in increased erosion and destabilisation of stream banks. This, along with stormwater quality, which are also not clearly addressed, has the potential to impact on the adjacent waterways, which include contact waters (Maitai River and nearby water holes).
64. In terms of the provisions that are proposed Policy RE6.3 requires an SMP to be submitted 'at the earliest stage'. Arguably, the earliest stage is at the plan change stage. Insofar as the workability of the proposed provisions around stormwater matters, these matters are irrelevant if it cannot be demonstrated that they can be achieved. The evidence of Mr. Suljic has highlighted inadequacies within the proposed freshwater principles in X.9.⁸
65. PPC28 has not demonstrated that it will maintain or enhance the health of streams and wetlands and does not uphold the concept of Te mana o te Wai. For example, the X.9 Ecological Outcomes and freshwater Principles include a principle of "minimising" stream loss, where-as the NPS-FM directs that stream loss is to be avoided to the extent practicable - a more stringent requirement.

Landscape and Amenity

66. The site straddles three district wide landscape character areas, including parts of the Malvern/Botanical Hills, Atawhai Hills and the Maitai Valley.
67. I note that the RPS establishes a high expectation through its provisions related to landscape matters, which are framed in directive language, seeking a high standard to uphold. The overarching objective being, that the landscape character is '*preserved and enhanced*'. I consider that managing visual dominance and landscape character effects is critical for the PPC28 site.
68. In my view, there is a link between 'character' and 'amenity' and that these elements cannot be considered in isolation from each other. My statement of evidence

⁸ Para 66 Evidence of Mr. Suljic

combines these two elements accordingly. The RPS also has a relatively high standard of amenity values to uphold, again with an overarching objective to *'preserve and enhance'* these values.

69. Having considered the evidence of landscape experts (and those planning views), I agree with the validity of some of the points raised by Mr. Girven, but his evidence is based on previous iterations of the Structure Plan. The information that was submitted in the evidence of Mr. Milne has provided a more detailed analysis of effects than the information provided with the notified version of the plan change. The original Landscape, Visual Amenity and Urban Design Assessment ("LVAUDA") submitted contained a number of assessment points that raised concerns in my view. In particular, I disagreed with the repetitive statement that referred to the development as being 'anticipated'. In my view, incorporating those views into the baseline/assessment had the potential to downplay effects in some instances, particularly those conclusions around the magnitude of change arising from the status quo rural environment to an urban environment through PPC28 if authorised.
70. I have reviewed the evidence of Ms. Steven and I consider her evaluation of PPC28 to be thorough, robust, transparent, and her conclusions have addressed some of my original concerns of the notified LVAUDA from a planning perspective. I adopt the position of Ms. Steven.
71. Ms Steven has stated in her evidence *'in my view the fact the Kākā Valley has been "tagged" for urban expansion has no bearing on the outcome of a LVA assessment. Rather it is the LVA assessment that will contribute the necessary information to decide if urban expansion of the nature proposed through PPC28 is appropriate.'*⁹ I agree with this statement.
72. The assessment undertaken by Ms. Steven has concluded that the magnitude of visual change to the landscape viewed is generally 'Moderate to High', rather than generally 'Low to Moderate' as assessed by Mr. Milne.¹⁰
73. The landscape experts have all considered that there are no outstanding natural features or landscapes associated with the site. Additionally, the landscape experts agree that the Maitai River and its margins are a significant feature/landscape¹¹. Ms. Steven's position is that Kākā Valley as a tributary valley of the Maitai River is a significant or visual amenity landscape in its own right.¹² My understanding is that this view of Ms. Steven differs from that of the other landscape experts in this regard.

⁹ Para 21, Evidence of Ms. Steven

¹⁰ Para 13, Evidence of Ms. Steven

¹¹ Clause 3.3 JWS Landscape (1)

¹² Clause 3.3 JWS Landscape (1) and Para 94, Evidence of Ms. Steven

74. In terms of landscape values, Ms. Steven has identified the Malvern Hills as important due to is the relatively natural green, open space hill backdrop/green belt and prominent ridgeline/skyline of the Malvern Hills. An additional important value associated with the Site is its role as a highly picturesque or pleasant and peaceful rural to natural setting adding to the quality of recreational experience gained from the Maitai River reserve areas. Ms. Steven considers that most of the Kākā Stream valley forms a large part of this picturesque setting.¹³
75. Ms. Steven has considered that the LVAUDA has understated the degree of visual effect. Ms. Steven's evidence has analysed the degree of effect on visual amenity resulting from PPC28.¹⁴ Broadly, Ms. Steven considers that adverse amenity effects will be a Moderate to High to High from a number of viewpoints. In terms of the proposed skyline and backdrop areas, adverse effects on landscape character and visual amenity will be a Moderate-High to High degree, depending on how much is seen for any particular viewpoint.¹⁵ Ms. Steven considers that *'it is the open rural character of the landscape and especially its skylines and ridgelines and its riparian areas with an overwhelming dominance of landform and vegetation that underlies the most important values as set out in AP9.6 and AP9.7, as backdrop, greenbelt and gateway landscape. The Backdrop/Skyline areas do not represent the only parts of the Site that are significant.'*¹⁶
76. The disparity between the views of Mr. Milne and Ms. Steven has been stated in the evidence of Ms. Steven and at times appears to arise from assumptions by Mr. Milne that this is a logical expansion area and that urban expansion is 'anticipated' on the PPC28 site. Ms. Steven has considered the bespoke provisions proposed in Schedule X in terms of the the ridgeline/skyline in the Backdrop/Skyline throughout her evidence and my interpretation is that these proposed provisions would not be able to negate the adverse effects on visual amenity due to urban development.
77. The site has high natural amenity values and the Maitai Valley functions as an important greenbelt, which is referenced in the NRMP and its protection reinforced in the RPS and NRMP provisions. Ms. Steven has concluded that *'Referring to Policy DO15.1.3, PPC28 would not retain the greenbelt function of the Malvern Hills ridgeline and the Maitai Valley. The current clear transition between urban and rural and the proximity of visual open space and rural landscape (acknowledging there is no as-of-right physical public access on the Site at present) would be lost.'*¹⁷
78. Based on Ms. Steven's evidence, I consider that these values will not be adequately protected in future consenting stages through the use of the bespoke provisions in

¹³ Paras 106 Evidence of Ms Steven

¹⁴ Visual change table at para 162, visual effects table at para 210 Evidence of Ms. Steven

¹⁵ Ibid

¹⁶ Para 9, Evidence of Ms. Steven

¹⁷ Para 204 Evidence of Ms. Steven

Schedule X for overlay areas, and the existing NRMP framework for non-overlay areas. Given the general Moderate-High to High landscape character and visual amenity effects, I am unconvinced that the pattern of zoning that is proposed in the Structure Plan can be absorbed by the PPC28 site.

79. I note that the proposed rules in Schedule X will enable future development in the Backdrop/Skyline overlay through a controlled activity resource consent (notwithstanding that Ms. Steven considers that these would not sufficiently mitigate adverse effects). Development in the remainder of the PPC28 site will broadly require a consent as a restricted discretionary activity. These provisions include non-notification clauses. The existing NRMP framework and proposed framework is weak in this regard.
80. The inclusion of the 'Revegetation Overlay' on the structure plan and proposed Policy RE6.x seeks enhancement of that area through indigenous vegetation of these areas. Notably, there is a lack of necessary detail (specifications, spacings, species) and this is another area of uncertainty, that is proposed to be dealt with in future consenting stages.
81. In terms of non-visual amenity matters, Ms. Steven has stated that *'the Maitai River corridor and wider valley context, including Kākā Valley is highly valued for its open space and quiet rural character and the numerous recreational opportunities in a rural setting of high visual amenity in the way of linear parks, river trails, swimming holes and sports facilities, all in close proximity to central Nelson.'*¹⁸ I agree, and consider this to be an important context in terms of the adjacent amenity and recreational values. Again, the RPS also places high value on amenity values being 'preserved and enhanced.'
82. The topic of noise effects was discussed in the planning expert conferencing sessions¹⁹ particularly regarding whether there was a need for an assessment of effects of the rezoning on noise. The other planners opined that noise effects would be satisfactorily addressed through the existing NRMP framework, however, I have an opposing view. Given the high standards sought by the RPS for amenity values²⁰, I consider that there would be more certainty of effects if a noise assessment, including construction noise and vehicle noise from residents and through traffic, was provided at the plan change stage to address the change in noise from the status quo environment to the zoning/development intensity that is anticipated through PPC28 and to ensure that the resultant noise amenity is reasonable. Given the high amenity values of public areas close to the PPC28 site for passive recreation (swimming,

¹⁸ Para 88, Evidence of Ms. Steven

¹⁹ Clause 3.9 JWS Planning (3)

²⁰ Overall objective in the RPS is to 'preserve and enhance'

picnics, walking etc), I consider noise effects are highly relevant to the assessment of PPC28.

