PRECIS OF EVIDENCE AND PRESENTATION BY J M FITCHETT FOR SELF AND CHANGE PC 29 INCORPORATED - SET FOR HEARING ON AFTERNOON OF 28 AUGUST

SUBMISSION NO 732 BY JOHN FITCHETT

SUBMISSION 587 BY CHANGE PC 29 INCORPORATED

1 BACKGROUND

My name is **JOHN MALCOLM FITCHETT**; and I am Submitter under **No 732**

I live at 21 Examiner Street, and that has been my primary home and residence since 1950 – i.e. for 74 years
I am a retired ? solicitor.
I am a Trustee of J & K ISSUE FAMILY TRUST: the owner of commercial properties at 167 Hardy Street and 256 Trafalgar Street.
I was an elected member of Nelson City Council for two terms from 1971 to 1977 – when I did not stand for re-election.

I do not suggest that I am giving evidence as an "*expert*"

I am a member of **CHANGE PC 29 INCORPORATED**; a Submitter under **No 587**.
That Incorporated Society has authorised me to present on its behalf and in respect of it's Submission

2 INUNDATION WITH PAPER – AND WORDS

I tried to acquaint myself with the 2000 (plus) pages of Plan Change 29: but with only marginal success

I have attempted to understand the further papers now on the Hearing Portal – but probably with even less success. When I find that the Section 42A Report (inc Appendices) exceeds 3600 pages, I (and I am sure most laymen) simply tend to "*give up*", and accept that Resource Management decision making now-a-days has been taken over by "*the experts*". As an example of why I have been tempted to "*give up and walk away*", I see that my 13 page Submission was converted into 53 pages of Submission Points by the Council Officers and others.
Quite simply, notwithstanding that, I have been unable to find identified (as "Submission Points") some of my opposition or support paragraphs set out in those 13 pages

I fully accept that this presentation is very amateurish in form. However, my main aim is
- to show the Panel, and Council, that I (like many citizens) oppose the whole thinking behind the Plan Change (i.e. we do not accept that there is a "housing crisis"), and
- to get decisions from Council as to grounds for not rejecting the whole Plan Change: and in particular rational details as to the grounds on which it rejects political correct (or nanny state) proposed requirements such as

- requiring cycle storage in commercial premises; and
- providing for papakainga in a manner contrary to the normal principles of resource management

3 BASIC SUBMISSION

Notwithstanding those complications, I commence this presentation by referring the panel to "My Basic Submission" half way down the first page of my Submission. Despite all the subsequent comment, argument, and Submission Points distilled by Council Officers (or others), I have failed to find some of those points set out clearly in the Council papers

My basic opposition to the Plan Change was there set out under 4 bullet points

1 the "old" Policy - that residential development "*does not diminish the amenity of neighbouring sites*" - should not be jettisoned
2 the use of the expression "*planned built character*" of an area, was shorthand for saying that existing character of an area was of no more than nominal value;
3 prospective loss of amenity to neighbours was subservient to entitlements set out in the Plan Change document; and
4 there is no "*housing crisis*" in Nelson;

and so the whole premise on which the Plan Change is based, is faulty

They remain the basis of my opposition – with all the technical wording being only *dressing*

The other aspect of the Submission process that I want to address the Panel right at the start, is to emphasise my view that it is the "Policies and Objectives" in the Plan Change that should be looked carefully at - for they set the tone for all that follows. Most residents look only to the specific Rules, whereas I encourage you to look at the Policies and Objectives, and discern whether they have been drafted in a manner to ensure

- the right for neighbours (and others) to have input to decision making is minimized;
- the discretionary powers retained by the salaried Planners (within Council) is maximized;

for I say that is the position to be seen in the Plan Change: and especially where (as here) the basic Policy seems to be "*the housing crisis is so bad, that the City needs to plan in a way that there will be little or no protection for the amenities of properties in the High Accessibility Overlay*"

4 OPPOSE IN ENTIRETY – OPPOSE SUGGESTED HIGH ACCESSIBILTY OVERLAY

Even though the Council has spent over $3 million on this Plan Change (and I suspect it will be over $5m by the end), as set out in First Further Submission (on page 1 of my Submission), I still oppose it in its entirety. The reasons (in my Submission) include:

- It deals with only a bit over half of the residential component of the City – the area north east of the Maitai river is excluded
- There was none of the required statutory "*consultation*" as to the Inner City and City Fringe components

- There was no adequate statutory "consultation" as to the residential component
- There was none of the required statutory consultation - other than with Iwi - as to the papakainga component

Section 42A Report Overview and Strategic – prepared by Rachel Morgan

Para 5.2 FDS I do not accept as correct the statements in this paragraph – generally along the lines that the FDS foreshadowed the contents eventually included in Plan Change 29.

In that respect I refer to para D1 of my Submission: which seems to have been distilled by Officers to be Submission Point 732.048.

