BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for a proposed Private Plan Change (Private Plan Change 28) by CCKV Maitai Dev Co LP and Bayview Nelson Limited to the Nelson City Council associated with the rezoning of approximately 287-hectares of land located within Kaka Valley, along Botanical Hill and Malvern Hill on land at 7 Ralphine Way, Maitai Valley and Bayview Road as detailed within the application.

S42A ADDENDUM REPORT TO THE COMMISSIONERS

MR GREG HILL (CHAIR), MS SHEENA TEPANIA, MS GILLIAN WRATT, AND MR NIGEL MARK-BROWN

SECTION 42A ADDENDUM REPORT OF GINA SWEETMAN – PLANNING, SWEETMAN PLANNING SERVICES, ON BEHALF OF THE NELSON CITY COUNCIL

29th June 2022

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A. INTRODUCTION

Qualification, Experience and Code of Conduct

1. My name is Gina Marie Sweetman. My qualifications and experience are set out in my s42A report. I confirm I continue to abide by the Code of Conduct for Expert Witnesses.

Purpose and scope of this Addendum

2. I have prepared this addendum s42A report in response to the evidence submitted by the applicant, including the "Applicant's Legal Analysis on the Section 42A Reports". I confirm I have read all of the applicant's evidence and further information. On receipt of the evidence, I briefed the various experts engaged by the Council to review the evidence and provide me with s42A addendums where required. I have reviewed the addendums which were prepared and have used these as well as my own analysis of the evidence to prepare this addendum. I have received addendum s42A reports from the following experts, which are attached as follows:

Appendix B	Dr Paul Fisher – Water quality
Appendix C	David Wilson – Water sensitive design
Appendix D	Rhys Girvan – Landscape, visual amenity and natural character
Appendix E	Dr Tanya Blakely - Ecology
Appendix F	Dr Ann McEwan – Historic heritage
Appendix G	Graeme McIndoe – Urban Design
Appendix H	Graeme Ridley – Earthworks, erosion and sediment control
Appendix I	Kate Purton – Stormwater and flood risk
Appendix J	Mark Georgeson - Transport

3. Given the amount of new information provided with the evidence and the extent of changes made to the Structure Plan, planning maps, NRMP provisions and proposed Schedule X, I have not had the time to prepare a full update of my s42A, with updated recommendations. I intend to provide updated recommendations at the hearing.

4. I have also not had the time to review and respond to submitters' evidence and will do so at the hearing.

Approach to the s42A Addendum

5. In responding to the applicant's evidence, I have been mindful of Mr Maassen's Memorandum of 22 June 2022, in which in paragraph 7 he states the applicant's preference is that I state what

additional changes are considered necessary if the plan change is approved in a form that numbers each assessment point in a tabular form and according to logical topics related to expert disciplines. I have generally followed this approach, where appropriate. I have not attempted to redraft the changes sought by the applicant, rather I have focussed on matters of workability and appropriateness of what is sought through PPC28, alongside the matters of concern raised by Council experts and submitters. As I did with my s42A report, I have included an Appendix A, which sets out the changes sought to the NRMP and new proposed Schedule X and provided commentary against these.

6. The body of this Addendum addresses the bigger picture issues, such as overall workability and appropriateness, and where I have identified that there are policy "breaks" in what is sought by the applicant. While I have made suggestions for improvements, I have not attempted to redraft, as ultimately, there are a number of fundamental issues that need to be addressed and PPC28 is a private plan change.

B. SECTION 32 EVALUATION OF AMENDED STRUCTURE PLAN, PROVISIONS AND PLANNING MAPS

7. In responding to the submissions and s42A report and providing an updated structure plan, planning maps, planning provisions and Schedule X, Mr Lile has not provided an updated s32 evaluation or s s32AA evaluation in terms of why they are appropriate. This has made it difficult for me to determine whether what is proposed now is the most appropriate means of achieving both the objective of the plan change, but also the objectives in the NRMP and the purpose of the Act, without having to undertake such an evaluation myself.

8. In saying this, I consider the applicant's evidence and updated structure plan, planning maps, planning provisions and Schedule X have been able to address some of the concerns expressed in my s42A report. Generally, I am reasonably comfortable at a very high principle level with the rezoning of part of the site to Residential, and I consider it is generally consistent with the National Policy Statement on Urban Development (NPS-UD) and Nelson Regional Policy Statement (RPS) in this regard.