83. I have reviewed the NRMP provisions, and I do not consider it to provide a robust framework that enables the full extent of acoustic effects to be addressed at later consenting stages. Bearing in mind that there are sensitive receivers nearby (particularly the adjacent recreational areas and rural sites), the effects on noise amenity values remains unclear. I acknowledge that the NRMP does include some noise standards for residential activity (although arguably, it is unclear what the amenity effects would be from a cumulative effect of residential activity associated with PPC28). The NRMP also includes some noise provisions around construction noise, although I note that such effects will be long-term.
84. The NRMP does not include any mechanism or standards to control all noise emitting activities. For instance, the baseline of vehicle movements will change considerably if PPC28 is authorised, introducing additional traffic noise and amenity effects. Including general traffic movements to and from the PPC28 site and construction vehicles. PPC28 may also enable diversion of traffic from SH6 as a direct consequence of an approval of PPC28. The degree of shift in the noise environment from the status quo may impact on adjacent rural-residential properties, and nearby recreational reserves where the existing tranquility of the area is an appreciated amenity value.
85. As a secondary point, an acoustic assessment would have addressed other acoustic related matters, including reverse sensitivity effects. The rural zone provisions in the NRMP includes exemptions to the noise standard for some 'rural' type activities that have the potential to be noisy. Other reverse sensitivity effects related to noise could arise from activities within the adjacent recreational activities (the Maitai River recreational reserves, and potentially the Maitai Cricket Grounds). Any constraints and specified buffer zones between the development and adjacent activities could have been identified on the Structure Plan.
86. The consideration of recreational amenity values is a multi-disciplinary consideration and one that I have discussed in other areas of my evidence. To summarise, there is uncertainty around effects on the recreational resources with regard to water quality and quantity, sedimentation management, visual impact and noise.

Earthworks

87. The location and extent of earthworks expected to facilitate the development of PPC28 remains unclear. The applicant's evidence has provided an indicative earthworks plan for the collector road within the graphic attachment prepared by

Rough Milne Mitchell Landscape Architects.²¹ It is near impossible to derive from this information, an approximate scale and extent of all earthworks required for the development, the proximity to wetlands (and other waterways), and the anticipated final landform. Based on my observations of the site, PPC28 will likely require some substantial earthworks. My evidence offers some high level commentary with regard to sediment management.

88. The evidence of Mr. Parsonson concludes that “*the suite of existing and proposed provisions provide an appropriate assessment and decision making framework to ensure that the sediment related effects of development with the PPC28 area can be acceptably minimised.*”²² Conversely, the evidence of Mr. Ridley concluded that “*the current NRMP provisions and the identified PPC28 Schedule X.9 principles that apply provides negligible certainty of achieving an appropriate outcome in managing erosion and sediment control for the PPC28 area.*” This is a matter of contention that will likely require some resolution in the hearing.
89. The changes to Schedule X that have been made in the applicant’s evidence have incorporated X.12 - “*additional earthworks requirements*” as a means of reinforcing sediment management as a key assessment matter.
90. I am unclear how these requirements are triggered under the proposed and existing NRMP framework, for the following reasons. They are identified as being ‘principles’, as opposed to any rules, objectives, or policies. The earthworks rule from the NRMP that would most likely apply to the PPC28 area is Rule REr.61 (a restricted discretionary activity), which sits outside of the Schedule X provisions, and has its own matters of discretion/assessment criteria. As an overarching observation, I consider that there is complexity in administering and enforcing these ‘principles’ and achieving these outcomes that are intended, for both consented activities and permitted activities.²³
91. I refer to the statements in the evidence of Mr. Ridley that this site is challenging, with sensitive receiving environments. I note the reference to earthworks being a ‘temporary activity’ in the evidence of Mr. Parsonson.²⁴ While earthworks generally are of a temporary nature, the earthworks required for PPC28 will be long-term and will feature somewhat permanently for an extended period of time. The resultant adverse effects arising from poor sediment management can also be long-term or permanent on sensitive receiving environments within or in close proximity to the plan change site.

²¹ PPC28 CCKV Maitai Development Co LP and Bayview Nelson Ltd Graphic Attachment, Page 18 (dated 15 June 2022).

²² Para 89, Evidence of Mr. Parsonson

²³ Para 54, Evidence of Mr. Parsonson

²⁴ Para 44, Evidence of Mr. Parsonson

92. In the absence of any details relating to earthworks that confirms the construction works can be effectively managed, along with a robust framework, I am unable to conclude the impacts on the sensitive receiving environment. It remains unclear whether the proposed pattern of zoning in the Structure Plan is appropriate to its context.

Streams, Rivers and Wetlands

93. My evidence addresses the effects on streams, rivers and wetlands as a higher level commentary.

94. In regard to wetlands, the applicant has acknowledged that there are two wetlands within the PPC28 area. On my site visit I observed additional areas on the PPC28 site that present wetland-like characteristics, yet these areas have not been mentioned or classified in any of the ecological reports/evidence of the applicant to date. My interpretation of the evidence of Ms. Blakely (s 42a report) is that there are possibly additional wetlands based on the comment “*it is likely that OLFs may include vegetated gullies and wetland habitats.*”²⁵

95. It is unclear whether the original geotechnical report submitted with PPC28 (notified version) may have identified some of these ‘wetland’ areas shown as ‘debris fans’ and areas of ‘reeds.’²⁶ In any event, it is a matter that needs clarification and certainty.

96. Overall, I agree with the evidence of Ms. Blakely and Ms. Sweetman in that all habitats, waterways, wetlands, overland flow paths, should be included on the Structure Plan. The absence of all wetlands being identified on the Structure Plan undermines the plan change process of ensuring that the proposed zoning is appropriate, based on an understanding of the site constraints.

97. The landform modifications to facilitate future development are not readily understood. Given the topography of the site, it is likely that areas will require geotechnical engineering of the land. I have adopted the position of Mr. Suljic in his evidence,²⁷ as I agree that the effects are not clearly informed at this time within the SMP and from the information presented to date, we cannot deduce whether this will result in drainage or partial drainage to the wetlands on the site.

98. The notified version of PPC28 identified a single stream, the Kākā Hill tributary (also referred to as the Kākā Stream), that runs through the PPC28 site from headwaters

²⁵ Para 23, Evidence of Ms. Blakely

²⁶ Geology and Geotechnical Hazards Report, prepared by Tonkin & Taylor, dated March 2021 – Figure 1012397-F2 – Geomorphology Plan

²⁷ Para 29, Evidence of Mr. Suljic

in the steeper hills to the meandering channel in the lower valley, at its confluence with the Maitai River. PPC28 seeks to support a realignment of the Kākā Stream.

99. The applicant's evidence has not identified any further streams on the site, although it is clear that further streams do likely exist on the PPC28 site.
100. The extent and location of earthworks remains unclear, however; based on the Structure Plan pattern of density of residential zoning, it is plausible that additional streams may be reclaimed or impacted in order to facilitate future development of the site in the densities that are proposed on the Structure Plan. These streams should be identified on the Structure Plan, so that the site constraints are clearly understood and to ensure that the proposed zoning is appropriate to its context.
101. In terms of the realignment of the Kākā Stream, the original ecological report submitted with the PPC28 request recommended that, for the realignment of this stream, it should be demonstrated that there is a functional need.²⁸ There has been no reason stated around the requirement to realignment of the Kākā Stream, other than for enhancement opportunities noting the statement in Mr. Lile's evidence "*that location (with the benefits of shade), maximises the potential benefits and opportunities for the enhancement for freshwater quality and ecological values, as addressed in the expert evidence of Mr Markham for the applicant, with the potential benefits also acknowledged in the Ecology JWS.*"
102. Based on the JWS (ecology)²⁹ and the evidence of Ms. Blakey, my understanding is the existing Kākā Stream channel would also provide a beneficial opportunity for enhancement. In my view, maintaining and enhancing the current stream alignment would better align with the management hierarchy of the NPS-FM.
103. The evidence of Mr. Lile, in reference to the Groom Creek realignment, states: *Even if the statutory requirement of the NPS-FM 2020 had been integrated into a new regional plan for Nelson, I would be surprised if the application of the effects management hierarchy (Section 3.24, NPS-UD 2020) hindered the granting of the Groom Creek consents. I strongly doubt that was the intent of this national policy when considering the provisions as a whole.*
104. In principle, I disagree with the final sentence of this statement. When considering the NPS-FM provisions '*as a whole*', it is clear that the effects management hierarchy is an integral element of implementing the NPS-FM as it is referenced throughout the national policy, and is also reinforced through Policy 7.³⁰ I interpret the effects management hierarchy and policy direction to avoid loss of river extent and values to

²⁸ Tonkin and Taylor – Ecological Constraints and Opportunities, Paragraph 4.1.2.1, dated March 2021

²⁹ Clause 3.5 and 3.6(f) of JWS Ecology

³⁰ Policy 7: "The loss of river extent and values is avoided to the extent practicable."

the extent practicable as directive policies that must be given effect to according to their terms.

105. Clause 3.24(1) of the NPS-FM relating to rivers, states:

Every regional council must include the following policy (or words to the same effect) in its regional plan(s):

“The loss of river extent and values is avoided, unless the council is satisfied:

(a) that there is a functional need for the activity in that location; and

(b) the effects of the activity are managed by applying the effects management hierarchy.”

106. While I accept that the requirement to avoid loss of stream extent and loss of stream values is not an absolute, there clearly needs to be a functional need for such activities to occur. With regard to PPC28, no functional need has been clearly stated and I do not consider the ‘enhancement opportunities’ to be a ‘functional need’ when the existing channel also has beneficial enhancement opportunities. In my view, this is directly contrary to the directive of the NPS-FM.

107. The applicant intends for the stream realignment effects to be addressed through future consenting stages. The plan change, however, provides an enabling framework for the stream realignment and pre-emptively creates an inability to fully manage potential significant adverse effects during later consenting stages.