I do not accept that such distillation is sufficient, and ask that the Panel read (and consider) the whole paragraph; and in particular to note that the complete theory of going to 6 storeys in a residential area, was apparently given informally by 2 NCC "workshops" in respect of which

- there were no Minutes,
- there was no video recording, and
- there was no Resolution - or other written decision:

all in breach of the Ombudsman's rulings in respect of "workshops".
That is all set out at D i of my Submission but I have not found a full reference to that in the Section 42A papers. (I apologise to the Panel if I am wrong, and it is there)

I also refer to the other portions of the 2 pages constituting para D of my Submission. Again I do not find full reference to the same in the Submission Points; and emphasise

D ii Council's failure to engage in community consultation;
D iii Council's refusal (until threat of Ombudsman involvement) to provide information to me
D iv Council's "rush" to promote the Plan Change; and the possible reason for the same; and
D v Council's refusal to meet a LGOIMA request that I be provided with a copy of the briefs given to the "outside" consultants

Para 46 at 5.3 under "Consultation I do not accept that the "consultation" on the FDS was of a nature that it could be relied on to form an "*understanding* (of) *the community's views"* as suggested at para 46

The result of the "consultation" by the Council's was effectively pre-determined by the framing of the questions: e.g. "*do you support or do not support new housing being focused in areas where people have good access to jobs, services and amenities by public and active transport, and in locations where people want to live*".
Members of the Panel will not be surprised that the majority of respondents answered affirmatively. It was like respondents were being asked "*would you like free ice-creams*"

Paras leading to para 90 under 10 I do not accept the validity of Ms Morgan's arguments under 10.

I have no special expertise, or ability to reference other methods of making appropriate future population projections; but understand that other Submitters will be talking (critically of the Council) on that subject: I support their argument

"Other" at 13.0 In the absence of any more appropriate place to make the submission, I here refer the Panel to other portions of D of my Submission.

Para D vi sets out some of the perceived defects in the Section 32 Report which was promulgated last year. I cannot find in the Section 42A Report any reference to the first and last bullet points in that D vi namely no comment

- as to prospective financial loss in value which properties within the (now) High Accessibility Overlay will suffer when 6 storey apartments are built just 3 metres from the boundary, and with a 60 degree recession angle commencing at 8 metres; or
- The effect on Plan Change 29 (if implemented) of recent decisions by the Council to effectively impose a "*sinking lid*" on the provision of on-street and specified areas of carparking; and to remove on-street carparks for additional bus-stops and for other installations

Conclusion – para 14. Because this seems to be an appropriate place; and noting the recommended change from a High Density Zone to a High Accessibility Overlay: I wish now to take the Panel to the example (with photos) that I included in the end portion of my Submission – that is the effect on the property at 197 Rutherford Street if the Overlay scenario is approved.

I accept that the 3 properties to the north could be said to be "crying out" to have intensification: the amalgamated allotments area would be over 1360 sm, and there would be more than 24 metres frontage to two streets.



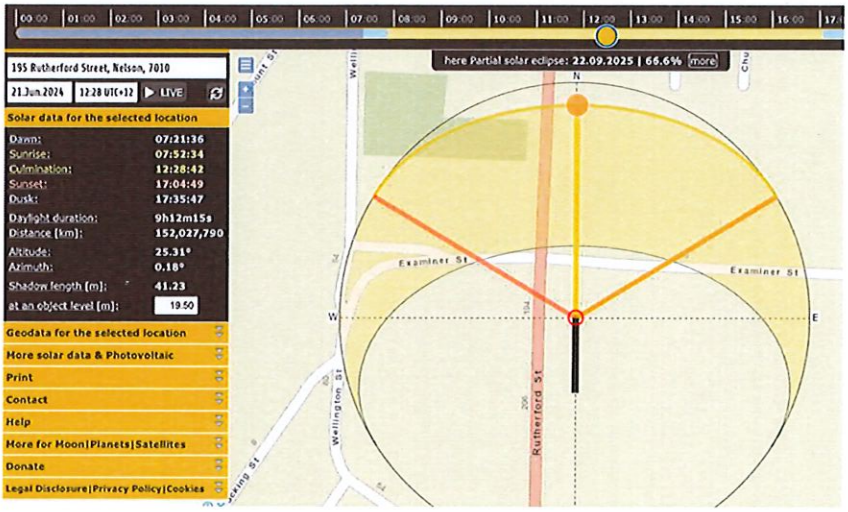
As stated above; under the updated proposed Rules, very high buildings could be built on that amalgamated allotment; close to the boundary; with a 2 story (plus) vertical wall; and a very steep recession plane: with the effect that parts/most of the motels would never – or only rarely – ever see direct sunlight .

Further, if the Girls College (encouraged possibly by governmental cost saving mandates) decided to sell its property to the south of the motels; the recently built motel would find itself "boxed in" from both north and south: and very substantially depreciated in value.

I ask rhetorically "*is that what the Nelson City Council (and its professional planners and contractors) considers to be good planning*"

I clearly set out this example in my Submission – together with comment – but I cannot find any detailed comment thereon in the Section 42A Report. (I apologise if there is one)

I am no computer expert, and am a very *geriatric* when trying to down-load things from the internet. I have however downloaded from a web-site, details of the length of shadow created if a block(s) of apartments was built on the land to the north of the motels. I have down-loaded the details showing that on approximately the **shortest day** of the year, at the time the sun is **highest,** the shadow cast from a building 19.5 metres high, is over 41 metres.



