

**BEFORE A HEARING PANEL CONSTITUTED BY  
NELSON CITY COUNCIL**

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*IN THE MATTER*

of an application by CCKV Maitahi Development Co LP and Bayview Nelson Limited for a plan change to the Nelson Resource Management Plan (Plan Change 28)

*IN THE MATTER*

of Part 5 and Schedule 1 of the Resource Management Act 1991

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**LEGAL SUBMISSIONS FOR THE APPLICANT**

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## Section 1 – Electronic Folder

- [1] The Applicant has prepared an electronic folder that is filed with these submissions as foreshadowed in the Applicant’s memorandum dated 22 June 2022. The evidence and joint witness statements are organised according to expert discipline.
- [2] The Applicant will provide at the hearing hard copies of the plans forming part of the proposed PPC 28 provisions and key supporting visuals of Mr Milne as part of a ‘Graphics Bundle’ for the Panel and witnesses. The Google Earth model will also be available to obtain 3-D viewing.
- [3] The Electronic Bundle includes these submissions and Mr Lile’s evidence and rebuttal evidence with hyperlinking. Hyperlinking is indicated by underlining but can also be seen in any PDF reader where there are settings to highlight links. The index for those materials is also hyperlinked.

## Section 2 – Introduction

### *Counsel’s background*

- [4] My name is John Maassen. I am a barrister residing in both Wellington and Auckland. I have over 35 years of experience as a specialist in local government, public law and resource management. I am also a certified chairperson under the Ministry for the Environment Commissioner Programme having also led the first eight years of Commissioner training as part of the central region training team.<sup>1</sup>
- [5] I work extensively in the top of the South Island. I am lead counsel for the Marlborough District for Marlborough District Council including managing Environment Court appeals on the 2<sup>nd</sup> generation Proposed Marlborough Environmental Plan. Since 2016, I have undertaken legal work for the infrastructure arm of the Nelson City Council (NCC) concerning the re-consenting of City water supply consents for the Maitai dam in the Maitahi catchment as well as abstractions from the Roding River that forms part of the Waimea catchment administered by Nelson City and

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<sup>1</sup> [www.johnmaassen.com](http://www.johnmaassen.com)

Tasman District in a split catchment management regime. I am also contracted as lead counsel for the infrastructure arm of NCC concerning the consenting of the wastewater treatment plant near Nelson Haven that has a sea outfall in Tasman Bay. In 2006 I also acted as Hearing Commissioner on PC06/01 to the NRMP, being from Catal Developments Limited as resulting in *Schedule N* 'Large Format Retailing' being added to the Industrial Zone chapter. Consequently, I am familiar with Nelson City, its major catchments, the City's planning history and environmental context. That has enabled me to assist with the development of PPC 28 from a legal perspective.

- [6] In this matter I am representing CCKV Maitai Dev Co LP and Bayview Nelson Limited that comprise several owners as 'shareholders'<sup>2</sup> in two private entities collectively referred to as the as the '**Maitahi/Bayview Consortium**' or just the '**Applicant**'.
- [7] The Maitahi/Bayview Consortium represents a collection of individuals with a long history of successful development in both the Nelson and Tasman regions. The individuals behind the Applicant have played a major role in releasing land for residential use in the Nelson and Tasman regions and have developed hundreds of residential land units using a variety of conventional and special housing tools created by central government over the last decade.
- [8] Additionally, Ngāti Koata, an iwi with manawhenua status and Statutory Acknowledgements incorporating the PPC 28 site have an interest in the Maitahi/Bayview Consortium. Ngāti Koata has extensive forestry (~4000-hectares) holdings in the Maitahi Catchment as part of its *post-Tiriti* settlement, which adjoins the Site on the western side, sharing the boundary with Kākā Hill.
- [9] The Maitahi/Bayview Consortium has also committed to gift to Ngāti Koata culturally significant whenua at Kākā Hill within the Site for

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<sup>2</sup> The limited partnership of CCKV in fact comprises partners not shareholders.

administration to sustain and enhance that distinctive Whakatū maunga according to mātauranga Maori and Ngāti Koata tikanga.

- [10] The land affected by PPC 28 encompasses land titles in the Kākā Valley<sup>3</sup> and land on the Botanical and Malvern Hills<sup>4</sup> (“the Site”). Those cadastral divisions broadly mirror the two key landscape components and catchments of the Site. They also match the two landholding groups within the Maitahi/Bayview Consortium.

*Scope of legal submissions and evidence*

- [11] These submissions and the Applicant’s evidence are in support of the application (the **Application**) by the Applicant dated 24 August 2021 to NCC pursuant to the Resource Management Act, Schedule 1, clause 21 that seeks to change the Nelson Resource Management Plan (**NRMP**). The Application is called Plan Change 28 (**PPC 28**).

- [12] For the purpose of these submissions the Application means the notified changes to the NRMP as *modified* by the Applicant. For version referencing the Applicant uses the following nomenclature:

- (a) NV – PPC 28 = the notified version;
- (b) ‘Schedule X (V3, 7 July 2022)’ = relevant iteration of Applicant’s proposed version of the PPC 28 provisions.

- [13] The Applicant’s offered changes to NV – PPC 28 are informed by the ambulatory assessment of opportunities and constraints by the Applicant’s expert team during:

- (a) The Schedule 1 process and submissions;
- (b) The expert witness conferencing directed by the Panel; and

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<sup>3</sup> Part Sec 11 District of Brook Street & Maitai and Part Sec 8 Square 23, described within Record of Title NL11A/1012.

<sup>4</sup> Lot 504 Deposited Plan 564198 described within Record of Title 1005535; and Sections 26-27 Square 23 and Part Section 29 Square 23 and Part Section 58 Suburban North District and Part Section 59-60, 62-64 Suburban North District and Lot 2 DP564514, described within Record of Title 1039028.

(c) The evidence exchange process.

[14] The Site affected by PPC 28 is approximately 287 ha and is located east of Nelson City, with the Kākā Valley component approximately 2.5 km from the Nelson City centre via Nile Street East, Maitai Valley Road and Ralphine Way.

*Witnesses for Applicant*

[15] The evidence in support of PPC 28 for the Applicant at this hearing is by:

Applicant representatives

- (a) Andrew Spittal – Maitahi/Bayview Consortium representative.
- (b) Hemi Toia – Chief Executive at Koata Ltd and appearing in Ngāti Koata’s capacity as a Matahi/Bayview Consortium representative.

Part 2 – Expert witnesses

- (a) Tony Milne – landscape and natural character, structure plan and landscape overlay.
- (b) Hugh Nicholson – urban design and structure plan.
- (c) Michael Parsonson<sup>5</sup> – erosion and sediment control.
- (d) Robert Greenaway – recreation.
- (e) Robin Miller – heritage.
- (f) Amanda Young – archaeology.
- (g) Gary Clark – transportation.
- (h) Ben Robertson – terrestrial ecology and revegetation overlay.
- (i) Joshua Markham – freshwater ecology.

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<sup>5</sup> Michael Parsonson will be indisposed on Wednesday 3 July 2022.

- (j) Stuart Farrant – freshwater management and sensitive water design.
- (k) Damian Velluppillai – flood hazard and management.
- (l) Maurice Mills – engineering, infrastructure and stormwater management. Behind Maurice is a larger Tonkin + Taylor team he leads, some of whom may also be available to answer questions.
- (m) Mark Lile – strategic policy and planning.

[16] The arrangement of witnesses in the groups above means the Applicant will first present witnesses for the Applicant and then the order of expert witnesses is loosely based on the following format. Firstly, those crucial to the opportunities and constraints analysis following the directions of Part 2. These witnesses are then followed by the ‘implementation’ witnesses with an engineering bias. Following that are the witnesses that inform the assessment under RMA, s 32 that support the opportunities and constraints analysis and inform the choice of appropriate objectives, policies and methods under RMA, s 32. However, due to availability constraints, this approach to the order of expert witnesses is not strictly followed. Finally, Mr Lile will present his strategic planning analysis.

[17] Some of the Applicant’s relevant witnesses have provided reports that support the Application in Section C – Technical Assessments of the Application.

[18] The Applicant’s approach was to avoid witnesses in their evidence repeating the contents of reports. Rather, they addressed additional or new matters arising from s 42A reports from NCC and outstanding matters from the expert conferencing process.

[19] The evidence will be taken as read in accordance with the Panel’s directions. However, where appropriate the witnesses will make a short statement updating the Panel as to where the ‘matching’ experts are at in their assessments so that the Panel understands what remains in contention. Mr Spittal will be available to answer questions. Mr Milne and



Mr Nicholson may take slightly longer to present because it will be useful to go through their graphical material.

*Manawhenua engagement*

- [20] Aneika Young (formerly from Te Aranga Environment Consultancy) along with Mark Lile and Ngāti Koata facilitated early iwi consultation/engagement and prepared an iwi engagement summary to establish compliance with RMA, Schedule 1, clause 1A, clause 26A (concerning Mana Whakahono ā Rohe) and clause 3B that reads:

**3B Consultation with iwi authorities**

*For the purposes of [clause 3\(1\)\(d\)](#), a local authority is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under [section 35A](#), if the local authority—*

- (a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and*
- (b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and*
- (c) consults with those iwi authorities; and*
- (d) enables those iwi authorities to identify resource management issues of concern to them; and*
- (e) indicates how those issues have been or are to be addressed.*

- [21] The Applicant has fully engaged with eight Te Tau Ihu iwi in the plan development process and PPC 28 enjoys the support in the form of submission of five of these iwi who participated in the consultation process.

- [22] The Panel has a recent letter of 18 March 2022 from Te Ātiawa o Te Waka-a-Māui Trust to Hemi Toia confirming Te Ātiawa supports PPC 28.

*Information Standards*

- [23] In preparing the Application the information standard that the Applicant must meet is in RMA Schedule 1, clause 22(2).
- [24] That clause requires experts to have a somewhat different approach to their environmental risk analysis compared with an RMA, Schedule 4 assessment. The experts require a good understanding of the planning machinery that is within PPC 28 and how those tools operate applying the scheme of the RMA. That knowledge is essential to judging information sufficiency and assessing the right time and place to address or manage effects.
- [25] Through the Schedule 1 process, where additional information is required (in addition to already satisfied requests for additional information before the Application was notified), that information has been supplied with the Applicant's evidence.
- [26] Notably, the Applicant has supplied with its evidence:
- (a) More detailed evidence concerning flood water modelling based on reasonable development parameters for the Kākā Valley through the evidence of Damian Vellupillai.
  - (b) Mr Mills has supplied a stormwater management plan (SMP) dated 15 June 2022 containing four appendices using a multi-disciplinary team.
  - (c) Tony Milne has provided:
    - (i) A natural character assessment.
    - (ii) Graphic attachments EV14(2).
    - (iii) EV14(4) showing the elements of the Structure Plan using a Google Earth model. An updated version is also provided with Mr Milne's rebuttal evidence.

- [27] A legal analysis dated 14 June 2022 supplied with the Applicant's evidence includes an analysis of the information requirements of the RMA with a particular eye to differences between the Applicant and NCC on information requirements arising from some assessments by NCC sub-disciplines affecting the freshwater topic.
- [28] The Applicant's approach after providing additional information where appropriate is to rely on refinements to the planning machinery in PPC 28 to ensure appropriate resource management outcomes are achieved.
- [29] NCC's witnesses in rebuttal have identified much smaller information gaps than in their s 42A report. In some cases the NCC witnesses have missed material in the Applicant's evidence. That is pointed out where appropriate in the Applicant's rebuttal evidence.
- [30] In the rebuttal evidence Mr Nicholson produces a notional Master Plan to further assist the Panel and experts to conceptualise a layout for the development of the Site. It is for illustrative purposes only as a non-fanciful implementation of PPC 28.

