

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

IN THE MATTER of Private Plan Change 28 – Maitahi Bayview

**AND IN THE MATTER of Clause 21 of the First Schedule of the Resource
Management Act 1991**

STATEMENT OF KELLY MCCABE TO PPC28 HEARING PANEL

DATED 18 JULY 2022

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1. I have reviewed the information and evidence throughout the plan change process, I was involved in a number of the expert conferencing topics, and I have been watching the hearing online until this point. Overall, and as stated in my original evidence, I consider that there is insufficient information to make a confident recommendation on PPC28 and that aspects of PPC28 are not consistent with higher order objectives and policies.
2. My summary today, incorporates some matters that I originally addressed in my evidence, and I have additionally incorporated some of my views on matters or topics that have been raised in both the rebuttal evidence and discussions throughout the hearing. As I see it, the topic of the sufficiency of information remains to be an area where there are vast differences in opinions between the applicants team, Council and submitters.
3. The legal submission of Ms. Gepp has comprehensively detailed the need for sufficiency of information to be provided for a private plan change in Section 2.3. From a planning perspective, I agree with the approach to sufficiency of information that she laid out. An understanding of whether the existing or proposed zoning is more appropriate for the site, requires an understanding of the effects on the environment. Furthermore, when making a rule in a district plan, it is important to be sure that those rules are sufficiently robust to manage the activities and their adverse effects.
4. I consider that there are some large gaps in the information that has been provided to date. This has impacted on my ability to be able to understand the effects on the environment and to establish whether the planning mechanics are appropriate to control the anticipated activities and their adverse effects.
5. There are areas where the applicant's team considers that the Applicant and the Council experts are 'very close' in their views. For example, this has been stated by the applicant's team for stormwater management, freshwater ecology, and water sensitive design. That has not been my interpretation of the s42a reporting officer's evidence, where I considered it to be quite evident in those statements that the gaps were somewhat larger than 'very close'. The SMP is inadequate in its current format and needs refinement. There are many other disciplines in which there are varying degrees of views on the level of

information that it required. In some cases, these difference of opinions are vast.

6. The panel raised the question in the hearing as to why a SMP hadn't been produced in the initial stages of the PPC28 project, and whether it is now a race to get the information in. From my perspective, this is how it appears to me, and it does not apply only to the SMP matter either. The applicant was sent a request for further information that covered a detailed number of matters across a number of disciplines, prior to notification of the plan change. I note that the response from the applicant's team stated:

“At this point it is also relevant to point out that there are some items in the further information request that we consider are unnecessary in order to understand Request and the associated effects. Our assessment as to why some of those questions / requests are unnecessary is provided within the attached Further Information Response Table. In particular, we consider some of these requests seek information that the NRMP requires would be assessed and managed as a part of resource consent process.”

7. Incidentally, these matters, are topics that are now being discussed at the hearing in terms of information requirements, rather than being able to provide constructive assessments and feedback. There have been other opportunities in the process where experts have indicated to the applicant's team explicitly in terms of what information would be needed for assessments to be undertaken – this included the expert conferencing, the s42a reporting, and expert evidence. However, the same point remains, where it is not possible to understand the extent of adverse effects.
8. During the hearing the applicant's team have made mention of some prior assessments and plans that they have undertaken or prepared, but these documents have never been provided as part of the plan change documentation. For example, Mr Foley stated that he had previously assessed the permeability of the floodplain soils, and that infiltration can be achieved – but this has not been submitted as part of the information. With respect, that is information that should have been provided to demonstrate a cross-discipline assessment of the proposed approaches in the SMP and would have enabled the other relevant

experts to consider the effects and the workability of the planning mechanics within their disciplines.

