

**IN THE MATTER**

of the Resource  
Management Act 1991

**AND**

**IN THE MATTER**

of Submissions and Further  
Submissions on the  
Proposed Wellington City  
District Plan

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**Minute 23:**

**Stream 3 Follow-Up**

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## **Introduction**

1. Following the completion of the Stream 3 hearing on 19 May, there are a number of issues that we need to address.

## **Caucusing**

2. There appeared to be a general consensus that the Heritage Design Guide would benefit from being considered as part of the process we have directed for the Residential Design Guide and the Centres and Mixed Use Design Guide (refer Minute 15).
3. As discussed with some parties in the hearing, however, we have some concerns about doing so without some qualification of the scope of review. The Heritage Design Guide guidelines are expressed differently to those of the other two design guides and its detailed content is the subject of relatively few submissions seeking substantive changes. Wholesale amendment to its contents would be out of scope and would raise natural justice issues because of that. Having said that, we accept that there are common elements to all of the design guides, and it is also more efficient if they are structured in the same way.
4. Accordingly, we direct that the Heritage Design Guide be the subject of review in the same way as the Residential, Centres and Mixed Use Design Guides, but only in relation to those common elements and its structuring.
5. As with those other design guides, we expect periodic updates of progress in their review and that, ultimately, any revisions will be discussed in the Section 42A Report for the wrap up hearing proposed for September, so that submitters will have the opportunity to provide feedback on the end result.
6. It occurs to us that submitters may be unsure as to the role of the wrap up hearing, and the issues potentially to be addressed in that hearing. It is fair to say that when we made provision for the wrap up hearing in Minute 1, we did not have a clear idea in mind as to what matters would in fact be addressed in it. Experience, however, indicates that there are likely to be issues 'left over' that have not been addressed in any of the previous hearing streams. Making provision for the wrap up hearing gave us some security that matters that had previously fallen between the cracks, so to speak, would be heard.

7. The position has now changed with the directions we have made in relation to the design guides. They at least will be a substantive issue considered in the wrap up hearing.
8. We emphasise, however, that it is not our intention that the wrap up hearing will be an opportunity for parties to present argument and/or evidence on matters that they have addressed in previous streams more generally. The design guides are a clear exception in that regard.
9. We will make hearing directions as to what exactly will be considered in the wrap up hearing closer to its commencement.
10. Lastly, in relation to caucusing, we have considered whether it is appropriate to direct that Ms Smith caucus with her heritage counterparts in relation to potential listing of additional buildings or areas. While we were encouraged to make such directions, we have decided that this is not appropriate.
11. The role of caucusing is to provide a forum within which expert witnesses can engage regarding differences between their evidence, seek to resolve such differences, and highlight the matters left in contention (and the witnesses' positions on those outstanding matters). It seemed to us that this was not what was being suggested. Rather, the suggestion seemed to me that if Ms Smith met with her counterparts, they might be able to collectively undertake whatever analysis was required in order to fill what is currently an evidential gap. In our view, allowing such a process has natural justice implications for other parties with an interest in the matter, who are then presented with a fait accompli, and no opportunity to provide meaningful input. The most obvious example was in relation to the proposal for a heritage area centred on Hay Street. Mr Archer made representations opposing such a heritage area and was understandably concerned that a process in which he had no opportunity to participate (caucusing between Ms Smith and Mr Kelly) might result in the scheduling of a Hay Street heritage area.
12. We consider that we must make our recommendations on the basis of the evidence that we already have before us, noting that the Council's Reply is just that, an opportunity to reply, rather than an opportunity to present new evidence.

### **Additional Feedback from the Parties**

13. During the course of the hearing, we gave a number of parties leave to present additional material on identified subjects. Most of that material is now in hand and we thank the parties who have provided it. There are two exceptions. On the final day of hearing, we gave Kāinga Ora and Wellington International Airport Limited leave to provide additional material by close of business this coming Friday, 26 May, as follows:

(a) Kāinga Ora:

(i) A table to be prepared by Ms Woodridge comparing HH-P7 and the Heritage Design Guide to identify the extent to which that policy already provides for the outcomes sought in the Heritage Design Guide;

(ii) A Section 32 Evaluation, again to be prepared by Ms Woodridge, of the risks of a regulatory gap should the Mount Victoria North Character Precinct be deleted and not be replaced by a heritage area in the short term;

(b) WIAL has leave to provide suggested redrafting of SASM-R3 to clarify the inter-relationship between that rule and Schedule 7.