I accept that I may be wrong (in which case I apologise) but nowhere in the Sections 42A Report do I see details as to the extent such a 19.5 m building would shade 197 Rutherford – to me it seems "*fully shaded for the whole day on the years shortest day*"

Please be clear: I entirely agree that "intensification" is appropriate in parts of the area fronting Rutherford Street – and in other areas of the city: what I do not agree with, is intensification which results in buildings of such height, with such high blank side walls; which effectively block all view, and most sunlight, from neighbouring properties; and particularly where such new buildings would be approved by Council without any input whatsoever from affected neighbours. (NB I deal with "*less than minor*" later in this presentation)

I support the theory of intensification which results in housing akin to terrace houses to a height of maybe 10 metres; and/or houses (of up to 10 m) very close together. (Yes; the latter may become the slums of the future – but that is life – and the neighbours are not wholly deprived of direct sunlight).

I wish now to present briefly on the High Accessibilty Overlay: naturally I am pleased to see that the Council planners have accepted what was obvious to most residents 10 months ago, and now recommend against implementing the suggested HDZ. That is a relief to thousands but does not assuage the concerns of those within the Overlay – like me. If anything, it makes those residents even more concerned – for developers' interest will be further concentrated. When one looks at the "*1000 square metres/24 metre frontage*" requirement, most might become relaxed as, on my brief look at the Council's GIS site, I can count on the fingers of both hands the properties that might (in their present situation vis a vis Improvements) become relevant to the Overlay. The principle concern however is that those properties include 2 KO sites, and at least one controlled by a provider of social housing. KO has made clear it intends to build to maximum height on the Examiner Street property – irrespective of concerns of other residents in the neighbourhood, and the other Housing Provider might feel the financial imperative to build to the new maximum height

I consider that a properly, and professionally, drawn S 42A Report would set out precisely how many additional houses/apartments would be likely to be built (and over what period) if Council adopted the Overlay scenario. I looked (briefly) in the Sec 42A Report for those details – and found none: but accept that they may be somewhere in the three thousand six hundred pages

My final submission today on the proposed Overlay is: when one considers the stress the residents have at the prospect of 20 metre apartment block next door, and how much of the Overlay area is occupied by schools; do the citizens of Nelson really want to try to be like the metropolitan centres, and have 6 storey apartment blocks in residential areas. Surely it is much preferable to allow up to (say) 10 m "as of right"; and (if there be any perceived willingness for 6 storeys in any Residential area); to provide that 20 metre apartment blocks cannot be consented to "as of right" – instead there is an element of "notification" and neighbours have a right to be heard. **GO TO 6 on page 9**

5 PARKING IN THE CBD – "INNER CITY".

(I acknowledge this to be something of a personal "rant" – but still being factual. I will delete from my oral presentation: but ask that all members of the Panel read it so that all are aware of the parking problems in the city)

PC 29 proposes to prohibit car parking as a permitted use on the ground floor of any Inner City property. I submitted against such proposal – see my para 17 and Council's 732.014 and 027

Principally for the benefit of the 2 independent members of the Panel, I propose to give something of the last 50 years of history of parking in the CBD

In the early 1970's there was no parking area in what is now the Montgomery and Buxton Squares Carparks. The Council of the day realised that easy and close availability of car parking was essential for the success of the CBD. Council bought up the relevant properties, and developed both carparks. The entire cost was borne by the CBD ratepayers by way of a Special Rate.

That worked very well from the early 1970s till sometime after the turn of the century. Over the

last 20 years Council has been increasingly following an "*anti-car-parking Agenda*" and one where Council encourages use of buses, bikes and foot to access the CBD – to the exclusion of cars. Individual (or multiple) car parks have been removed (and not replaced); and the streets supposedly beautified by trees, seats (not often used), and inordinately wide footpaths (over 6 metres wide) which add nothing to the ambience of the area. (As examples see two phots right at the end of this presentation)

I did not simply stand back doing nothing. In 2011 Council proposed removing many carparks from Montgomery Sq, and replacing the same with grass/play area. Council refused to listen to retailers' pleas, and so I (and one other) had to apply to the High Court for an injunction. We were successful, and the proposal was "canned" – but at considerable cost to Council.

Notwithstanding that Court decision, Council has over the last decade kept trying to reduce car parking in the Inner City – and if the correctness of that statement is questioned, I can provide *chapter-and-verse*.

About 20 or 25 years ago, Council also decided to impose an Inner City rate differential – it started low, but now is 4 ½ times (per $ of Land Value) the rate paid for residentially zoned properties.

Council has also facilitated the development of commercial retail in the Vanguard St and Quarantine Road areas.

The present position is that most major retailers have "*voted with their feet*". For example 20-30 years ago The Warehouse, New World, Warehouse Stationery, Briscoes, Rebel Sports, Bed Bath and Beyond, Beds-R-Us, Toyworld, and Mitre 10 (and probably others I can not immediately think of) all had a substantial presence in the Inner City. Now all those retailers – plus major retailers such as Harvey Norman & Chemist Warehouse - have exited the Inner City. Below is a montage of photos of some of those shops in their new location: the predominant aspect being "*free convenient carparking*"

























First 11 retailers have relocated from the Inner City Zone to free convenient carparking

these other 2 (and Kmart) spurned the CBD

However, in effect Council has decided that "*it knows best*" – as to how to manage the CBD – and appears to consider that the views of the major retailers (especially national chains) - that free convenient car parking is essential for successful retail - are wrong; or do not need to be taken notice of. Residents are implored to use cycles, foot, or the eBus (currently substantially subsidized by central government – but how long will that continue ?). Council is taking "many" parks from the Millers Acre carpark – and responds to criticism of that removal, by saying some replacement carparks are being provided near Rutherford Park: more than 500 metres away . Notwithstanding it's reluctance to encourage the provision of parking in the Inner City, Council sees nothing wrong with buying approx 1000 sq metres in New Street to park its own vehicles, and (I understand – but may be wrong) provides free parking for its CEO, and for Councillors attending meetings.