9. However, there are significant and fundamental matters of achievability of the Structure Plan and workability of the proposed amendments to the NRMP and Schedule X that in my view need to be resolved before I could recommend overall approval of PPC28. I also remain concerned about the framing of the proposed provisions in respect to being consistent with and giving

effect to the National Policy Statement on Freshwater Management (NPS-FM). These are addressed in my s42A report, including Appendix A.

C. ACHIEVABILITY OF THE STRUCTURE PLAN – REALIGNMENT OF THE KĀKĀ STREAM

10. Several of the experts have raised concerns about the reliance of the structure plan layout on the realignment of the Kākā Stream. In particular, the location of the Kākā Stream and the Higher Density Residential Zone is predicated on consent being obtained to relocate the Stream from its current position. I understand that this is the applicant's risk and the Structure Plan if approved is not determinative on this occurring; however, the objective and policies of PPC28 provide a policy framework that would support its realignment.

11. Dr Fisher, in his addendum attached as Appendix B, has expressed concern that there has been no evidence provided that would demonstrate that realignment of the stream would provide ecological improvements above restoring the stream in-situ and that it adheres to water sensitive design principles and outcomes. Mr Wilson in his addendum attached as Appendix C, has also identified that insufficient evidence has been provided that supports the applicant's experts' evidence. I note Mr Girvan is of the view in his addendum attached as Appendix D is of the view that levels of natural character can be preserved and enhanced, including through stream diversion in no more than very low adverse and potential beneficial effects. Dr Blakely, in her addendum attached as Appendix E, considers that while realignment should be explored as an option, equally the alternative of enhancement of the stream in its current alignment needs to be considered at the plan change stage.

12. In respect to water sensitive design, Mr Wilson is of the view that mimicking natural systems and processes for stormwater management could be achieved without realigning the stream. His position is that the realignment of the stream is not required to enable the use of constructed wetlands or bioretention devices.

13. Accordingly, without that evidence, I do not support Objective RE6 clause f, Policy RE6.3 clause j and X.9 clause 8, which I consider are directive to the realignment in this regard. On the face of it, I do not consider that this is necessarily consistent with the NPS-FM. I appreciate that there is a route for subdivision and development to occur that is not in accordance with the Structure Plan through X.2 and X.3; however, should consent for realignment not be forthcoming, this may also require consents for urban development in the proposed Open Space Zone. Again, I understand that this is ultimately the applicant's risk.

D. NON-NOTIFICATION CLAUSES FOR RULES X.2 AND X.3

14. Given the scope of the matters addressed by both rules and the potential effects arising, I remain of the view that a non-notification clause is not appropriate. I agree with Mr Lile that X.2 and X.3 only relate to specific activities and not a broader range of activities that require resource consent approval. However, the scope of what is covered by X.2 and X.3 is in my view much broader than the rules relating to comprehensive housing developments and subdivision in the NRMP. It is my preference to take a more cautious approach in this circumstance and not preclude either public or limited notification. Irrespective, as Mr Lile says, other consents will likely be required at the same time, which would in my view make any preclusion clause redundant in any case.

E. HERITAGE ITEMS

15. In terms of the heritage structures on the site which are the subject of expert evidence, in my view Mr Lile has missed a fundamental step in terms of recognising their heritage values.

16. Chapter D04 of the NRMP deals with heritage.

17. Objective DO4.1 sets the objective of the "retention and enhancement of heritage items that contribute to the character, heritage values, or visual amenity of Nelson, in a setting that enhances such items.

18. Policy D04.1.1 states that

> *Heritage buildings, places, or objects, and important trees, should be identified in this Plan and classified according to the criteria set out in Appendices 1 and 2 in the following categories:*
>
> *Buildings, Places or Objects*
>
> *Group A - Protection and retention highly desirable*
>
> *Group B - Protection and retention important*
>
> *Group C - Protection and retention desirable*
>
> *…*

19. Policy DO4.1.3, demolition or removal of group B heritage items states:

The protection of Group B heritage buildings, places, or objects is important, and demolition or removal should be avoided where this can reasonably be achieved in terms of the assessment criteria in the Rules.

20. While I find the wording of this policy slightly vague, I assume that DO4.1.6 alterations and adjoining development applies to additions and alterations to heritage items:

The heritage significance and integrity of any feature identified by a Heritage Overlay should not be unduly compromised by any alteration, addition or adjoining development, having regard to the category of protection afforded the listed item or place and the purpose of that protection.

This policy recognises the need to be able to alter or extend heritage buildings to meet the needs of present and future generations, subject to those alterations being sympathetic to and not unduly detracting from the heritage values of the building.