## Section 2 – Background

### *European history of the site*

- [31] The European history of the site and its association with the Richardson family is set out in the Historical and Archaeological Assessment dated 17 December 2020 which is Item C2, 2 Volume C of the Application. This history was further refined through the expertise of Mr Robin Miller, as attached to the Heritage JWS of 16 May 2022, and again in Mr Millers rebuttal evidence.
- [32] A more recent (20th Century) history of the Site can be found in the instructive submission on PPC 28 of Mr and Mrs Harley (S422.001) who are shareholders of Bayview Nelson Limited. Mr Harley is a tax lawyer in Wellington and his father was a well-known solicitor in the eponymous legal firm Glasgow & Harley, in Halifax Street, Nelson.

- [33] Mr Lile has also provided some explanation of the Maitai Farm Limited subdivision undertaken in 1979 and resulting in the creation of the Maitai Cricket Ground, river reserve and Ralphine Way subdivision. Despite the underlying Rural-Higher Density Small Holdings zoning, the development potential of the Site evidently has gestated for some time.

*Housing needs without Council-led planning solutions*

- [34] Nelson's residential housing market is broken. Land and capital values are at unsustainable multiples of income which is not high in the first home buyer cohort in the Nelson Region. This situation preferentially benefits older generations and presents significant barriers to entry. The demand for single housing residential units has mainly been met in the last five years through development in the Tasman district. For example, NCC has averaged consents for 106 land units during the period of 2020/2021 whereas Tasman District is over 348.<sup>6</sup> To sustain the vibrancy of Nelson CBD development around and near Nelson's urban fabric is essential.
- [35] For these reasons, the present Council early in its triennium identified housing affordability as a key priority.<sup>7</sup> Despite that, very few 'runs on the board' have been achieved by meaningful changes to the NRMP to address the situation. That is true even on the Council's main initiative of enabling intensification.
- [36] The Maitahi/Bayview Consortium considered the option to promote the Site for residential development through the much vaunted 2nd generation Nelson Plan process. However, it became apparent for a range of reasons that such a plan would not be notified any time soon. The Council has deferred notifying a 2nd generation plan, despite its review obligations under the RMA, in the face of a 'running maul' of multiple law and planning instrument changes. That includes, of course, serial national policy on freshwater management and latterly the prospect of cross-district planning

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<sup>6</sup> NPS on UD Nelson-Tasman Joint Monitoring Report June 2021

<sup>7</sup> [Shape Nelson - Housing affordability and intensification](#)

through combined plans. Maxine Day at NCC has supplied a short note on the Council's strategic planning workstream.<sup>8</sup>

*PPC 28 as an area-specific planning tool that can be bolted on to a 2nd Generation Nelson Plan*

- [37] The Maitahi/Bayview Consortium lodged PPC 28 recognising that the Site required a supplementary planning framework that responded to the distinctive features of the Site using the established scheduling technique.
- [38] The proposed area-specific regime in PPC 28 can easily be transposed to a 2nd generation plan, when it arrives, using Part 3 – Area Specific Matters for “Precincts (Multi-zone)” following the structure of the National Planning Standards (November 2019).
- [39] The NRMP residential scheduling tool has a family resemblance to the AUP precinct tool.

#### **Section 4 – the Structure of the NRMP**

- [40] The NRMP comprises four volumes as follows:
  - (a) Volume 1 contains six chapters including details about the administration of (and how to use) the plan, resource management issues and district-wide land, freshwater and coastal objectives and policies.
  - (b) Volume 2 contains the zone provisions for the eight zones as well as the bespoke schedules for each zone. That includes the residential zone provisions (Chapter 7) referenced as “REd”. The NRMP includes the Marsden Valley scheduled area (Schedule I at RE4) with supplementary planning plan provisions for the Marsden Valley plateau and hills. That schedule provided a template for proposed Schedule X in PPC 28 but the latter is noticeably more comprehensive. Volume 2 also contains the provisions for the Regional Coastal Plan.

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<sup>8</sup> Maxine Day, s42a Addendum Evidence - Memorandum on Nelson Plan Programme dated 27 June 2022.

(c) Volume 3 contains the appendices (including Appendix 28 containing the freshwater plan rules).

(d) The planning maps are contained in Volume 4.

[41] In Volume 1 at AB5 the plan records that it is a combined plan. AB5.2 states:

*“AB5.2 The Plan includes (as at the date of notification) planning material on:*

*a) all district council functions*

*b) some regional council functions:*

*i) the Coastal Marine Area*

*ii) soil erosion and sedimentation*

*iii) freshwater environments”.*

[42] NRMP Volume 1 at pages 3-2 summarises the nature of policy (as distinct from an objective) as follows:

*“A ‘policy’ is what needs to be done to attain an objective. Several policies may be related to one objective. Policies generally:*

*a) focus on the effect to be managed in order to attain the objective*

*b) state how the effect is to be managed*

*c) provide guidance for deciding resource consent applications”.*

[43] The NRMP at page 3-6 expressly provides for assessment criteria in a manner consistent with the treatment of assessment criteria in *Sustain Our Sounds v. New Zealand King Salmon Company Limited*<sup>9</sup>. The relevant text of the NRMP states:

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<sup>9</sup> *Sustain Our Sounds v. New Zealand King Salmon Company Limited* 1 NZLR 673 at [38] and [41].

*“Assessment criteria are to be used in the consideration of whether or not to grant resource consents and the imposition of conditions. The list of assessment criteria is not exhaustive. The Council must take into account all of the matters mentioned in section 104 of the Act. Assessment criteria are ‘other provisions’ within section 104(1)(d) and have no priority over the other matters mentioned in the section, which include the effects on the environment, objectives and policies. Assessment criteria are provided as a guide to applicants and decision makers as to what practical matters will generally be considered. They do not restrict the Council’s discretion”.*

- [44] Information requirements for subdivision applications are set out in AD8.3.
- [45] In Volume 1 AD10.2iii, page 3-7 the NRMP references the Nelson Tasman Land Development Manual 2019. The revised version was issued on 16 November 2020.<sup>10</sup>
- [46] The NRMP identifies the relevant overlays at AD11.3 at pages 3-21 onwards and relevantly for the Site, is within the following overlays:
  - (a) Flood overlay (in part);
  - (b) Landscape overlay (in part); and
  - (c) Service overlay (entirely).
- [47] The function of the Service Overlay is fully explained in the Application and s 32 report and is also addressed at AD11.3.3, page 3-25 of Volume 1 of the NRMP.
- [48] AD11.4A expressly provides for structure plans as a tool and describes it in this way:

*“**AD11.4Ai** Structure Plans are used to achieve the integrated management of the effects of developing larger areas of land, often held in multiple ownership, particularly in an urban or urban fringe context. A Structure Plan provides an overall*

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<sup>10</sup> <http://www.nelson.govt.nz/environment/nelson-resource-management-plan/nelson-resource-management-plan-2/view-the-nrmp/nelson-tasman-land-development-manual/>

*plan to guide integration of those elements that will achieve a quality urban environment (i.e. streets, walkway/cycleway connections, open space and natural values, character and activities). These elements may also exist in areas of Rural zoning where they link more urban neighbourhoods or are adjacent to urban areas. Requiring that development proceed in general accordance with the Structure Plan will ensure that individual landowners incrementally work in a co-ordinated and orderly way towards a planned and sustainable urban environment.*

**AD11.4A.ii** *The Structure Plans are located either within Scheduled Sites for various locations and zones throughout the district, for example in the Residential and Rural Zone rules (Chapters 7 and 12), and/or in the planning maps contained in Volume 4 of the Plan. Structure Plans incorporated in the Nelson Resource Management Plan have the effect of a rule and must be complied with to the extent specified in the relevant rule”.*

[49] The Plan anticipates certain content for structure plans by AD11.4A.ix as follows:

**“AD11.4A.v** *Other information that may be shown on the Structure Plans includes the items below. Sections AD11.4A.v - AD11.4A.ix provide the definition and intent of these items:*

- a) *Indicative Roads: The purpose of indicative roads on Structure Plans is to achieve good integration between land use and transport outcomes, having regard to the intensity of development and providing a choice in transport routes where appropriate. They are also used to ensure road linkage between different physical areas or catchments (e.g. valleys) which will enhance transportation outcomes, contact between communities, access to key commercial services, amenities and community facilities, and improve the quality of the urban*



*environment. They do not show the full reading network required to service any future development of the area. The indicative roads may potentially arise in a wider context than merely the Structure Plan area.*

- b) Walkways: The purpose of the walkways on Structure Plans (these can also be cycleways where the terrain is suitable) is to promote recreational opportunity through off-road linkages within and surrounding the urban area, to provide for choice in transport modes, and to promote the safe and efficient movement of people and vehicles by resolving potential tensions between pedestrians, cyclists and motor vehicles.*
- c) Biodiversity Corridors: The purpose of Biodiversity Corridors is to contribute to natural values within, through, and beyond the urban environment, and assist where appropriate in meeting the open space, recreational, riparian, low impact storm water management, landscape setting and amenity objectives of quality urban design. In addition Biodiversity Corridors recognise and help preserve the cultural significance of water, native vegetation and native aquatic flora and fauna to Maori. Where these objectives can be met in proximity to a water way identified in the Plan, the Biodiversity Corridor will wherever practicable include any existing Riparian Overlay. 'Biodiversity Corridor' is defined in Chapter 2 of the Plan.*
- d) Greenspace: The purpose of 'greenspace' is to offset the surrounding residential development and ensure an open space, or vegetated network is created which is integral to the community in the area. 'Greenspace' and Biodiversity Corridors can exist together as they will often achieve compatible goals. In private ownership the ongoing maintenance is the responsibility of the developer and/or final owner, and the methodology for future management of these areas will need to form part of any subdivision proposal under which they are created. Council may purchase some, or all, of this land for reserves purposes. 'Greenspace' is defined in Chapter 2 of the Plan".*

[50] Following these provisions are general objectives and policies on diverse matters as urban design, provision of diversity of housing typologies and management of landscape features. All of these have constraining force in the assessment of activities in proposed Schedule X because those objectives and policies are *relevant* within the meaning of RMA, s 104(1)(b) when resource consents are required.

[51] Volume 2 has specific rules for each zone and the relevant rules for Chapter 7 (Residential Zone) are at 7-15 onwards. RE r.7 states:

*“Any activity listed in the schedule following the Rule Table shall comply with the rules set out in that Schedule”.*

[52] For each schedule site *there is a rule identifying what parts of the zone rules apply*. Schedule X has a similar rule as explained in Mr Lile’s evidence.

## Section 5 – the Key Components of PPC 28

[53] The PPC 28 Application dated 24 August 2021 summarised the nature of the request in the following way:

*“To rezone approximately 287-hectares of land located within Kaka Valley, along Botanical Hill and Malvern Hill, from:*

- *Rural; and Rural-Higher Density Small Holdings Area,*

*to*

- *Residential (Higher, Standard and Lower Density Areas);*
- *Rural-Higher Density Small Holdings Area;*
- *Open Space Recreation; and Suburban Commercial*

*along with a number of integrated changes to associated provisions of Volumes I, II and III of the Nelson Resource Management Plan”.*

[54] These components are then more fully described in section 4 of the Application. Section 5 and Attachment D1 provides the s 32 analysis.

- [55] The planning tools used in the ‘Applicant’s 2nd and 3rd Versions – PPC 28’ application are a combination of additional and new planning provisions and spatial mapping tools as follows:

Planning provisions

- (a) Enlargement of the information requirements in Volume 1.
- (b) Site-specific policies both within Volume 1 (landscape) and Schedule X.
- (c) Enlarged site-specific discretions and assessment criteria within Schedule X using existing and new rules.
- (d) Infrastructure triggers to support the Services Overlay within Schedule X.

Spatial tools

- (e) Zoning changes using a zone plan.
- (f) A Schedule X structure plan.
- (g) A site vegetation overlay to support protection of existing significant indigenous vegetation and to inform the requirement of revegetation policies. That will apply when applications for development consents are made.
- (h) A landscape overlay where specific rules controlling landscape effects are engaged.

- [56] The key changes to the PPC 28 Application in ‘Applicant’s 2nd and 3rd Versions – PPC 28’ following the joint witness conferencing and s 42A reports are presented in tabular form below.

