IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2024] NZEnvC 281

IN THE MATTER	of the Resource Management Act 1991
AND	an appeal under clause 14 of the First Schedule of the Act and Private Plan Change 28 to the Nelson Resource Management Plan
BETWEEN	SAVE THE MAITAI INCORPORATED
	(ENV-2022-CHC-65)
	Appellant
AND	NELSON CITY COUNCIL
	Respondent
AND	CCKV MAITAI DEV CO LP & BAYVIEW NELSON LIMITED
	Applicant

Court:	Environment Judge J J M Hassan Environment Judge K G Reid Environment Commissioner K A Edmonds
Hearing:	On the papers
Last case event:	30 August 2024
Date of Decision:	11 November 2024
Date of Issue:	11 November 2024

FINAL DECISION OF THE ENVIRONMENT COURT

A: The parties are directed to make the changes to PPC28 set out in this decision and provide a final set of provisions.

B: Applications for costs are not encouraged. Any party wishing to apply must do so by 29 November 2024, and any response is to be provided by 13 December 2024.

REASONS

Introduction

[1] Save the Maitai Incorporated ('STM'/'appellant') appealed against the approval by the Nelson City Council ('NCC'/ 'Council') of Private Plan Change 28 ('PPC28').[1]

[2] The PPC28 site was a mix of Rural and Rural Higher Density Small Holdings under the Nelson City Resource Management Plan. The Council's decision on PPC28 rezoned parts of the site as Residential, Open Space – Recreation and Suburban Commercial, retained the remainder as Rural, and introduced a new Schedule, structure plan and bespoke planning provisions. The notice of appeal filed by STM raised a wide range of issues, but by the time of the hearing the scope of the appeal had been significantly narrowed to erosion and sediment control issues, and issues concerning the National Policy Statement for Highly Productive Land. The appellant requested that the court consider the evidence on flood risks, but did not otherwise seek to pursue the issue.

[3] The court made findings on the evidence presented, including that:[2]

(a) the PPC28 site is relatively low risk from an erosion and sediment

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1 PPC28 is formally known as *Private Plan Change 28: Maitahi – Bayview to the Nelson Resource Management Plan*.

2 *Save the Maitai Inc v Nelson City Council* [2024] NZEnvC 155 ('interim decision') at [89].

control perspective;

(b) there may be benefit in undertaking a sediment risk modelling analysis, however, undertaking the exercise now as part of PPC28 would involve a significant element of speculation;

(c) the intended direction of the policy package is the most appropriate way to manage the erosion and sediment control risks;

(d) there remains erosion and sediment risk associated with development on the site, but the magnitude of this risk is small and it is appropriate to manage that risk by way of plan provisions which, amongst other matters, govern future resource consenting.

[4] The court also found that the National Policy Statement for Freshwater Management ('NPS-FM') principle of Te Mana o te Wai requires a high degree of confidence that land use changes will not result in the loss of freshwater values. We were satisfied that the combination of the process that has been adopted by the applicant in developing PPC28 and the proposed plan provisions (provided these provisions could be modified as we indicated in the interim decision) will achieve this high degree of confidence.

[5] We indicated that there were several matters of drafting refinement requiring further input from the parties before the court could be in a position to determine the most appropriate zoning outcome and on what basis (if any) PPC28 could be approved. The following changes to PPC28 were required:

(a) the Walters Bluff area should be retained as Rural (the current zone) on the structure plan (in response to the court's findings on the National Policy Statement for Highly Productive Land); and

(b) further amendments to the provisions package were required to address various matters the court identified.

[6] The parties lodged a planning joint witness statement ('JWS') dated

15 August 2024. The planners indicated there were no remaining areas of disagreement. The JWS attached a set of amended provisions. The planners also lodged a supplementary JWS on 26 August 2024 addressing the overlap between the Council's proposed Plan Change 29 ('PC29') and PPC28. STM lodged a memorandum with comments on the JWS provisions on 30 August 2024, but did not seek further hearing time and is content for the remaining issues to be determined on the papers.

JWS

[7] The court has considered the planning JWS and the agreed provisions. The court is satisfied that the provisions appropriately address the issues identified in its interim decision, subject to a few more amendments detailed below.