108. In my review of the evidence that has been presented to date, it is not contested by any experts that stream realignments are complex. Ecological effects aside, the changes to the flow regime in altering the existing stream from a diffuse flow path to a channelised system have not been evaluated at this time. The proposed SMP (June 2022) states that the *“refinement of the transition from the Kākā Stream to the Maitahi/Mahitahi River has not been made and consideration of velocity effects at Dennes Hole and potential outlet will be considered at a later design stage.”*³¹ Put simply, we do not understand the complete picture of effects at this point in time to conclude the acceptability of the stream realignment.

109. There is a risk of uncertainty of adverse effects, including the impacts on the highly valued recreational areas that are located directly downstream of the PPC28 site, inclusive of the Maitai River and swimming holes. Maintaining high water quality for contact water in the Maitai River and swimming holes is essential, in addition to managing any changes to hydrology. The SMP and proposed earthworks management have not satisfied concerns around these matters, and the effects remain

³¹ Paragraph 5.7.1, Site Management Plan – Evidence of Mr. Mills

unclear. I address water quality requirements for contact waters under an assessment of the NPS-FM in my evidence below.

110. In my view, there is a high risk of uncertainty with regard to effects on streams, rivers, and wetlands if PPC28 is authorised. The level of information provided to date is not commensurate with the potential magnitude of effects, which could be significant.

Traffic

111. A connector road is proposed to be constructed between Ralphine Way/Maitai Valley and the Malvern Hill ridge. The latest iteration shows a road towards Walters Bluff. The Structure Plan identifies that walking/cycling paths will be constructed within the PPC28 site.
112. My evidence on transport based matters is more of a high level commentary, although I have considered the evidence of transports experts, as I discuss below. I have not been privy to any of the discussions around the funding of infrastructure, and my understanding in this area is therefore somewhat limited. The question of infrastructure funding was posed in expert conferencing and all planners agree that funding is not a determinative as to whether PPC28 is approved.³² I agree with that statement, although on reflection, understanding the funding implications is a relevant consideration in the extent that it assists in comprehending whether PPC28 can be delivered at pace and consistency with the NPS-UD. The transport infrastructure upgrades (and the wastewater and water network upgrades) required for PPC28, are considerable upgrades.
113. The evidence of Mr. Lile has explained the logic of the NRMP around the funding of infrastructure and in particular references Policy DO14.3.1, which correctly states that if the works are not included in the LTP then the developer is required to meet the costs of infrastructure. Assuming that this is a commitment by the applicant, I still do not fully understand the expected timeframes for the PPC28 development to be delivered and whether it will be delivered in a timely manner.
114. In terms of existing transport network deficiencies, the conclusions from expert conferencing resulted in the applicant agreeing to a list of five identified wider transport upgrades for inclusion within Schedule X. Mr. James considered that three additional deficiencies in the transport network will need addressing at some stage during the development of PPC28. All transport experts *agreed* that those three identified upgrades were not an exhaustive list of future upgrades that may be required in response to the PPC28 development.³³

³² Paragraph 3.14, JWS Planning (3)

³³ 3.8 – JWS Transport (1) and 3.1 – JWS Transport (2)

115. By my understanding, there remains uncertainty on the explicit transport upgrades that PPC28 will need to undertake to mitigate its own effects. This was discussed further in the planning expert conferencing with all other planners of the view that this could be addressed by incorporating a requirement for an ITA into Schedule X to be addressed at future consenting stages. I disagree with this approach as I consider that the Schedule X provisions need to provide specificity and certainty that PPC28 will mitigate its effects. In my view, this is critical to meeting the requirements of the NPS-UD.
116. The applicant's evidence has now incorporated a table in Schedule X (X.11) to address five of the identified constraints, effectively seeking to provide certainty that these upgrades are implemented prior to the first new dwellings, or lots associated with PPC28 being established.
117. I have reviewed the evidence of all transport experts. I rely in particular on the evidence of Mr. James. In his statement of evidence, he has noted a number of transport related deficiencies and uncertainties that require further consideration, and impact on the ability of PPC28 to achieve multi-modal transport options that link to existing transport infrastructure. This impacts on whether PPC28 will contribute to a well-functioning urban environment.
118. I am not confident that PPC28 has identified all of the necessary transport infrastructure upgrades (i.e., transport infrastructure that will be exacerbated by increased traffic associated with PPC28), as was indicated in the JWS Transport (2).³⁴ I consider that the current assessment relating to transport matters does not provide a sufficient basis for understanding all the potential transport effects of the development at this plan change stage.
119. The evidence of Mr Georgeson, as an isolated example, states that with respect to the single lane Gibbs bridge *"the change in volume presents new risks including some vehicles experiencing longer delays and queuing."*³⁵
120. Conversely, Mr. Clarke states that *"the Gibbs Bridge constraint is an issue that does not need to be addressed as part of PPC28. This is because there are a number of changes to the road network, land uses and the road environment that will occur over the life of PPC28 that are within the development area and external. Any future improvements to Gibbs Bridge will need to take into*

³⁴ JWS Transport (2) 10 May – Section 3.1 states that "all other experts do not consider that this list of 3 items would be an exhaustive list of future upgrades that may be required in response to development of the PPC 28 area."

³⁵ Section 4.2, Evidence of Mr. Georgeson

*account all changes and can be dealt with later through the normal Council processes under the RMA or LGA (LTP)."*³⁶

121. I am aware of authority to the effect that *"it is bad resource management practice and contrary to the purpose of the Act.....to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it"* (*Foreworld Developments Limited vs Napier City Council*). It is also my planning opinion that it is better resource management practice to address these issues prior to any live zoning.
122. The requirement for an ITA to be prepared and submitted for all future subdivision or development has now been incorporated into Schedule X under X.14 as a *'Special Information and Design Requirement'* for all future subdivision or development.³⁷
123. Notwithstanding, that a robust ITA at this time may have negated this requirement for some future development, the requirement for an ITA is only an 'information requirement'. The provisions do not include any mechanism that requires that any upgrades identified through any future ITAs are implemented at critical times during staging to mitigate those transport issues. In future consenting stages, consent will be required as a restricted discretionary activity if submitted with an ITA, yet there are not any relevant matters of discretion that address wider transport network deficiencies.
124. The mechanism of requiring ITA's in future consenting stages to identify the effects on the transport network arising from PPC28 becomes increasingly challenging. The identification of constraints arising from PPC28 'as a whole' becomes complex when future subdivision/development resource consents will likely be discrete stages of the overall PPC28 development. In latter stages, it becomes challenging to relate effects and mitigation requirements back to the plan change site.
125. I maintain my view that a robust evaluation through the preparation of an ITA at the plan change stage could have provided greater specificity and certainty within the proposed Schedule X framework for the infrastructure upgrades, than is currently proposed. All necessary upgrades could have then been stated in Table X.11 with a trigger point requiring it to be addressed.
126. An additional concern arises around the point that the applicant and Waka Kotahi have held discussions around the use of the PPC28 internal road network (the collector road) as an alternative temporary route for SH6.³⁸ This will undoubtedly

³⁶ Section 100, Evidence of Mr. Clarke

³⁷ Introduced in the applicant's evidence in Schedule X (v2)

³⁸ Section 4.2 of the Transport evidence of Mr. Georgeson (s42a)

increase traffic movements arising from these traffic diversions from SH6 through the internal road in PPC28 to the adjacent network.

127. These additional traffic movements have not been evaluated in terms of how they will impact on the transport network. Furthermore, any associated amenity effects (such as noise) on both the future occupants within the PPC28 site and adjacent sites/activities arising from this additional generation of vehicular traffic have not been assessed in the plan change request. These are a direct effect of the Structure Plan, and a matter that warrants further evaluation. I note the conclusion by Mr Georgeson for NCC that road design for the through-site link will need engineering approval from Council at the time of resource consent, which provides an opportunity to consider its use as a SH6 temporary alternative route.³⁹ In my opinion, engineering approval at resource consent stage is not sufficient to provide for the broader roading network safety and amenity considerations that should be part of a decision to enable a link between SH6 and central Nelson through Kākā Valley.

128. Overall, I conclude that the level of assessment provided around transport matters and the proposed framework in Schedule X is not appropriate to understand the adverse effects arising from PPC28 and to ensure that the traffic generated effects of PPC28 are mitigated to the extent that they result in a safe and efficient transport network.

Non-Notification Provisions

129. The JWS Planning (3)⁴⁰ addressed the included appropriateness of the non-notification provisions in Schedule X. All planning experts, with the exception of Mr. Lile, considered there was insufficient information at that time to determine the appropriateness of the proposed non-notification provisions.

130. I have reviewed the latest iterations and I consider the proposed non-notification provisions in Schedule X are inappropriate. Based on the evidence of Ms. Steven, adverse visual amenity effects will be a Moderate to High to High from a number of viewpoints. In my view, the risks associated with this degree of effect does not align with non-notification of future consents. Furthermore, there are a number of matters where the information submitted to date is inadequate, and this also poses risk in terms of the merit of non-notification provisions.