Table 2: Land Areas and Zonings (amended by applicant June 2022)				
Zone Type	Planned Density	Minimum Lot Size	Areas as-Notified	Amended Areas
Residential	High	300m <sup>2</sup>	48.065ha	15.201 ha
Residential	Standard	400m <sup>2</sup>	29.105	21.334 ha
Residential	Low Density	800m <sup>2</sup>	60.61ha	38.77 ha
Residential	Low Density (Backdrop Area)	1500m <sup>2</sup>	36.44ha	32.105 ha
		Subtotal	144.805ha	109.775 ha
Rural – Small Holdings Area	High Density	5000m <sup>2</sup> , 1ha average	35.407ha	0 ha
Suburban Commercial	--	No minimum	00.283ha	0.15 ha
Open Space & Recreation	--	N.A.	41.21ha	38.448 ha
Neighborhood Reserve			0.447	0.669 ha
Current zoning to remain				
Rural	--	15ha	64.669ha	131.01 ha
Residential	Standard	400m <sup>2</sup>	00.63ha	0.63ha

[57] These spatial changes reduce further the development opportunity of the site and provide a better toolkit of planning provisions to enhance the quality of the environment.

[58] All these changes are on PPC 28 and within scope to address submitters' and NCC's concerns.<sup>11</sup>

## Section 6 – the Legal Framework – RMA

### *Legal Framework – RMA*

[59] The range of relevant matters and the manner in which they are to be considered are set out in the Application, the s 42A report of Ms Sweetman and the evidence of Mr Lile. These submissions do not repeat that material or discuss in detail the statutory framework for

<sup>11</sup> For a recent example of the application of scope principles see *Meridian Energy Limited v. MacKenzie District Council* [2022] NZEnvC 105.

PPC 28. The following observations are made with on key provisions and documents.

### Part 2 RMA

[60] PPC 28 implements the purpose and principles of the RMA as more explicitly stated in national policy by the sustainable protection, management and use of land and freshwater resources on the Site using planning tools.

[61] The following is a synoptic Statement of Sustainability to summarise the environmental credentials of PPC 28:

PPC 28 seeks to enable under RMA, s 5(2) the development and use of developable land within the Site to increase the urban development capacity of Nelson City in a way that supports the development of new residential communities with appropriate suburban facilities (NPS-UD 2020).

While (following RMA s, 5(2)(a)) sustaining the important values of the natural and physical resources within the Site using an integrated catchment landscape analysis<sup>12</sup> to meet the reasonably foreseeable needs of future generations by:

- (a) Protecting Kākā Hill and sustaining the relationship with Māori with that ancestral land; (RMA, s 6(e)); s 7(a) and s 8));
- (b) Protecting areas of significant indigenous vegetation and significant habitats (RMA, s 6(c));
- (c) Preserving the natural character of the margins of the Matai River through appropriate interface management (RMA, s 6(a));
- (d) Ensuring significant risk from natural hazards of developed land are adequately managed (RMA, s 6(h));

and while safeguarding the life supporting capacity of air, water, soil and ecosystems (RMA, s 5(2)(b)) by:

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<sup>12</sup> NPSFM 3.5(i).

- (e) Enhancing the terrestrial biodiversity values through restoration planting in appropriate locations that will also support freshwater values (RMA, s 7(a)(aa), (d) and (f)); and
- (f) Identifying and protecting natural inland wetlands on the site (RMA, s 6(a)) (NPSFM – Policy 3.23); and
- (g) Enhancing the natural character values and habitat of the Kākā Stream in the lower valley while supporting community access to that natural resource (RMA, s 6(a) and s 6(d), and section 7(a)(aa) and (f)) (NPSFM – 1.3(5) reflecting the hierarchy of values);

and also while avoiding remedying or mitigating adverse effects in the environment (RMA, s 5(4)(c)) by:

- (h) Ensuring the efficient use and development of natural and physical resources including transportation and stormwater infrastructure (RMA, s 7(b));
- (i) Maintaining and enhancing landscape and natural character values (RMA, s 7(a), (aa), (c), (d) and (f));
- (j) Ensuring appropriate urban design outcomes (RMA, s 7(c)) (NPSFM – 1.3 Mana whakahaere);

in a way that also accounts in the arrangement and calibration of the matters listed above a full consideration of the interests of tangata whenua (RMA, s 7(a) and s 8)).

### Section 32 RMA

[62] Section 32 of the RMA identifies Council’s obligations when assessing the Plan Change:

- (a) Section 32(1) requires Council to carry out an evaluation examining:
  - (i) The extent to which each objective is the most appropriate way to achieve the purpose of the RMA (s 32(1)(a));

- (ii) Whether the other provisions (i.e.: policies, rules and other methods) are the most appropriate way to achieve the objectives (s 32(1)(b)).

The section requires a cascading analysis – from the purpose of the RMA through the objectives to the policies, rules and other methods.

- (b) Section 32(2) provides that for the purposes of the examination of the efficiency and effectiveness of the provisions (s 32(1)(b)(ii)), an evaluation must take into account:
  - (i) The benefits and costs of the effects that are anticipated from the implementation of the provisions; and
  - (ii) The risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions.

[63] A detailed s 32 analysis was provided with the application for PPC 28.

#### Section 32AA RMA

[64] The proposed changes to ‘NV – PPC 28’ require further evaluation under RMA, s 32AA alongside any other changes. The Applicant’s technical evidence and planning evidence provides the necessary content to enable the Panel to record the ultimate changes it may choose in a way that complies with RMA, s 32AA(d)(ii).

[65] There is no need for a planning expert to make further s 32AA evaluations in evidence when the process of plan change development is iterative and the final planning outcome is under development.

[66] It is important to note, however, that the new objectives proposed by the Schedule X (V3, 7 July 2022) for the management of the Site (mainly by enlisting through the zoning method the relevant NRMP objectives for those zones) are unchanged. What has been examined and refined through amendments to PPC is the *provisions*. That is to ensure that the provisions

are sufficiently and effectively implementing those objectives in an appropriate way.

#### Sections 74 and 75 RMA

- [67] Sections 74 and 75 RMA govern the contents of district plans and plan changes. Section 75(3) provides that a district plan must “give effect to” any national policy statement, national coastal policy statement and regional policy statement. This is, “a *strong directive, creating a firm obligation on the part of these subject to it.*” and operates to constrain decision-makers.”<sup>13</sup>
- [68] The relevant national and regional planning documents have been addressed comprehensively in the application and evidence. It is not proposed to address those documents in detail, subject to the following:
- (a) The National Policy Statement – Urban Development 2020 (“NPS-UD 2020”) must be implemented in the resource management selections from the buffet of choices presented by the Application and submissions. The relevance of the NPS-UD 2020 to a private plan change has recently been considered by the Environment Court in *Eden-Epsom Residential Protection Society Incorporated v. Auckland Council*<sup>14</sup> (“Eden-Epsom Decision”). That decision and selected NPS-UD 2020 provisions are discussed below (section 7).
  - (b) Commentary is provided with regard to selected provisions of the Nelson Regional Policy Statement (section 8).
  - (c) The Nelson/Tasman Future Development Strategies.

<sup>13</sup> *EDS v. The NZ King Salmon Co Limited* [2014] NZSC 38, [2014] 1 NZLR 593; at [77] and [91].

<sup>14</sup> *Eden-Epsom Residential Protection Society Incorporated v. Auckland Council* Environment Court Decision [2021] NZEnvC 082.



## Section 7 – National Policy Statement – Urban Development 2020

[69] The NPS-UD 2020 contains objectives and policies concerning how urban environments should be developed, along with obligations on councils about the provision of sufficient residential and commercial capacity to accommodate future growth.

[70] Nelson is a Tier 2 urban environment under NPS-UD 2020 Appendix 1, Table 2.

[71] PPC 28 implements NPS-UD 2020.

### *The Eden-Epsom Decision*

#### Environment Court Findings

[72] The Court said in the *Eden-Epsom* Decision:

*“[29] The Court holds that it is not required to and will not be giving effect in this case to Objectives and Policies in the NPSUDP that are not requiring ‘planning decisions’ at this time.*

*[30] We acknowledge the promulgation and operative status of the NPS overall but cannot prejudge, let alone pre-empt, Schedule 1 processes yet to be undertaken by the Council on implementation of it.”*

[73] In reaching those findings, the *Eden-Epsom* Decision (emphasis added):

- (a) Records at paragraph [6] that clause 1.3 of the NPS-UD 2020 provides that NPS applies to, “planning decisions by any local authority that affect an urban environment”.
- (b) At paragraph [8] queries whether a decision on the merits of a private plan change on appeal is a “*planning decision*”.
- (c) Notes that the definition of “*planning decision*” in the NPS-UD 2020 means a decision on “*a district plan or proposed district plan*” (paragraph [9]) and refers to the definitions of those terms in the RMA but ultimately concludes in paragraph [18] that, “*some provisions of the*

*national instrument may be considered in a ‘planning decision’ on the merits of a requested plan change including on appeal to the Environment Court”.*

- (d) Identifies the NPS-UD 2020 provisions that explicitly refer to “*planning decisions*” and appears to proceed on the basis that provisions which do not use that term need not be given effect on private plan changes.

### The Applicant’s Submission

[74] The Applicant submits that:

- (a) If the consequence of the *Eden-Epsom* Decision is that NRMP provisions introduced by private plan changes do not need to give effect to all or some provisions of the NPS-UD 2020, then it is contrary to the scheme of the RMA and in particular section 75(3)(a) and the express wording of the objectives and policies in NPS-UD 2020.
- (b) The Panel is required to give effect to the NPS-UD 2020, including the provisions addressed in Mr Lile’s and Ms Sweetman’s evidence, when making a decision on the PPC 28.

[75] In any event, the *Eden-Epsom* Decision suggests a discretion to give effect to objectives and policies that do not refer to “*planning decisions*”. In that context, the Panel should give effect to the provisions discussed above and in the evidence of Ms Sweetman and Mr Lile as confirmed in their Joint Witness Statement (Planning).

### Analysis

[76] Concerning clause 1.3 of the NPS-UD 2020. The Applicant submits that “*planning decisions ... that affect an urban environment*” is a broad description:

- (a) The Nelson urban area is an “*urban environment*” in terms of the NPS.
- (b) That urban environment can be “*affected*” in a wide variety of ways, including where Unitary Plan provisions relating to urban zone

rules change or, as in this case, where urban zones are increased in extent on the periphery of the urban environment.

- (c) The effect generated by such a change will arise regardless of how it is introduced (e.g.: whether through a privately or publicly promoted plan change). It is the planning outcome that generates the effect, not the process through which the outcome is implemented.
- (d) Accordingly, any (public or private) plan change such as PPC 28 that seeks to extend the urban area would give rise to a 'planning decision' that affects an urban environment and hence is subject to the NPS-UD 2020 pursuant to Clause 1.3(1)(b).

[77] The Applicant submits concerning paragraph [30] of the *Eden-Epsom* Decision that:

- (a) The NPS-UD 2020 imposes a number of specific obligations on territorial authorities. The existence of PPC 28 does not remove or reduce those obligations on Council.
- (b) The Applicant is seeking site-specific provisions, supported by its experts on the merits, that it says are consistent with and give effect to relevant objectives and policies in NPS-UD 2020. The fact that the NPS-UD 2020 imposes additional obligations on the Council in terms of the region is irrelevant to the merits of PPC 28.
- (c) Approval of PPC 28 may in practice result in Council concluding that it does not need to introduce additional plan changes to carry out these obligations. Alternatively, Council may consider that the PPC 28 provisions:
  - (i) Do not fully address its obligations under the NPS-UD 2020; or
  - (ii) Address those obligations but in a manner that differs from Council's preferred method and thus should be the subject

of subsequent plan change processes, along with the balance of the city.

The existence of PPC 28 will not preclude the Council from introducing further plan changes if it considers that appropriate or necessary to give better effect to the NPS-UD 2020.

- (d) Introducing changes to the NRMP that are consistent with the NPS-UD 2020 (which the Applicant's witnesses consider to be the case) would neither prejudice nor pre-empt any separate Schedule 1 process NCC chooses to undertake in the future.