21. Dr McEwan, in her addendum attached as Appendix F, has undertaken an assessment against the criteria contained in Appendix 1 and determined that the buildings and structures examined by all the heritage experts would warrant categorisation within Group B in Appendix 1 of the NRMP. Mr Lile's approach appears to be that because it is the applicant's intention to demolish these buildings and structures that this step of categorisation is not necessary.

22. I disagree, as does Dr McEwan, as articulated in her s42A addendum. I remain of the view expressed in my s42A report that to be consistent with the NRMP, and s6(f) of the RMA, the shearing shed should be included in Appendix 1 of the NRMP as a Category B item. If achievement of the Structure Plan would require the alteration or demolition of the item, then a resource consent should be required, to be consistent with and achieve the objectives of the NRMP.

23. In my comments on the proposed PPC28 provisions, I further identify that instead of a controlled activity rule, the applicant may want to consider a bespoke restricted discretionary activity or discretionary activity rule that cross-reference back to REr.85, and REr.87 of the NRMP and include additional bespoke matters of discretion (for the restricted discretionary activity rule). For a discretionary activity rule, Mr Lile may want to consider adding to the bespoke structure plan policy RE6.1.

F. URBAN DESIGN

24. I have reviewed Mr McIndoe's s42A addendum, attached as Appendix G. I defer to his expertise and adopt his assessment in respect of:

a. The secondary road location and Suburban Commercial zone configuration.

b. Relocation of the secondary road to the esplanade reserve.

c. The consistency and accuracy of the cross sections across the Kākā Valley that were provided with the evidence.

25. I recommend that a further updated Structure Plan be produced that responds to points a and b above. I note, as has Mr McIndoe, that the applicant's urban design expert agrees with Mr McIndoe in respect of these points. I also note that Mr Georgeson agrees that the secondary road should be reconfigured so that this new route would more logically connect to the main site spine road immediately adjacent to the proposed commercial centre, to improve accessibility and to deliver a more integrated transport outcome. I agree.

26. I note that Mr McIndoe supports the realignment of the Kākā stream from an urban design perspective. While this may be the case, in my opinion, greater weight needs to be given from an ecological, natural character and freshwater perspective given the direction through the NPS-FM and section 6 RMA.

G. EARTHWORKS

27. I have reviewed Mr Ridley's s42A addendum, attached as Appendix H. I agree with Mr Ridley that the applicant should provide a plan showing expected earthwork locations and extents and high level sediment modelling. Both of these would assist to be able to determine the appropriateness of the rezoning from rural land use to urban land use. In my view there can be no dispute that the proposed rezoning will result in significantly more earthworks than would be anticipated should the site remain zoned rural. The provision of this information, at a high level, would enable a more fulsome assessment of the anticipated effects arising from PPC28. I would generally not take this position if the site was flat or easier terrain. However, as Mr Ridley points out, this is a more complex and constrained site. From my experience, such earthworks information is generally a layer of a multi-disciplinary approach to determining the layout of a Structure Plan and the need for any bespoke provisions in the circumstances.

28. Set out below are the matters of control and discretion for earthworks as set out in REr.61 of the NRMP:

Matters of control are:

i) loss of topsoil or movement of soil down slope, and

ii) damage to structures or adjoining properties, and

iii) soil and vegetation entering rivers or coastal water, and

iv) damage to instream and coastal habitats, and

v) adverse effects on catchment stream flow, including stormwater ,and

vi) river bank and coastal erosion, and

vii) duration of exposure of bare soil to wind and rainfall, and

viii) water quality, including suspended sediment load and increased stream bed load, and

ix) the method and timing of the activity, and

x) the area to be disturbed at any one time, and

xi) the provision of structures to control soil erosion or sedimentation, and

xii) the timing and techniques used for revegetation, and

xiii) the depth, height and volume of cut and fill and the finished ground level, and

xiv) the quality of fill material and compaction methods, and

xv) visual effects, and

xvi) control of noise, and

xvii) control of dust, and

xviii) traffic and access issues.