Precedent Effects

131. The topic of precedent effects was addressed in an early planning expert conferencing session - Planning JWS (2) where all planning experts agree that a plan change is an

³⁹ Para 6.2, Evidence of Mr. Georgeson

⁴⁰ Section 3.26 JSW Planning (3)

appropriate mechanism for this proposed rezoning and that “precedent effects” are not relevant.⁴¹ On reflection, I now understand the positions of a number of experts, and more information has been submitted by the applicant in their evidence. I have a better understanding of the magnitude of change proposed to the character of the Maitai Valley, and I am of the view that there is some potential to create an adverse precedent effect. The plan change enables the change of the character of the Maitai Valley from predominantly non-urban to urban which has the potential to be replicated by others, further blurring the rural-urban interface, resulting in the loss of open spaces, and impacting on recreational amenities and adjacent rural uses.

STATUTORY AND POLICY FRAMEWORK

National Policy Statements

132. National Policy Statements are the RMA legislative tool whereby central government can prescribe objectives and policies to address matters of national significance. The Council must prepare and change its plan in accordance with a NPS (s74(1)) and must give effect to any relevant NPS (s75(3)).

133. I wish to emphasise the requirements in Section 75 of the RMA to “*give effect*” to National Policy Statements and operative Regional Policy Statements. The Supreme court has stated that “*give effect to*” means “*implement*” and it is a “*strong directive creating a firm obligation on the part of those subject to it*”.⁴²

National Policy Statement on Urban Development 2020

134. The NPS-UD came into effect on 20 August 2020. In implementing these objectives, the NPS-UD directs planning decisions to ensure that development contributes to well-functioning urban environments.

Reconciliation between the NPS-UD and other planning statutes

135. The PPC28 request states that “*it is clear through Policy 8 that Plan Changes, such as this, are recognised as a significant part of achieving the objectives of the NPS-UD.*”⁴³

136. Policy 8 is referenced below for context:

⁴¹ Section 3.9 JWS Planning (2)

⁴² *Environmental Defence Society Inc vs New Zealand King Salmon Company Limited* [2014] NZSC 38

⁴³ Page 87, Private Plan Change Request to the NRMP, prepared by Landmark Lile, 24 August 2021

Policy 8: *Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:*

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

137. The Environment Court's decision in *Eden-Epsom Residential Protection Society Inc v Auckland Council* [2021] NZEnvC 082 raises a legal issue as to the extent to which the NPS-UD is relevant to private plan changes. This will be addressed in legal submissions.

138. Clause 3.8 of the NPS-UD, relating to unanticipated or out of sequence developments, states that:

(2) Every local authority must have particular regard to the development capacity provided by the plan change if that development capacity:

- (a) would contribute to a well-functioning urban environment; and*
- (b) is well-connected along transport corridors; and*
- (c) meets the criteria set under subclause (3).*

(3) Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity.

139. I acknowledge that the NPS-UD has an overarching intention to supply housing, and I accept that there is some scope for plan changes that may be unanticipated or out of sequence. I understand that Council have to give 'particular regard' to the development capacity provided by an out of sequence or unanticipated plan change; however, this does not override the requirement to give effect to environmental matters under the RPS and other national direction, including the NPS-FM.

140. With regard to Clause 3.8(3) there have been no updates to the RPS to include such criteria. In my opinion, I do not agree that if there are no criteria then it is only the first two listed matters in (2)(a) and (b) that are relevant. Some weighting should be afforded to the potential that changes to the RPS to address Clause 3.8(3) may extend to other matters (such as vehicle emissions).

141. Ms. Sweetman has stated that the definition of development infrastructure includes water, wastewater and stormwater as well as land transport infrastructure and if a proposal cannot be adequately serviced by the necessary infrastructure it cannot be

said to contribute to development capacity.⁴⁴ I agree, and in my view, PPC28 has not clearly demonstrated that it can be adequately serviced by the necessary infrastructure, particularly around transport related matters and stormwater. Therefore, I do not consider Policy 8 to be applicable to PPC28.

142. In my view, the complexity of considering unanticipated plan changes at this time, is that plan changes must *give effect* to (a) any national policy statement; and (c) any regional policy statement. At this stage the RPS is not giving effect to the NPS-UD. The RPS currently contains some highly directive actions via its objectives and policies, particularly around matters related to landscape character, and amenity values.

143. Broadly speaking, I do not consider there to be alignment between the direction set out in the NPS-UD and the RPS. While, broadly, there are some similarities around the funding and delivery of infrastructure and the need for growth areas to be connected and integrated with the existing urban environment, the RPS strongly links in the importance of amenity/landscape and recreational values into its provisions related to urban expansion. In my view, the NPS-UD does not embed these same amenity and landscape value outcomes to any extent near that which is sought in the RPS. I have evaluated the relevant RPS provisions in more detail, further below.

Objectives and Policies of the NPS-UD

Objective 7: *Local authorities have robust and frequently updated information about their urban environments and use it to inform planning decisions.*

144. Clause 3.11 of the NPS-UD directs local authorities to use evidence, particularly any relevant HBAs, to assess the impacts of regulatory and non regulatory options for urban development. The HBA for Nelson indicates that there is sufficient development capacity provided in the current planning provisions to meet expected housing demand until at least 2039.

⁴⁴ Paragraph 96, Section 42a report by Ms. Sweetman.

Policy 1: *Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:*

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

*(i) meet the needs, in terms of type, price, and location, of different households;
and*

(ii) enable Māori to express their cultural traditions and norms; and

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

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

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

(e) support reductions in greenhouse gas emissions; and

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

145. The wording of Policy 1 sets out the requirements to meet a well-functioning urban environment *as a minimum*. These are not an exhaustive list by any means.

146. In terms of the listed matters, in my view PPC28 does not give effect to Policy 1(c) because in its current form it does not integrate the residential intensification with good accessibility for future residents between jobs, and community services. PPC28 has identified a road, walking and cycling tracks on the Structure Plan, however; the evidence of Mr. James highlights concerns on the practicality of achieving multi-modal transport outcomes. In my view, PPC28 has not successfully resolved how deficiencies in the transport network will be managed, resulting in ambiguity and uncertainty as to the coordination of the delivery of all transport infrastructure with the development. I have doubts around whether PPC28 will be mitigating its own effects.

147. As a minimum, I consider that in order to contribute to a well-functioning environment in order to successfully meet development capacity, a plan change site must be ‘infrastructure ready’.⁴⁵ The evidence of Mr. Suljic has highlighted that there are concerns related to the future stormwater management of the PPC28 development. As these matters are currently unresolved, in my view PPC28 is not

⁴⁵ Defined in Clause 3.4 of the NPS-UD

infrastructure ready and it has not been demonstrated that the zoning pattern proposed in the Structure Plan can be appropriately managed from a stormwater perspective.

148. Overall, PPC28 has not sufficiently demonstrated that it will meet the minimum requirements to contribute to a well-functioning urban environment.

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

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

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

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

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

(c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)

(d) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity

(e) the likely current and future effects of climate change.

149. In terms of Policy 6 relating to decisions that affect urban environments, I note that (a) and (b) will not apply, as the relevant RMA planning documents have not yet given effect to the NPS-UD. In terms of matter (c), I have addressed well-functioning urban environments above.

Objective 6: *Local authority decisions on urban development that affect urban environments are:*

(a) integrated with infrastructure planning and funding decisions; and

(b) strategic over the medium term and long term; and

(c) responsive, particularly in relation to proposals that would supply significant development capacity.

150. Under Part 3 of the NPS-UD, the definitions of “plan-enabled” and “infrastructure-ready” in Clause 3.4, are particularly relevant to considering Objective 6, as these relate to the provision of water, wastewater, stormwater and transport infrastructure by the council. These provisions link the zoning of land to the funding and provision of infrastructure.

151. Strategically, PPC28 is not plan enabled.⁴⁶ PPC28 is not “*infrastructure ready*” as there is no existing infrastructure within the plan change area and the site has not been earmarked for any funding in the LTP. In my view, PPC28 has not sufficiently demonstrated that it will coordinate urban growth with the delivery of stormwater and transport related infrastructure, as I have discussed above.

152. In light of the above, I conclude that PPC28 has not demonstrated that it will “give effect” to the NPS-UD.

National Policy Statement for Freshwater Management 2020

153. The National Policy Statement for Freshwater Management 2020 (‘NPS-FM’) sets out the objectives and policies for freshwater management under the RMA. It came into effect on 3 September 2020. The fundamental concept of the NPS-FM is Te Mana o te Wai. This is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community. It incorporates a hierarchy that prioritises first the health needs of water, then of people, then of wider economic uses. Policies 6 and 7 are particularly relevant:

Policy 6: *There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.*

Policy 7: *The loss of river extent and values is avoided to the extent practicable.*

154. As set out in my evidence above, there are likely to be additional streams, wetlands and waterways on the site that have not been identified or mapped on the Structure Plan. The lack of information around the locality and extents of earthworks leads to uncertainty as to whether adverse effects on all streams and wetlands will be avoided (where practicable). I consider that all these features should be identified on the

⁴⁶ Resulting from the decision of the Ombudsman (June 2022)

structure plan to ensure that the zones identified and the necessary works are appropriate within the context of the site constraints. The fate of additional streams and wetlands is impossible to deduce from the information presented to date.

155. In terms of effects on wetlands, there is currently insufficient information to determine whether PPC28 will align with Policy 6 and Clause 3.22 as it relates to wetlands.

156. The applicant has contended that detailed design for works around the wetlands would need to be provided and addressed at future resource consenting stages. While I can appreciate that this may be the case, I disagree that adequate information has been presented at this time to satisfactorily ensure that all wetlands on the site are sufficiently protected in line with the NPS-FM, and that the pattern of density that is shown on the Structure Plan is suitable with respect to the context of the wetlands on the site.