[78] It is difficult to reconcile the *Eden-Epsom* Decision with the purpose and content of the NPS-UD 2020. For example, Policy 8 states, “*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.*” In practice that policy will only apply to private plan changes. The policy would be otiose in the context of public plan changes where the territorial authority could alter its planning documents to the extent necessary or amend its sequence of planned land release to incorporate and be consistent with any public plan change proposal.

[79] One rationale underlying the *Eden Epsom* decision could be that the Court wanted to brush off attempts by experts and submitters to co-opt a private plan change process to litigate decisions required of a council under NPS-UD 2020 yet to be made. This rationale is understandable and attempts by submitters to litigate those matters would undermine the required *responsive* decision-making.

[80] Save the Maitai has advanced similar arguments from time to time. For example, they argue that the proper way for providing growth in Nelson is intensification and that there should be no further extension of the urban fabric. The Applicant submits that the outcome of these processes cannot be pre-empted and one cannot make reliable assumptions about potential yield from intensification. Any intensification plan change by NCC will

need to go through its own process. The ultimate framework and its capacity to support urban growth is unknown.

*Relevant NPS-UD 2020 Provisions*

[81] Mr Lile and Ms Sweetman address in detail NPS-UD 2020 in their planning evidence. The following additional comments are made with regard to objectives and policies of particular importance.

[82] **Part 2.1 – Objectives**

- (a) **Objective 1:** This is a generally worded objective seeking well-functioning urban environments as an essential dimension of sustainable management.
- (b) **Objective 2:** *“Planning decisions improve housing affordability by supporting competitive land and development markets.”* Comment: PPC 28, gives effect to this objective by increasing the supply of urban zoned land for residential and other activities, thus reducing upward pressure on prices. [Nb: This provision refers to “*planning decisions*” and the *Eden-Epsom* Decision requires that you must give effect to it.]
- (c) **Objective 3:** *“New Zealand’s urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.”* Comment: PPC 28 is consistent with a quality compact city envisaged by the Council and gives effect to the objective. It provides in a special way for tangata whenua.
- (d) **Objective 4:** *“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.”* Comment:
  - (i) With regard to a):

- The PPC 28 Site is adjacent to existing urban areas and can be serviced in terms of water supply, wastewater and other utilities.
  - NCC is comfortable future road infrastructure will be developed.
  - NCC's infrastructure engineers are satisfied the necessary infrastructure extensions are feasible.
- (ii) With regard to b), the PPC 28 urbanisation of this land is strategically desirable in both the medium and long terms.
- (iii) With regard to c), PPC 28 provides significant development capacity so the Council should be responsive to them (i.e.: be prepared to give them effect).

[83] **Part 2.2 - Policies**

- (a) **Policy 1:** This is a generally worded policy, related to Objective 1, requiring planning decisions to contribute to well-functioning urban environments. Again, this is the overall outcome promoted by PPC 28. [Nb: The provision does refer to “planning decisions” so in terms of the *Eden-Epsom* Decision you would be required to give effect to it.]
- (b) **Policy 2:** *“Tier 1,2 and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short-term, medium-term, and long-term.”* Comment: While this policy is one of many provisions in the NPS-UD 2020 that imposes duties on local authorities, PPC 28 will assist NCC to give effect to the policy.
- (c) **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.”* Comment: The adjective *responsive* means to respond readily and positively.<sup>15</sup> That affects the Panel’s process and the planning merits of PPC 28. It demands a solutions-orientated focus to achieve the environmental outcomes that the NPS-UD 2020 seeks.

## Section 8 – National Policy for Freshwater Management 2020

### *Overview*

[84] The NPSFM 2020 came into force on 3 September 2020. It is a 70 page document that contains considerable detail concerning the management of New Zealand’s freshwater resources. Because the NPSFM 2020 comprehensively addresses a single resource domain (i.e. freshwater) and governs its management, the NPSFM 2020 is a definitive statement on freshwater sustainability implementing RMA Part 2.<sup>16</sup> The NPSFM 2020 introduces a “fundamental concept” called Te Mana o te Wai. The notion of a ‘concept’ in this context means a plan or intention. It is therefore consistent with goal-based planning and the characterisation of the concept as “fundamental” emphasises that it lies at the core of the plan. The concept is further explained in clause 1.3. The concept encapsulates the fundamental importance of water itself and as a connected element of the wider environment. It has a mauri that is to be protected. Hence clause 1.3(1) states “*Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment and the community*”.

<sup>15</sup> Concise Oxford English Dictionary 10<sup>th</sup> Edn.

<sup>16</sup> The situation is equivalent to that described by the Supreme Court in New Zealand in *Environmental Defence Society Incorporated v. The New Zealand King Salmon Company* [2014] NZSC 38. In that case the Court treated the NZCPS as a complete expression of Part 2 applying to the coastal domain.

- [85] The comprehensive nature of the NPSFM 2020 is emphasised by clause 1.3(2) that states:

*“Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement”.*

- [86] Following from clause 1.3(3) the NPSFM states that Te Mana o te Wai encompasses six principles. The verb “encompass” connotes the idea the concept supports or holds within these principles. These principles do not define Te Mana o te Wai but inform both the meaning of the National Policy Statement, its fundamental concept and its implementation. The six principles are set out in clause 1.3(4) and are as follows:

- (a) *Mana whakahaere*: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater
- (b) *Kaitiakitanga*: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations
- (c) *Manaakitanga*: the process by which tangata whenua show respect, generosity, and care for freshwater and for others
- (d) *Governance*: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future
- (e) *Stewardship*: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations
- (f) *Care and respect*: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.

- [87] These principles reflect strongly a bi-cultural perspective. The first three principles (clauses 1.3(4)(a) – (c)) represent roles and management philosophies to freshwater derived from the culture of tangata whenua.



The principles in clause 1.3(4)(d) – (f) reflect a Pakeha perspective using principles from that cultural perspective. Each cultural principle has family resemblance to its equivalent in the other but they have different shades of meaning recognising the different cultural lenses.

[88] To emphasise that the principles have an order and priority, clause (1.3(5)) states:

“(5) *There is a hierarchy of obligations in Te Mana o te Wai that prioritises:*

*(a) first, the health and well-being of water bodies and freshwater ecosystems*

*(b) second, the health needs of people (such as drinking water)*

*(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future”.*

[89] This priority is reflected later in an effects management hierarchy. That effects hierarchy is defined in clause 3.21(1) as follows:

*“effects management hierarchy, in relation to natural inland wetlands and rivers, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that requires that:*

*(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”.*

[90] It is plain from the concept of Te Mana o te Wai that the New Zealand Government considers that the balance between community use of freshwater resources and its impact on the ecosystems and freshwater values is out of kilter. That reflects a well-recognised reality that there is an undesirable trajectory of decline in freshwater values in New Zealand.

[91] Implementing policies relevant to that journey of improvements include the following:

(a) *Policy 5:* Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies.

(b) *Policy 7:* The loss of river extent and values is avoided to the extent practicable and freshwater ecosystems are maintained and (if communities choose) improved.

(c) *Policy 13:* The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.

[92] There is nothing in the NPSFM 2020 to suggest that achieving the appropriate balance can be done overnight. Quite simply, it cannot. Furthermore, the NPSFM 2020 recognises that it is not necessary to achieve a return to a pristine state but rather to avoid loss of extent and values and to restore the extent and values to the extent practicable.

[93] In development of the points set out above clause 3.3 requires councils to establish long-term visions for freshwater that set ambitious but reasonable goals. These goals will be informed by a national objectives framework that identifies freshwater management units, values and outcomes together with baseline states using attributes. To ensure the trajectory of improvement is

achieved the NPSFM 2020's Appendices contain detailed attribute bands which provide scientific information about the state of water quality and its ability to support attributes and bottom lines. They also enable measurement of movements between attribute bands as indicators of restoration or degradation.

*PPC28 and its relationship to NPSFM*

- [94] This section of the submission repeats content of legal analysis in Counsel's memorandum on the s 42A reports on the freshwater topic dated 15 June 2022.
- [95] PPC 28 is not a freshwater planning instrument under RMA s 80A. That must be initiated by NCC.
- [96] PPC 28 is principally designed to perform NCC's territorial functions under RMA s 31 but with some components relevant to regional functions. That recognises that NRMP is an integrated combined plan with freshwater management provisions in AP28.9. In practice these operate in an integrated way through development consenting using RMA s 91 where required.
- [97] PPC 28's envelope of development opportunity through spatial controls and the planning regime of discretions, objectives, policies, and assessment criteria have been made with a close eye to:
  - (a) Ensuring requirements of the regional plan are fully integrated within the NRMP while addressing how these may be supplemented by policy and information requirements specific to the consenting of subdivision and development in the catchments affected by PPC 28 to ensure best-practice freshwater management.
  - (b) The fact that NPSFM 2020 will also will be made relevant under RMA, s 104 regional consents.
  - (c) Implementing the hierarchy of values in NPSFM 2020.

- [98] PPC 28 implements NPSFM 2020 to a degree appropriate to PPC 28's scope and function by:
- (a) The formulation of the provisions in consultation with tangata whenua that also allow for further cultural evaluation in the consenting process.
  - (b) Following the management approach in NPSFM 2020, clause 3.5 (ki uta ki tai) so that urban growth is co-ordinated with management of the catchments recognising *the interactions between freshwater, land water bodies, ecosystems and receiving environments*.
  - (c) Aiming for improvements in freshwater values implemented by a mix of measures including:
    - (i) Ecological enhancements at a catchment scale.
    - (ii) Esplanade requirements to support improvements in instream habitat and create ecological corridors of appropriate depth and complexity to support ecological persistence.
    - (iii) Directive policy and assessment criteria to ensure best practice is implemented to achieve appropriate water quantity and quality outcomes from construction and development.
- [99] To the extent that any future regional consenting processes do not authorise a realignment of the Kākā Stream shown in the Structure Plan then a further plan change is not necessarily required. Any adjustments will probably be comfortably within the ambit of any discretion exercised through RMA, s 104.
- [100] The Structure Plan is not so prescriptive that only the shown realignment is permitted.
- [101] In any event, strategic planning by NCC can be anticipated as part of implementing a range of national policy and ancillary refinement of the

Kākā Valley catchment including consequential changes can be comfortably accommodated.

[102] The obvious reasons PPC 28 is not a freshwater planning instrument are the following:

- (a) That is performed by NCC as the regulator.
- (b) It would require a catchment approach well beyond the Kākā Valley sub-catchment, and include the wider Maitahi/Mahitahi catchment
- (c) Requires higher level of public engagement than is appropriate for building urban development capacity.

[103] Throughout the country development capacity is being enabled without new freshwater instruments. Practical planning must enable these increases in capacity in an appropriate way rather than freezing or stalling development until the long term freshwater programme in NPSFM is implemented by Councils.

*Involvement of tangata whenua*

[104] Recognising the limited scope of the freshwater elements of PPC 28, the Applicant has undertaken considerable engagement with tangata whenua. The freshwater management regime in PPC 28 is considered desirable by tangata whenua. That makes complete sense when the PPC 28 contemplates significant improvement in the life supporting capacity and hence mauri of the lower reaches of the Kākā Stream through riparian enhancements. These are more profiled in the indicative cross-sections supplied by Tony Milne. See in particular “EV142 APP - Tony Milne graphicattachmentpage14”.