Matters of discretion are:

i) loss of topsoil or movement of soil downslope, and

ii) the potential for slope failure, and

iii) damage to structures or adjoining properties, and

iv) soil and vegetation entering rivers and coastal water, and

v) damage to instream and coastal habitats, and

vi) adverse effects on catchment stream flow, and

vii) bank and coastal erosion, and

viii) duration of bare soil to wind and rainfall, and

ix) water quality, including suspended sediment load and increased stream bed load, and

x) the method and timing of the activity, and

xi) the area to be cleared at any one time, and

xii) the provision of structures to control soil erosion or sedimentation, and

xiii) the timing and techniques used for revegetation, and

xiv) the long term management of the land cleared, and

xv) the provision of appropriate resources to ensure that adverse effects arising from emergency or unforeseen circumstances are controlled or mitigated, and

xvi) visual effects, and

xvii) the impacts on privacy and on the admission of daylight and sunlight to neighbouring sites, and

xviii) the values set out in Appendix 6, Table 6.1 for any river, and

xix) the matters in Appendix 9 (landscape components and views), and

xx) the matters in Appendix 4 (marine ASCV overlay), and

xxi) control of noise, and

xxii) control of dust, and

xxiii) traffic and access issues.

29. I note that both of these provisions are very broad, and both provide control and discretion over the method and timing of the activity and the area to be cleared at any one time. While I can understand Mr Lile and Mr Parsonson's positions that these provide broad scope, I agree with Mr Ridley that they could be augmented to provide greater certainty in the three matters listed in paragraph 265 of his evidence. This could occur through a bespoke earthworks rule, which I address below.

H. STRUCTURES IN THE STREAM CORRIDOR

30. I note that Mr Wilson, Mr Girvan and Dr Blakely have all raised concerns about the SMP showing devices and structures in the stream corridor, given their potential impact on water sensitive design, natural character and ecological values.

31. The stream corridor is proposed to be zoned Open Space. Under OSr.56, Riparian Overlay:

On land adjoining a Riparian Overlay identified in Table 6.2 of Appendix 6 (riparian or coastal areas with priority values) the following are not permitted within the distance set out in the Esplanade Requirements column:

a) erection or extension of any structure (excluding a fence), or

b) adverse effect on indigenous vegetation, or

c) disturbance to river banks.

32. As set out in paragraph 40 of my s42A report, the Riparian Overlay applies to the Maitai River boundary of the site between Jickells Bridge to the Conservation Zone boundary. It also applies to the lower Kaka Hill tributary, but only on that part of the site that is zoned Rural. There is a gap of approximately 750m between that area zoned Rural and the Maitai River, being that part of the site zoned Small Holdings Area.

33. PPC28 does not propose to amend Table 6.2 of Appendix 6, but rather to introduce a new X.7 setting out the requirement for esplanade reserves.

34. While those parts of the site to which OSr.56 applies will address structures, this does not cover that part of the site currently zoned Small Holdings Area and may provide for structures within this location without the benefit of assessment through a resource consent process. Further, not all stormwater devices may be structures and may not be captured by this rule.

35. I recommend that this needs to be addressed through the PPC28 provisions.

I. STORMWATER MANAGEMENT PLAN

36. The relevant Council's experts support the provision of a Stormwater Management Plan (SMP) as an important facet of considering the effects of PPC28 and ensuring that an integrated and comprehensive SMP is provided for the whole site as part of the first application for consent, with subsequent consents and updated SMPs referencing back to that.

37. However, having reviewed the proposed provisions, the Council's experts and I have a number of issues with the SMP. I have set these out in my appendix. These include:

    a. The relationship between Policy RE6.3 and the requirement for a SMP as part of an application made under X.2 and X.3

    b. What the required content of a SMP is

    c. Whether the overarching SMP is required for the first consent

d. How subsequent consents would reference back to the overarching SMP

e. That there is no requirement for a SMP for consents that are not required under X.2 or X.3.

38. Ms Purton, as set out in her addendum attached as Appendix I, remains of the view that while good progress has been made on advancing the understanding of stormwater and flood risk issues and their proposed management, there are still some gaps and inconsistencies.

39. Mr Wilson has also reviewed the principles in Policy RE6.3, which he advises include principles he would not expect to see in a SMP. The following are what he would consider appropriate:

a. Recognise the key constraints and opportunities on site and in the xxxxx catchment

b. Devise an integrated stormwater management approach to facilitate urban development

c. Develop a set of best practicable options for stormwater that can be incorporated into the development

d. Emphasise a water-sensitive design approach that:

i. manages the impact of land use change from rural to urban

ii. protects and enhances stream systems and natural hydrology

iii. mitigates for hydrological changes and manages flooding effects

e. Minimise the generation and discharge of contaminants/sediments into sensitive receiving environment of the xxxxxx

f. Protect key infrastructure, people and the environment from significant flooding events

40. I agree. I recommend that the applicant reconsider these principles in light of what is required to be set out in a SMP. In my view, however, the content of what is in a SMP best sits under an information requirement rather than in a policy. The policy rather, should be setting the direction to achieve the outcome which is set out in Objective RE6.