157. Referring to the evidence of Mr. Suljic, comprehensive bulk earthworks and geotechnical engineering of land have an effect on the impact of pre-existing hydrological conditions.⁴⁷ Alteration to the soil profile through compaction can lead to changes in soil infiltration which in turn can affect the recharge of wetlands. There is uncertainty on the impacts to the identified (and any relevant non-identified) wetlands and whether there is potential that these may be drained or partially drained, or the existing biodiversity values altered.

158. The NPS-FM also requires that the loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except in narrowly defined circumstances.⁴⁸ Those circumstances do not include urban development, and only include infrastructure where it is identified as regionally significant in a RPS (along with additional requirements). As such, I do not believe that development associated with PPC28 can have any effects on wetland extent or values.

159. With regards to effects on streams, the realignment of the Kākā Stream and the associated loss of river extent and values have not been adequately addressed in the application documents. The functional purpose of the realignment has been ambiguously presented in the request documents throughout the process, and it remains unclear as to its actual purpose.

160. I do note that the realignment would enable further useable land to increase the housing yield. Recently stated in the evidence of Mr. Lile, the Kākā Stream realignment is proposed for beneficial enhancement opportunities. Neither of these

⁴⁷ Para 27 Evidence of Mr. Suljic

⁴⁸ Clause 3.22 of NPS-FM

scenarios align with a functional purpose that would meet the intent of Clause 3.24(1) of the NPS-FM in my view. Further consideration should have been given to enhancing the existing stream channel, as appears to be alluded to in the evidence of Ms. Blakely. It appears that this existing channel would provide suitable enhancement opportunities as well.

161. These are too many uncertainties around the stream realignment, which is exacerbated by the absence of any authorisation from Council. The authorisation of PPC28 pre-emptively creates an inability to fully manage the potential significance of effects, and it is clearly discordant with the effects management hierarchy and the directive to avoid loss of stream values under the NPS-FM.

162. If PPC28 developments do come within an exception under Clause 3.22, then there is a requirement to apply the effects management hierarchy. This hierarchy, which applies to wetlands and rivers⁴⁹, requires:

(a) adverse effects are avoided where practicable; and

(b) where adverse effects cannot be avoided, they are minimised where practicable; and

(c) where adverse effects cannot be minimised, they are remedied where practicable; and

(d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; and

(e) if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; and

(f) if aquatic compensation is not appropriate, the activity itself is avoided.

163. At this stage, I have doubts that the PPC28 proposal in its current form is in accordance with the above hierarchy.

164. The popular swimming holes located adjacent to the PPC28 are significant recreation areas that are highly valued by the community. Maintaining high water quality for contact water in the Maitai River and swimming holes is essential to satisfy the NPS-FM requirements.

165. Appendix 3 of the NPS-FM targets water quality requirements. The specific categories for human contact attributes are based on water quality – particularly E. coli and cyanobacteria (planktonic), in tables 9 and 10 in Appendix 2A. Additional considerations include water clarity, and deposited sediment. At this stage, there has

⁴⁹ Clause 3.24 of NPS-FM

been no contaminant load modelling undertaken for stormwater discharges from the future development of PPC28. It is unforeseeable as to whether the pattern of density proposed under PPC28 is acceptable and will ensure that water quality of these downstream contact waters align with the national targets. On this basis, I cannot confirm that Policy 12, referenced below, will be achieved.

Policy 12: *The national target (as set out in Appendix 3) for water quality improvement is achieved.*

166. For similar reasons, PPC28 has not demonstrated that the wellbeing of the community through the ability of continued use of these highly valued recreational reserves and amenities, will be enabled in line with Policy 15 below.

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

167. For the reasons outlined above, PPC28 does not ‘give effect’ to the NPS-FM and does not uphold the concept of Te Mana o te Wai.

New Zealand Coastal Policy Statement (2010)

168. Pursuant to sections 74(1)(f) of the RMA, a plan change must give effect to the New Zealand Coastal Policy Statement (2010). The purpose of the NZCPS is to state policies in order to achieve the purpose of the Act in relation to the coastal environment of New Zealand.

169. In reference to the evidence of Mr. Lile which states that the JWS Planning (2) contains an agreement that the site is not within the coastal environment⁵⁰, I disagree with the accuracy of that statement, which signifies this as a matter resolved. The agreement at that particular point in the planning expert conferencing session (2) was that ‘the plan change area is not within the “Coastal Environment” as identified in the NRMP.’⁵¹ That statement is factually correct in terms of the PPC28 site and the NRMP mapped area.

170. The matter of the coastal environment was further discussed in the landscape expert conferencing session.⁵² In summary, there is disagreement between the experts regarding the delineation of the coastal environment within the NRMP maps. Ms. Steven noted that the current NRMP mapping excludes the first main ridge from the active coast, which she considers is part of the coastal environment in common practice. The other landscape experts did not agree with Ms. Steven on this point.

⁵⁰ Paragraph 131, evidence of Mr. Lile

⁵¹ Clause 3.14 JWS Planning (2)

⁵² Clause 3.2 Landscape (1)

Ms. Steven also noted that the backdrop area identified in the NRMP also did not align with the NRMP mapping.

171. The topic of the coastal environment was revisited in the final planning expert conferencing.⁵³ To elaborate, my position at that point had involved some research around the NZCPS and what constitutes the ‘coastal environment.’⁵⁴ My findings were that the extent and characteristics of the coastal environment was historically defined by case law, which predominantly aligned with it generally extending up to the dominant ridge behind the coast.⁵⁵ It is also clear that *‘the inland extent of the coastal environment is difficult to pinpoint through lines on a map, as there will be ‘grey areas’ and ‘blurred edges.’*⁵⁶

172. Based on my review of the NZCPS, and those points that were raised by Ms. Steven in the landscape expert conferencing, I considered that at that point in time (i.e., planning expert conferencing (3)), I did not have sufficient understanding to adopt any position on the inland extent of the coastal environment without viewing further evidence from the landscape experts, as it relied on concepts and assessments that are outside of my area of expertise. In particular, Policy 1(2)(f) recognises that the coastal environment includes *‘elements and features that contribute to the natural character, landscape, visual qualities or amenity values.’* Most of these attributes lie within the expertise of landscape experts.

173. The conclusion of those discussions in the planning expert conferencing is recorded in the JWS in the statement *‘reconciliation between these different documents will be the subject of evidence from Landscape experts.’*⁵⁷ To confirm, my position has never been that the ‘site is not within the coastal environment’ as stated by Mr. Lile. I remain open minded to the consideration that the seaward side of the Malvern Hills is part of the coastal environment. I also note, through my research, that the delineation of the landward extent of the coastal environment is challenging to pinpoint, and that the NRMP does contain some ambiguities in terms of definitions relating to the coastal environment.

174. Policy 3 of the NZCPS does seek that a precautionary approach is adopted towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse. I have noted that these areas within the PPC28 site are visible from the coastal areas. I have therefore applied a precautionary approach here, considering the extent of potential adverse effects

⁵³ Clause 3.15 JWS Planning (3)

⁵⁴ NZCPS 2010 Guidance note Policy 1: Extent and characteristics of the coastal environment

⁵⁵ Northland Regional Planning Authority v Whangarei County Council [1977]

⁵⁶ Stated in the NZCPS 2010 Guidance note Policy 1: Extent and characteristics of the coastal environment.

⁵⁷ Clause 3.15 JWS Planning (3)

derived from Ms. Steven. I consider the following provisions of the NZCPS may be relevant.

175. Objective 2 of the NZCPS seeks to preserve the natural character of the coastal environment and protect natural landscapes through identifying those areas where various forms of subdivision, use and development would be inappropriate and protecting them from such activities.

176. Policy 6 of the NZCPS relates to activities in the coastal environment with some relevant considerations in the subclauses below.

(f) consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable;

(h) consider how adverse visual impacts of development can be avoided in areas sensitive to such effects, such as headlands and prominent ridgelines, and as far as practicable and reasonable apply controls or conditions to avoid those effects;

177. Drawing from the evidence of Ms. Steven, there is potential for the degree of adverse visual effects on the seaward side of the Malvern Hills to be high. Accordingly, the PPC28 development has not avoided visual impacts in these sensitive areas. I recognise that the delineation of the ‘coastal environment’ is a contentious matter, and in any respect a high level of landscape character and visual effects is sought under the RPS provisions, regardless of whether the site is located within the ‘coastal environment.’

178. There are additional policies in the NZCPS of relevance to PPC28, including Policies 22 and 23, which respectively relate to ensuring adverse sedimentation and discharge of contaminants effects are avoided. There is also Policy 11, which relates to indigenous biodiversity in the coastal environment. These provisions are tightly linked to sediment management and stormwater management.

179. I have noted the proximity of the adjacent freshwater environments to that of the coastal receiving environment (i.e., Nelson Haven), however, in terms of sediment management and stormwater management, these are topics that have inadequate levels of information, and I cannot confirm whether these activities will contribute to contaminants entering the coastal environment. Consequently, I cannot confirm with any certainty that discharges from the site will align with these relevant provisions of the NZCPS.

180. Overall, I am unable to conclude with any certainty that PPC28 will ‘give effect’ to the NZCPS.

National environmental standards or regulations

181. Pursuant to sections 74(1)(f) of the RMA, a plan change must be “in accordance with” regulations, which includes any relevant national environmental standard. While I note that there are other relevant national environmental standards applicable to PPC28, the focus of my evidence is briefly on the NES-F.