### *Wetlands*

- [105] Following the direction in NPSFM 2020 the natural inland wetlands are identified and protected thereby complying with Policy 3.22. These are mapped and able to be monitored following Policy 3.23.
- [106] The issue of wetlands is problematic when achieving urban development requirements and an exposure draft from MfE proposes changes to Policy 3.23 (see 3.22(1)(c) by allowing changes in values or extent of natural wetlands where the regional council is satisfied *the activity is necessary for the purpose of urban development that contributes to a well-functioning urban environment (as defined in the National Policy Statement on Urban Development)*).
- [107] These sorts of amendments better reconcile retentions between NPSFM 2020 and NPS-UD in an explicit way but that reconciliation is not required for this PPC 28 because of the explicit recognition and protection of the values and extent of the known natural inland wetlands.
- [108] There are no other wetlands on the site. There is some *Juncus* species on the lower flats but none of these reached the density of the definition of natural wetland in NPSFM 2020.<sup>17</sup> The long-term pastoral use of the developable land means it is exotic pasture dominated and any ecological values from the presence of hydrophytes is very low.<sup>18</sup>

### *NPSFM Policy 3.24*

- [109] PPC 28 proposes a realignment of the Kākā Stream south of the point where the proposed collector road bisects the stream and shown as a blue dotted line in the Proposed Structure Plan [EV142 APP - TonyMilne page 7].
- [110] That responds to the ecological opportunities and constraints assessment accompanying the Application in Volume C, Item C5 that identifies the re-alignment as a significant opportunity to improve ecological values using natural channel design guidelines. The right mix of policies, discretions and

<sup>17</sup> National Policy Statement for Freshwater Management 2020 at page 23.

<sup>18</sup> The Exposure Draft of the Amended NPSFM revises the Natural Wetland definition at D (2). See also *Greater Wellington Regional Council v. Adams et al.* [2022] NZEnvC 25.

assessment criteria ensure a superior habitat is created replacing the highly modified and denuded environment that presently exists.

[111] Policy 3.24 of NPSFM 2020 requires the immediate inclusion of the following policy and regional plans:

*“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”.*

[112] Policy 3.24(2) introduces Policy 3 that governs consents where proposals directly or indirectly result in a loss of extent or values of a river. That policy states:

*“(3) Every regional council must make or change its regional plan(s) to ensure that an application referred to in subclause (2) is not granted unless:*

*(a) the council is satisfied that the applicant has demonstrated how each step in the effects management hierarchy will be applied to any loss of extent or values of the river bed (including cumulative effects and loss of potential value), particularly (without limitation) in relation to the values of: ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity; and*

*(b) any consent granted is subject to conditions that apply the effects management hierarchy”.*

[113] The Applicant’s position is that:

(a) Policy 3.2.4(1) is not engaged by the indicated changes in alignment to the lower reach of the Kākā Stream; and

(b) Any change in river bed alignment in combination with the PPC 28 policies, assessment criteria and discretions will enhance ecosystem and natural character values (reflecting the hierarchy of values).

That means that the anticipated modifications will only occur in circumstances where natural character and habitat values will be substantially improved.

[114] On the first point above, therefore, PPC 28 does not anticipate the *loss of river bed extent and values* that Policy 3.24(1) addresses. The conjunction of the first clause in Policy 3.24(1) means that the consequence of the activity has to be both a loss of extent and values. The policy, therefore, does not apply where there is change of river bed extent (i.e. size and scale) that enhances river values as anticipated by PPC 28.

[115] Even if the policy applied, avoidance does not require in all cases no change. In *King Salmon*<sup>19</sup> the Supreme Court said at [145] concerning the interpretation of the avoidance policies in NZCPS 2010:

*“It is improbable that it would be necessary to prohibit an activity that is minor or transitory adverse effects in order to preserve the natural character of the coastal environment even where that natural character is outstanding. Moreover some uses or developments may enhance the natural character of an area”.*

[116] Therefore, it would be a stretch to suggest that a relatively minor change to a highly modified river bed in combination with requirements for enhancement of a significant character did not implement Policy 3.24(1).

[117] An approach that looks pragmatically at the environmental outcome is also consistent with English case law on strategic planning. The Panel is referred to the decision of the English Court of Appeal in *City & Country Bramshill v. Secretary of State*<sup>20</sup>. In that case, there was a statutory direction to have particular regard for national policy. Admittedly not an implementation obligation at [57] p 5779 line H, resulting in a highly directive policy quoted at p 5780 line B and the Court said at [78] p 5788:

*“Cases will vary. There might, for example, be benefits to the heritage asset itself exceeding any adverse effects to it so that there would be no ‘harm’ of the kind envisaged in paragraph 196. There might be benefits to other heritage*

<sup>19</sup> *Environmental Defence Society Incorporated v. New Zealand King Salmon Company* [2014] NZSC 38.

<sup>20</sup> *City & Country Bramshill v. Secretary of State* [2021] 1 WLR 5761.



*assets that would not prevent 'harm' being sustained by the heritage asset in question but are enough to outweigh that 'harm' when the balance is struck. And there might be planning benefits of a quite different kind, which have no implications for any heritage asset but are weighty enough to outbalance the harm to the heritage asset the decision-maker is dealing with."*

- [118] It is inappropriate to read policy in NPSFM as absolutist rules. They are intended to constrain strategic planning to ensure optimal outcomes. A recent case Counsel appeared in the Supreme Court called Port Otago v. EDS<sup>21</sup> will address this issue and become known as 'King Salmon (the sequel)'.
- [119] As already stated, while the Structure Plan shows a realignment of the bed of the Kākā Stream, the ultimate alignment may vary through the resource consent process to achieve the policy requirements in Schedule X.
- [120] An example of how enhancement can be achieved and an example of the robustness of the Council's process is a relatively recent consenting of the Groom Creek realignment that NCC sought as part of a stormwater project. The relevant materials are contained in the Electronic Bundle as additional materials. That case study shows that it is not uncommon for local authorities and landowners to consider some forms of morphological change to degraded waterways. Implementation of those changes can be combined with other ecological treatments to achieve a very positive outcome. It is simplistic and inappropriate to treat any change as against an avoidance policy in spite of these evident and often significant ecological benefits.

#### *Primary Contact Site – Dennes Hole*

- [121] A number of submissions address the impact of PPC 28 on the Dennes Hole in the Maitai River meander adjacent to the Maitai Recreation Reserve. This location is a primary contact site for the purposes of NPSFM 2020.

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<sup>21</sup> *Port Otago v. EDS* Supreme Court 6/2022 heard May 2022.

That does not give rise to any specific policy requirements, but the Council is required to monitor those sites under Policy 3.27.

- [122] PPC 28 policy outcomes for water quality discharges should have an eye to sustaining this recreational value. The terrestrial interface with that resource is addressed in the graphic attached of Tony Milne [EV142 APP-Tony Milne – Graphic A page 12]. This graphic is also appended to the Recreation and Open Space Joint Witness Statement of Andrew Petheram and Robert Greenaway<sup>22</sup>, where they agree that is an appropriate treatment from a recreation perspective.

## Section 9 – Nelson Regional Policy Statement

- [123] Like its other planning instruments, Nelson’s Regional Policy Statement is dated and does not capture or implement any recent national policy instruments.
- [124] Chapter 6 of the RPS addresses urban expansion at section DH1. In terms of spatial management, Policy DH1.3.1 requires protection of areas that have special values.
- [125] Policy DH1.3.1 commences *where urban expansion is considered to have greater net benefit than intensification, to provide for the most appropriate form of urban expansion for Nelson.*
- [126] That has led to a number of submissions promoting intensification over greenfield development. On this matter the relevant experts in their joint ‘Economic’ witness statement dated 27 April 2020 correctly stated:

*“Many submissions wanted to prioritise intensification of existing urban areas before new ‘greenfield’ areas were rezoned. The current NPS-UD (2022) has removed references to sequencing of development (as stated in NPS-UDC) and therefore removed any suggestion that priority in terms of timing should be given to intensification over greenfield development. This promotes competition, thus helping Councils meet objective 2 of the NPS-UD. **Both economic***

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<sup>22</sup> Recreation JWS dated 13 May 2022.

***experts** consider this further supports their assessment of the appropriateness of urban development of the PPC 28 area”.*

- [127] The introduction of Policy DH.1.3.1 has an obvious flaw. In any greenfields plan change it is impossible to make a comparative assessment with intensification which is not the subject of the plan change. In addition, the *status quo* is that there is no further intensification provided for in the NRMP. Therefore, in terms of the RPS the comparison is with the existing environment where no further provision has been made for intensification beyond the current NRMP (1996).
- [128] Others who have given evidence or made submissions also point to the market forces and ‘aggregation inertia’ to increases in urban development capacity that make reliance upon intensification entirely to meet future demand is not a viable strategy. In any event the future development strategy of the Nelson and Tasman Districts show that.
- [129] Policy DH1.3.1 does provide a list of matters that will be relevant to assessing the appropriateness of PPC 28. There are 17 evaluative considerations are listed below.

*“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;*
- 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.”*

[130] All of these listed criteria are fully addressed in the Applicant’s evidence.

- [131] While the RPS refers to these as criteria they are in fact a list of considerations because they contain no inherent weighting and do not state intended outcomes. A criterion is a principle or standard by which something may be judged.<sup>23</sup> The RPS is clearly not stating criteria.
- [132] Therefore, the RPS contemplates an evaluation of these matters. Following RMA, ss 74 and 75 these must be assessed according to the lights of higher order policy and Part 2. Reason DH1.6.1 in the NRPS states that the purpose of the objectives and policies is to achieve Part 2.
- [133] Method DH1.4.2 identifies the use of future demand strategies to assess options for urban expansion. The Applicant says this is found in the Nelson Tasman FDS (2019) and confirmed by the Draft Strategy dated 2022. Other private plan changes have also taken this opportunity and used the scheduling tool available in the NRMP.
- [134] There are references in the methods and reasons to community expectations as a matter of regard. However, (as seen in DH1.6.3) these are not absolutes and where indigenous vegetation and fauna is protected and significant areas of open space on the Site are preserved there is no fundamental inconsistency with the goal in the RPS to provide for development. That is confirmed by the anticipated environmental results that do not seek unqualified protection even of highly resources. A mix of avoid, remedy and mitigate is acceptable and in the end the outcome to aim for is a pleasant, coherent and functional urban area. The relevant anticipated environmental results from the RPM (section DH1.7) are set out below.

*“DH1.7                      **anticipated environmental results***

*DH1.7.1                      Urban expansion which avoids, remedies, or mitigates adverse effects on areas identified as having special significance or value to the community.*

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<sup>23</sup> See definition of ‘criterion’ in Concise Oxford English Dictionary 10<sup>th</sup> Edn.

DH1.7.2 *Maintenance of environmental standards when assessing the relative merits of intensification of the urban area versus urban expansion.*

DH1.7.3 *A pleasant, functional and coherent urban area which provides for the reasonable expectations of the community while avoiding, remedying, or mitigating adverse effects on the environment.”*

[135] According to the evidence of Mr Milne and Mr Girvan these environmental results are achieved by PPC 28.

[136] It is also important to read the NRPS as a whole and one of the key and early themes of the NRPS is the recognition of property rights. AD6 states:

*“With ownership comes an expectation of the ability to reasonably develop and use private land. In a property owning democracy reasonable rights and expectations of private property owners are respected. However, all property owners must respect the rights of other property owners to be able to enjoy their property free from adverse effects arising from the activities on adjacent properties”.*

[137] AD7 says the following concerning the degree of regulation that should be used in planning instruments:

*“(a) The Resource Management Act generally contains the presumption, in the case of land, that a natural or physical resource can be utilised by people and communities to provide for their social, economic, and cultural well being provided that the adverse effects of that utilisation are acceptable or can be avoided or mitigated and the reasonably foreseeable needs of future generations are provided for. In the cases of water and air this presumption is reversed and it is necessary to show that the effects are acceptable or can be avoided or mitigated before the resource can be utilised.*

*(b) Section 32 of the Act specifically requires that before adopting any objective, policy, rule, or other method, Council must have regard to the extent to which that objective, policy, rule, or other method is necessary in achieving the purpose of the Act. Council must also have regard to other means of achieving the same purpose, and to the benefits and costs of the various alternative methods”.*

- [138] These provisions obtain some relevance because the published aim of Save the Matai Incorporated is the appropriation of the Applicant's private land for open space essentially creating a *de-facto* reserve. That offends the property right principles properly recognised in the NRPS.

