

**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

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**REPLY EVIDENCE OF MARK A. B. LILE**

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## Introduction

- [1] My name is Mark Lile.
- [2] I have prepared this reply evidence to set out the refinements made to Schedule X and their rationale as a response to the issues raised by the submitters, the s42A experts and the Hearing Panel. This plan optimisation process has led to the most appropriate set of provisions, contained within what is “*V4 – PPC28*” provided with the applicant’s closing submissions and reply evidence.

## Optimised Provisions (“V4 – PPC28”)

- [3] Throughout the hearing Ms Sweetman and I were encouraged to undertake further conferencing to iron out the matters raised in the s42A addendum report (as to mechanics of the rules, and communication of, and linkages between, the provisions). Overall, this is what the Panel Chair asked on Day 1: “*how does it all hold together?*”.
- [4] The process that Ms Sweetman and I followed was to discuss the provisions in Schedule X (V3, 7 July 2022), assess what improvements should be made and reach an agreement on as many topics as possible. This included doubling back on the feedback from the other experts, both from the applicant and s42A officers. Also, it involved going through the marked-up version of the PPC28 provisions, which included suggestions from the Council’s team of experts<sup>1</sup>. I agree with Ms Sweetman that we made good progress<sup>2</sup>. We undertook our role as professional resource management planners and followed the Environment Court Code of Practice.
- [5] The optimised PPC28 provisions entitled “*V4 – PPC28*” have therefore been prepared in response to:
- (a) The questions and issues raised by the Panel, including the direct reference to Ms Sweetman’s addendum report identified in (b) below; and

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<sup>1</sup> Sweetman, Summary Statement, 21 July 2022, paragraph 19.

<sup>2</sup> Sweetman, Summary Statement, 21 July 2022, paragraph 20.

- (b) The questions and issues raised in the s42a report(s), and in particular within Attachment A ‘*Review of PPC28 Provisions*’ of Ms Sweetman’s s42a addendum (29 June 2022); and
  - (c) The evidence that was presented at the hearing by the applicant’s experts.
- [6] Overall, the provisions set out within ‘*V4 – PPC28*’ capture the technical expert expectations, and address the mechanics of the provisions, while providing the linkages through the package of provisions through the policy framework, in a manner that Ms Sweetman referred to ensuring PPC28 “*works*” with “*a clear line of sight and logic between the Structure Plan and the objectives, policies and rules in PPC28 and the NRMP*”<sup>3</sup>.
- [7] For clarification, and to avoid confusion, the provisions within Schedule X have not been renumbered. Renumbering will however be required when PPC28 is inserted formally into the Nelson Resource Management Plan.
- [8] In this next section of this Reply I explain the improvements I now recommend to the:
- A. Supporting objectives and policies; and
  - B. Rules contained in Schedule X; and the
  - C. Special Information Requirements.

#### **A. SUPPORTING OBJECTIVE AND POLICIES**

##### **REd.**

- [9] Only very minor changes have been made to this explanatory statement which is to be inserted into the start of Chapter 7.

##### **RE3.1.viii**

- [10] No change has been made to this Method.

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<sup>3</sup> Sweetman, Summary Statement. Para18. 21 July 2022.

### **Policy RE3.9 Maitahi Bayview Area (Schedule X)**

- [11] The landscape policy has been amended to more clearly state what is required within Schedule X to achieve the Objective. This includes amendments to the associated methods.

### **Objective RE6 Maitahi Bayview Area (Schedule X)**

- [12] This proposed new Objective and the supporting policies (and methods) have each been amended to pick up on the feedback received from the Panel and the s42A experts. In particular, the Panel suggested that these provisions could be “crisper” so the drafting has focused on more straightforward and more direct statements.

### **Policy RE6.1 Maitahi Bayview Structure Plan**

- [13] I have attempted to take the approach described above in redrafting this policy.

### **Policy RE6.2 Whakatū Tangata Whenua Values**

- [14] Ms Day has advised through Ms Sweetman that, through the process of engagement on the draft Nelson Plan, the Council has been directed to use “Whakatū Tangata Whenua” instead of “Mana Whenua”, and hence the change to the subject of Policy RE6.2.
- [15] Further improvements have been made to this policy to correct the language around tino rangatiratanga, and clarify the policy direction of relevance to the subject site being of cultural significance.

### **Policy RE6.3 Integrated Catchment Management Tools and Principles**

- [16] The changes made to Policy RE6.3 overlap with the changes made to X.9 in response to the suggestions from the s42A experts and the Panel. Likewise, these changes have been made in conjunction with the improvements made to the SMP in response to the suggestions from, and discussion with, Commissioner Mark-Brown.

- [17] The WSD principles previously located in X.9 are now appropriately located within this policy. Given this policy's relatively long list of principles, the obvious repetition has been removed.

