

**BEFORE THE INDEPENDENT HEARINGS PANEL  
WELLINGTON CITY COUNCIL**

**IN THE MATTER of the Resource Management Act 1991**

**AND**

**IN THE MATTER of the Wellington City Proposed District Plan**

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**EVIDENCE OF ALISTAIR ARTHUR ABURN ON BEHALF OF  
WILLIS BOND AND COMPANY LIMITED AND ITS SUBMISSION  
ON THE PROPOSED DISTRICT PLAN**

**PLANNING**

**HEARING STREAM 4: CITY CENTRE ZONE**

**12 JUNE 2023**

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## **1. INTRODUCTION:**

1.1 My full name is Alistair Arthur Aburn. I am a planning/resource management consultant.

1.2 I have prepared this statement of evidence on behalf of Willis Bond and Company Limited (**Willis Bond**) in respect of their submission on the City Centre Zone/Te Ngākau Civic Precinct.

## **2. QUALIFICATIONS AND EXPERIENCE**

2.1 My qualifications are Bachelor of Arts (Hons), Master of Arts (Hons), Diploma in Town Planning and Diploma in Dispute Resolution (Mediation).

2.2 I have over 40 years' experience in town planning and resource management. This includes 6 years as Wellington City Council's City Planner and General Manager Environment. Since 1996, I have been self-employed as a Director of Urban Perspectives Ltd, a Wellington-based planning and urban design consultancy.

2.3 My recent experience has included preparing resource consent applications for a number of Wellington Central Area and waterfront buildings. I have also prepared resource consent applications for the following:

- a) Wellington Town Hall (refurbishment and seismic upgrade);
- b) Municipal Office Building (refurbishment and seismic upgrade);
- c) Wellington Central Library/Te Matapihi (refurbishment and seismic upgrade);
- d) Central Administration Building (building demolition and creation of temporary vacant land); and
- e) Michael Fowler Carpark (new Central Area building).

2.4 My client for the first four listed applications was the Wellington City Council. All of those applications were processed on a non-

notified basis. My client for the Michael Fowler Carpark building was a development entity controlled by Willis Bond. This application has been referred directly to the Environment Court following public notification.

### **3. CODE OF CONDUCT**

3.1 I have read the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023 (**Code**). I have complied with the Code in preparing this evidence. I also agree to follow the Code when presenting my evidence to the Hearings Panel.

3.2 I confirm that I consider the issues addressed in my evidence are within my area of expertise. I also confirm that I have not omitted to consider any material facts known to me that might alter or detract from my opinions.

### **4. INVOLVEMENT WITH THE PROPOSED DISTRICT PLAN**

4.1 I had two involvements on behalf of the Wellington City Council in the lead-up to the notification of the Proposed District Plan relating to:

- a) a review of the Operative District Plan viewshafts in association with my urban design colleague, Deyana Popova; and
- b) a review of the Operative District Plan's Pipitea Precinct/Operational Port/Port Redevelopment Precinct in association with Mark St Clair of Hill Young Cooper.

### **5. SCOPE OF EVIDENCE**

5.1 My evidence addresses points relating to:

- a) City Centre Zone - maximum building heights;
- b) City Outcomes Contribution; and

- c) Te Ngākau Civic Square Precinct - maximum building heights and the notification requirements.

## 6. CITY CENTRE ZONE (CCZ)

### Maximum Building Heights

- 6.1 I support the submissions that requested the removal of a maximum building height for buildings in the CCZ, including Willis Bond's submission points 416.181 and 416.182. I do not comment on Willis Bond's submission that floor area ratios be considered as an alternative to height controls (submission point 416.183).
- 6.2 I support the s42A Report recommendation that the 'maximum building height' is replaced with the 'city outcomes contribution height threshold'. I do so for two principal reasons:
  - a) the change in approach is consistent with:
    - (i) the National Policy Statement on Urban Development (2020), and, in particular, Policy 3 (a) for tier 1 local authority district plans to enable:

*In city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and*
    - (ii) CCZ-P5 Urban Form and Scale - enabling greater overall height and scale of development to occur; and
  - b) replacing 'maximum building height' with 'height threshold' better captures District Plan intent: 'maximum' is somewhat of a misnomer and is potentially confusing for lay people, as under Rule CCZ-R20 and Rule CCZ-PREC01-R78 there is the opportunity to gain additional building height.