## Section 10 – Nelson/Tasman Future Development Strategy

- [139] Urban development capacity analysis has matured as a strategic policy discipline since 2017.
- [140] In 2006 NCC promulgated the Nelson Urban Growth Strategy ("NUGS") 2006. The consultation version identified the Kākā Valley as an area potentially suitable for residential development but the final version rejected it on the basis there was strong opposition to residential zoning based on loss of open space, conflict with recreational values and effects of more traffic and noise<sup>24</sup>. Following the NPS-UDC Tasman District Council and NCC prepared a joint document called "The Nelson Tasman Future Development Strategy 2019". This is the current version and Kākā Valley is identified as a suitable area for urban expansion. At page 12 it stated:

*"The FDS recognises the need to provide for some greenfield development in case it is needed, while aiming to protect rural land of highly productive value where possible".*

- [141] While the Council said it would promote intensification that has not, as already noted, happened in any meaningful way beyond adoption of the non-statutory Intensification Action Plan (IAP). Table 1 contains the capacity calculations. The Strategy plans is for development of the Site in 'Decade 2' (2029-2038) as follows:

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<sup>24</sup> See Nelson Urban Growth Strategy 2006, page 14.

*Table 1. Long term housing capacity by broad location*

Area	Decade 2: 2029-2038	Decade 3: 2039-2048	Total
Kākā Valley	614	228	842

- [142] The draft replacement strategy has a new technical report dated March 2022. It is a step-change in the use of datasets and assessment methods. The technical report identifies a range of scenarios and then does a multi-criteria assessment of growth areas. Table 11 section 8.2.1 identifies the site (N-106) as a Site recommended for inclusion in the strategy.

## Section 11 – Key Unresolved Issues with NCC’s Experts

### *Introduction*

- [143] The expert conferencing process was very successful and substantially narrowed the issues between NCC and the Applicant. There are now few issues between experts for NCC and the Applicant. These submissions only address the remaining issues.

### *Landscape*

- [144] The landscape (one joint witness statement dated 11 May 2022) identifies the sole remaining significant issue between Mr Girvan for NCC and Mr Milne (for the Applicant) concerning landscape matters.
- [145] Clause 3.6 concerns potential skyline effects of the area above Walters Bluff and Malvern Hills. Mr Girvan at 3.6 has recorded his position as follows:

#### ***“Rhys Girvan considers:***

1. *that the Skyline Area above Walters Bluff within the Botanical Hill Overlay should be excluded from residential zoning. In the alternative, Rhys will consider further whether or not identifying the additional ridgeline within the area above Walters Bluff and applying the proposed controls in X.5 c) and d) will*



- adequately address potential ridgeline effects (Tony to provide a copy of the Structure Plan showing the additional ridgeline being discussed);*
2. *that the proposed planning provisions (e.g. in X.5 c) and d)) be amended to specify viewing locations (Rhys considers that from the town centre and State Highway 6 are the priority viewing locations);*
  3. *that the 20% planting provisions in the Backdrop area (X.4) should also apply to the Skyline Area (X.5)".*

[146] These items were partially agreed to by Tony Milne as follows:

**"Tony Milne agrees with Rhys Girvan's recommendation 1** *only to the extent of identifying the additional ridgeline on the Structure Plan and applying the proposed controls X.5 c) and d). Tony does not agree with excluding the area from residential zoning.*

**Tony Milne agrees with Rhys Girvan's points 2 and 3 above.** *With these amendments Tony is satisfied that the existing NRMP provisions and the proposed PPC 28 provisions together, will adequately manage the Skyline Area. This includes NRMP Appendix 14 and the PPC28 proposed low density residential zoning (1500 m<sup>2</sup> minimum site area and controlled activity resource consent requirements)".*

[147] Mr Milne in his evidence at [189] addresses the key themes emerging from the conferencing process. Key Theme 1 concerning modification to the City's skyline and column 4 of that table identifies the changes to the plan change provisions to respond to that matter. In assessing the Applicant's response and the amended provisions, Mr Milne says at [84]-[85] of his Statement of Evidence:

*"[84] I am comfortable, as previously stated in the LVAUD, that the proposed residential lower density zoning within the city Backdrop and Skyline Area for the ridgetop area above Walters Bluff, will result in PPC28 on Botanical Hill having no more than a moderate degree of adverse effects on the existing visual amenity experienced from SH6, east of the SH6 and Haven Road intersection.*

[85] *As shown on the indicative Master Plan the density of development on this hillside will be dictated by topography and geotechnical constraints. Specifically, development will be unlikely within the gully above Walters Bluff. Development will more likely be limited to the more gentle slopes on the spur descending to the two northern most dwellings at the top end of Davies Drive. Therefore, it is likely that future development will resemble a density similar to the north-west facing side of Malvern Hills and it will be clustered, leaving open green spaces between pockets of development”.*

[148] There is a limit to which development on amenity landscapes should be restricted to prevent housing development. Such landscapes do not enjoy any specific recognition under RMA, Part 2 and Policy 6 of NPS-UD notes that perceptions of amenities are subjective and controls of land use to privilege one group in a community over another should not be used where this undermines the good functioning urban environments and provides for a variety of housing densities and types. Policy 6 NPS-UD states:

*“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] Mr Girvan’s rebuttal evidence shows that the Walters Bluff issue is narrowing even further. Mr Girvan proposes plan provisions that use discretions to control development on Walters Bluff to ensure it is appropriate. That solution properly looks to the planning machinery to resolve the tensions that need to be addressed. Mr Girvan proposes using a restricted discretionary activity class. The Applicant is not opposed to that solution and has now changed Rule X.5 in line with Mr Girvan’s recommendation.

[150] Mr Girvan’s natural character starting point for lower Kākā Stream is ‘low-moderate’ as opposed to Mr Milne’s assessment of ‘very low’. This is simply a variation of professional judgment. Mr Milne’s stands by his opinion that lower Kākā Stream certainly has a lesser degree of natural character than other areas.

### *Heritage*

[151] Dr McEwan provided an assessment of the Richardson/‘Maitai Run’ shearing shed on the Site. The assessment is a separate document. The values assessment emphasises the associative values of the shed as follows:

#### ***“Summary Of Heritage Significance***

*The former Richardson/‘Maitai Run’ shearing shed has overall heritage significance to Nelson district. The building has high historical and social significance for its association with the Richardson family, especially Effie and her daughter Ralphine who managed and operated the farm for many decades. The former Richardson/‘Maitai Run’ shearing shed has cultural value as a demonstration of the way of life of the Richardson family and their workers and architectural value as a vernacular farm building adapted and added to as need*

*required. The former Richardson/ 'Maitai Run' shearing shed has group and setting significance as a defining feature within its rural setting and landmark value within the rural, river valley setting of the 'Maitai Run'. The building's site has high potential archaeological significance in view of its age and location and technological and scientific value as a 19th century vernacular farm building that has the potential to provide further information through research and investigation of its structure and historic use".*

[152] Based on that assessment Dr McEwan concludes at [24]-[25]:

*"[24] In response to Ms Sharland's submission, however, and in the context of the stated opinion of the applicant's expert witnesses and PPC 28 Policy RE6.1, which includes 'protection of heritage and cultural values', the shearing shed has been assessed according to the NRMP 'Heritage Buildings, Places and Objects' criteria and found to have significant heritage value.*

*[25] If the shearing shed is not subject to protection, by way of scheduling or an alternative planning mechanism, and the recommendations put forward by the applicant's heritage experts are adopted, then PPC 28 should be revised in order to ensure these mitigations for the loss of identified heritage values are undertaken".*

[153] The shearing shed is dilapidated and located in the heart of a proposed intensive housing area in PPC 28. The shed currently has no protection under the Plan and therefore not part of the existing environment.<sup>25</sup> It is unappealing for a heritage expert to co-opt a plan change to enable housing development that will involve removing the shed to obtain a level of heritage protection for the shed. As there is no current protection the heritage values would not be a qualifying matter operating against Tier 1 authorities implementing Policy 3.

[154] Mr Miller for the Applicant does not accept that the shearing shed has significant heritage value. Mr Miller contends at his rebuttal evidence at [28] onwards that the analysis was not undertaken in accordance with

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<sup>25</sup> *Queenstown Lakes District Council v. Hawthorne Estate Limited* [2006] NZRMA 424.

“Nelson Plan Heritage Methodology, a Revised Methodology for Identifying and Assessing the Heritage Significance of Buildings, Places, Areas and Objects” (Dr Ann McEwan & Dr Greg Mason, June 2015)”.

- [155] In her rebuttal evidence at [15], Dr McEwan accepts that she did not use the 2015 methodology. In that methodology Dr McEwan identifies key themes in the development of Nelson. Sheep farming is barely mentioned and not identified as key to Nelson’s development by the author of the Thematic History, John Wilson. Dr McEwan says that the 2015 methodology was designed for the new plan not the present plan. The problem with that response is that one does not in a plan change apply old methodologies. The most appropriate methodology is the one developed by Dr McEwan in June 2015. It makes no sense to apply old methodologies simply because the plan change pre-dates the implementation of the new methodology for a new plan. If Dr McEwan cannot justify the protection of the shed under her improved methodology, she should not be proposing the type of restrictions using an old methodology.
- [156] Mr Miller correctly concludes at [38] that the heritage values are redundant and there is no realistic pathway to sustain them by adaptive reuse.<sup>26</sup>
- [157] Dr McEwan disagrees on her rebuttal evidence at [18]. The Panel should reinspect the shed to form its own opinion.
- [158] The heritage JWS records Dr McEwan as confirming that ‘*there is no statutory requirement to protect built historical resources within the PPC area and therefore the recommendations put forward by Robin Miller and Amanda Young are reasonable in the circumstances*’. Dr McEwan’s evidence departs from her JWS.
- [159] It is submitted that if the land is rezoned the shed will be an incongruous element in an urban landscape and the associative values would not be appreciated by the new community. Rather, foreseeably residents will demand its removal as an unsightly and dangerous element in a new urban context. For that reason, the planning regime should provide for no more

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<sup>26</sup> Section 42A report, Robin Miller – Heritage at [38].

than the recording of the heritage values and its elements for use in historical analysis.

[160] Mr Milne in his rebuttal evidence at [20] summarises the position as follows:

*“...I believe that what I have recommended as mitigation measures in terms of salvage, recording and dissemination of the resulting information (please refer to Rule X.10) are as realistic as can be reasonably achieved given the condition of the building.”*

[161] In principle, the Applicant agrees to a standard that can be crafted to secure an appropriate record of the shed for historical purposes.

#### *Urban design*

[162] There is substantial agreement between Mr McIndoe and Mr Nicholson on urban design matters. Many of the improvements to the Structure Plan proposed by Mr McIndoe have been adopted into the Applicant’s 2nd and 3rd Versions of the Structure Plan.

[163] The Structure Plan produced in the Applicant’s evidence did not show the suburban commercial zone at the crossroads. However, as set out in the rebuttal evidence of Mr Nicholson in response to the s42A addendum evidence of Mr McIndoe, the Structure Plan is being updated to ensure the outcomes recommended by Mr McIndoe are achieved. This Structure Plan will be provided at the start of the hearing.

[164] Interestingly, Mr Nicholson and Mr McIndoe both agree there are significant advantages from an urban design perspective from the realignment of the lower reaches of the Kākā Stream.<sup>27</sup>

[165] As set out in the Joint Witness Statement – Urban Design dated 5 May 2022, Mr Nicholson and Mr McIndoe agree that from an urban design perspective, the PPC 28 Site is suitable for urban growth and development and the proposed urban development as shown on the Structure Plan will

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<sup>27</sup> Hugh Nicholson, Statement of Evidence dated 15 June 2022 at [27] – [29] and Graeme McIndoe, s42a addendum evidence dated 27 June 2022 at para [10] – [12].

achieve a well-functioning urban environment as required by NPS-UD Policy 1.

*Terrestrial ecology*

- [166] There is almost complete alignment on terrestrial ecology with considerable enthusiasm evident from the ecologists on the prospect of meaningful enhancements to the Kaka catchment.
- [167] Further and appropriate fine-tuning of the plan provisions to ensure that these revegetation aims are secured through development process do not trouble the Applicant. It is committed to that outcome. However, the Applicant does not want the plan provisions to go down to the detail of species and PB standards. There will be a process of development of revegetation plans in consultation with tangata whenua. To ensure appropriate agency of tangata whenua through the process undue prescription in plan provisions at this stage should be avoided.