#### **Policy RE6.4 Indigenous Biodiversity**

- [18] This policy once had a focus on terrestrial biodiversity. In making improvements to the provisions and addressing the feedback from the s42A experts I have redrafted the policy to capture terrestrial and freshwater biodiversity values. That approach is consistent with and overlaps with the changes made to combined X.15 and X.16 described below.

#### **Policy RE6.5 Earthworks**

- [19] Using the same policy drafting approaches described above. As suggested by Ms Sweetman and the Panel, the previous best practice principles within X.12 have been transferred into this new Policy RE6.5.

#### **Policy RE6.6 Heritage Structures**

With the applicant volunteering a new rule (X.10) requiring consent for the demolition of the shearing shed and chimney structures, a new policy has been added to provide the necessary linkage between objective, policy and this new rule.

## **B. RULES WITHIN SCHEDULE X**

### **X.2 CHD in the Residential Zone – Higher Density Area**

[20] The following changes have been made to X.2:

#### X.2(a)

- (a) With the combination of X.15<sup>4</sup> and X16<sup>5</sup> (explained under X.15 below) the reference to X.16 has now been removed from X.2(a) (and X.3(a)).

#### Transport constraints

- (b) Commissioner Hill questioned the need for the third column to the transport constraints table within X.11. These specific transport constraints were of direct relevance to the RDA standard(s) inserted into X.2(e) and X.3(h) as a part of Version 3 (July 2022) which stated:

*“the transport upgrades identified in Rule X.11 have been addressed and are operational”.*

- (c) The third column to X.11 was discussed with Ms Sweetman<sup>6</sup> regarding the mechanics of X.11 and how this should supplement and operate in conjunction with the operative Services Overlay provisions.
- (d) For context, these constraints were identified in the Transport 2 JWS (10 May 2022, Section 3.1) with the mechanics of the Services Overlay also a matter discussed in the Planning 3 JWS (19 & 20 May 2022, 3.12 and 3.13). Likewise, the Services Overlay was explained in my primary evidence dated 15 June 2022, in paragraphs 166-169.
- (e) Under the X.11 heading below<sup>7</sup> I explain why the third column to the transport constraints table has been deleted from V4 - PPC28.

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<sup>4</sup> Ecological Assessment.

<sup>5</sup> Vegetation and Fauna Management Plan.

<sup>6</sup> 13 July 2022

<sup>7</sup> Paragraphs 36-40.

So, correspondingly, the RDA standard (quoted above) has also been removed, with the “line of sight” to the transport constraints contained within the matters of discretion alongside the requirements for an ITA, which reads:

*“the matters relevant to the Integrated Transport Assessment provided in accordance with X.14 of Schedule X, and whether the transport constraints identified in X.11 have been addressed and are operational”.*

- (f) As set out under X.11 below, the operative Services Overlay planning framework already very clearly sets out the risks associated with advancing subdivision and development before identified constraints are addressed.

#### Matters of Discretion

- (g) To clearly communicate the purpose of the particular information requirements and their relationship to the subdivision and development rules in X.2 and X.3, the general reference to these requirements in the matters of discretion<sup>8</sup> has now been expanded to address each of those individually. That was also a change suggested by Ms Sweetman. X.2 now contains matters of discretion I to XV (previously I-XII). Note: These individual methods have also been identified in the PPC28 policy framework, including listed methods following the format used in the NRMP.

#### Reference to the NPS-UD

- (h) The reference to the National Policy Statement for Urban Development 2020 has now been updated with the May 2022 version. That also applies to the explanation following X.3.

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<sup>8</sup> X.2(X11) and X.3 (XI) (Schedule X (V3, 7 July 2022))

### Non-Notification

[21] I have made no changes to the non-notification provisions in X.2 (nor X.2). In Ms Sweetman's summary statement, she said she was more comfortable with this provision in terms of Comprehensive Housing Development "*if the rule was for land use only and not subdivision*" (my emphasis). Her reasoning for this assessment is given in paragraph 16 of her summary, being that CHD consents are more focused on design and location elements, with internalised effects, and also given the sensitive location of the Higher Density Zone in the floodplain area.

[22] The NRMP provides the following definition of CHD:

*"**Comprehensive Housing Development** - Means three or more residential units, design and planned in an integrated manner, where all required resource and subdivision consents are submitted together, along with sketch plans of the proposed development. The land on which the proposed residential units are to be sited must form a separate contiguous area."*<sup>9</sup> (my emphasis)

[23] Separating the activity of subdivision from the land use/housing would not therefore align with the approach taken in the NRMP to enable an integrated approach. As I have clearly expressed in my evidence and in the answer to questions from the Panel on the topic, these provisions are of central importance to achieving the purpose and intent of the NPS-UD (May 2022).

