

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE NELSON
CITY COUNCIL**

IN THE MATTER OF

The Resource Management Act 1991
(**RMA** or **the Act**)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on Plan Change 29 to
the NRMP

AND

IN THE MATTER OF

Submissions and Further Submissions
on Proposed Plan Change 29 by

Wainui Properties Limited

SUPPLEMENTARY EVIDENCE

MARK A.B. LILE

Dated: 27 August 2024

INTRODUCTION

1. My name is Mark Lile and this supplementary evidence (planning) has been prepared in response to:
 - (a) Addendum 1 to the s42A Report – *Residential* from Coralie Barker (dated 19 August 2024); and
 - (b) Addendum 1 to the s42A Report – *Heritage and Churchill View Shaft* from Jacqueline Hewson (dated 19 August 2024)
2. It is also important to record here that in accordance with the directions from the Panel, significant progress was made between the experts within expert conferencing sessions, as formally recorded in the agreed Joint Witness Statements (JWS). The expert conferencing sessions that I attended (excluding those where an agreement was not reached) are listed below. Those JWS agreements relevant to the submissions made by Wainui Properties Limited are in bold:

Date	JWS Topic
24 July	Infrastructure
30 July	Flooding
31 July	Geotechnical
1 August	Heritage (REr.18T/19T)
5 August	City Centre
5 & 6 August	Strategic, Residential and Planning
7 August	Infrastructure
7 August	Infrastructure Part 4 (Services Overlay)
14 August	Heritage Part 3 – Rules REr.18T/19T

3. Wainui Properties Limited (WPL) also appreciates the assistance provided by Ms Oliver and Mr Munro for their independent facilitation of the JWS processes.

MATTERS UNRESOLVED

4. As noted above, considerable progress was made in the expert conferencing process under the residential topic (5 and 6 August 2024). The process saw little debate or disagreement on any of the topics for discussion. There was general agreement reached on all matters. We did however agree that some further homework was required to ensure the built form standards were appropriate, and aligned with the types of residential intensification to be enabled by PC29.
5. The matters that remained unresolved following the JWS dated 5th and 6th of August included:

- (a) Site Coverage / Permeable Landscape Areas, High Accessibility Overlay;
 - (b) Glazing to the Street.
6. I have addressed each of these matters under the following subheadings, and in doing so, will also address each of the associated s42A addendum reports.

Site Coverage / Permeable Landscape Areas, High Accessibility Overlay

7. In my expert evidence for Wainui Properties Limited I explained that the rules proposed by PC29 (as notified) do not provide for the format of housing that is to be enabled, and that this oversight would “trip up” the enabling provisions.
8. As a result of expert conferencing on this matter, the JWS (5 and 6 August 2024) recorded the following agreement:

*All experts **agree to amend** (REr.17C.1 18C.1 19C.1), (REr17H.1/18H.1/19H.1), and (REr.18V.3) to apply the site coverage, permeable landscaped area, and high accessibility overlay rules **to the parent net area / application site prior to development**. Council officers to consider this and any additional or consequential changes (i.e. subdivision rules), and circulate possible wording to ML. Refer also 3.1.2. **(emphasis added)***

9. This matter has now been addressed in Attachment 1 of the s42A report with recommended amendments being made to the above-listed rules. The amendments propose to apply the building coverage and permeable landscaped area standard to the ‘development site’ “*as it exists before any new buildings or development of the land is undertaken*”. I agree within this recommended change. I do however consider the rules should also apply before ‘subdivision’ of the development site, just to make it clear that coverage gets calculated prior to the comprehensive development commencing. I have initiated some discussion with Ms Barker and Ms Morgan over this matter. My suggestion is that we continue to work through additional change over the next few days and update the Panel accordingly.

Glazing to the Street

10. The glazing to the street rule was opposed by WPL and addressed in the expert evidence of myself and also the architectural evidence of Mr Irving. This is because for units with a south facing frontage, such as the Nile Street property owned by WPL, the living area and sun will be to the north. Non compliance with the rule would also change the wider activity status to be enabled.

11. Within expert conferencing we agreed that REr.18M/19M should be amended to preclude notification and therefore align with the other enabling provisions, and also to include consideration of building orientation in any resource consent process required due to a breach of the glazing rule. These changes have now been addressed in the s42A addendum report (paragraphs 46-47).

12. I confirm that WPL is now satisfied with the recommended changes to REr.18M/19M.

Heritage Rule REr.18T/19T

13. This proposed new rule was the subject of opposing submissions from WPL. This submission was made as the rule as notified also applies to situations where a site contained a heritage, thereby restricting permitted height to 8m. I provided this clarification here as the s42A addendum report (Heritage) suggests that the submission from WPL on this rule was site specific (paragraph 7), and also the opposition was due to there being a heritage building at 51 Domett Street (paragraph 16). Both of these statements are incorrect. I address this further below.

14. The purpose and intent of this new rule was discussed in the expert conferencing process, and recorded in the JWS of 14 August 2024. The Council experts recorded that the intent of the rule was not to control the height of building when located on the same site of a heritage item, but only intended to restrict height when the adjoining site (with a common legal boundary) contains a heritage item. This clarification resulted in Ms Hewson's recommended amendments to REr.18T/19T as set out in Attachment 1 of the JWS dated 14 August 2024.