*Freshwater ecology/water sensitive design/stormwater*

- [168] The witnesses for the Applicant and NCC are now very close. NCC accepts that there can be appropriate stormwater design that meets best practice. The Stormwater Management Plan demonstrates that the best practice principles can and will be implemented where feasible. Some NCC technical witnesses expressed concern that all solutions are not prescribed by the plan change. However, in implementing the plan change provisions through the resource consent process, the policies and assessment criteria have strong constraining force. If the solutions are feasible then they must be implemented. It is not appropriate at the plan change stage to use the Stormwater Management Plan as the tool for resolving tensions inherent in providing a workable stormwater solution.

*Flooding hazard*

- [169] The witnesses for the Applicant and NCC are now in broad agreement. There are some loose ends to be tidied up which have been dealt with in Mr Velluppillai's evidence in rebuttal.

#### *Transport*

- [170] The witnesses for the Applicant and NCC are generally in agreement on transport matters. Ms McCabe, for Save the Maitai, raised the issue of the need for further transport assessment in the form of an Integrated Transport Assessment (ITA), despite this not being raised by Mr James in his evidence and the planning experts having agreed in their JWS Planning dated 19 & 20 May that one can be requested as part of the resource consent process.

#### *Recreation*

- [171] There are no contentious matters on this topic.

#### *Servicing Infrastructure*

- [172] There are no contentious matters on this topic.

#### *Economics/ demography*

- [173] There are no contentious matters on this topic.

#### *Geotechnical*

- [174] There are no contentious matters on this topic.

#### *Erosion and sediment control*

- [175] Mr Parsonson and Mr Ridley have significant differences concerning the levels of information required to support PPC 28. The Panel will need to assess these different views. The Applicant's position is that this information is not required but it is content to supply that further information if the Panel's judgment is that more is required.



[176] It is submitted that there is robust machinery in PPC 28 to address erosion and sediment contamination. To the extent that any textual refinements are required to improve the linkages with other NRMP provisions or otherwise direct decision-making then these are the better tools than models and staging plans. With this proviso, the existing and proposed provisions, in conjunction with the adoption of the principles of the Nelson Tasman Guideline<sup>28</sup> (also included in PPC 28) and the adoption of proven technical earthwork management methods, will ensure that potential adverse sediment-related effects can be appropriately controlled and minimised through consenting and during construction. Deriving staging plans and undertaking modelling at this time will not be informative or necessary. They would be reliant on notional assumptions about location staging and exposed areas that are typically modified during later design phases. Effective control and minimisation of effects is not dependent on that information being provided at this time.

## Section 12 – Evidence for Save the Maitai Inc

[177] This section of the submissions briefly deals with some of the evidence that is presented on behalf of Save the Maitai (STM).

[178] The stated aims of STM are to persuade NCC<sup>29</sup> to:

- (a) Prevent residential development in the Kākā Valley; and
- (b) acquire the Site for a regional park.

[179] STM's submission advances those objectives with the aim of precluding development potential to enable STM to later convince NCC to acquire the land below its intrinsic economic value.

[180] That agenda is achieved through a landscape analysis by Ms Steven that inflates the values of the Site's landscape components. Then Ms McCabe mischaracterises the intent of Chapter 7 of the NRPS to support the protection of these inflated values. By impeaching the PPC 28 principally

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<sup>28</sup> *Nelson Tasman Erosion and Sediment Control Guidelines*; July 2019

<sup>29</sup> [www.savethemaitai.nz](http://www.savethemaitai.nz)

on this basis, Ms McCabe concludes that PPC 28 does not implement Part 2 and the NRPS. By default Ms McCabe's opinion supports the *status quo*, without analysing using s 32, how that more appropriately implements Part 2 and high order policy compared with PPC 28 or other viable changes to PPC 28.

- [181] It is a basic error in planning analysis to say that so-called deficiencies in PPC 28 reliably lead to the conclusion *status quo* better meets the statutory requirement tests in s 32 and ss 74-75.

### *Landscape*

- [182] Ms Steven draws some bold landscape conclusions without the benefit of a proper Site visit.

- [183] The Applicant submits that the evidence of Ms Steven has the pretence of reaching broad landscape conclusions resting on assumed community values and needs. Ms Steven attaches landscape significance to the Site that is not found in the existing NRMP provisions and without undertaking a comparable region-wide study according to the requirements of best landscape architecture practice to rate regional landscape values in a systematic way. That Ms Steven's evidence is unreliable, is revealed by the fact that her conclusion must be (despite the evident need for housing) that the Site has no absorption capacity for development at all. According to Ms Steven it must retain its bucolic pastoral state. Otherwise, Ms Steven would have undertaken a more nuanced and collaborative analysis of PPC 28 with the other landscape architects. Respectfully, that conclusion that there is no absorption capacity on the Site for development is fanciful.

- [184] These submissions address only the following matters concerning Ms Steven's assessment:

- (a) Are the Malvern/Botanical Hill ridgelines part of the coastal environment?
- (b) Is there such a thing as a 'gateway landscape' and how it should it be managed?

- (c) Does rural production land have significant natural character?
- (d) Are the impacts of development on visual values as significant as Ms Steven claims?

*Are the Malvern/Botanical Hills part of the coastal environment?*

[185] It is not uncommon to use a primary inland ridgeline to denote the extent of a coastal environment but that is not a rule of thumb and the Practice Guidelines for Landscape Architects direct a case-by-case assessment. The Malvern/Botanical ridgelines are not mapped as part of the coastal environment in the NRMP or the RPS. The NRPS is focused on coastal land riparian margins and this follows through into the NRMP. The more recent Boffa Miskell landscape study does not include these landscape elements in the coastal environment.

[186] The NZCPS, Policy 1 recognises the site-specific context for the assessment of the extent of the coastal environment and provides an inclusive list of items that potentially fall within the character of the coastal environment. The text of that policy is set out below.

***“Policy 1 Extent and characteristics of the coastal environment***

(1) *Recognise that the extent and characteristics of the coastal environment vary from region to region and locality to locality; and the issues that arise may have different effects in different localities.*

(2) *Recognise that the coastal environment includes:*

(a) *the coastal marine area;*

(b) *islands within the coastal marine area;*

(c) *areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;*

(d) *areas at risk from coastal hazards;*

- (e) *coastal vegetation and the habitat of indigenous coastal species including migratory birds;*
- (f) *elements and features that contribute to the natural character, landscape, visual qualities or amenity values;*
- (g) *items of cultural and historic heritage in the coastal marine area or on the coast;*
- (h) *inter-related coastal marine and terrestrial systems, including the intertidal zone; and*
- (i) *physical resources and built facilities, including infrastructure, that have modified the coastal environment”.*

[187] The ridgelines of the Malvern/Botanical Hills are distant from the coastal marine area separated by the State Highway, at an elevation of 500m although this varies along the ridgeline and within the Site the maximum elevation is approximately 236m.. Sandwiched between the CMA and the ridgelines are patterns of urban development. There are no indigenous coastal species present and coastal processes and influences are not significant for the purpose of NZCPS, Policy 1(2)(c). Rather they are minimal. These land resources are not part of the coast in any meaningful sense and the only ground for Ms Steven’s claim that it is part of the coast seem to be that the ridgelines are visible when viewed from coastal locations.

*Is Kākā Valley a ‘gateway’ landscape?*

[188] Ms Steven characterises the Kākā Valley landscape as a ‘gateway’ landscape. That characterisation has no established pedigree in the RMA, in case law or in Te Tangi A Te Manu - Aotearoa NZ Landscape assessment Guidelines. Ms Steven’s term ‘gateway’ is used with apparent deference to Policy NA2.3.3 of the NRPS that states:

*“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”.*

[189] The RPS intent therefore need to be considered.

[190] Ms Steven’s approach rests on an incorrect assessment of the landscape aims of the NRPS. It is instructive to look at the methods for implementing the objectives and policies in Chapter 7 of the NRPS. These methods are stated in column 1 with comment in Table 2 below.

*Table 2: Landscape methods in Nelson Regional Policy Statement*

Provision	Comment
<p>NA2.4.1 Council will undertake a detailed inventory of landscape and natural features in order to assess their relative significance, vulnerability and the degree to which they are threatened.</p>	<p>The Council did undertake a detailed inventory under the NRMP and the Site was not identified using a region-wide study. Even in the most recent Boffa Miskell region-wide study, Kākā Valley has not been identified as of significant or particularly vulnerable. Note the reference to <i>relative</i> significance pointing to the need for a region-wide perspective.</p>
<p>NA2.4.2 Council will introduce rules in its District Plan to restrict land use activities with the potential to impact on significant landscape and natural features.</p>	<p>Subdivision (RUr.80) and Building Residential units (RUr.54) in the Landscape Overlay is a controlled activity. However, these provisions need to be read alongside DH1 ‘Urban Expansion’ and then also</p>

		the parallel provisions and methods identified in the NRMP relating to urban growth (i.e. Structure Planning (AD11.4A) and DO15 'Peripheral Urban Expansion).
NA2.4.3	Council will introduce rules in its District Plan to restrict land use activities with the potential to impact on significant landscape and natural features.	Subdivision (RUr.80) and Building Residential units (RUr.54) in the Landscape Overlay is a controlled activity. However, these provisions need to be read alongside DH1 'Urban Expansion' and then also the parallel provisions and methods identified in the NRMP relating to urban growth (i.e. Structure Planning (AD11.4A) and DO15 'Peripheral Urban Expansion).
NA2.4.4	Council will encourage those persons undertaking subdivisions or other activities attracting development contributions to vest significant landscape and natural features in Council.	This is achieved by PPC 28. Not by vesting the landscape in NCC since NCC does not want Kākā Hill. It is achieved by vesting it in Ngāti Koata.
NA2.4.5	Council will encourage and, where it considers appropriate, assist landowners and resource	The Council has never considered purchasing the Kākā Valley land or

	users to protect significant landscapes and natural features through covenants and other mechanisms.	indeed Kākā Hill and has no intention of doing so. The important point is that the Council has identified it as an appropriate method to acquire land rather than using regulatory instruments as a means of appropriating public values at private expense. It would not be appropriate to use covenants and other mechanisms except to protect significant landscapes and the Site has not been identified in any instrument or regional study as significant.
NA2.4.6	Council will develop landscape and building appearance guidelines in order to advise applicants seeking resource consents.	That text shows that appropriate landscape management controls can be achieved by landscape and building appearance controls. That is precisely what PPC 28 does.
NA2.4.7	Council will consider and, where appropriate, prepare a landscape management strategy for the city foothills and the Maitai Valley in order to co-ordinate land	There is no landscape management strategy for the Site and the Site has never been considered in any strategy contrast to the

	management and to preserve and enhance Nelson's landscape setting.	upper reaches of the Maitai Valley.
NA2.4.8	Council will require that pre-determined standards are met or appropriate resource consents are granted before any activity is undertaken which has the potential to adversely affect any significant landscape or natural features.	That only applies to significant landscapes or natural features which the subject site is not. In any event there are estimable controls within PPC 28.
NA2.4.9	Council will use abatement notices and enforcement orders where protection of significant landscape and natural features warrants such an approach.	No comment required.

[191] The anticipated results and performance indicators in NA2.7 and NA2.8 are also set out below in Table 3.

*Table 3: Anticipated Results in Nelson Regional Policy Statement on Landscape*

Provision		Comment
NA2.7.1	Preservation or enhancement of significant landscape and natural features while minimising conflict with private land ownership rights.	Preservation is only for significant landscapes and natural features. Also note the point about private land ownership rights and respecting those.
NA2.7.2	Development which is sympathetic to or	The NRPS does not contemplate that all development is excluded.



	complements significant landscape and natural features	Some development can be sympathetic to or complementary to landscapes. Schedule U of the NRMP is a good example.
NA2.8.1	Positive protection being introduced for significant landscape and natural features.	Protection is only appropriate for significant landscapes and natural features.
NA2.8.2	Developments which preserve or features Developments which preserve or features.	Note that this provision recognises the development can be appropriate in a way that maintains or preserve or enhances the significant landscapes and natural features. The experts for the Applicant say that this is precisely what PPC 28 achieves.