9. In terms of the NPSUD, in my view development capacity can be met through intensification or through urban expansion. I referred to the Eden-Epsom case law in my evidence. As has been stated in Ms. Gepp's legal submission and in the hearing, the definition of planning decision in the NPSUD was changed to include private plan changes. These changes coincided with the time that I was preparing evidence and I was not aware of that change. To confirm, this case law is no longer relevant to PPC28. In my evidence, I concluded that, in its current form, PPC28 does not contribute to a well-functioning urban environment. My reasons for this conclusion are based on inadequacies relating to transportation and stormwater management. Mr Suljic and Mr James have discussed these matters, and I don't intend to repeat those concerns in detail myself.
10. Related to the NPSUD, is the matter of the FDS. Questions have been raised around the weighting that should be given to the 2019 FDS. As I stated in my evidence, the Ombudsman decision indicated that the consultation was unreasonable in the respect that members of the public would not have clearly understood that the Maitai Valley area was referenced as a potential residential expansion area. This was a component around my reason to apply no weight to the 2019 FDS, as I simply cannot reconcile that in terms of a consultation process, the fact that the public would not have understood the implications, is by any means an adequate process. There are also other clear issues with the 2019 FDS, such as it having not been promulgated under the NPSUD. I remain of the view that no weight should be placed on the 2019 FDS. If a new FDS is produced before the Panel makes its decision, I consider that it should be taken into account.
11. There have been claims by the applicant's team that I have 'avoided the inconvenient truth that the status quo undermines the aims of the NPS-UD.' I certainly recognise the need to give effect to the NPSUD directives to plan for growth and ensure the delivery of well functional urban environments for all people, communities, and future generations. However, I don't see the NPSUD as directing that any proposal that provides for housing must be approved. The

responsive planning clauses use the words to ‘have particular regard to.’ The NPSUD does not provide any directive that overrides the need to give effect to other planning instruments, which results in ensuring that growth management is achieved through robust integrated management approaches, and that environmental outcomes are also achieved. I have used the information in the 2020 HBA around housing demand and supply, which states that there is adequate housing supply enabled through the current planning framework to meet demand until at least 2039 and to 2051 if the draft Nelson Plan is implemented. Additionally, the NPSUD must be applied in such a way that the objectives and policies of the NPS-FM are given effect. To date, I consider that this has not been demonstrated by the applicant.

12. An issue remains as to whether all streams and wetlands on the site have yet been identified on the Structure Plan. This information is needed in understanding whether the pattern of density and the necessary works to facilitate PPC28 can give effect to the NPS-FM. I further table a report that I came across late last week. It is titled “*Maitai Ecological Restoration Plan*” and is available on the Nelson Council website. The Nelson Council initiated project involved Morphum Environmental developing a restoration plan to guide restoration efforts along the river and riparian corridor. I refer to Section 2.6.7 under the heading “Water Sensitive Design”. The third paragraph down states:

“There is also an opportunity to further enhance an area of wetland along the Kaka Hill tributary within the vicinity of the confluence with the Maitai River confluence, possibly integrated with the ecological enhancement and/or stormwater management aspirations of the proposed Kaka hill development (noting that the wetland likely covers both private and council managed land).”

13. By my understanding this indicates the possibility of a wetland within the PPC28 site that has not been identified. The matter of the identification of all wetlands on the PPC28 site has been raised as far back as the request for further information, with Council requesting ‘*mapping and classification of wetlands within the structure plan area (beyond the two identified)*.’ This matter has been raised in expert conferencing, and within the expert evidence. This has never been explicitly addressed by the applicant’s relevant experts in any responses or within their

evidence. Understanding the constraints and receiving environment is important when considering matters such as stormwater and water sensitive design, the management of earthworks, streamworks, and the floodplain works. At this point, I cannot be certain that the planning mechanics that are proposed in PPC28 are appropriate to manage adverse effects.