15. It was only on the morning of 14 August 2024 that I realised there was a heritage item on the property at 51 Domet Street. This has also been addressed in the s42 addendum report with a helpful copy of the site in Figure 1 of that report. This shows a stream title / parcel separating the WPL property from the 51 Domett Street property, and as such they do not adjoin, nor share a common legal boundary. The recommended change to REr.18T/19T also provides amendments that apply these changes. I agree these changes address the concern I raised as to the application of the rule and also about how the rule is to be applied. That being said, WPL remains opposed to REr.18T/19T.

16. The s42A addendum report quantifies the impact of this rule on 67 properties, given they share a common boundary with 45 heritage items and two precincts. I have attempted to better understand these numbers and consider further clarification should be sought

from Ms Hewson. Reason being, each heritage item is likely to have at least 2 residential properties adjoining, and frequently even 3. 67 means an average of 1.48 neighbours for each heritage item, which so does sit comfortably with me. I consider this should be tabulated, with all affected properties identified to show that this is an accurate assessment.

17. Tabulating the above impacts would also serve to list the 45 heritage items and the heritage precincts. This is also important as the rule relates to “heritage precinct, item or place”. I also see “object” is recommended to be removed.
18. WPL remains in opposition to proposed rules REr.18T/19T as it is **possible** that Wainui House is subdivided off the current site at some stage, and **potentially** prior to the comprehensive redevelopment of the balance area as enabled by rezoning by PC29. If that was to occur, then the balance land **would then be impacted** by REr.18T/19T, reducing the newly enabled (11m or 19.5m) building height down to 8m. Not only is this a substantial impact on the site and opportunity, but will also to apply the entire balance area, well beyond the land immediately adjoining Wainui House. Ironically, as it stands, the adjoining property to the west (135A Nile Street), located down a driveway would be constrained to an 8m height due to Wainui House some 68m away.
19. In addition to the impacts addressed above, I also question the basis upon which the rule is proposed, and its justification under section 32 of the Act. I address those concerns below. I do however acknowledge that neither Dr McEwan nor Ms Hewson were involved in drafting these provisions.
20. According to the s32 report and the s42 reports (including evidence), REr.18T /19T were identified as required as a part of ensuring heritage values were protected from the effects of intensification. The supporting technical assessment report is that by Dr McEwan entitled ‘*NCC Plan Change 29 – Heritage Protection in the Context of Housing Intensification*’ (Appendix 3L, s32 report).
21. Dr McEwan’s assessment identifies two risks from intensification. The first is that the scale of new buildings may overwhelm the size and scale of heritage items, while the second is that impacts such as shading may reduce the viability of heritage item and building through impacting on their desirable use. Both of these concerns relate to size and scale, which must therefore translate to an impact on those seeking to exceed 8m next to a heritage item/building. As to shading, this elevates the importance of shading

effects for those living in heritage buildings above those that don't. Why would any owner of a heritage building agree to something above 8m in height? Likewise, the process would be determined through a contest between heritage professionals, within a reasonable risk of disagreement due to the subjectivity of the topic. The disagreement between the heritage experts on the other live topics serves to demonstrate that scenario.

22. As it stands therefore, I remain very concerned about the impact REr.18T/19T will have on the intensification objective. The recommended change to REr.18T/19T has clarified how the rule is to be applied, however I consider this is likely to have a significant impact on the opportunities to develop land adjoining a heritage item or building. I consider the heritage listing protects the subject heritage values. REr.18T/19T goes too far in my opinion.
23. A more efficient (and balanced) approach could have been to include a matter of discretion into REr.18B and REr.18V, which would have required some consideration of the context of the site adjoining a heritage item, without changing the consenting pathway. This would align with the approach now recommended for the Inner City (see ICr.37B).

SUMMARY

24. In summary, Wainui Properties Limited supports PC29 as it considers the medium density development would provide for an efficient use of this site, and without generating adverse effects on the environment. In addition, it is with this intensification opportunity that Wainui House is likely to benefit. WPL currently has a expert team looking closely at Wainui House, and the options to return this to its former glory, as a part of a wider site development containing approximately 20 new units.
25. Over the course of the expert conferencing process we have reached agreement to changes to various provisions that are required to ensure the rules are functional and appropriate. These pre-hearing processes have been very worthwhile.
26. The only matter that remains outstanding is the new rule REr.18T/19T. For the reasons explained, this rule has a significant impact on the enabling provisions of PC29. I do not consider the rule to have a sound basis. I consider the approach recommended for ICr.37B to be more appropriate, where height is not impacted but consideration must be given to any neighboring heritage item/building (with the same consenting pathway). Just like some of the other amendments being discussed under the Inner City and Residential topics, I consider the experts involved in those heritage discussions can continue to try and find an acceptable compromise before the end of the formal hearing process.

27. Thank you again for your time and consideration of the WPL submissions. I am happy to answer any questions.

A handwritten signature in black ink, appearing to read 'M. Lile', with a stylized, cursive script.

Mark A. B. Lile
27 August 2024