### **Council Reply**

14. The final element of the Stream 3 hearing process is receipt of the Council's written Reply. As previously, we have reviewed our notes of the hearing and identified a number of points on which we would appreciate the Council providing a specific response as part of its Reply, as follows:

(a) Legal Issues:

(i) Can Counsel provide an update on the timeframe for the hearing of the appeal of the Environment Court's decision in the Waikanae Land litigation?

(ii) What matters in Hearing Streams 1-3 should be considered ultra vires if the reasoning of the Environment Court's decision in the Waikanae land litigation applies?

(iii) Can Counsel provide authority to support the proposition advanced in legal submissions that the Hearing Panel is not bound by the Environment Court's decisions?

- (iv) Does the Hearing Panel need to make findings on Dr Kahn's allegation of discriminatory conduct under the Human Rights Act?
- (v) Can Counsel please provide his view of the matters canvassed in Mr Gordon's supplementary legal submissions for Turi and Jane Park regarding the correct interpretation of Policy 21 of Regional Policy Statement?
- (vi) Is Counsel satisfied the Council's classification of provisions related to total demolition of heritage buildings (HH-P10 and 16, HH-R9 and 16) as IPI matters is intra vires (noting that Hutt City Council has received legal advice to the contrary in relation to its IPI Plan Change), and if so, why is that the case?
- (vii) In relation to viewpoint scope issues:
  - Is there scope to alter the right hand side of viewshaft 8 in the manner proposed?
  - Is there scope to apply viewshafts outside the Central City Zone and Waterfront Zone generally, and to the extent proposed (especially with respect to the potential effect on 1 Carlton-Gore Road)—or more specifically:
    - Would a reader of the notified Plan have reasonably understood it had that effect?
    - If not, do the submissions of the Council, or Eldin Trust (or any other submitter) provide scope to amend the PDP in the manner recommended?
    - If the answer to the first two questions is 'no', is this an appropriate case to exercise the Panel's jurisdiction to recommend 'out of scope' relief given the number of properties that would encompass?
  - Is there scope to alter the categorisation of viewshafts 11 and 12?

(b) Heritage Issues:

- (i) Please provide the dates for the relevant steps in Figure 1 (page 23 of the Section 42A Report)?
- (ii) Please provide a list of partial heritage listings.
- (iii) Please provide a table identifying the location of the Section 77K/77J evaluation for heritage listings and heritage area provisions as appropriate, including a narrative summarising the different elements of the evaluation?
- (iv) What do Officers regard as appropriate consultation with property owners to allow them to propose scheduling of a) heritage areas, and b) individual heritage buildings.
- (v) Do Officers consider consultation is also necessary for contributing buildings in a a) Heritage Area and b) Character Area?
- (vi) How long does it take on average to assess a potential heritage building to the standards required by Council for scheduling?
- (vii) To Ms Smith, would best conservation practice include a site visit of the property for the purpose of assessing a building as to its heritage values?
- (viii) What influence, if any, does the condition of a building have on the heritage values of a building and/or the subsequent evaluation under ss32, 77K and/or 77J?
- (ix) Given the consistent theme in the evidence suggesting that the Council's administration of heritage provisions under the ODP has sought to preserve heritage buildings and areas unaltered, significantly increasing the costs incurred by property owners as a result and potentially increasing the loss of property values accompanying heritage listing, is there a need for a greater emphasis in the Heritage Chapter objectives, policies and rules on the desirability of adaptive reuse? If so, do submissions provide scope for further changes required to achieve that outcome?
- (x) Is greater clarity required regarding the rules governing non-scheduled items within heritage buildings/areas?