[8] The court notes the amendments to improve integration between the provisions. We have made some directions to further improve cross-referencing and integration.

[9] Firstly, there is a need for consequential amendments to ensure that there is consistency in treatment of "development", "subdivision", "earthworks" and "earthworks related discharges".[3] Otherwise there is the potential for unintended consequences.

[10] We propose the following additional consequential amendments:

(a) RE6.5 – in the opening sentence "subdivision and development" should be replaced with "subdivision, development and earthworks";
(b) RE6.5.i – the wording "… RE6.5 guides the overall design of such development …" should be amended to "… RE6.5 informs the

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3 As identified in the interim decision at [138].

overall design of such development …";

(c) under the heading "Special Information Requirements that apply within Schedule X" – the opening sentence should be amended to read "In order to ensure subdivision, development and earthworks within …";

(d) X.12 – add "or earthworks" after "… subdivision and integrated development …";

(e) X.13 – add "or earthworks" after "Each SMP submitted for subdivision and development …";

(f) X.15 - add "or earthworks" after "Each Ecological Impact Assessment submitted for subdivision and development …";

(g) X.16 – amend the heading to read "Earthworks Design and Erosion Sediment Control Plan";

(h) X.16 – amend "Applications for subdivision, earthworks and earthworks-related discharges" to read "Applications for subdivision, development, earthworks and earthworks-related discharges";

(i) X.16 – amend reference to "X.11 and X.15" to read "X.11, X.12 and X.15".

[11] A further issue relates to the adequacy of the cross-referencing of policies in the "Special Information Requirements that apply within Schedule X" to make it clear that the Special Information Requirements are to inform an integrated approach to resource consenting. We note that the Methods under Policy RE6.1 Maitahi/Mahitahi Bayview Area now contain:

> RE6.1.vi Additional information requirements under section 88 of the RMA, including the Special Information Requirements in X11-X.16 that demonstrate how the outcomes sought by Policies RE6.1-RE6.5 [are] to be achieved.[4]

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4 See paragraph [61] below.

[12] We deal with this issue further when addressing the STM memorandum.

STM memorandum

[13] STM considers that the proposed changes in the JWS are an improvement, but they do not go far enough to address the issues identified by the court, in particular to ensure the provisions capture the fundamental concept of Te Mana o te Wai and protect freshwater values.[5]

[14] STM relies on the JWS with respect to the interaction between PC29 and PPC28. A decision has not yet been made in the PC29 process.[6] STM's preference is to ring fence the PPC28 provisions so that they are not affected by the changes to PC29. STM notes that one of the PC29 changes would alter the activity status of subdivision in the Flood Overlay (in the Residential zone) from discretionary to restricted discretionary. STM is opposed to the subdivision activity status restricting Council's discretion or otherwise becoming more lenient, and ring fencing would avoid such an outcome.[7]

[15] There is no scope in this appeal to interfere with or pre-empt the PC29 process. In any case, we are not inclined to go down that route, as to curtail the Council's decisions on the PC29 submissions is inappropriate.

Objective RE6 and Policy RE6.1

[16] STM notes that the JWS includes an agreed addition to objective RE6 (and corresponding amendment to policy RE6.1):[8]

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5 STM memorandum with comments on JWS dated 30 August 2024 at [3].
6 STM memorandum with comments on JWS dated 30 August 2024 at [5].
7 STM memorandum with comments on JWS dated 30 August 2024 at [6].
8 STM memorandum with comments on JWS dated 30 August 2024 at [7].

> An environment where the adverse effects of accelerated soil erosion are avoided, remedied or mitigated.

[17] STM submits that "avoid, remedied or mitigated" represents a policy direction, rather than an objective (outcome to be achieved). STM says that while it understands some degree of soil erosion is inevitable, the evidence presented on behalf of the PPC28 proponents was premised on there not being adverse effects on receiving environments from soil erosion.[9] STM requests that the addition be replaced with the following:[10]

> *Objective RE6*
>
> - an environment where accelerated soil erosion is managed so that adverse effects on the receiving environment are avoided.
>
> *Policy RE6.1*
>
> - accelerated soil erosion is avoided, remedied or mitigated so that adverse effects on the receiving environment are avoided.