National Environmental Standards for Freshwater (2020)

182. The National Environmental Standards for Freshwater (‘NES-F’) regulates activities that pose risks to the health of freshwater and freshwater ecosystems.

183. In the JWS Planning, all planners have agreed that the NES-F is relevant to PPC28 in the extent that it determines what consents will be required in future stages. As an example, earthworks to enable development within a 100m setback from a natural wetland that results in complete or partial drainage will require resource consent as a non-complying activity. Earthworks, or the taking, use, damming, diversion, or discharge of water within a natural wetland that result in drainage are prohibited.

184. I do not intend to comprehensively analyse the NES-F in my evidence. As a high level statement, based on the same matters of concern that I have raised under my assessment of the NPS-FM relating to streams, wetlands and rivers, I do have an overarching concern that these may pose complications or barriers in future consenting stages. I question whether development anticipated by PPC28, in its current form, could readily obtain consents under the NES-F regulations.

185. There is also a “flipside” to this issue. I am aware that Government is consulting on amendments to the NES-F regulations, and this includes enabling some forms of urban development to impact on natural wetlands where the development is “plan-enabled”. My concern is that rezoning PPC 28 may result in the site being “plan-enabled”. The policy intent is presumably that wetlands will have been identified at the planning stage, so areas will only be plan-enabled subject to having identified and protected all wetlands. However, wetlands have not been comprehensively identified in PPC28, so this policy intent is based on an incorrect assumption. As a result there may be a policy gap in wetland protection if PPC28 proceeds with rezoning without identifying and protecting wetlands.

Regional Policy Statement

186. Any plan change must ‘give effect’ to the Regional Policy Statement (75(3)(c) of the RMA).

187. The Nelson Regional Policy Statement (RPS) came into effect in 1997. A replacement combined plan and RPS is being prepared and was anticipated to be publicly notified

in early 2022, however Council have postponed this notification due to the Government's new legislation that is to come into effect later this year..

188. I have undertaken an assessment of some of the relevant objectives and policies of the RPS below.

Chapter DH1 urban expansion

Objective DH1.2 *To avoid, remedy or mitigate any adverse effects on the sustainable management of natural and physical resources including rural land uses.*

Policy DH1.3.1 *To identify areas having features or values of significance and to ensure that these features or values are appropriately protected. Areas identified will include those which:*

- i) have significant flora and fauna values;*
- ii) are subject to significant natural hazards;*
- iii) are recognised as being significant in terms of culture or heritage;*
- iv) have high natural amenity value;*
- v) have significant open space values such as greenbelt(s);*
- vi) make significant contribution to the natural character of the coastal environment, wetlands, rivers and their margins; and/or*
- vii) are outstanding natural features and landscapes. (emphasis added)*

189. The landscape experts have agreed that there are no outstanding natural features and landscapes on the PPC28 site. All landscape experts all agree that the Maitai River and its margins are a significant feature/landscape.⁵⁸ There are also wetlands and streams within the PPC28 site, potentially more that have not been identified on the Structure Plan and supporting documents. I note that the Structure Plan incorporates blue-green aspects to the identified streams and wetlands, but given that there is uncertainty whether more wetlands/streams exist on the site, I am unable to conclude whether these values have been 'appropriately protected.' I note that with respect to the coastal environment, Ms. Steven has determined that these values have not been 'appropriately protected'.⁵⁹

190. The recreational areas adjacent to the PPC28 site are considered to be highly valued by the community for its recreational and amenity values. For a number of reasons, I

⁵⁸ Landscape JWS, Section 3.3

⁵⁹ Para 34, 129 Evidence of Ms. Steven

am of the view that the appreciated values are not ‘*appropriately protected*.’ These reasons range from water quality and quantity effects on the downstream environments, visual amenity effects and the loss of the surrounding greenspace that is currently enabled through the existing baseline (with the degree of effects assessed by Ms. Steven as ranging from low in some areas, to high in other areas), non-visual amenity effects (inclusive of noise impacts).

191. In terms of Policy DH1.3.1(iv), the importance of the Maitai Valley greenbelt is reflected in the NRMP framework, where it is particularly referenced.⁶⁰ Ms. Steven has considered that proposed PPC28 would not retain the greenbelt function of the Malvern Hills ridgeline and the Maitai Valley. Ms Steven considers that ‘*the current clear transition between urban and rural and the proximity of visual open space and rural landscape (acknowledging there is no as-of-right physical public access on the Site at present) would be lost*.’⁶¹ In light of this, I consider that the greenbelt has not been ‘*appropriately protected*.’

Policy DH1.3.2 *To have regard to community expectations when determining the extent of urban expansion.*

192. This same policy has been assessed by Mr. Lile in the PPC28 request stating ‘*the community, through their input into the FDS, and the applicant through the comprehensive assessment and design process followed in the preparation of this PPCR, has given careful consideration to the above criteria*.’⁶² The 2019 FDS process did not follow a robust process, did not live up to community expectations, and did not transparently enable their input around urban expansion in the ‘Kākā Valley.’⁶³ There were only four submissions on the proposal in the 2019 FDS to provide for urban development in Kākā Valley, so it appears the community was not aware of the proposal. I do not consider it is appropriate to determine consistency with Policy DH1.3.2 based on the 2019 FDS.

193. The plan change request has also not included a ‘*comprehensive assessment and design process*.’ The plan change request has focused heavily on opinions that the existing and proposed provisions of the NRMP, offer acceptable environmental outcome that can primarily be evaluated and assessed through future consenting stages. The extent and scale of effects through PPC28 are not readily understood, further compounding the concerns of the community. Broadly speaking, the plan change process associated

⁶⁰ Policy DO15.1.3 *Adverse effects on existing rural character and amenity values should be avoided, remedied or mitigated in the Maitai Valley, between Bishopdale Saddle and Wakatu, and between Stoke and Richmond, in order to maintain a greenbelt between existing built up areas.*

⁶¹ Para 204, Evidence of Ms. Steven

⁶² Page 107 of S32 Report

⁶³ Refer to Appendix 1, Ombudsman decision on 2019 FDS.

with proposed urban expansion through PPC28, has also not aligned with community expectations.

194. Future consenting stages are proposed to be predominantly be non-notified. A local authority must publicly notify a proposed plan change if the standard Schedule 1 process is used. Community participation is therefore an integral part of the process and, in my view, the combination of limiting the information provided now to be addressed in future consenting stages (that are non-notified) undermines the plan change process. It does not robustly evaluate the anticipated effects from the change from the status quo (or permitted baseline) to the level of development that will arise from PPC28.
195. A total of 715 submissions were received during the notification of the PPC28 request. The s42a report prepared by Ms. Sweetman states that 628 of these submissions oppose the plan change in its entirety.⁶⁴ Additionally, over 13,000 people have signed a petition opposing the future development that will be enabled through PPC28, if authorised. This is indicative of community expectations with respect to urban expansion into this area.
196. In my view, the community has resoundingly indicated that they oppose this plan change and if authorised, the urban expansion to the PPC28 does not have “*regard to community expectations*”.

Policy DH1.3.3 *Where urban expansion is considered to have greater net benefit than intensification, to provide for the most appropriate form of urban expansion for Nelson. In determining what is most appropriate, to assess the costs and benefits of various options according to the following criteria:*

- i. energy efficiency in terms of location and structures;*
- ii. infrastructure costs including opportunity costs of existing infrastructure;*
- iii. natural or physical barriers to expansion;*
- iv. existence of incompatible rural activities such as quarries or smelly activities;*
- v. susceptibility to natural hazards;*
- vi. existence of sensitive uses such as land transport links, airports or ports;*
- vii. utilisation of the land resource for primary production purposes;*

⁶⁴ Paragraph 59, s42a report, prepared by Ms. Sweetman.

- viii. *proximity to existing facilities;*
- ix. *impacts on natural and conservation values associated with riparian and coastal margins, rivers and the coast;*
- x. *effects on internationally, nationally, or regionally significant natural features and landscapes;*
- xi. *effects on internationally, nationally, or regionally significant native vegetation and significant habitats of indigenous fauna;*
- xii. *effects on ancestral land, water sites, waahi tapu and other taonga of significance to tangata whenua;*
- xiii. *effects on heritage values of sites, buildings, places, and areas of regional, national, or international significance;*
- xiv. *effects on amenity values of international, national, or regional significance;*
- xv. *effects on recreation resources of international, national, or regional significance;*
- xvi. *effects on urban form and on the demarcation between urban and rural areas; and*
- xvii. *effects on availability of land resources for future generations. (emphasis added)*

197. Policy DH1.3.1 above requires a comparative assessment of the net benefits of urban expansion against intensification. I have assessed the listed criteria as follows.

198. The extent to which the request demonstrates viable options for funding and financing infrastructure required for the development is not clearly understood. I understand through Policy DO14.3.1 of the NRMP that if works are not included in the LTP then the developer is required to bear the costs for infrastructure upgrades. Mr Lile has made reference to this policy in his evidence, and I assume that the applicant therefore has committed to funding, where necessitated, but I have not seen evidence of this commitment.