And of course, within the next two years, things will probably come to a head when Council proceeds to spend upwards of $40 million on re-developing Bridge Street, and removing carparks. I fear that many Bridge Street retailers/hospo will "go broke" during the construction period – for there has been no suggestion that Council would subsidize their rent during that time. I also fear that those retailers/hospo who survive the construction period, will go broke when they find that Council's hope of renewed public retail activity in the re-formatted Bridge Street is shown to have failed.

My final background comment on parking problems (contributing to retail problems) is to fully acknowledge that the serious decline in CBD/Inner City Zone retailing is following a national trend: and not restricted to Nelson. However Nelson Council's attempts to curtail the decline are unrealistic: the big box retailers have clearly proved that "*shoppers want free parking where they shop";* and shoppers have shown they prefer to *drive to shop* – rather than *bus/bike/walk* as promulgated by the Council

If pressed, I suspect Council Officers would argue that "*all is not doom and gloom*" as to retail in the Inner City: and might refer to the moving to the Inner City of the Connings shop which is to be a "pop-up" (Conning's words) in a Council owned property in Wakatu Sq. Whilst I acknowledge that I am pleased to see that imminent arrival; I say that it is not the start of any "trend". A month ago I made a LGOIMA request to Council for a copy of the lease, and details as to *commencing rental*, and *price at which the option to purchase the freehold* could be exercised. Council responded last week refusing my request for those details - effectively on the alleged ground of commercial confidentiality. My view is that, in light of Council's refusal to disclose *rent* and *price,* it is appropriate to infer that both would be perceived to be on the low side – or very low. (Obviously there has been insufficient time for me to go to the Ombudsman)

Also relevant to parking in the Inner City Zone, is parking in the Fringe Zone. Even a cursory tour around that zone – especially where properties are across the street from the Inner City Zone - shows that (unlike in the Inner City Zone) there has been a lot of re-development over the last 25 years, and all property owners have included parking

I now revert to the oral presentation

6 ***'RESTRICTED DISCRETIONARY" - "LESS THAN MINOR"***
especially re High Accessibility Overlay

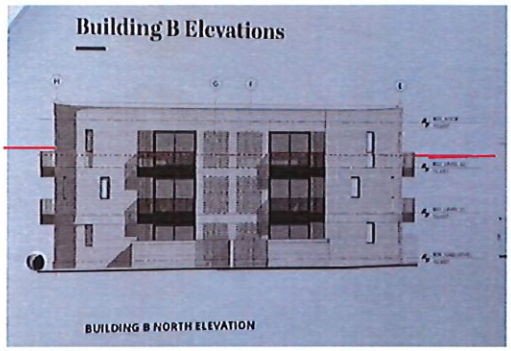
At various places in my Submission I have submitted in opposition in respect of Council's intention to make many aspects of ongoing planning "*restricted discretionary*" : without any notification to neighbours – or to the public. In particular I refer to paras 5, 6, 7, D vii and D viii of my Submission

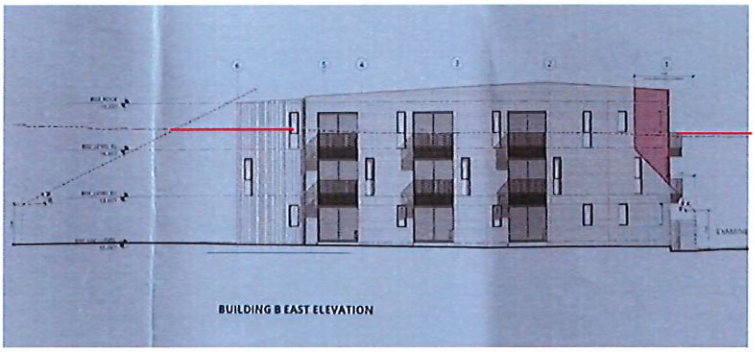
Quite bluntly, as already mentioned, I simply do not trust that Council's planning staff will consider objectively the interests of neighbours, and the public generally. In using the words "do not trust" I am not suggesting corruption, or similar . I mean that the Planners seem to interpret things in whatever manner they think appropriate : especially in regard to what breach of Rules is "*less than minor*". It is principally for that reason that I wish to ensure that the Plan Change "nails down" the amount of discretion that planning officers are to retain.

If I be asked for the basis of my absence of trust: I would acknowledge that much is by way of "pub talk" of applications that have been allowed to proceed with non-compliance being "less than minor" even though the objective observer would consider otherwise. Yes; a "concerned neighbour" could apply for judicial review of Council's decision not to notify (just as Auckland Airport last month won a judicial review in respect of a Kainga Ora proposal to build a 16 storey apartment block in an area included in the Auckland Airport noise overlay – where the Auckland Council treated it on a non-notified basis) but very few have the necessary tens of thousands to embark on such litigation. Therefore they have to trust in the views of Council planners