[18] STM does not support the current highly directive wording of the introductory words to policy RE6.1, as subdivision and development is to be "provided for".[11] STM suggests that the introductory words to policy RE6.1 be amended as follows:[12]

> Provide for subdivision and development which is consistent with the Maitahi/Mahitahi Bayview Structure Plan in Schedule X ~~and~~ only where it is demonstrated that: …

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9 STM memorandum with comments on JWS dated 30 August 2024 at [8].

10 STM memorandum with comments on JWS dated 30 August 2024 at [9].

11 STM memorandum with comments on JWS dated 30 August 2024 at [10], referring to the interim decision at [114].

12 STM memorandum with comments on JWS dated 30 August 2024 at [10].

[19] It submits that this would make it clear that the environmental outcomes to be achieved are just as important as providing for subdivision and development.[13]

[20] The court noted that there was a lack of reference in objective RE6 and proposed policy RE6.1 to the risks associated with erosion and sediment from earthworks, and suggested an amendment.[14] The JWS objective RE6 includes the court's suggested addition.[15] While we did note that policy RE6.1 is highly directive in "providing for" subdivision and development, we accept the JWS amendments to objective RE6 and policy RE6.1. We consider that the amended provisions appropriately respond to the issues the court raised. We decline to direct the further amendments STM requested.

Policy RE6.2

[21] STM submits that the vagueness of policy RE6.2 (which was identified by the court) has not been rectified.[16] STM does not address this further. We accept the JWS provisions, including the cross-reference added in method RE6.2.ii to the other policies which now reads:

> The specific provision for Iwi involvement following the principle of Mana Whakahaere through the requirement in X.11 for a Cultural Impact Assessment for any resource consent application involving earthworks, freshwater, discharges, subdivision or comprehensive housing, also demonstrating how the associated outcomes sought by Policies RE6.1-RE6.5 [are] to be achieved.

[22] The JWS notes that the court's questions, comments and suggestions do not prompt any changes to policy RE6.2 itself, but also acknowledges that

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13 STM memorandum with comments on JWS dated 30 August 2024 at [10].

14 Interim decision at [114]-[115].

15 Interim decision at [115].

16 STM memorandum with comments on JWS dated 30 August 2024 at [12], interim decision at [117].

policy RE6.2 is at the heart of related changes to other provisions.[17] We accept the amended method as an appropriate approach.

Policy RE6.3

[23] STM notes that the JWS recommends the following be added (together with associated changes to the explanation and reasons):[18]

> A. Prioritising the health and well-being of surface water bodies in a manner that maintains or enhances cultural, recreational and ecosystem values.

[24] STM considers this does not go far enough to capture the fundamental concept of Te Mana o te Wai, nor does it reflect the hierarchy of obligations (and suite of policies) as set out in the NPS-FM.[19] STM submits that the following wording better reflects Te Mana o te Wai and the hierarchy of obligations:[20]

> A. Implementing the hierarchy of obligations in Te Mana o te Wai, which 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.
>
> AA. Recognising that protecting the health of freshwater protects the health and well-being of the wider environment, protects the mauri of the wai, and restores and preserves the balance between the water, the wider environment, and the community.

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17 JWS dated August 2024 at [4.1].

18 STM memorandum with comments on JWS dated 30 August 2024 at [14].

19 STM memorandum with comments on JWS dated 30 August 2024 at [15].

20 STM memorandum with comments on JWS dated 30 August 2024 at [16].

[25] The court identified that policy RE6.3 does not contain an overarching expression of an intention that reflects the concept and principles of Te Mana o te Wai as set out in the NPS-FM.[21] The court has considered and accepts the amendments proposed in the JWS to policy RE6.3 A are sufficient to deal with the court's concerns. The court rejects STM's proposed changes.

[26] The court also rejects STM's proposed consequential change to the amended explanation and reasons.[22]

[27] STM notes that policy RE6.3.vii refers to X.11, X.13, X.15 and X.16. STM submits that the special information requirements within X.12 should be added, as it is proposed to apply to earthworks.[23] We agree that cross-reference should be added.