41. In my opinion, many of the principles contained in Policy RE6.3 are more appropriate to the Vegetation and Fauna Management Plan, in particular those relating to ecological values. These

may be better expressed through Policy RE6.4, but again Policy RE6.4 needs to be setting the direction to achieve the ecological outcomes expressed through Objective RE6.

42. I agree with Ms Purton that further work is required on the PPC28 provisions to require future development to adhere to the proposed stormwater and flood risk approach set out in the applicant's evidence, and to demonstrate that this mitigates the effects of the development. Ms Purton shares my concern that the provisions as proposed do not require an initial site-wide SMP followed by successive individual development/subdivision SMPs that provide more specific detail than the site-wide one.

43. Aside from the SMP, I also agree with Ms Purton's recommendation about what further content the PPC28 provisions should cover, including:

    a. restrictions on building materials to limit contaminants;

    b. treatment of first flush runoff from carparks and roads;

    c. infiltration of 5 mm of runoff from new impervious areas (when located within a recharge zone);

    d. on-site rainwater reuse tanks;

    e. extended detention of 50% AEP 2-hour runoff, released slowly over 24 hours; and

    f. attenuation of 1% AEP post-development peak flows to 80% of pre-development peak flows, with performance demonstrated by hydraulic modelling.

44. I note that Ms Purton raised these issues in her s42A report, and these have not been addressed by the applicant.

J. WATER QUALITY AND WATER SENSITIVE DESIGN

45. Dr Fisher remains of the view that the applicant has not provided any high-level details regarding the construction phase, how development will be staged at a scale to avoid significant sediment loads to reduce impacts on water sensitive design infrastructure, including stormwater treatment wetlands and downstream effects to recreation and ecological values[1].

[1] Paragraph 30 of Dr Fisher's Addendum.

46. He is also of the view that:

> *The proposed provisions, the existing provisions in the NRMP and requirements of the NTLDM together may not be sufficient to address the effects of development, especially the catchment-scale and cumulative effects, and also where existing controls (e.g. flood overlays) may not correctly reflect the future developed form, high intensity rainfall events, erosion and flood extent.*

47. While I appreciate that any resource consent application will consider effects, this is a higher level conceptual matter that needs to be addressed through the plan change.

48. Mr Wilson remains of the view that the existing and proposed plan provisions together still do not provide sufficient control on future subdivision to ensure Water Sensitive Design outcomes are achieved

K. WORKABILITY OF THE PROPOSED NEW PROVISIONS, INCLUDING SCHEDULE X

49. In Appendix A of my section 42A report I provided commentary against the provisions proposed by PPC28. I found Mr Lile's evidence as to how the NRMP works useful and I appreciate how amendments have been proposed to Schedule X in particular, to provide for better integration with the NRMP as a whole. I appreciate and understand that the NRMP is a unitary plan, containing both regional and district plan provisions. While not as familiar with the NRMP as Mr Lile is, one of my key focuses is evaluating PPC28 as to its workability and whether it will deliver the outcomes that Mr Lile and the other applicant experts have stated it will. I also have proceeded with the approach that not all people have Mr Lile's degree of familiarity with the Plan and I have taken a position of wanting to ensure that the provisions as proposed provide clarity to all Plan users in the future.

50. To this end, as I outlined earlier, I have provided another table, in my Appendix A, with commentary on the provisions proposed by PPC28. Overall, while some of the issues that I identified in my s42A Appendix A have been addressed, many have not, and new provisions have been introduced where I have also found issues of workability.

51. In approaching my evaluation, I have been mindful of the relevant tests in s32 RMA, through which there is a clear need to demonstrate the clear linkages between objectives, policies, rules and other methods. I have done this in two ways. I have considered each of the rules and other requirements in Schedule X and evaluated how they would achieve the policies and objectives of PPC28 and the NRMP as a whole. I have also considered the proposed objective and policies

of PPC28, and along with the other provisions in the NRMP, evaluated whether they will be achieved by PPC28 (and the rest of the NRMP). In doing so, I have drawn on my extensive contemporary experience in policy development and drafting across the country.

Achievement of the Structure Plan as a whole

52. I am unclear as to what is the mechanism in Schedule X that would see the development of the site as a whole occurring in accordance with the Structure Plan. This is because the only rules that refer to consistency with the Structure Plan are X.2 for comprehensive housing development in the higher density zone and X.3 for subdivision – residential. I would expect to see rules for subdivision in the Rural Zone and Open Space Zone that also referred to consistency with the Structure Plan. This is particularly the case for the Rural Zone, as subdivision is a controlled activity under RUr.78. Quite simply, as proposed, there would be no requirement to consider the Structure Plan or PPC28 provisions beyond X.8 and X.9 in respect of a controlled activity subdivision on Kākā Hill.