Even in Nelson I am aware of something the same – in relation to KO's plan to build apartments in Examiner Street. They designed on the basis of the existing height limitations (7.5m) but,

presumably because they were aware of how easily the Nelson Council would be prepared to find that a height non-compliance could be dismissed on the "less than minor" technicality, the planned 3 storey blocks failed to meet (strictly) any of the height limitations. Here are some of the plans that KO provided to neighbours after the Plan Change had been notified. These plans had been discussed by KO with Council planners, but then put "on hold" because (as the KO Planners explained) Council planners said that Council was proposing the present Plan Change – with much increased heights allowed as of right





Note the red line showing the permitted height on two separate elevations. *(the extensions beyond the buildings were added by me – to provide clarity)*

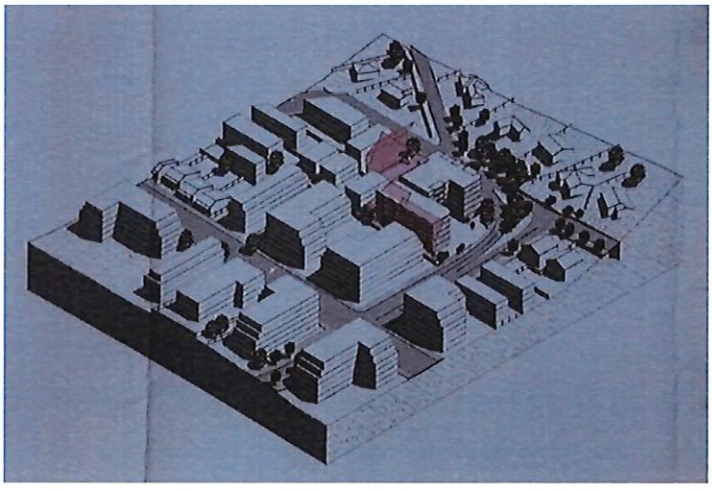
When quizzed (at a semi public meeting) the KO planning person was quite open in acknowledging (in my presence) that the plans had been prepared on the basis that the Council would accept that the height non-compliance was "*less than minor*". He said words akin to "*the City Council is keen to see KO apartments built as soon as possible*". Also it is obvious KO would not go to the expense of preparing plans (including such blatant non-compliance) unless they fully anticipated that Council would accept them.

I also mention that the KO plans for that Examiner Street site (prepared for 6 storey apartments after Council planners told KO early last year of the proposal to have a Plan Change to permit 6 storey apartment blocks) include blocks 6 stories high; with 59 apartments (containing 81 beds); but providing for only 20 carparks (i.e. approx 1 for every 3 apartments) – see below: together with KO's plan for optimum development of the Rutherford Street area.

KEY TYPE & YIELD - PARTIAL 6 LEVELS

TYPE	YIELD	BEDS
1 BED	37	37
2 BED	22	44
TOTAL	59	81
COMMUNAL	(87m²)	
CARPARKS	20	

CARPARK RATIO - 0.339



If the proposed Overlay is permitted to proceed, it appears clear that KO would work immediately to build the 6 storey buildings – and (if the history of their interaction with Nelson City Council planners is anything to go by) KO would seek to go higher than the suggested 19.5 metres – and would argue that the non-compliance (as to height) was *less than minor*; and/or that the Plan Change gave discretion to Council to accept the non-compliance (e.g. by REr19K and REr.19 J). It is of interest that at least one of the KO plans clearly shows a proposal to breach the recession angle.

All that would be to the detriment (as to amenity and value) of the neighbours, and other residents in Wellington/Locking/Rutherford Streets: including some members of Change PC 29 Incorporated. Another relevant point (also mentioned above), is that KO plans to have only 1 park for every 3 apartments. That is also of great concern: I accept that there are recent governmental edicts on that aspect, but submit that the Council's updated Plan should not "encourage" such tall buildings built for *social housing* where the occupier has no choice as to whether to wait for an apartment with a carpark – or take what is offered. The type of apartment building Mr Lyle was talking about earlier in the week was very different from a KO building

As to the whole theory of provision of parks for apartments (especially for *social housing*): I refer to para 9 of my Submission (I can not find it identified as a Council Submission Point) submitting that if at least 1 park per apartment is not provided, then ANY failure to comply strictly with the other Rules will mean that the application is to be considered as "non-Complying.

7 TREATMENT OF HISTORICAL LANES SUCH AS SYNAGOGUE LANE

I refer to para 16 (and 9) of my Submission and Council's Point 732.047 (and .013)

Synagogue Lane is a historical Lane (Right of Way) running west from Trafalgar Square

It is only 12 feet (yes – 12 feet) wide.

It runs through to the back of houses fronting South Street – which have Heritage Status.

The house at No 1 of the Lane has Heritage Status

No 5 backs on to South street Heritage properties - and so should be protected from the effects of the Overlay

all properties in the lane are within the High Accessibility Overlay



NCC GIS of the Lane – and part of South Street



The Lane – photo taken yesterday

My concerns are two fold:

First to ensure that a 12 foot historical right of way cannot be used as access to a multitude of apartments – possibly over 8 metres high.