Policy RE6.4

[28] STM notes that the court commented that policy RE6.4 is narrower in focus than protection of the values of the relevant water bodies. The JWS states that with the addition of the new clauses in policy RE6.3, the narrowness of the policy may be less of a concern.[24] STM does not agree, and submits further amendments are required. It suggests:[25]

> a) Amending the heading of the policy so that it refers to "*Indigenous Biodiversity <u>and Freshwater Values</u>*".
>
> b) Amend clause d so that it reads: *Protecting and enhancing <u>habitats of indigenous freshwater species with a particular focus on</u> threatened species habitats within Kaka Stream.*
>
> This change ensures alignment with Policy 9 of the NPS FM which is that habitats of indigenous freshwater species are protected. This policy

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21 Interim decision at [118].
22 STM memorandum with comments on JWS dated 30 August 2024 at [17].
23 STM memorandum with comments on JWS dated 30 August 2024 at [18].
24 STM memorandum with comments on JWS dated 30 August 2024 at [19] and [21].
25 STM memorandum with comments on JWS dated 30 August 2024 at [21].

is not limited to threatened species.

c) Amend new clause f) so that it reads: *Protecting the values of waterbodies within Maitahi Bayview area and in receiving environments and prioritising the mauri, health and wellbeing of local waterbodies.*

This addition is more specific about what action is required.

[29] STM submits that its further amendments are required in order to protect freshwater values and to ensure that habitats of indigenous freshwater species are protected (not only where they are threatened).[26] STM refers to provisions of the National Policy Statement for Indigenous Biodiversity ('NPSIB').[27] The court issued a minute on 2 February 2024 in which it noted it was not inclined to open inquiry into the NPSIB, as the court is not a planning authority.[28] The court accepts the provisions as agreed in the JWS.

[30] STM supports the suggestion in the JWS to amend X.15 to refer to policies RE6.2 and RE6.5 (as well as policy RE6.4).[29] STM suggests that reference to RE6.1 and RE6.3 should also be added.[30] We agree that would be a useful addition. STM notes that the methods for RE6.4 refer to X.15. STM submits that a consequential amendment should be made to RE6.2 and RE6.5, which should also refer to X.15.[31] We do not consider this amendment is necessary.

Policy RE6.5

Scope as relates to subdivision and development

[31] STM acknowledges the JWS amendment to the RE6.5 introduction, but

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26 STM memorandum with comments on JWS dated 30 August 2024 at [19].

27 STM memorandum with comments on JWS dated 30 August 2024 at [20].

28 Minute of the Environment Court Re requested case management directions dated 2 February 2024.

29 STM memorandum with comments on JWS dated 30 August 2024 at [22].

30 STM memorandum with comments on JWS dated 30 August 2024 at [22].

31 STM memorandum with comments on JWS dated 30 August 2024 at [23].

submits it should be supplemented, by also adding:[32]

> Require that subdivision and development within Schedule X is only authorised where it does not accelerate soil erosion or mobilisation, through:
> …

[32] STM submits that the change makes it clear that the outcomes need to be achieved for subdivision and development to be authorised, rather than priority being given to development.[33]

[33] The court identified a potential issue as to whether there was too great a presumption that development (with or without subdivision) has a priority.[34] We consider that the JWS formulation is appropriate. STM proposed drafting addition does not add anything to the provision. The court rejects STM's proposed amendment.

Sediment yield modelling

[34] The JWS recommends the addition of:[35]

> Ensuring that the design of subdivision and management measures for earthworks are informed by associated sedimentation risk, including through sediment yield analysis where appropriate.

[35] STM considers this wording should be adjusted, to make it clear:[36]

(a) that this needs to include consideration of risks at a holistic level; and
(b) to require sediment yield analysis except where this is irrelevant to the assessment of risk.

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32 STM memorandum with comments on JWS dated 30 August 2024 at [26].
33 STM memorandum with comments on JWS dated 30 August 2024 at [27].
34 Interim decision at [121(e)].
35 STM memorandum with comments on JWS dated 30 August 2024 at [29].
36 STM memorandum with comments on JWS dated 30 August 2024 at [30].