14. It is my view that the stream realignment for the Kaka Stream does not align with the imperative to avoid loss of stream extent and values. There is simply insufficient detail to conclude that the enhancement opportunities provided by the realignment outweigh the enhancement of the current stream alignment, as the applicant has stated. For these reasons, along with the strong directive of the NPS:FM, if PPC28 is approved I do not support the proposed framework that implies that the realignment is more beneficial than the protection and restoration of the existing alignment.
15. In terms of freshwater quality, inadequacies in the SMP have been discussed during the hearing. There has been no information provided that supports the claims that earthworks can be managed appropriately during the latter stages. Mr. Suljic addresses these matters in more detail in his evidence. The downstream environment, including the Maitai River and particularly Denne's hole, are highly vulnerable given the recreational activities that occur within those waters, and there is a need to ensure those values are protected, along with the wider environment. I have heard the evidence relating to the hydrology of the Maitai River including its flushing power, but that raises a new issue about the ultimate receiving environment where sediment that is flushed is deposited.
16. Overall, in my view there is inadequate information to demonstrate that PPC28 will give effect to the NPS-FM.
17. In addition to applying the NPSUD in a way that the objective and policies of the NPS-FM are given effect, PPC28 must also give effect to the RPS, which encompasses matters that are important at a regional level. The NPSUD, the NPS:FM and the RPS are the key planning instruments that I consider to be significant to achieving appropriate and well-balanced outcomes for the PPC28 site. I acknowledge that the RPS is an older document but it is very clear in its description of anticipated community outcomes. The level of attention paid to

the RPS appears to be a major reason for the differences in opinions between myself and Mr. Lile.

18. The RPS, contains specific policies that relate to 'urban expansion'. This includes Policy DH1.3.3 which seeks an outcome where expansion is only to be provided for where it has a greater benefit than intensification. Within the listed criteria to assess this policy, there are infrastructure related matters, environmental issues, and amenity related matters. I conclude that there has been no demonstration at this point that urban expansion will result in a greater benefit than intensification.
19. Furthermore, Policy DH1.3.2 seeks that regard is given to community expectations when determining the extent of urban expansion. The degree of opposition to PPC28 and the current draft FDS resoundingly indicates that the community are not in support of urban expansion in this plan change area. I consider that landscape character and natural features within the RPS contains some strong directive language and should be accorded high weighting. Ms Steven has concluded that the PPC28 development would result in adverse effects on landscape character and visual amenity of a Moderate to High degree. There are also concerns related to the gateway landscape and the Maitai Valley greenbelt function, which Ms Steven has addressed in her evidence.
20. To extend further on the RPS, there are unknown effects related to amenity and whether PPC28 meets the high level of amenity that is sought under the RPS, being to maintain and enhance amenity values. I consider that a noise report should have been prepared to address the noise effects arising from PPC28. I have considered the existing NRMP framework around noise related matters, and I do not consider them to be sufficiently robust to address the extent of acoustic issues that may arise from the development of PPC28 at later consenting stages. The community have expressed concerns around the impacts arising from urban development on the 'tranquillity' of the Maitai valley recreational resource. Those in the community are best placed to describe these amenity values and their associations with the Maitai, which I am sure they will express in the hearing. I consider that it is important that development of this site is compatible with maintaining and enhancing amenity values, as is sought by the RPS.

21. Overall, I have concluded that PPC28 does not give effect to the RPS.
22. Regarding the non-notification provisions that are proposed, I am of the view that these provisions should not be based on a presumption that the existing planning mechanics are the most suited for the PPC28 site. Furthermore, the NRMP has been mentioned throughout the plan change process as being ‘dated’ in other regards – which poses questions as to whether following the existing planning structure is the most appropriate method. Mr. Lile has outlined that there will be a high likelihood that future consents will be ‘tripped’ into a higher activity status by rules in overlays and these will be the subject of normal RMA notification tests. That may be the case, however, I consider that it is more appropriate that the notification structure is relevant to the explicit rule that it is addressing, rather than relying on other sections of the plan. Based on the information provided to date, I consider that if PPC28 is approved, the normal RMA tests for notification would be more appropriate. In my view, there is a high degree of uncertainty that PPC28 is compatible with a preclusion for notification.
23. The panel has given some constructive advice on how to address the workability of Schedule X should PPC28 be approved, as has Ms Sweetman in her s42a report and addendum report. I agree in this respect that the provisions are not workable in their current format, have an element of confusion, and require more specificity in terms of what the provisions are attempting to address. I understand that the applicant’s team are working to address this matter. However, my bigger concern is that there has not been adequate levels of information provided in the plan change process and this information is critical for Section 32 evaluations, and demonstrating relationships between the issues, objectives and policies that are proposed in a plan change.

Kelly McCabe

18 July 2022