Secondly to ensure that the Plan prevents the owner of No 5 Synagogue Lane from re-subdividing his property to create a "*spite strip*" along the back of the properties in South Street – and thereby avoid the strictures applicable if the property did in fact adjoin any of Heritage protected South Street

I acknowledge that the Improvements Value of 3 Synagogue Lane is only $20k (and sitting on Land Value of $1.18m), and therefore it is ripe for redevelopment.
I also accept that it may be appropriate to write Rules which permit re-development on 2, 4, & 5 but I want to make sure there are enforceable restrictions as to height; and that vehicular access (over a 12 foot wide ROW) is appropriately dealt with.
Redevelopment in the manner of 360, 362, & 364 Trafalgar Sq (also visible in the GIS photo above) would seem to be to be appropriate

The Sect 42A Report's Appendix recommends "*accept in part*" – but I have not found the specific reference as to "*which part*"; or "*how*"

8 PAPAKAINGA

In the current Plan "**Papakainga"** is defined thus

> means the use and occupancy of multiple-owned land involving the development of the land for residential units and other buildings and uses necessary to enable the owners to live on their land.

i.e. "*multiple-owned land*" and "*to enable the owners to live on their land*"; and with no reference to possible commercial use

In both the current Plan and PC 29 "tangata whenua" is defined as "*in relation to a particular area, means the iwi, or hapu, that holds the mana whenua over the area*"

Under the Plan Change **Papakainga** is defined thus

> means in Residential Zone - Standard Area, Comprehensive Area, Lower Density Area, Rural Zone, Industrial Zone and Open Space and Recreation Zone, the use and occupancy of multiple-owned land involving the development of the land for residential units and other buildings and uses necessary to enable the owners to live on their land.
> means in the General Residential Zone, Medium Density Residential Zone and High Density Residential Zone, Inner City zones and Suburban Commercial Zone, housing and any ancillary activity (including social, cultural, educational, recreational, and commercial activities) for tāngata whenua on their ancestral land.

i.e. broader than the current Plan; and including "*social cultural, educational, recreational, and commercial activities*" but requiring that it be "*on their ancestral land*"

"**Tipuna/tupuna**" is defined thus

> means (in relation to papakāinga in the General, Medium Density and High Density Residential zones, Inner City and Suburban Commercial zones) ancestors.

Ancestral land" is defined thus

means (in relation to papakāinga in the General, Medium Density and High Density Residential zones, Inner City and Suburban Commercial zones) land that belonged to tīpuna/tupuna.

It appears from the Hearing Portal that I was one of only a few non Maori who made Submissions last year in respect of the Papakainga sections of the Plan Change

The relevant parts of my Submission, and how the Council has distilled Submission Points seems to be as follows

Matter Raised	Council' Submission Points	My Submission para
Last 22 words of DO1A.2.4	50	para 29
"commercial" in DO1A.2.5 and Papakainga definition	18	para 14 & 30
Mandatory reliance on Iwi in DO1A.2.6	25	para 31
Deletion of first 10 words of DO13A.3.3		para 32
No identification of "ancestral" land	19	para 33

The Section 42A Report deals with Submission Points at 7 & 8 and the relevant Appendix, and it is recommended that all my Submission Points be rejected

Notwithstanding such blanket recommended rejection, I make no apology for raising these aspects. In my understanding of the law, a Plan is promulgated for the benefit of the whole community – not just one part of it – and if some people are permitted to follow a course of action in a given area, all people in that area should be permitted the same latitude

Also, and even more importantly, all residents should be able to work out from an informed reading of the then current Plan precisely

- what can be done; and
- with what restrictions; and
- where such things can be done;

for only then can prospective purchasers/developers make informed decisions as to where they might be interested in making financial or familial investments

Key Issue 1 Objectives & Policies is dealt with at para 7.2 of S 42A Report (paras 211 to 241). Doubtless I will be criticised for saying so, but an objective observer would say that the tenor is "*what ever tangata whenua seek is to be allowed*" and "*the views of local Iwi authorities trumps the views of Councillors and resource management experts*"

This extends to saying at para 215 that papakainga provides "*for sustained occupation of ancestral land*" but makes clear that "*general land*" (which has no relationship to "*ancestral land*", "*Maori land*", or "*Treaty Settlement land*") can also be developed as papakainga – even

though it is acknowledged that such "*may contain activities of a character, scale, and intensity or range that are not provided by in the surrounding area*" (para 228 of the Report)

I suspect the following sentence may be given publicity, but (in my view) the comments in that portion of the Report, is explicit support for a theory akin to apartheid: namely one race (or the local component of one race) is permitted to do things in some areas that members of other races (or even of their own race - but not from their iwi) are not.

Please be clear: I am only opposing the extension of papakainga to "general" land

Key Issue 2 Papakainga Rules is dealt with at para 7.3.

I refer to para 243 of the Report; and concentrate on

- the inclusion of the word "*and*" after sub para a); and
- the requirement in b) that the owners can "*demonstrate their whakapapa or ancestral connection*" to the land.

I made my Submission prior to the Foreshore & Seabed decision in *Edwards* being released just after last year's election – that being the decision that the government has said it is going to change by legislation. In simple terms I paraphrase: the Court of Appeal interpreted the law in a manner contrary to the clear words of the Act: and the 2 judges in the majority said that they based their decision on the practical impossibility for claimants to satisfy the clearly stated requirements set out in the Act: therefore the 2 Judges broadened them beyond what was stated in the Act of Parliament.