[36] STM considers the reference to a sediment yield analysis "where appropriate" does not provide policy direction and is too uncertain.[37] STM proposes the following amended wording:[38]

> Ensuring that the design of subdivision and management measures for earthworks are informed by associated sedimentation risk from specific works and cumulatively, including through requiring sediment yield analysis (except where this would be irrelevant to the assessment of sedimentation risks). ~~sediment yield analysis where appropriate.~~

[37] The court raised a potential issue as to whether the policy would adequately signal and allow for consideration of the sediment yield in a holistic design of the subdivision or development.[39] The court found that there may be a benefit in undertaking a sediment risk modelling analysis. However, undertaking that analysis as part of the PPC28 process would involve a significant element of speculation, and it might ultimately have to be re-done once the more detailed planning is undertaken in the context of resource consenting.[40]

[38] We have considered the JWS provision and find that it is sufficient to allow a sediment yield analysis where that is appropriate. An example might be when such an analysis might assist to quantify risks. The JWS provision is the most appropriate. We find that it is sufficient to leave application of this policy to the Council in processing applications for resource consents.

[39] STM's suggested consequential amendment to X.16 directing a sediment yield analysis except where this is irrelevant to the assessment of sedimentation risk is also rejected as unnecessary. The application of the policy

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37 STM memorandum with comments on JWS dated 30 August 2024 at [30].
38 STM memorandum with comments on JWS dated 30 August 2024 at [31].
39 Interim decision at [121(a)].
40 Interim decision at [89(d)].

is appropriately left to the consent authority.[41]

Te Mana o te Wai and the nexus with erosion and sedimentation

[40] STM refers to amendments to policy RE6.5(c) to include the phrase "… with particular emphasis on minimising sediment discharges to the Kaka Stream Maitahi/Mahitahi River and its swimming holes". STM supports this change, subject to the following amendments:[42]

> …with particular emphasis on ~~minimising~~ avoiding sediment discharges ~~to~~ reaching the Kaka Stream, Maitahi/Mahitahi River and its swimming holes.

[41] The court raised the issue that the language of policy RE6.5 (in particular, in "minimising" adverse effects) would appear to contemplate potential risk to the mauri of the receiving waters. We considered the issue to be one of proper risk management.[43] The court's decision was not, however, that all risks should be avoided (without exception). The planners are agreed that the minimisation focus of the policy would be enhanced by reference to sediment discharges, rather than adverse effects. We consider the JWS formulation to be the most appropriate. The STM amendment is rejected.

[42] STM notes that X.16 states that the Erosion and Sediment Control Plan ('ESCP') must demonstrate that the provisions contained in policy RE6.5 have been addressed and achieved in the earthworks design. STM considers this should be expanded to refer to all relevant policies (RE6.1 – RE6.5). As a consequential amendment, reference to X.16 should be added to each method statement where not already included.[44]

[43] We accept this submission insofar as the change to X.16 should be

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41 STM memorandum with comments on JWS dated 30 August 2024 at [32].
42 STM memorandum with comments on JWS dated 30 August 2024 at [34].
43 Interim decision at [123].
44 STM memorandum with comments on JWS dated 30 August 2024 at [36].

made. It should refer to all relevant policies. However, we do not consider that the amendment to the method statements of all policies to refer to X.16 should be made. There was no evidential basis for this change to be made.

Language regarding earthworks on steeper slopes

[44] STM supported the amendments to clause (d) as set out in the JWS but proposes the following additional amendments:[45]

> *Avoiding, to the greatest extent practicable, and otherwise minimising, earthworks on steeper slopes, and providing for earthworks on steeper slopes only where erosion and sediment control measures will be effective in avoiding sediment discharges reaching the receiving environment. ~~unless supported by site specific geotechnical and sediment yield analysis~~*

[45] This amendment is rejected. The outcome sought is likely unachievable. The court's decision was not that all effects must be avoided. We raised the issue that the (then) proposed revision (replacing the direction "avoiding, to the greatest extent practicable, and otherwise minimising earthworks on steeper slopes" with the direction "discouraging earthworks on steeper slopes unless supported by site specific assessment") might weaken the effectiveness of the policy or reduce its clarity.[46] The JWS records that the planners support the reversion to the decisions version of this clause as clearer and more effective. We consider the issue has been satisfactorily addressed.

