IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER of **Private Plan Change 28** – CCKV Maitai Dev Co LP& Bayview Nelson Limited) - 7 Ralphine Way, Maitai Valley and Bayview Road to the Nelson Resource Management Plan.

DIRECTION (5) FROM THE HEARING PANEL

ADDENDUM SECTION 42A REPORT AND FURTHER EVIDENCE

1. Pursuant to sections 34 and 34A of the RMA, Nelson City Council (the Council) has appointed a Hearing Panel consisting of independent hearing commissioners - Greg Hill (Chairperson), Sheena Tepania, Gillian Wratt and Nigel Mark-Brown. The Hearing Panel's function is to hear the application and submissions and make a recommendation to the Council on those submissions and the Plan Change. Our delegations also include addressing any procedural issues.

2. The Hearing Panel issued Hearing Direction (4)[1] to provide for an Addendum section 42A hearing report and to change the date any rebuttal evidence was due from the Applicant. This Direction (5) amends Direction (4), and should be read alongside Direction (4).

3. The Hearing Panel has received a letter from Save the Maitai Inc's (STM) legal counsel Sally Gepp[2]. Ms Gepp raises concerns about Direction (4) in relation to expert evidence from STM. She states at paragraph 3:

> *First, I observe that the Addendum s42A report is to be published just two days after submitter expert evidence is due, which means there will be limited if any opportunity for the Addendum s 42A report to include a meaningful consideration of, or response to, submitter expert evidence. I appreciate that normally a s 42A report would come before submitter evidence, but it is important to clarify expectations as submitters might otherwise reasonably expect a report on behalf of Council that follows on from submitters' expert evidence will include some consideration of it. It would be helpful if the Hearing Panel could clarify how any response to submitter expert evidence will be provided (at the hearing?).*

4. The Hearing Panel understands the issue raised by Ms Gepp. If the Addendum section 42A author(s) have not had sufficient time to address STM's expert evidence, then the Hearing Panel will deal with that evidence at the hearing. Notwithstanding this, we note that the due date for submitters expert evidence is the latest it can be filed; but may be filed earlier. If it were able to be filed earlier (given the issues have already been addressed in expert conferencing), this would enable additional time for the Addendum section 42A author(s) to consider it. However,

[1] Dated 24 May 2022
[2] Dated 31 May 2022

as set out in the following paragraphs, the Hearing Panel will provide for further expert evidence from submitters who have filed primary expert evidence in relation to any matters addressed in any Addendum section 42A report.

5. Ms Gepp states at paragraph 4:

> *Second, while the pre-hearing process provides an opportunity for the applicant to respond to the Addendum s 42A report (through rebuttal evidence), the same opportunity is not afforded to submitters. Save the Maitai Inc requests an amendment to the directions to provide for submitters to file expert evidence strictly in response to matters addressed in the Addendum s 42A report by 7 July 2022.*

6. The Hearing Panel agrees to Ms Gepp's request. Submitters who have filed primary expert evidence will be able to file further expert evidence by 7 July 2022; but strictly in response to matters addressed in any Addendum section 42A report. This time frame is the same as directed for the Applicant to file any rebuttal evidence. To the extent that the Applicant wishes to rebut any further expert evidence from the submitters, it may do so by providing further rebuttal evidence before or at the hearing when it is presenting its case.

7. Accordingly, the Hearing Panel amends Direction (4) by adding the following:

   (a) Pursuant to sections 41B(3) and (4) of the RMA, any submitter who has filed primary expert evidence is able to file further expert evidence strictly in response to matters addressed in any Addendum section 42A report. Any further expert evidence is to be provided to the Council's Senior Administrator no later than **midday, Thursday 7 July 2022** and will be made available to the parties and on the Council's website no later than **5.00 pm, Thursday 7 July 2022**. **This is a new clause from Directions (1) and (4).**

   (b) Pursuant to sections 41B(1) and (2) of the RMA, the Applicant may provide further rebuttal evidence in response to any further expert evidence provided for in (a) above before or at the hearing when it is presenting its case. Any further rebuttal evidence is to be provided to the Council's Senior Administrator when it is available. **This is a new clause from Directions (1) and (4).**

8. Any enquiries regarding this Direction or related matters should be directed to the Council's Senior Administrator, Ms Rebecca Dowling at Administration@ncc.govt.nz



Greg Hill Chairperson

1 June 2022