- (xi) Query whether HH-P9 should be amended to link the suggested reference to appropriateness of an alternative siting to retention of relevant heritage values?
- (xii) Query whether renumbered HH-P16 sets too high a bar when it requires no detracting from heritage values, particularly given the focus in the following policy on significant adverse effects?
- (xiii) Is there a need to clarify the activity addressed by renumbered HH-P17 to identify how “*relocation... within heritage areas*” differs from re-positioning as per the previous policy?
- (xiv) Is there a need to clarify the inter-relationship between recommended permitted activity and restricted discretionary activity rules where the activities in question overlap?
- (xv) Does Appendix A of the Section 42A Report need to be amended to include the recommendation contained in paragraph 492 of the S42A Report?
- (xvi) Has the resource consent for 32 The Terrace lapsed? If so, should renumbered Rule 27 be retained? And if it is retained, should the rule be amended to clarify what alterations it covers?
- (xvii) Does Mr McCutcheon recommend an alternative description in renumbered HH-S1 for the ‘BNZ Centre’?
- (xviii) Please confirm a final view as to whether an amendment to the Character Precinct Rules for unreinforced masonry chimneys would be within scope (refer s42A report, paragraph 282), and if so, what amendment is recommended?
- (xix) What is the Officer response to the argument presented for Argosy Property No. 1 Limited that the information requirements in renumbered Rules 12, 13, 23 and 25 are excessively onerous, and that not all of that information would be required in all cases?
- (xx) In relation to 20 Austin Street, Ms Smith suggested that work to fix leaking from the interior guttering should be accommodated. How is this proposed to be done?

- (xxi) Does the extent of heritage controls in the PDP over 1 Ranfurly Terrace deprive its owners of reasonable use of their home in terms of Section 85 of the RMA?
- (xxii) As regards the Penthouse Cinema, what is the Officer response to the owners' advice that redevelopment of the site pursuant to the resource consent that has been granted is now considered to be unviable? Assuming the recommendation remains as per the s42A report, does the 'Facade and 10m' include the full extent of the two higher parts of the gabled roofs towards the street, but exclude the part of the building with the lowest gable roof towards the back?
- (xxiii) As regards Hurston House and the McLean Flats, does the Council have enough information to populate a listing? If so, please set out what would be inserted in the Plan if the Hearing Panel agrees with the reasoning of Heritage New Zealand Pouhere Taonga?
- (xxiv) What is the Officer response to the suggestion, in conjunction with the case presented in relation to 241 Tinakori Road, that the listing for 121 Hill Street should be deleted?
- (xxv) In relation to 28 Robieson Street, what weight should be given to the NZIA Award given that the exterior (at least) of the architecture in question does not appear to be 'enduring' very well?
  - (i) Have any submissions been made on the Regional Council Change 1 process vis a vis Policies 21 and 22?
  - (ii) Is it correct that 28 Westchester Drive does not appear on a search of the ePlan? If so, should this be corrected?
- (xxvi) Is it possible to present a more 'plain English' version of the proposed definition of 'non-scheduled buildings and structures'?
- (xxvii) Is it desirable to clarify the meaning of 'conservation' in a heritage context?
- (xxviii) In relation to the definition of 'maintenance and repair':



- Is there a need to clarify the extent of the ability to repaint and resurface as part of 'maintenance and repair'?
- Do Officers have any suggestions as to how the situation should be addressed where the existing surfacing is not water tight because of a defective design/design specification?
- More generally, if a building that is scheduled or proposed to be scheduled has critical design flaws (including inappropriate materials used) that make like for like replacement or repair impractical, how far are heritage values affected (retained or lost) by the necessary replacement of original materials with substitutes that correct these flaws, to enable ongoing sustainable use? What is the consent process that is required to undertake such work, and will the policies and rules as currently worded allow for such replacement?
- Please clarify the Officer position in relation to the Wharanui Apartments practice of routinely replacing windows?

(xxix) Is there a case to add Green and Emmett Street to the Newtown Shopping Centre Heritage Area given the orientation of the residences on those streets to the commercial properties on Riddiford Street?

(xxx) Would the values of Salisbury Garden Court be more appropriately addressed in a Character Precinct? – and if so, is there scope and a Section 77L Evaluation that would permit that relief to be adopted?

(xxxi) What is the Officer response to the Lower Kelburn Neighbourhood Group presentation by Dr McIntosh – is there a case for a heritage area to be identified south of Bolton Street?

