

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

IN THE MATTER

of an application by **CCKV Maitahi Development Co LP** and **Bayview Nelson Limited** for a 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

STATEMENT OF REPLY EVIDENCE OF MARK FOLEY

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Statement of reply

- [1] My name is Mark Foley.
- [2] I prepared a statement of evidence relating to the geological and geotechnical aspects of Proposed Plan Change 28 (PPC28)
- [3] I have also prepared rebuttal evidence in response to addendum evidence by Mr Suljic.
- [4] I have also prepared a written statement outlining my verbal response to questions asked by the Panel of Commissioners and statements made by others in response to questions put to them from the Panel of Commissioners.

Reply evidence

- [5] I have listened to the presentation expert evidence of Mr Ridley, and the questions put to him by the Commissioners.
- [6] I note Mr Ridley is in agreement with Mr Parsonson that best practise erosion and sedimentation control (ESC) is well established and implemented on many earthworks sites. That has been my experience in Nelson.
- [7] In responding to a question from Commissioner Mark-Brown, Mr Ridley described the risk-based process that was undertaken to enable the planning and design of earthworks for the Warkworth to Wellsford motorway in advance of applying for resource consent. While the RMA context is different, I expect that the process to be followed in advance of any resource consent being sought within the proposed PPC28 Plan Change area will also involve a risk-based approach that is iterative with earthworks design development. I note that the preparation of the revised Structure Plan included multi discipline input with a focus on excluding areas with significant constraints. Input to that process included consideration of topographic and geotechnical constraints, construction materials (soil and rock) and short and long term impacts, of earthworks, on the environment and identifying areas. As design development progresses this process will continue in advance of an application for resource consent.

- [8] In response to a further question from Commissioner Mark-Brown, Mr Ridley spoke about the changes in erosion and sediment control practises, in what he referred to as structural and non structural changes over the last 20 years. My observation in Nelson is that there has been a progressive shift from about 2014 onwards away from meeting minimum standards as prescribed in the Nelson Land Development Manual 2010, to implementation of a risk based framework for earthworks planning and design, best industry practice with regard to structural solutions to avoid and mitigate erosion and sedimentation, and also the use of adaptive management with multi stakeholder and expert input to earthworks planning and construction management. The Nelson Tasman Erosion and Sedimentation Guidelines, issued in 2019 is a comprehensive document that outlines the risk-based approach to erosion and sediment control and which also outlines the application of the USLE (noting its shortcomings) to aid in identifying potential variations across a site of potential sediment yield and to assist in allowing the “erosion and sediment control methodology to be tailored to suit the site’s variations”.
- [9] My experience in planning and developing earthworks designs in advance of any resource consent application is that the effects of earthworks construction are fully considered as part of the design development process. This includes minimising or avoiding earthworks in areas where potential effects cannot be satisfactorily mitigated (within the frameworks of the RMA). At consent application stage draft construction management plans and dust erosion and sedimentation plans are prepared. These identify staging programmes to ensure that:
- (a) Bare areas are minimised with appropriate controls identified to ensure sediment generation is minimised and adequate (near to source) treatment including flocculation are provided.
 - (b) Earthworks areas are stabilised progressively
 - (c) Monitoring and adaptive planning is an integral part of earthworks management.

- [10] The policies and rules in the NRMP form a basis of consideration in this process and the Nelson Tasman erosion and Sediment Control Guidelines provides effective tools to shape the design development process. As part of all land use consent applications the applicant is expected to provide construction management plans, including erosion and sediment control plans that cover the whole of life of earthworks and associated land disturbance activities. Further, under the NRMP Freshwater rules any land disturbance activity that may be associated with suspended sediment discharge requires a Discharge Consent which outlines further assessment criteria that is to be considered before a consent can be issued.
- [11] The most recent Land Use Consent that has crossed my desk demonstrates the attention given by Nelson City Council to ensure that adverse effects (both short and long term) arising from earthworks are appropriately avoided mitigated or remedied. Of a total of 59 conditions included in the consent, 49 plus an additional 30 sub-conditions, refer specifically to construction and environmental management, earthworks drainage, earthworks erosion and sedimentation, earthworks dust erosion and sediment control management, and post earthworks documentation and requirements for professional statements that resultant risks arising from instability (which includes erosion and sedimentation risks) in the long term are low.
- [12] Within this context, and noting the draft PPC 28 provisions, I consider that through an iterative development of the earthworks design, which will include consideration of both short and long term risks, and the avoidance of earthworks in some areas, it is feasible to undertake earthworks for urban development, and that satisfactory management of the potential effects can be expected.

Dated 28 July 2022



Mark Foley