New Vegetation Overlay

53. In paragraph 242 of his evidence, Mr Lile states how the new Vegetation Overlay shows how through a structure planning process the long-term landscape (and biodiversity and water quality) can be positive outcomes when compared to the status quo.

54. I have commented in my attached table in detail on the proposed provisions. However, in summary, I am unclear as to how what are shown as Vegetation Overlays on the Structure Plan will result in the enhancement of landscape values as set out in paragraph 23 of Tony Milne's evidence. In paragraph 147 Mr Milne states that "a key component of the proposal is the proposed revegetation of the Rural zoned land in combination with the Open Space zoned land, and this will be the realisation of the potential natural character (and landscape) value encapsulated within the PPC28 site."

55. Mr Girvan also addresses these overlays in his s42A addendum. He notes from his discussions with Mr Milne that it is intended that these areas obtain 100% native vegetation coverage. This would be a positive outcome, however, as I set out below, there is no clear mechanism provided through PPC28 for this to occur. Further, Mr Girvan has also identified a potential policy disconnect whereby the Indicative Earthworks Plan for Collector Road shows that it would be partly located within one of the Residential Green Overlays. Given the current framework

proposed by PPC28, there would appear to be no restrictions on this occurring, undermining the intent suggested by Mr Milne to Mr Girvan.

56. I note Mr Wilson's conclusion that if the Revegetation Overlay provisions are revised so that they achieve the stated intent, this would achieve a positive water sensitive design outcome.

57. Quite simply, I cannot see how the objective, policies, rules and information requirements would result in the outcome stated through the applicant's experts' evidence. As PPC28 is currently framed, I find key linkages required between the objective, policies, rules and other methods are not provided. In particular:

- The section titled "special formation and design requirements within Schedule X" states that the information requirement X.16 for a Vegetation and Fauna Management Plan for the Residential Green Overlay and Revegetation Overlay only applies to Rules X.2 and X.3
- X.2 is for comprehensive housing development in the Residential Zone – Higher Density Area. Neither Overlay applies in this area, and as such, this is redundant.
- X.3 is for subdivision in the residential zone. It does not apply to the Rural Zone, where the Revegetation Overlay is located.
- The only matter of discretion in X.3 that is relevant to the Vegetation and Fauna Management Plan is "the matters arising from the information provided in accordance with X.3(a) above". I do not consider that this provides any clear direction as a matter of discretion.
- Information requirement X.16 does not state what the purpose and content of the Vegetation and Fauna Management Plan is. Dr Blakely agrees.
- There are no specific rules relating to these overlays. I am unclear for example if development was to occur prior to or even subsequent to a subdivision within these overlays what would occur and whether it is intended that there are any restrictions. I am unclear as to whether there would be any restrictions on vegetation clearance above and beyond what is contained in RUr.25 and REr.59, noting that both of these are reasonably permissive in their application. In particular, I do not see how either Overlay supersedes these rules.
- If an application was made for any restricted discretionary activity within the Structure Plan area not covered by X.2 or X.3, the information requirement would not apply and there would be no relevant matters of discretion to consider.
- If an application was made for a discretionary or non-complying activity within the Structure Plan area, then Policy RE6.4 would come into consideration. However, I find

this policy would benefit from rewording to provide clearer direction of what needs to be considered.

- As I have already outlined, I cannot see how subdivision in the Rural Zone would be required to implement the Overlay or how the Overlay would sit with any vegetation removal.

58. Further, I also agree with Dr Blakely's recommendation that the Vegetation and Fauna Management Plan should apply to the whole site, in much the same way as it is also recommended that the SMP apply to the whole site. This would mean that there was a whole of site plan prepared, with subsequent subdivision or development specific plans produced.

Additional Earthworks Requirements X.12

59. I have reviewed this. I am not clear what it is proposed to be (a rule, standard, assessment criteria or matter of discretion). I am also unclear how it would apply in addition to the suite of rules that Mr Lile has set out in paragraph 175 of his evidence. On the face of it, I cannot see the mechanism of how this could be applied in conjunction with the matters of control and discretion contained in that suite of rules. In my view, it could only apply if there was a new earthworks rule introduced through Schedule X, that referred back to all those rules in that table, and then added these as matters of discretion.