### **X.3 Subdivision – General (Residential Zone)**

[24] Aside from the changes to X.3 described above, no other improvements have been made to X.3.

### **X.4 Backdrop Area (Excluding the Skyline Area)**

[25] I have made two changes to X.4. The first is the addition of the following controlled activity standard:

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<sup>9</sup> Meaning of Words, Chapter 2, p6, NRMP.



*4. The building is not located within the Residential Green Overlay as identified on Attachment B1.2 of Schedule X.*

- [26] This addition is necessary to secure the purpose of this Residential Green Overlay.
- [27] Secondly, the words “excluding Skyline Area” have also been added to the rule to ensure clear separation between X.4 and X.5.
- [28] For clarification, the Ecological Management Plan required at the time of subdivision (see X.15) will ensure the Residential Green Overlays are planted and protected as a part of the subdivision process.

#### **X.5 Skyline Area (Malvern Hills and Botanical Hill)**

- [29] The Reply Evidence from Mr Tony Milne for the applicant has described the changes made to X.5 as a part of improving “*the ‘workability’ and ‘practicality’ of the current provisions relating to ‘measuring’ skyline breaches on the PPC28 site from a plan rules point of view*”<sup>10</sup>.
- [30] In short, Mr Milne and I consider that it is appropriate to remove the standard that required a height measurement to be taken from viewing positions on the State Highway and make building activity within the Skyline Area a Restricted Discretionary Activity.

#### **X.6 Building on Kaka Hill**

- [31] No changes have been made to X.6 from V3 dated 7 July 2022.

#### **X.7 Esplanade Reserve Standards**

- [32] Other than the deletion of the “Note” referring to the potential realignment of the Lower Section of Kākā Stream, no changes have been made to this rule.

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<sup>10</sup> Reply Evidence from Mr Tony Milne, paragraph 32.

- [33] The approach taken by the applicant to undertake a fully integrated approach to the detailed design of the Kaka Stream corridor was explained thoroughly to the Panel at the hearing.

#### **X.10 Heritage Structures**

- [34] In response to the summary statement of Ms Sweetman and Dr McEwan, the primary difference is that I consider the heritage structures would not qualify for more than “Group C” listing in the NRMP. In any event, the resources are beyond repair for any practical reuse and that evidence is uncontested. Given that situation, and as a matter of good faith, the applicants have volunteered to ensure certain heritage values are salvaged and recorded before demolition.
- [35] The only change made to this rule has been to specifically identify the shearing shed as a heritage building, along with the remnant chimney structure. This change was made in response to a question from the Panel Chair during the hearing. I consider it appropriate to clarify precisely what part of the shearing shed building has been identified as containing some heritage value, as most of the shed has no value. That clarification has been provided by adding to the rule reference to the Origin Consultants Limited Memo of June 2022 and area A1 of the building.
- [36] To address workability as identified by Ms Sweetman, Objective RE6 has been amended and Policy RE6.6 has been added to contain a bespoke heritage policy.

#### **X.11 Services Overlay – Transport Constraints and Required Upgrades**

- [37] During the hearing the Panel Chair questioned the need for the last column “Development Threshold” within X.11. As addressed within X2 above, this resulted in the mechanics of X.11 being discussed with Ms Sweetman.
- [38] I now consider it appropriate to delete the last column of that table because the first two columns identify what off-site transport constraints must be resolved and what upgrades are required in advance of subdivision and development. This provision, with the requirement for an ITA, adds to the

current Services Overlay tool, which forms part of the NRMP. In Paragraphs 167-168 of my evidence of 15 June 2022, provided the following explanation:

*[167] As a part of the above expert conferencing process, and in the context of the identified transport deficiencies, I gathered the provisions of the NRMP that relate to the Services Overlay and prepared the following summary:*

1. *The NRMP clearly includes transport as part of the infrastructure canvassed by the Services Overlay (AD11.3.3.i).*
2. *The NRMP states that the constraints must be addressed before development can proceed (AD11.3.3.i), but also deals with situations whereby there are constraints “in the area” and so would need to be developed in a comprehensive manner in conjunction with Council and other property owners (AD11.3.3.ii).*
3. *The Services Overlay is also a method used to ensure development occurs in an orderly manner (DO14.1.3, and DO14.1.3.ii and iv). Financial contributions are also listed as a means of ensuring subdividers and developments contribute towards the costs of providing services (DO14.1.3.i). The development contributions policy is another very relevant part of the jigsaw.*
4. *Objective DO14.3 ‘Services’ and the associated policy require that services be provided in anticipation of likely effects and needs and that:*  
  