[46] STM submits that policy RE6.5(e) should be amended to include reference to limiting exposed areas of earthworks and to include the word "avoid" as follows:[47]

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45 STM memorandum with comments on JWS dated 30 August 2024 at [37].

46 Interim decision at [121(b)].

47 STM memorandum with comments on JWS dated 30 August 2024 at [38].

> e. Requiring staging (including specified open area limits) and progressive stabilisation of all earthworks to minimise the area of earthworks left exposed at any one time and avoid the adverse effects of erosion.

[47] STM understands this amendment would be consistent with the evidence that limits on exposed areas are not required in PPC28 itself, but would be proposed as part of a resource consent application. STM submits that amending clause (e) as above would better give effect to policy RE6.5.[48]

[48] We consider a reference specifically to open area limits is unnecessary. This aspect should be left to the ESCP and Council's oversight. The reference to "avoid" is also rejected, as is the proposed consequential change to X.16 to refer to open area limits for earthworks.[49]

Accuracy of the policy explanation and reasons

[49] STM suggests the following additional changes to the JWS explanation and reasons at RE6.5.i.:[50]

> It prompts subdivision and earthworks designs to be informed by a clear understanding of potential erosion and sedimentation effects, and to adopt effective avoidance, management and remediation measures to minimise the transportation and discharge of sediment and avoid effects on receiving environments. Inherent in this approach is the fundamental principle of Te Mana o te Wai.

[50] The first aspect of the proposed amendment is approved (except for the addition of the word "avoid"). There is no need to refer to Te Mana o te Wai as "fundamental". That aspect is rejected.

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48 STM memorandum with comments on JWS dated 30 August 2024 at [39].
49 STM memorandum with comments on JWS dated 30 August 2024 at [40].
50 STM memorandum with comments on JWS dated 30 August 2024 at [41].

Methods statement

[51] STM notes that the JWS refers to the court's comments regarding method statement (RE6.5.ii), but no amendments are proposed.[51] STM suggests the following change:[52]

> Procedures and standards are outlined within Nelson City Council's technical documents and guidelines to help manage the design and execution of earthworks. To be consistent with this policy, all works undertaken within the Maitahi/Mahitahi/Bayview area must adopt those standards as a minimum. However, there may be circumstances where a higher standard is required. That will be identified and adopted on a case-by-case basis through the preparation and assessment of earthworks consent applications. The details of how the policy and its principles and outcomes will be achieved and ~~are~~ incorporated into design will be provided in the report and proposed Earthworks and Erosion Sediment Control Plan that is required by Schedule X.16.

[52] We approve the above amendment on the basis that clearly the court intended that attention to the outcomes that will be achieved and incorporated into design is required and it is appropriate that the method state that.

Rule framework

[53] STM suggests that the matters of discretion for earthworks in X.10, which includes references to policies RE6.5, RE6.2, RE6.3 and RE6.4, should also refer to policy RE6.1.[53] We agree that amendment should be made.

[54] STM also notes that the JWS discusses how the rules would require a comprehensive and integrated management approach to achieving the PPC28 policies. STM notes that changes are proposed in the JWS to X.13 and X.15

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51 STM memorandum with comments on JWS dated 30 August 2024 at [43].

52 STM memorandum with comments on JWS dated 30 August 2024 at [44].

53 STM memorandum with comments on JWS dated 30 August 2024 at [45]-[46].

to refer to the Ecological Impact Assessment/ Stormwater Management Plan needing to:[54]

> … address any specific matters that are related to the given stage or activity relevant to each application for resource consent

[55] STM is uncertain as to why this change has not also been recommended for addition to X.16.[55]

[56] Also, STM considers this wording is not very clear as to what it requires. In particular, STM is unconvinced that JWS changes will require or secure a comprehensive and integrated management approach to achieving the PPC28 policies at the time of <u>first</u> application.[56] However, STM submitted that any further comment on the issue is difficult without transgressing into comments on the interim decision itself.[57]