60. In terms of earthworks, I also note paragraphs 20 and 21 of Mr Ridley's addendum in respect of secondary earthworks. This is a matter that remains outstanding that the applicant may wish to address at the hearing.

Ecological outcomes and freshwater

61. I remain unclear as to how X.9 will be implemented. If this is intended to be an information requirement, as X.2 and X.3 would imply, then this needs to be clearly stated as such, with the product being a report that addresses these principles. The same issue arises as I have outlined above in respect to the Vegetation Overlays that there also then need to be clear matters of discretion against which to assess such a report.

62. Further, while it is intended that X.9 (and X.8) would apply to any development (which I assume includes subdivision) within the Structure Plan area, Mr Lile needs to be satisfied that there are matters of control and discretion for controlled and restricted discretionary activity rules that are not contained in Schedule X which would provide for their consideration. I have reviewed

RUr.78 and I am satisfied that there are matters of control that would provide for the consideration of a cultural impact assessment provided under X.8 and the matters addressed under X.9.

Mechanism to achieve the "Kanuka Vegetation and Kahikatea Tree to be Protected"

63. The Structure Plan includes an annotation of "Kanuka Vegetation and Kahikatea Tree to be Protected". These are identified in areas of the Open Space Recreation Zone. I cannot see particular provisions within Schedule X that would protect the Kanuka Vegetation or Kahikatea Tree. While X.2 and X.3 require consistency with the Structure Plan, these only apply to the Residential Zones and not the Open Space Zone. I would expect to see a specific rule in this regard.

64. I note that the colour on the Structure Plan between Neighbourhood Reserve and Kanuka Vegetation and Kahikatea Tree to be Protected is very problematic and I recommend that it be revised to be clearer and more distinct.

X.5 Skyline Area

65. Mr Girvan remains concerned about the wording in condition c) of X.5. In particular, he has identified that this rule continues to refer to the primary ridgeline identified in Figure B1.2 and does not refer to the updated "Malvern Hills and Botanical Hill Ridgeline" now referred to in Figure 8 of the RMM Graphic Supplement. Coinciding with this, it is also unclear how target points are to be identified from such roads to determine whether such skylines are breached. Based on the existing skyline areas as mapped in the Nelson Landscape Study he considers any development in this location will breach the skyline. From my perspective, the condition as worded is not certain enough to be included as a condition of meeting a controlled activity rule.

66. Further, I am concerned about the breadth of "control" covered by matter of control 4. In my view, it is very broad for a controlled activity, and I question its certainty. A controlled activity cannot be declined, and conditions that can be imposed cannot unduly constrain the consent.

67. Mr Girvan has recommended that there needs to be more discretion applied to the appropriateness of any new building in this area. I agree, accordingly I consider a restricted discretionary activity rule would be more appropriate. This addresses also my first concern regarding matter of control 4.

L. TRANSPORTATION

68. Mr Georgeson has produced a s42A Addendum, attached as Appendix K. This covers matters relating to the proposed Schedule X provisions which I have included in my Appendix A. He also recommended the following new conditions to X.2 and X.3, which I concur with:

    a. that once development within the northern portion of the site reaches the indicative western site connection, then either the "spine road" through the site or the western site link via Walters Bluff be formed and operational.

    b. that the final gradient of the road will need to be designed and constructed to ensure that where there is no practicable impediment, the road achieves as shallow a grade as possible within the southern hillside environment, being no steeper than 1:8 and with sections of no steeper than 1:15 where bus stops are to be provided, to ensure a practicable future public transport service.

    c. that off-road paths to be sealed and at a grade no steeper than 1:20 except within the southern hillside environment, where grades no steeper than 1:15 shall be achieved where the paths divert away from the road carriageway, and that these paths shall be at least 2500mm wide. Where constraints are proven to prevent 1:15 grades, then sections no steeper than 1:12 will be required to be constructed to a minimum 3000mm width, to compensate for potential greater speed differentials of users.

69. I note that item b. responds to matters relating to s329 of the Local Government Act that have come to light after the expert conferencing occurred. As Mr Georgeson has outlined, this section requires that where the NRMP or NTLDM are to be varied from, that specific provisions are included in X.9.

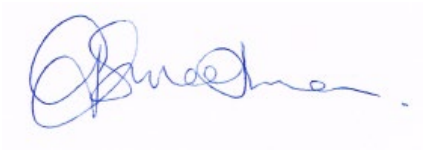
M. RECOMMENDATIONS

70. As I have stated earlier, I have not had the time to be able to provide a full update to my s42A report. However, set out on the following page in Table 1, is a brief update as to the matters in contention contained in section 10 of my s42A report.