- [192] Ms Steven claims the so-called ‘gateway’ characteristics are highly valued by the community. That assertion is not supported by any credible analysis. Normally a landscape architect implements a structured assessment of community values including experiential and associative values. No such analysis exists. It is also concerning that Ms Steven has not undertaken an assessment of the views of tangata whenua contrary to Chapter 5 of the NRPS. As the evidence of Ngāti Koata will demonstrate, providing housing that enables their people intimacy with the ancestral lands and the Matai awa are important experiential and associative values. Consideration of these values is required following RMA, s 6(e), s 7(a) and s 8. It is submitted that it is a serious matter when a landscape architect excludes

tangata whenua reasonable access to ancestral resources through an opinion that is not informed by their needs and requirements and values. Ms Steven's assessment unjustifiably privileges other members of the community who are members of STM.

[193] Ms Steven has outlined a number of key observations regarding the suite of Nelson landscape studies undertaken by Boffa Miskell [Steven [92]]. Bullet point 3 of that paragraph connects the purpose of the 2015 study to in part 'significant landscapes' (SL) which are afforded consideration under RMA, s 7(c). Bullet point 4 then implies the Maitai Valley landscape qualified as a significant landscape. This has also been mapped by Ms Steven with Attachment A – Figure 4. However, this is an incorrect interpretation of the Boffa Miskell landscape study. Mr Girvan has confirmed this. It is actually the 'Maitai/Maitahi River' which is identified as a significant landscape with its values set out. A review of these factors reinforces that it is the value of the river corridor which has been recognised not the wider Maitai Valley character area as Ms Steven's summary evaluation states.

[194] Because there are limited landscape controls on the Site, the Site could instead be planted out in exotic species such as Radiata Pine (like most of the Maitahi Catchment) and would not provide the same landscape and amenity values as proposed in PPC 28.

*Natural character on production land?*

[195] Because development is only proposed on land which is cleared, the question arises what natural character is being lost as a result of the proposed development.

[196] Significantly the RPS does not direct identifying features or values based on natural character other than in the margins of coastal environment and rivers. The relevant policy reads:

*“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 significant open space values such as greenbelt(s);*
- v) make significant contribution to the natural character of the coastal environment, wetlands, rivers and their margins; and/or*
- vi) are outstanding natural features and landscapes”.*

[197] *Natural character* is defined by the New Zealand Institute of Landscape Architects (NZLIA) as:

*“The cumulative expression of natural and cultural features, patterns and processes in a geographical area, including human perceptions and associations”.*

[198] Natural character is essentially concerned with the measure of naturalness which includes biophysical and sensory landscape attributes. Natural character depends upon:

- (a) The extent to which natural elements, patterns and processes occur.
- (b) The nature and extent of modification to the ecosystems and landscape/seascape.

[199] It is submitted that it is not credible for Ms Steven to opine that highly modified long standing pastoral environments have a degree of natural character sufficient to exclude housing.

- [200] Mr Girvan and Mr Milne have properly identified attributes of naturalness on the Site and proposed measures where appropriate to enhance natural character.

*The degree of impact on landscape values*

- [201] A significant difference between Ms Steven on the one hand and Mr Milne and Mr Girvan on the other, is the rating of the significance of visual impacts [Steven [82]]. What Ms Steven fails to recognise is that in her key viewing locations a person has a large visual palette. For example, at the Botanical Hill lookout, you would expect most people to be focusing on the view across the City towards Tasman Bay and the distant Abel Tasman National Park landform rather than the inland valley.
- [202] It is submitted the Panel should look at these viewing locations during a Site visit to assess the merits of Ms Steven's conclusions. At these four locations Ms Steven overstates the impact of development on the Site.
- [203] In addition, the introduction of transport infrastructure and communities to the Site provide people and communities with greater opportunities to enjoy the landscape and views. There are both pluses and minuses. All choices involving trade-offs. Ms Steven's lens is entirely negative.

*Transportation*

- [204] At [29]-[30] Mr James refers to the Services Overlay and suggests that despite this overlay further evidence of mitigation is required to show the impacts of PPC 28 can be appropriately managed.
- [205] That contrasts with the opinion of Mr James in relation to the assessment of transport impacts for the Enner Glynn & Upper Brook Rezoning & Structure Plan Change 17 (operative 09/09/2013). Mr James gave evidence as a professional transport advisor to NCC. Mr James considered that the timing of any mitigations and the funding was best be dealt with at the resource consent stage. He stated in his report mitigations are exactly the type of mitigations which are expressly addressed by the plan change to be considered through the resource consent process in PPC 28. A copy of

Mr James' report is in the Electronic Bundle under "Other Documents Referenced".

### *Planning*

[206] Ms McCabe's planning evidence fails to address the statutory evaluative assessment in s 32 even though the requirements are mentioned at [25] of Ms McCabe's SOE.

[207] The private plan change brings forward the planning review cycle<sup>30</sup> and opens for consideration the optimal planning framework for the Site. There is no presumption in favour of the *status quo*. The evaluation requires the Panel to *examine* again the appropriate objectives for the subject site framed by the proposal as an alternative.

[208] That evaluative enquiry is necessarily comparative because the question s 32 poses is whether or not the proposal is the *most appropriate* objective and with appropriate implementing provisions. The point that s 32 requires a comparative analysis is very plain in the Ministry for the Environment Guide to section 32<sup>31</sup>. For example, a search for the word 'comparison' in that guide produces 11 results.

[209] Section 32 requires, therefore, (subject to scope constraints) a comparative evaluation of:

- (a) The plan change provisions and any consequential changes within submissions; or
- (b) Some middle ground or alternative supported by a submission; or
- (c) The *status quo*.

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<sup>30</sup> For a description of the planning cycle see Figure 1, Section 2, MfE *A guide to section 32 of the Resource Management Act 1991: Incorporating changes as a result of the Resource Legislation Amendment Act 2017*, Wellington: Ministry for the Environment.

<sup>31</sup> Ibid.

[210] Ms McCabe's evidence does not undertake an RMA, s 32 comparative assessment between the plan change provision (as modified following conferencing) and the *status quo* that she supports in her conclusion.

[211] That omission is significant since in a comparative exercise there are trade-offs and a range of benefits and costs to be evaluated. That is what RMA, s 32 forces a planner to confront. By not undertaking an alternative s 32 analysis, for example, Ms McCabe avoids the inconvenient truth that the *status quo* undermines the aims of the NPS-UD.

[212] In the final bullet point of paragraph [3] (Executive Summary) Ms McCabe says:

*"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".*

[213] Again, this is not a comparative analysis and if the question is how to achieve Part 2 (which it is) then the scope of STM's submissions is sufficiently broad to enable Ms McCabe to identify where the Applicants opportunities and constraints analysis needs to be recalibrated or re-set and specify any changes to the plan provisions that might be required.

[214] A planner cannot logically say that their finding that the plan change is deficient is proof that the *status quo* is the optimal planning solution under s 32.

[215] A submitter is free to seek rejection of a plan change. A professional planner however is required to assist in the Panel securing the optimal planning outcome.

[216] These submissions now examine the statements in Ms McCabe's Executive Summary.

[217] The first bullet point of [3] (McCabe Executive Summary) says:

*"Irrespective of the legal issue I also do not consider PPC 28 to contribute to a well-functioning urban environment, as it does not currently meet the minimum*

*requirements set out in NPS-UD particularly around transport connectivity matters and stormwater management”.*

- [218] There is no evidence the stormwater management is a significant remaining issue between the experts.
  
- [219] There is very little dispute concerning transport connectivity and stormwater management. The question is whether sufficient mitigation will be achieved through the plan change implementation. Any additional provisions required could have been put forward by Ms McCabe to resolve those matters.
  
- [220] In the second bullet point at [3] Ms McCabe says that there is no ITA but Mr James does not in his evidence state that in his opinion that one is required. The planning experts agreed in their JWS Planning dated 19 & 20 May at 3.12 that an ITA could be requested as part of the resource consent process.
  
- [221] The third bullet point at [3] claims that not all streams and wetlands were identified. All the streams are identified in the Stormwater Management Plan. The Structure Plan does not require this under the NRMP and ephemeral streams and things of that nature might be useful to manage overland flow paths but are not essential in terms of the function of the Structure Plan. All wetlands have been identified and the assertion they have not been has no evidential support.
  
- [222] In the fourth bullet point Ms McCabe claims that the realignment is contrary to the NPS-FM. For reasons already given it is submitted that that policy should not be read in the way that Ms McCabe suggests.
  
- [223] In the fifth to seventh bullet points Ms McCabe critiques freshwater management outcomes and that appears to rest entirely on the evidence of Mr Suljich which is strong on assertion.
  
- [224] In the eighth bullet point Ms McCabe discounts the Future Development Strategy (2019) on the weak basis that the Ombudsman noted that the FDS when notified referred to the Kākā Valley which may have confused people.

However, the Ombudsman did not seek to declare the strategy invalid and noted that the NPS-UDC had overtaken matters showing the important need of housing. To disregard that document relying on the Ombudsman's letter is misconceived.

- [225] Concerning landscape and natural character, (section 3 bullet points 8 and 9), Ms McCabe claims that PPC 28 does not achieve the strong directions of the RPS, Chapter 7. However, for the reasons given in the analysis of Ms Steven's evidence, that is not correct. In addition, Ms McCabe wrongly analyses the chapter on natural amenity values. The relevant objective of NA2.2 rather cryptically states:

*"A landscape which preserves and enhances the character of the natural setting in which significant natural features are protected".*

- [226] The principal point from that objective is that it is only significant natural features that are to be protected not others. Policies following that objective reinforce that point.
- [227] Supporting the view that the NRPS had in mind protection of truly significant landscapes with high naturalness through identification is Policy NA2.3.6 which states:

*"NA2.3. To identify landscape areas and natural features of significant conservation value based on the following criteria:*

- i) significant Māori cultural sites identified now or in the future in accordance with tikanga māori;*
- ii) protected areas such as reserves, sanctuaries and parks;*
- iii) scenic sites of national or international significance, including their collective characteristics;*
- iv) representative examples of regionally, nationally or internationally significant or outstanding landforms; and*
- v) geologic features of regional, national or international significance and of high vulnerability.*



**Note:** *Identification of areas of significant conservation value will be undertaken in consultation with Department of Conservation, tangata whenua, and other appropriate organisations, agencies and individuals”.*

[228] Then in relation to those identified sites, the policy is only to protect them to the extent necessary as stated in NA2.3.7:

*“NA2.3.7 To recognise and provide for the protection of those landscape and natural attributes 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;*
- iii) are not subject to any other relevant form of protection; and*
- iv) it is within Council's powers to achieve appropriate protection.*

*The degree of protection will be based on the relative importance of the site”.*

[229] Chapter 7 of the NRPS does not introduce a protection paradigm other than for the most special resources where a conservation ethic properly applies. To suggest that that applies to farmland in the Kākā Valley is, it is submitted, misconceived.

[230] Ms McCabe in her evidence has significantly departed from the evidence provided by the experts for Save the Maitai, as well as departing from the planning matters agreed in the Planning JWS dated 26 April 2022 and 19 & 20 May 2022. As set out above and as canvassed in the rebuttal evidence of Mr Lile, a number of the assertions in Ms McCabe’s evidence are also inconsistent with the expert witness evidence agreed during the expert conferencing process.

### **Section 13 – Conclusion**

[231] PPC 28 has been thoroughly tested by an excellent expert team.

[232] The Applicant and its team have never suggested that they could not learn through the process or refine the provisions so that they are sharper and more appropriate. The Applicant welcomes any solutions-orientated approach that burnishes the PPC 28 provisions to make them the best possible outcome for Nelson.

[233] It is submitted that PPC 28 is worthy of the Panel's positive consideration.

Dated 8 July 2022



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