I repeat that I am only concerned with the plan to allow "*general*" land to have papakainga established thereon: I have no objection to papakainga being permitted on Te Ture Whenua Maori Act and Treaty Settlement lands, or land currently owned by Iwi.
However I challenge the Report writer to identify any "*general*" land in the city which has been held for generations within the same family.
What I fear is that an individual person with maori blood will acquire "general" land in the open market, (and possibly find that an ancestor occupied that parcel of land 90 years earlier – or persuade the iwi to support him), and then claim the right to develop it as papakainga – to the distress of neighbouring residents. She/he might argue that it was "impossible" to prove ancestral links and so the Plan provision should be interpreted in a different manner: i.e. generally adopting the argument accepted by the C/A in Edwards late last year

Turning now to my specific Submission Points – as identified by the Report writer

Inclusion of "commercial". Para B v of my Submission

On my reading of the existing Plan, papakainga could not be used for fully commercial purposes. The Plan Change proposes to amend that, and permit commercial use - no matter where the papakainga is situated.

I consider that such possible "mix" of uses is contrary to the whole theory of late 20th century town planning, which then morphed into resource management; and rhetorically ask *"if* commercial *is to be added, what use would not be automatically permitted on a papakainga property"*

I stand by the correctness of this Submission Point – and submit that "commercial" should not be permitted as part of papakainga

No Identification on the Planning Maps Para b iv of my Submission, and Council's 732.019

A very important traditional purpose (and principle) of Council's planning maps is to enable citizens to identify where they may want to live – or where they may make a conscious decision not to live. However, I perceive that principle is at serious risk if the proposed Change proceeds. Council has failed, and refused, to identify what is in fact "*ancestral*" land, and none of the submitting Iwi have considered it appropriate to identify what they currently consider to be "*ancestral*" land. Therefore there is a general risk that any resident may find that the next door property turns out to be "ancestral" land, and find that a papakainga is established on it.

In that regard I remind the Panel again that the proposed Plan Change clearly acknowledges that uses on papakainga *"may contain activities of a character, scale, and intensity or range that are not provided by in the surrounding area"* (para 228 of the Report)

I ask "*Is papakainga to be only for "ancestral lands"*": from my reading of the way the update is drafted, I fear not: it will be able to be established anywhere in the City

(I suspect that some may suggest that the foregoing paras are submitted by someone inherently racist. I strongly deny any such suggestion. In support of such denial I remind people that in 1972 (when it was suggested that a racially selected Springbok rugby team would come to NZ and play in Nelson) I moved at Nelson City Council a Resolution that no racially selected rugby team be permitted to play on Trafalgar Park. It was put to formal vote: I voted in favour, but all other Councillors (and the Mayor) voted against. That vote shows I was standing up for racial equality even though the majority of citizens did not - at that time - support my view)

9 OTHER SUBMISSION POINTS IN THE PRESENTATION

Rule ICr.31A: my Submission at para 17; Sec 42A refers to as Submission Point 732.027

The Operative Plan permitted private car parking spaces in the Inner City:
PC 29 does not, and provides that "Controlled" is limited to 10.

As an Inner City Zone property owner, and long time occupier, I wish the existing Rules to continue; for only then will there be any real chance of sites being re-developed. This is especially so as Council is evidently taking stringent steps to encourage the building of apartments in the Inner City zone. The logical place for such to go is where land is currently being used for private car parks; and thus the number of such parks available to renting to those working in the Inner City Zone will reduce; many people working full time in the CBD rely on those parks, and offices (such as the law firm I spend time at) will be more likely to move to City Fringe if their staff can not obtain "all day parking" at reasonable weekly rates

RULE ICR.31B: My Submission para 18; Sec 42A refers to it as 732.028.
RULE REr.38A: My Submission para12; Sec 42A refers to it as 732.014

These new Rules would require new premises in the Inner City (and Residential) to include cycle storage in their design. I cannot accept that there is any true logic in that proposal – other than an attempt at *social engineering*.
As already noted, the Government (and Council) has made it clear that there is to be no requirement that residential units have car parking spaces – notwithstanding that the great majority of residents own a car. But here, Council is saying developers must provide cycle storage, even though the number of employees/shoppers using bikes is probably very small. I believe (but cannot verify) that Council itself provides more cycle parking facilities (per user) than it provides car parks (per user).
In my view "the market" should dictate whether such facilities are to be provided.
If the developer/client considers they will add to the viability of the build project, they will be included; if they are thought not to add to the financial viability they will not be provided.
In other words it is very similar to car parking for residential units in apartments.
Most developers know that the unit will not sell at an appropriate price if there is not a dedicated carpark: therefor most developers (such as Mr Lyle's clients) include carparks: even though the law does not require them to. In contrast developers such a Kainga Ora provide very few carparks – e.g as few as 1 for every 3 apartments in a development – as noted aleady

OC2.6.i: My Submission para 28; encouragement to close Trafalgar Street

As may be correctly inferred from various portions of my Submission and this Presentation; I simply do not trust the that Council's salaried staff will work appropriately for the benefit of the general citizenry of Nelson. It makes me sad to say that, but the comment is based on

- the misleading way various Council Planning Officers have intentionally misled people (or refused to answer openly and honestly) in August/ November last year; and
- as set out in para D of my Submission; and
- as set out in the responses of various "consultations" over the last 4 years

In light of the absence of trust, and being aware that many/some at the Council still seem to harbour a wish to close Trafalgar Street to all vehicular traffic; I spent some time looking for provisions in the proposed Plan Change that might subsequently be argued as supporting the closure of Trafalgar Street: this OC2.6.i was one; and I consider that there is no justification for its retention in the Plan. (On double checking the reference in the last few days; I fear it is wrong, and I cannot find the correct reference. Council Planners will undoubtedly know the reference I was seeking)

Rule ICr.37D.1 My Submission para 22; Council's Submission Points 732.026

Council is obviously tending to accept the general "retail" life in the Inner City is irreversibly doomed; (although hospo probably has a possibility of continuing economically) and is clear in supporting apartments – even up to 24 metres (I opposed that under para 20 – and supported to 20 metres), even though they would probably take land currently used for car parking.