N. UPDATE ON NELSON PLAN PROGRAMME

71. Attached as Appendix J is a memorandum from Ms Maxine Day on the Council's Nelson Plan programme. The purpose of this memorandum is to inform the Panel of the timing for upcoming

changes to the Nelson Resource Management Plan, Nelson Regional Policy Statement and the Nelson Air Quality Plan.



Gina Sweetman

Consultant Planner

29 June 2022

TABLE 1: UPDATE ON SECTION 42A RECOMMENDATIONS

Section of report	S42A recommendation	S42A Addendum recommendation
10.5 Overall decline	No recommendation	Subject to the matters in this addendum being addressed in a satisfactory manner, I would lean towards these submissions being rejected.
10.6 Overall support	No recommendation	Subject to the matters in this addendum being addressed in a satisfactory manner, I would lean towards these submissions being accepted.
10.7 Adequacy of information	No recommendation – addressed in topics	No change
10.8 Consultation undertaken	That Mr Whinney's submission be rejected	No change. Albeit, my recommendation should have included that the other submissions in opposition that raised this point, should have been recommended for rejection.
10.9 Need for additional greenfield land for growth	As set out in 10.9.6	No change
10.10 Housing affordability	As set out in 10.10.6	No change
10.11 Climate change	As set out in 10.11.6	Subject to the matters in this addendum being addressed in a satisfactory manner, I would recommend that: • the submissions that oppose PPC28 in this regard be rejected • the submissions that support PPC28 in this regard be accepted • the submissions that seek amendment to PPC28 be accepted in part
10.12.1 Geotechnical	As set out in 10.12.1.6	No change
10.12.2 Land contamination	As set out in 10.12.2.5	No change
10.12.3 Productive soils	As set out in 10.12.3.6	No change

10.13.2 Water	As set out in 10.13.2.5	No change
10.13.3 Wastewater	As set out in 10.13.3.5	No change
10.13.4 Funding	As set out in 10.13.4.5	No change
10.14 Water quality, flooding, stormwater, water sensitive design and erosion and sediment control	As set out in 10.14.6	No change. While acknowledging the evidence and updated structure plan and provisions, at this point there are still outstanding matters that need to be addressed by the applicant.
10.15 Ecology	As set out in 10.15.6	No change. While acknowledging the evidence and updated structure plan and provisions, at this point there are still outstanding matters that need to be addressed by the applicant.
10.16 Air quality	As set out in 10.16.6	No change
10.17 Transportation/Traffic	As set out in 10.17.6	Subject to the matters in this addendum being addressed, I recommend that: • the submissions that oppose PPC28 in this regard be rejected • the submissions that support PPC28 in this regard be accepted • the submissions that seek amendment to PPC28 be accepted in part
10.18 Historic heritage	As set out in 10.18.6	No change. If a bespoke rule is to be introduced, then as I set out above, I recommend that this be a restricted discretionary activity for alterations and a discretionary activity for removal/demolition.
10.19 Māori cultural values	As set out in 10.9.5	No change
10.20 Landscape, visual amenity and natural character	As set out in 10.20.6	I recommend that X.5 be amended to be a restricted discretionary activity rule. While acknowledging the evidence and updated structure plan and provisions, at this point there are still outstanding matters that need to be addressed by the applicant.

10.21 Urban design	As set out in 10.21.6	Subject to the amendments set out in this addendum being accepted by the applicant, I would recommend that: • the submissions that oppose PPC28 in this regard be rejected • the submissions that support PPC28 in this regard be accepted • the submissions that seek amendment to PPC28 be accepted in part
10.22 Housing design	As set out in 10.22.6	No change
10.23 Parks, reserves and recreation	As set out in 10.23.6	In respect of this topic, I recommend that: • the submissions that seek that PPC28 be declined in respect of this issue be rejected • the submissions that seek that PPC28 be accepted in respect of this issue be accepted • the submissions that seek that PPC28 be amended in respect of this issue be accepted in part.
10.24 Health and safety	As set out in 10.24.5	No change
10.25 Construction effects	As set out in 10.25.5	No change
10.26 School capacity	As set out in 10.26.6	No change
10.27 Non-notification clauses	As set out in 10.27.6	In respect of this topic, I recommend that: • the submissions that seek that PPC28 be declined in respect of this issue be accepted • the submissions that seek that PPC28 be accepted in respect of this issue be rejected

		• the submissions that seek that PPC28 be amended in respect of this issue be accepted in part.
10.28 Other	As set out in 10.28.5	No change