[57] Our interim decision noted a lack of clarity as to whether and how the rules would require or secure a comprehensive and integrated management to achieving the PPC28 policies at the time of the *first* application for resource consent involving earthworks anywhere on the PPC28 site.[58]

[58] The JWS did not directly respond to this point. However, it did replace the "first" Stormwater Management Plan ('SMP') in X.13 and the "first" Ecological Impact Assessment in X.15 with "[e]ach". This will require each relevant application to provide a comprehensive and catchment wide SMP and each relevant application to provide an Ecological Impact Assessment that addresses all the land and freshwater environments in Schedule X and potential

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54 STM memorandum with comments on JWS dated 30 August 2024 at [47].
55 STM memorandum with comments on JWS dated 30 August 2024 at [48].
56 STM memorandum with comments on JWS dated 30 August 2024 at [48]-[49].
57 STM memorandum with comments on JWS dated 30 August 2024 at [49].
58 Interim decision at [136].

effects on downstream receiving environments.

[59] After careful consideration of the revised provisions in X.16, we find there is no need to add a specific reference to addressing any specific matters that are related to the given stage or activity relevant to each application for resource consent involving subdivision, earthworks and earthworks-related discharges within Schedule X. We find policies RE6.1-RE6.5 to adequately signal the nature and extent of the resource consent information required, along with the report from a suitably qualified and experienced erosion and sediment control expert and the ESCP specified as required in X.16.

Amendments

[60] In addition to the changes listed in paragraph [10] above, the court therefore directs the following amendments be made to the provisions attached to the JWS at Attachment A:

(a) RE6.3.vii - refers to X.11, X.13, X.15 and X.16, and should also refer to X.12 Water Sensitive Design;

(b) explanation and reasons at RE6.5.i. – amend as follows:[59]

> It prompts subdivision and earthworks designs to be informed by a clear understanding of potential erosion and sedimentation effects, and to adopt effective avoidance, management and remediation measures to minimise the transportation and discharge of sediment <u>and effects on receiving environments</u>. Inherent in this approach is the principle of Te Mana o te Wai.

(c) method RE6.5.ii – amend as follows:

> Procedures and standards are outlined within Nelson City Council's technical documents and guidelines to help manage the design and execution of earthworks. To be consistent with this policy, all works undertaken within the Maitahi/Mahitahi/Bayview area must adopt those standards as a minimum.

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59 Note that "principal" has been amended to "principle".

> However, there may be circumstances where a higher standard is required. That will be identified and adopted on a case-by-case basis through the preparation and assessment of earthworks consent applications. The details of how the policy and its principles and outcomes will be achieved and ~~are~~ incorporated into design will be provided in the report and proposed Earthworks and Erosion Sediment Control Plan that is required by Schedule X.16.

(d) X.10 – which includes references to policies RE6.5, RE6.2, RE6.3 and RE6.4, should also refer to policy RE6.1;
(e) X.15 – amend "Policy RE6.4, RE6.2, RE6.5" to read "Policies RE6.1-RE6.5;
(f) X.16 – amend the reference to policy RE6.5 to read "Policies RE6.1 – RE6.5".

[61] The court has also identified some typographical amendments that should be made to the provisions:

(a) in method RE6.1.vi – add "are" before "to be achieved";
(b) method RE6.3.vii should be numbered RE6.3.v, with consequential renumbering of the remaining methods;
(c) in method RE6.4.iii – "Policies RE6.4" should be "Policy RE6.4";
(d) method RE6.5.ii should be numbered RE6.5.iii, with consequential renumbering of the remaining methods;
(e) in X.3, matters of discretion, some renumbering is needed;
(f) in X.14 – "relevant matters in Policy RE6.1 has been achieved" should be "have" been achieved.

[62] The parties are directed to make the changes to PPC28 set out in this decision and provide a final set of provisions to the court by 22 November 2024.

Costs

[63] Applications for costs are not encouraged. Any party wishing to apply must do so by 29 November 2024, and any response is to be provided by 13 December 2024.

For the court



K G Reid
Environment Judge



J J M Hassan
Environment Judge