I support the principle of apartment living in the Inner City – but not the suggestion that the ground floor must have "commercial" use. In my view it is clear that there is a surfeit of retail in the inner City Zone and that there must be some downsizing – and possibly converting retail shops to apartments. My view is that if a developer considers that there is an appropriate commercial use for the ground floor of an apartment block, he will provide for it; similarly if he considers that there is no sustainable "commercial" use for the ground floor, he will either cancel the whole project, or find another way to avoid Council's planning edict in that respect. There is no need for "nanny state" from Council in respect of commercial use of ground floor.

As to Council's rationale for the draft Rule (and the prohibiting of carparks in the Inner City): I suspect that it relates to the Plan's wish to avoid long boring expanse of exterior walls. If that be so, I suggest that Council should look to its own properties as shown in the second set of photos at the end of this presentation. Those two properties are Council operated in Hardy and Trafalgar Streets. Also look at the proposal to build a Storage Facility (for the Museum) in Church Street – with no "commercial" aspect, or access to the general public.
(I accept that it may now be canned: but that was Council's intention – at a cost of over $14 million)

Rule ICr.37D.1a. My Submission 21 Council's Points 732.031

My opposition to a Rule requiring that an residential apartment block does not have residential use on the ground floor, is similar to my argument about trying to "force" developers/owners to have "commercial" use on the ground floor.
If there is no "market" for commercial use on ground floor – for whatever reason – the development should be able to proceed with residential on the ground floor

Rule IC3. My Submission para 25 Council's Points 732.034 and 732.035

I realise that this aspect of my Submission – that there should be no fixed requirement that a Resource Consent be obtained for every new building in the Inner city Zone – is probably doomed to failure; but I make it in this presentation none-the-less. The Change says

IC3.2.ii	~~Rely on businesses to present a site which is attractive to their customers~~ Requiring resource consent for new buildings in the City Centre and City Fringe so that the design of new buildings can be assessed.

As set out in my Submission, my reasoning is that Council should stipulate it's **reasonable** requirements and, if a developer can meet those requirements, he/she should be able to proceed with approved building plans and a Building Consent – and not be put to the expensive hassle of applying for a Resource Consent, and thereafter being "at the mercy" of the discretion of salaried Council planners: and have to pay for their time considering the aesthetics.
The existing Plan correctly focused on the developers knowing what "*is attractive to their customers*": the Plan Change turns that idea on its head and says *"Council Planners know what is best"*

REd.9 and REd.10 My Submission para 43

You will see that at this para I opposed what I termed "planning speak": even though the Plan Change acknowledges that amenities will be reduced, and that there is little or no prospect or ability to "design" the neighbourhood – it being already fully designed

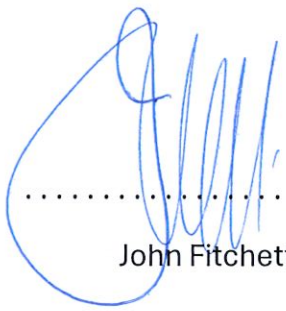
"**permeable landscaped areas**" in developments. My Submission para 15; Council Point 16

Council sees fit to require a percentage of the site of any apartment block to be "permeable landscaped area" – but there is no requirement that it be retained as such

I submitted that, IF such a Rule is appropriate (and I do not accept that it necessarily is), then there should be a provision requiring that area to be retained as "*permeable landscape*" – otherwise I am confident that it would often be "converted" to another purpose e.g. barbecue base, storage shed etc

10 Other Points of Opposition

Although I do not speak to them today (in the time available), I ask that the Panel gives full consideration to the large number of specific opposition to specific Policies, Objectives, and Rules set out in my Submission: and that full reasons are given in the Panel's written decision in respect of all that are rejected



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John Fitchett 28 August 2024





NCC mandated footpath widths; over 6 metres Photos taken 10.30 24 Aug and 11.30 yesterday





Council properties with *boring* extended frontages to Hardy and Trafalgar Streets



Council 's proposed storage facility – with no general public access – in Church Street. Car parking removed.

Why have storage in the Inner City Zone which is meant to be primarily for "commercial"

Relationship between my Submission and Council's Submission Points

Councils Points	My Submission
1	First Submission
2	46
3	
4	Basic Submission
5	Annexure 2
6	Second Submission
7	1 and 2
9	Relief
7	1 & 2
8	3
9	4
10	S I to A vi & B i
11	8
12	6 & Relief 9
13	9 & 10
14	18
15	A I to A vi
16	15
17	
18	30 & B v
19	33 & 59 & B iv
20	61
21	62
22	63
23	64
24	82
25	31
26	22
27	17

28	18
29	19
30	20
31	21
32	25, B vi & D ix
33	B iii, D ix
34	25
35	25
36	23
37	23
38	24
39	27
40	Fifth Submission
41	Fifth Submission
42	Fifth Submission
43	83
44	B iii
45	B iii
46	Second Submission
47	15 & 16
48	Annexure 1
49	Annex 3 Fifth Bullet
50	29
51	76
52	66