*‘It is appropriate for servicing requirements to be addressed at the time of subdivision or development to ensure that efficient and effective (including cost effective) systems are provided or enhanced and to ensure that the additional costs of servicing do not fall on the community generally’ (DO14.3.i, emphasis added).*
5. *Policy DO14.3.1 is directly relevant. If works are not included in the long term plan (LTP) then the developer is required to meet the costs. The explanation is also very helpful as it reinforces this framework.*
6. *The consequence and risks associated with developing in the Services Overlay are clearly spelt out in Policy DO14.3.3 ‘areas without services’. In these locations, development should not proceed where it will result in significant adverse effects. The explanation to REr.108 says such applications may be declined. Again, the Services Overlay is the primary tool for regulating this activity, with the assessment criteria and NTLDM listed as methods to administer this process.*

7. *There are a number of matters of discretion and assessment criteria that provide wide scope for the consent authority to ensure resource consent applications address the infrastructure constraints, such as:*
  - a. *The matters of discretion in REr.108.3;*
  - b. *The transport related assessment criteria in REr.107.2;*
  - c. *The matters in the NTLDM;*
  - d. *Traffic effects.*
8. *Having said all the above, the assessment criteria in residential rule REr.107.4 refers to “the matters contained in any Schedules ....”. (my emphasis). Adding some information on infrastructure constraints would make the planning framework even more robust.*

*[168] In summary, the Services Overlay requires that resource consent be obtained for at least a restricted discretionary activity, with scope for consents to be declined if the constraints have not been resolved. The NRMP states that it is at the time of subdivision and development that servicing constraints must be addressed.*

- [39] With the matters of discretion provided within X.2 and X.3, there is now a clear line of sight between the transport constraints identified in X11 and other potential issues identified in the required Integrated Transport Assessment (ITA). Appropriate linkages have also been added to the objectives and policies of PPC28.
- [40] Within item 167(6) of the above quote from my primary evidence, I describe the NRMP provisions that identify the risks of seeking consent before the servicing constraints are addressed and operational.
- [41] If the Panel considers that V3 provisions are more appropriate then the changes described in paragraph 20(e) above can be reversed.

## **X.12 Earthworks and Vegetation Clearance**

- [42] X.12 has been amended in response to the further discussion with Ms Sweetman over the earthworks principles being more appropriately incorporated into a new bespoke policy (addressed in Policy RE6.5 above).

These changes have also been addressed in the Reply Evidence of Mr Michael Parsonson.

## **C. SPECIAL INFORMATION REQUIREMENTS**

### **X.8 Cultural Values and Engagement with Te Tau Ihu Iwi**

- [43] I have simplified this information requirement by removing the opening sentence explaining the purpose of the CIA requirement. Amendments have also been made after considering the wording in the Fasttrack Covid 19 legislation, including what may be provided if a CIA is not provided. This other change was created in response to a question from Commissioner Tepania during the hearing.

### **X.9 Water Sensitive Design**

- [44] For the same reasons concerning the change to X.12, this information requirement has been simplified and amended with the principles moved into Policy RE6.3 to identify what needs to be done to achieve objective RE6 and achieve the outcomes proposed by PPC28.
- [45] The wording of this information requirement, and the other information requirements, have been standardised using consistent wording. My aim was to ensure the requirements are clearly expressed, including by whom, and, where appropriate, to what standard. That was also a suggestion made by Ms Sweetman
- [46] The updated WSD and SMP provisions have also been addressed in the Reply Evidence of Mr Stu Farrant and Mr Maurice Mills.

### **X.13 Stormwater Management Plan**

- [47] I have amended this information requirement to be consistent with the other information requirements, with an advice note provided to simply refer to a SMP template for assistance only.

### **X.14 Integrated Transport Assessment**

- [48] No changes have been made to X.14.

### **X.15 Ecological Assessment**

[49] Schedule X (V3, 7 July 2022) previously required an Ecological Assessment (X.15) and also a Vegetation and Fauna Management Plan (X.16). However, given both relate to ecological values, and with an identified need to clearly express the purpose and context of these requirements, it was considered appropriate to combine these into one (now X.15). Likewise, appropriate linkages are provided within Objective RE6, Policy RE6.4, along with the other associated policies which have overlapping considerations.

[50] This change is addressed in the Reply Evidence of Dr Ben Robertson and Mr Josh Markham.

### **X.17 Earthworks and ESC**

[51] I have added this information requirement to Schedule X (since V3) as an appropriate method to ensure the additional earthworks principles, now contained in Policy RE6.5, are demonstrated in resource consent applications to undertake earthworks. That has also been addressed in the Reply Evidence of Mr Michael Parsonson.

### **SUMMARY**

[52] Throughout this PPC28 process, I have remained open to making changes to Schedule X to ensure this request contains provisions that when implemented achieve the purpose of the Resource Management Act 1991 in the most appropriate manner. I have appreciated the opportunity provided by the Panel to make these improvements, and collaborating constructively with the s42A experts.

Dated 29 July 2022



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[Mark A. B. Lile]