199. The evidence of Ms. Steven has considered a number of the listed criteria within this policy. In the context of the policy above, PPC28 will broadly have some 'Moderate to High' effects on regionally significant natural features and landscapes (subclause x.). I have interpreted subclause xvi. and the 'demarcation between the urban and rural area' to be synonymous with the green belt that is specifically identified in

NRPM policy. Ms Steven has assessed that PPC28, if authorised, will result in the loss of the greenbelt.⁶⁵

200. The adjacent Maitai River and recreational areas are of regional significance in my opinion (subclause xv.). As I have referred to in my evidence elsewhere, I consider that the magnitude of effects on these regionally significant recreational resources has not been adequately addressed. This includes, but is not limited to, visual amenity and non visual amenity elements (also relevant to subclause xiv.). There are also unresolved matters relating to water quality and quantity effects, bearing in mind that these recreational areas are used by the community for swimming.
201. The authorisation of PPC28 will result in irreversible changes to the existing environment. The HBA prepared by Council has not indicated that there is a critical need for housing at this point in time. In my view, this has significant consequences in terms of limiting choices and availability of land for future generations (subclause xvii.). In the context of the potential adverse effects associated with the implementation of PPC28, I do not conclude the proposal to align with this policy.

Chapter NA2 Landscape Values and Natural Features

Objective NA2.2.1 *A landscape which preserves and enhances the character of the natural setting and in which significant natural features are protected. (my emphasis added)*

202. The relevant implementation Policies are as follows:

Policy NA2.3.1 *To preserve the natural landscape character and vegetation cover of the backdrop to Nelson City.*

Policy NA2.3.2 *To avoid development which detracts from the amenity afforded by dominant ridgelines.*

Policy NA2.3.3 *To avoid development which detracts from the landscape and amenity values afforded by viewshafts within the urban area and by gateways between urban and rural areas and between different landscape units.*

Policy NA2.3.4 *To encourage land use practices in rural areas which avoid, remedy, or mitigate impacts on landscape values.*

⁶⁵ Para 204, 216 Evidence of Ms. Steven

Policy NA2.3.8 To prevent any activity on or adjacent to any significant landscape or natural feature unless the adverse effects of that activity on the site or feature can be avoided, remedied, or mitigated. (my emphasis added).

203. The wording of these policies are strongly directive, such as “to avoid”, “to prevent”, and “to preserve”. The perception of change within a landscape is largely influenced by the visual sensitivity of the receiving environment to what is being proposed.

204. I have adopted the evidence of Ms. Steven, and consider the PPC28 site to be an important backdrop to Nelson City. The site contains amenity values that are afforded by its dominant ridgelines. Ms Steven identifies the PPC28 site to be a gateway between existing urban and rural areas. The site contains significant landscapes and features, including those encapsulated in the landscape overlays, the Maitai River and its margins, and the Kākā Valley environment itself. These elements identify the visual sensitivity of the receiving environment and provide a basis upon which to consider the policies of the NRMP.

205. The existing baseline for development of this PPC28 site is around 40 rural allotments. The PPC28 request, if authorised, will enable approximately 750 dwellings to be constructed across the site. As I have previously stated, the LVAUDA has relied on the development as being ‘anticipated’, which by my understanding, has appeared to lower the degree and magnitude of landscape and visual effects. I disagree that the development is ‘anticipated’ by any means.

206. In terms of dominant ridgelines, Ms. Steven has concluded in her assessment that visual amenity effects of the PPC28 development on the western Malvern Hills ridge would be adverse to a ‘High’ degree. Furthermore, *‘the development enabled by PPC28 would not preserve the natural character of the ridgeline and protect it from inappropriate subdivision use and development’ in respect of the coastal environment (seaward side of Malvern Hills ridge).*⁶⁶ In my opinion, PPC28 has not *‘avoided’* development which detracts from visual amenity that is afforded by these dominant ridgelines (NA2.3.2).

207. Ms Steven considers the lower Maitai Valley to be a gateway landscape, and further concludes that the *‘proposed urban expansion would detract from this landscape and would undermine its function as a gateway landscape.’*⁶⁷ PPC28 therefore has not *‘avoided’* development which detracts from this gateway between urban and rural areas (NA2.3.3).

208. The natural landscape character of the backdrop to Nelson City has not been *‘preserved.’* (NA2.3.1). Ms. Steven has considered that ‘all of the site’ has high amenity

⁶⁶ Para 34, Evidence of Ms. Steven

⁶⁷ Para 226, Evidence of Ms. Steven

values for a number of reasons, including for its visual and open space amenity. The urban expansion that is proposed in PPC28 is not compatible with the ‘preservation’ of the natural landscape character.

209. Policy NA2.3.8 seeks to prevent any activity on or adjacent to any significant landscape or natural feature unless the adverse effects of that activity on the site or feature can be avoided, remedied or mitigated. Drawing on the conclusions of the evidence of Ms. Steven, PPC28 has not demonstrated that such effects can be avoided, remedied or mitigated in its current form. The proposed bespoke Schedule X, along with the existing NRMP are not sufficiently robust to manage effects that are a Moderate – High degree.

210. In light of the strongly directive objectives and policies seeking a high threshold to achieve in relation to landscape values and natural features, I consider that PPC28 does not meet the overarching objective to ‘*preserve and maintain*’ the landscape character and natural features of the site and surrounds.

Chapter NA1 Amenity Values

Objective NA1.2.1 Preservation or enhancement of amenity and conservation values

211. The relevant implementation policies are as follows:

Policy NA1.3.2 To recognise and provide for the protection of those significant amenity and conservation attributes which Council has the power to protect and which contribute to a site being recognised as significant, where these attributes:

- i) are considered to be of high vulnerability to change;*
- ii) are subject to actual or potential threat of change; and*
- iii) are not subject to any other relevant form of protection. The degree of protection will be based on the relative importance of the site.*

Policy NA1.3.3 To avoid and as far as possible remedy or mitigate the conflicts between adjoining land uses including the provision of services and/or facilities. (my emphasis added)

212. For clarity, I consider the adjacent recreational resources along the Maitai River margins to be a particularly significant amenity/resource at a regional level. I consider these areas to be of a high vulnerability to change and are subject to an actual or potential threat of change arising from PPC28, if authorised. Urban expansion in this locality also has the potential to also create conflicts between existing adjoining rural land uses and the proposed urban-residential development.

213. The issues that are highlighted under NA1.1, which states that the '*amenity values include a wide variety of factors which have a pronounced influence on our quality of life*' and include views, peace and quiet, geological features and local landscapes, the natural character of the coast and rivers.
214. The amenity values that are appreciated by the community with regard to these recreational resources, include the current undeveloped nature of the surrounding vegetated hillsides within the PPC28 site. They include the ability to utilise recreational trails and enjoy water-related activities in the Maitai River and waterholes. The current tranquility of these recreational areas is also an appreciated amenity value, as are the low traffic numbers. Adjacent rural-residential properties also consider the existing visual and noise environment to be appreciated amenity values.
215. In terms of visual amenity effects, my views have been incorporated into other discussions in this evidence. The evidence of Ms. Stevens has concluded that the degree of adverse visual effect for users of the recreational areas would be low to high and would vary depending on viewpoint. For those rural-residential properties on Ralphine Way, Ms Steven has concluded that the degree of adverse visual amenity effect would be high.⁶⁸ On this basis, I consider that there is conflict between PPC28 being able to meet Objective NA1.2.1 and to 'preserve or enhance' visual amenity values.
216. In terms of '*peace and quiet*'⁶⁹, people living in the rural-residential properties in the vicinity, and also those users of the adjacent recreational areas, may experience adverse effects on their amenity from both construction and ongoing traffic noise (and potentially vibration effects) arising from the implementation of PPC28. There has been no assessment on noise (and potentially vibration) and how these will be addressed through construction phases, and ongoing traffic noise effects associated with the urbanisation of the area. Reverse sensitivity effects are another matter than can create 'conflicts between adjoining land uses' and this has not been addressed in any detail within plan change stage.
217. I have previously stated my views on the applicability of the existing NRMP framework to address noise, and I do not consider that the provisions are sufficiently robust to address the full extent of noise related matters, which may have the potential to impact on the health and amenity of persons.
218. In my opinion, PPC28 has not sufficiently demonstrated that significant amenity has been protected, particularly with regard to the adjacent recreational amenities (Policy NA1.3.2). Potential conflicts related to amenity matters have not been resolved

⁶⁸ Visual change table at para 162, visual effects table at para 210 Evidence of Ms. Steven

⁶⁹ Listed as an 'Issue' under NA1.1 (Amenity Values) of the RPS, page 57.

sufficiently between adjoining land uses (Policy NA1.3.3). Overall, I conclude that amenity values are not ‘preserved or maintained’ for the reasons outlined above.

Chapter IN2 Infrastructure

Objective IN2.2.1 *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.*

Policy IN2.3.1 *To promote the development of transportation systems which:*

- i) meet community needs for accessibility;*
- ii) use energy-efficiently;*
- iii) discourage dispersed development;*
- iv) avoid or reduce or adverse effects on human health, water, soil, air and ecosystems;*
- v) are consistent with the provisions of Part II of the Act and the New Zealand Coastal Policy Statement*

219. PPC28, in its current format, does not meet the community needs for accessibility as the request has not satisfactorily demonstrated that multi-modal transportation can be achieved. As alluded to in my evidence previously there is uncertainty in the wider transport deficiencies that may be exacerbated by the increases in transportation arising from PPC28. The evidence of Mr. James has also identified concerns around PPC28 achieving multi-modal transportation in the context of practicalities of a number of deficiencies in the transportation network.