- (xxxii) Please provide a tabulated comparison of the provisions of the Civic Square Precinct on the one hand, and the controls that would be in place if it remained as a heritage area with the Central Administration Building, the Municipal Administration Building and the Michael Fowler Centre identified as contributory buildings on the other?
  - (xxxiii) Is the history of the Kahn Family relevant to or a required element of the history of 53 Trelissick Crescent?
  - (xxxiv) In relation to renumbered HH-R6, should the test be whether internal changes to floor levels and structural upgrades are 'externally visible' or visible from a public viewing point?
  - (xxxv) What is the Officer response to the Wellington Branch NZIA critique of the Heritage Design Guide?
  - (xxxvi) Is Guideline 5 an appropriate guideline for the Heritage Design Guide i.e. is it an issue of urban design?
  - (xxxvii) In relation to Heritage Design Guide, is there a need to clarify what is meant by third party advertising?
  - (xxxviii) Should Heritage Design Guide Guideline 16 be qualified to relate to the situation where there is material physical evidence of an original shopfront design?
- (c) SASM:
- (iii) Please confirm a final view on whether there is scope to show streams currently identified in Schedule 7 as a corridor on the ePlan maps?
  - (iv) Please advise the Officer view as to how the application of SASM R3 might be clarified where there are no identified key features in Schedule 7?
  - (v) What is the Officer view of the suggestion from the Tyres Stream Group that Schedule 7 should include the major stream flowing down from Mount Kaukau?
  - (vi) What is Officers' final view regarding Mr Murcott's suggestion that the location of the stream bed through the Thorndon area

be shifted to show its route through the Queen Margaret College grounds and across Hobson Street?

(d) Viewshafts:

- (i) Please advise the Officer response to the Argosy submission regarding 7 Waterloo Quay – does the ePlan map correctly capture the intended viewshaft?
- (ii) Should the red (in particular) and blue banners visible in the photograph of Viewshaft 9 at the Willis Street end on Lambton Quay be removed so that dimensions of buildings sitting behind them are captured in the viewshaft? If so, would any submission provide scope for that change?
- (iii) Please advise what recommendations Officers would make if Kāinga Ora's submissions are accepted and a height limit of more than 11 metres is adopted in the Kelburn residential areas below the Cable Car?
- (iv) Please provide a road map showing how Sections 77J and 77L have been complied with in relation to viewshafts, including if Kāinga Ora's relief, as above, is accepted. As for heritage, what the Hearing Panel is looking for is a table identifying the relevant sections of the Section 32 Evaluation, and a narrative of the contents thereof.
- (v) Is there value in a varied more objective version of the Eldin Trust relief noting the role of Te Ahumairangi Hill as providing contrast to the focal points in front of it?

(e) Notable Trees:

- (i) Can Officers provide any suggestions as to how the rules might provide criteria for identification of notable trees in terminal decline?
- (ii) What is the Officer view of an expansion to the note in Tree – R2 advising that infrastructure activities within the Root Protection Area of Notable Trees are controlled under the Infrastructure Chapter?

- (iii) Is it desirable to state in Tree - S4 that hydro excavation is a fallback mechanism if other mechanisms are not available/appropriate?
  - (iv) Does the Council have data as to the girth (and therefore diameter) of all notable trees? If so, what is the Officer view of Mr Partridge's suggestion that the root protection area based on 12 times the diameter be shown on the ePlan maps?
15. For the avoidance of doubt, we confirm that the Council can, of course, comment on any issues that it wishes to do so that have arisen during the course of the hearing in its reply. We would, however, request that the above matters form part that reply.
16. As regards the timing of the Council reply, we have posed a number of questions, seeking feedback as part of that reply. We anticipate that it may take some time to work through that list, quite apart from any additional matters Officers wish to address, particularly given Ms Stevens' commitments in Hearing Stream 4. We also have to factor in the time provided for Kāinga Ora and Wellington International Airport Limited to supply additional information, as above.
17. Taking all of these matters into account, we direct that the Council's Stream 3 reply be filed on or before 5 July 2023.



**Trevor Robinson**  
**Chair**

**For the Wellington City Proposed District Plan Hearings Panel**  
Dated: 23 May 2023