220. I am not convinced that PPC28 has committed to the extent of mitigation that may be necessitated by the development. An ITA should be prepared at this plan change stage to meet the scope and specificity needed to address all transport deficiencies, to ensure that multi-modal transportation is achieved, and to ensure an overall safe and efficient transport network.

WA1 quality of natural waters

Objective WA1.2.1 *The maintenance and enhancement of the quality of inland water to protect the life supporting capacity of aquatic ecosystems and in specific areas, for urban water supply.*

***Policy WA1.3.2** To minimise the volume of contaminant entering water from non-point sources, including sediment, chemicals, refuse and debris.*

***Policy WA1.3.5** To manage riparian and coastal margins in such a way as to enhance or maintain water quality.*

***Policy WA1.3.6** To recognise and, where possible, reduce, adverse effects on water quality resulting from contaminated stormwater.*

221. In my view, PPC28 has not demonstrated that it will maintain or enhance the quality of inland water to protect in stream bioata. The effects associated with earthworks and sediment runoff have not been addressed in any detail at this point. The potential effects on downstream waterways arising from the works associated with the floodplain modifications and the stream realignment are also not yet clearly identified.

222. Mr. Suljic has concluded in his evidence that there is a high likelihood that the stormwater management framework proposed and relied upon by PPC28 is not adequate to protect the environmental values of the immediate and downstream receiving environments. Accordingly, there is risk that the quality of inland water will not be ‘maintained and enhanced.’

Conclusion on RPS

223. In conclusion, based on the current form of the proposal, I consider that PPC28 does not ‘give effect’ to the RPS due to the reasons I have expressed above in my assessment.

Regional Plan and District Plan (Nelson Resource Management Plan)

224. Section 75(4)(b) of the RMA requires that a district plan must not be inconsistent with a regional plan. Section 75(1)(b) and Section 32(1)(b) state that policies and methods should implement that plans objectives and policies and be the most appropriate way of achieving the objectives. The NRMP is a combined regional and district plan that become operative in 2004. The Freshwater Plan became operative in July 2007.

225. For the purpose of brevity, and to avoid repetition in my evidence, I simply provide a summary of a key objectives in the NRMP framework relating to peripheral urban expansion, and a policy specifically related to the Maitai Valley greenbelt.

226. Peripheral urban expansion is considered under the NRMP. I have included this as it is of particular relevance to PPC28.

Objective DO15.1 *An urban form in which intensive development is not detached from existing urban boundaries and which avoids or mitigates adverse effects on ecological, recreational, cultural, community and amenity values.*

227. This Policy and explanation that follows under Do15.i highlights concerns that have been raised in submissions around the urban expansion proposed. It particularly highlights that a consequential adverse effect associated with urban expansion is that it can diminish the ecological values, recreational and amenity values of the district, which are all significant topics of discussion in my evidence. I consider that all these matters are currently unresolved, and if unmanaged may have the potential to result in significant adverse effects.

228. I consider it appropriate to address Policy D015.1.3 in my evidence, as this relates to the Maitai Valley greenbelt.

Policy DO15.1.3 *Adverse effects on existing rural character and amenity values should be avoided, remedied or mitigated in the Maitai Valley, between Bishopdale Saddle and Wakatu, and between Stoke and Richmond, in order to maintain a greenbelt between existing built up areas.*

229. This policy contains flexibility as to the manner in which it is achieved (avoid, remedy or mitigate), but is directive in terms of its outcome (maintain a greenbelt). This is one of the few NRMP provisions that relates specifically to the Maitai Valley rather than to the resources and places of Nelson more generally. For those reasons I consider it should be given significant weight. As I have previously outlined, Ms. Steven has considered that PPC28 will result in a loss of the greenbelt. In my view, PPC28 is contrary to this policy.

Section 32

230. In my view, the objectives of the request (in this case, the stated purpose of the request and the proposed new objective RE6) are not the most appropriate way to achieve the purpose of the RMA. The provisions in the plan change are not the most appropriate way to achieve the objectives of the NRMP and the purpose of the request.

231. Adequate levels of information is critical for Section 32 evaluations, and importantly, evidence-based analysis should be able to demonstrate relationships between the issues, objectives and policies that are proposed in a plan change. This avoids policy being developed on assumptions that may not be reliable or achievable. Overall, I consider that the level of information that has been provided in the PPC28 application is inadequate.

Part 2 Matters

232. Under s74(1)(b), any changes to the District Plan must be in accordance with the provisions of Part 2 of the RMA. This sets out the purpose of the RMA (s5), matters of national importance that must be recognised and provided for (s6) and other matters that particular regard is to be had to (s7).

233. The following matter of national importance under s6 of the RMA is particularly relevant to PPC28:

(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;

234. There is insufficient information to conclude that the proposal will preserve the natural character of wetlands and rivers and their margins. From a multidisciplinary approach, there are particular concerns relating to the identification of all wetlands and streams on the PPC28 site, the effects associated with the proposed stream realignment and floodplain modification works (at the point of impact and downstream), earthworks management, and stormwater management effects. These effects potentially extend to the 'coastal environment' if the Panel are of the view that the seaward facing side of Malvern Hill does form part of the coastal environment.

235. In terms of other matters that shall be had regard to under s7 of the RMA, I consider the following to be relevant:

(c) the maintenance and enhancement of amenity values:

(d) intrinsic values of ecosystems:

(f) maintenance and enhancement of the quality of the environment:

236. The overall amenity values, inclusive of visual amenity elements, non-visual amenity factors, and recreational attributes, are not 'maintained and enhanced' through PPC28. Assessments that have been undertaken above, have concluded this.

237. Based on an inadequate level of information around wetlands, streams, and rivers, I am unable to confirm that the intrinsic values of ecosystems and their constituent parts, are safeguarded. PPC28 has not sufficiently demonstrated that the proposal will maintain and enhance the overall quality of the environment.

238. To conclude, at this point in time I am unable to confidently conclude that the extent to which the proposed objectives of the PPC28, are the most appropriate way to achieve the purpose of the RMA. Based on its current form, there are elements of PPC28 where I consider that there is a high likelihood that they will not achieve the purpose of the Act, as I have identified above.

ISSUES RAISED IN S42A RECOMMENDATION REPORT

239. I have reviewed the section 42A report and overall, I understand the position of Ms. Sweetman and the concerns raised regarding the lack of information to assess in the PPC28 documentation.

240. There are areas within the section 42A report that I disagree with, however; given that my evidence has been based on new information submitted in the applicant's evidence, I have instead provided a comprehensive evaluation of my own views, in my evidence above.

ISSUES RAISED IN APPLICANT'S EVIDENCE

241. I have reviewed the Applicant's evidence and overall, I do not agree with the conclusions by Mr. Lile, the reasons for which are generally outlined in my assessment above. In some of the relevant topics, there are clear conflicting positions in terms of information requirements and assessments of effects/statutory framework.

242. As an overall statement, there are a range of matters in which I consider the information presented to date to be insufficient to support a plan change. In reaching that view, I am aware that further information will be required for subsequent resource consent processes. However, I agree with Ms Sweetman that the Panel needs to be assured that the rezoning is appropriate for urban development, and that the resultant effects are able to be accommodated in the sensitive environment in which the rezoning is proposed.⁷⁰

RECOMMENDATION AND CONDITIONS

243. I consider that PPC28 should be declined for the reasons set out in my assessment above.

CONCLUSION

244. Overall, I am of the view that insufficient information has been provided with the request to determine the overall effects. I note that the plan change request has been submitted with a purpose of providing for residential land to meet demands in the short, medium and long term for the benefit of both Nelson and Tasman. The 'critical' need for housing that has been expressed in the PPC28 request is not mirrored in the HBA in my opinion, with sufficient housing able to be supplied through the existing planning framework until 2039.

⁷⁰ Para 7 s 42A Report by Ms. Sweetman

245. The potential adverse effects of the plan change may possibly outweigh any benefits that could be deducted from the residential housing supply and any potential contribution to competitive markets through PPC28. There is insufficient information presented to understand the full extent of environmental effects, noting that the PPC28 site and surrounds is a sensitive receiving environment, with challenging topography constraints. A number of concerns are raised in my evidence above, with regard to potential environmental effects.
246. I have undertaken a full statutory evaluation above and based on the information that has been provided to date I have concluded that elements of the plan change in its current form have not satisfactorily demonstrated that PPC28 will 'give effect' to the NPS-UD, the NPS-FM, the NZCPS, the NES-F and the RPS.
247. Adequate levels of information is critical for Section 32 evaluations, and importantly, evidence-based analysis should be able to demonstrate relationships between the issues, objectives and policies that are proposed in a plan change. This avoids policy being developed on assumptions, that may not be reliable or achievable. I conclude that the objectives of the request (in this case, the stated purpose of the request and the proposed new objective RE6) are not the most appropriate way to achieve the purpose of the RMA. The provisions in the plan change are not the most appropriate way to achieve the objectives of the NRMP and the purpose of the request.
248. There is insufficient information to conclude at this point in time that PPC28 achieves the purpose of the RMA. Based on its current form, there are elements of PPC28 where there is a high likelihood that they will not achieve the purpose of the Act (such as the stream realignment).

Kelly McCabe, Senior Planner

27 June 2022

APPENDIX 1 – DECISION FROM OMBUDSMAN ON 2019 FDS – JUNE 2022