### **City Outcomes Contribution Method**

- 6.3 In Willis Bond's submission they expressed general support for the City Outcomes Contribution 'design guide' (G97), but considered there needed to be a level of certainty that the significant investment required to deliver those outcomes would result in greater height (submission point 416.206).
- 6.4 I support the s42A Report recommendation that the City Outcomes Contribution 'design guide' (G97) is moved from the Centres and Mixed-Use Design Guide to Appendix 16 and with CCZ-S1 directly referencing that Appendix 16 must be complied with for buildings that exceed the height threshold.
- 6.5 The reasons why I support the City Outcomes Contribution method are expressed in the following paragraphs:

*City Outcomes Contribution is a method which aims to ensure 'density is done well'. It is a method to ensure that tall buildings (relevant to zone typologies) and buildings under the City Centre Zone minimum building height provide beneficial public and private outcomes, as identified in Table 3 below, and contribute to well-functioning urban environments.*

*It is targeted at commercial, residential and mixed-use developments that are either under height or above specific height thresholds. These developments, typically more so than others, have the potential to impact on the quality and level of public amenity within the City's commercial centres, and securing additional developments from these developments is therefore required.<sup>1</sup>*

- 6.6 The Operative District Plan includes the concept of 'design excellence', which is (only) referenced in a policy (Policy 12.2.5.5).

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<sup>1</sup> Appendix 16: City Outcomes Contribution - at page 66 of the Section 42A Report, Hearing Stream 4, Part 1: Overview and General Matters.

This concept gave no clarity as to the outcomes sought, other than the statement that:

*To ensure that over height buildings visually enhance the cityscape of the Central Area, the Council will require that they display design excellence.*

- 6.7 Having prepared resource consent applications for a significant number of Central Area buildings that exceeded the permitted activity height threshold, I can confirm that there was often a lack of consensus among the Council's planning and urban designers as to what constituted 'design excellence'.
- 6.8 In my opinion, the City Outcomes Contribution method provides more direction and certainty as to the outcomes sought when buildings exceed the height threshold. I consider this helps to address the concern identified by Willis Bond in their submission.
- 6.9 There is however one concern I have about the application of the City Outcomes Contribution as a consequence of the recommended deletion of "Urban Design Panel" from Table 3. This would mean that a building's 'architectural design excellence' in relation to 'urban form and building typology' and 'overall design quality' would no longer be an avenue to earn additional height above the height threshold. Such outcomes would no longer be encouraged. In my opinion, an outcome seeking excellence in architectural design should be encouraged. Consequently, I recommend that Table 3 is amended to replace 'Urban Design Panel' with "Architectural Design Excellence" (or similar), retaining the points range 1-10, and with the following statement (or similar) in the 'Comments' column: "The range of points depends on the development's architectural response to its context and its overall design quality as assessed by the Urban Design Panel". I have included the reference to the Urban Design Panel in the Comments column as I understand it is the Council's intention to establish one (reference Method "CCZ-M1 Urban Design Panel").

**Te Ngākau Civic Square Precinct**

6.10 In relation to the Te Ngākau Civic Square Precinct (**Precinct**) there are two matters I wish to address:

- a) CCZ-PREC01- S1 Maximum height; and
- b) CCZ-PREC01 - R8 Notification status.

6.11 In their submission Willis Bond opposed CCZ-PREC01-R7 (submission point 416.180). Willis Bond did not specifically submit in relation to CCZ-PREC01-S1. However, Council’s proposed amendments to the height limit provisions within the CCZ and the City Outcomes Contribution (both matters on which Willis Bond submitted) now affect CCZ-PREC01-S1.

6.12 For the Precinct the ‘concept’ of maximum height is retained - refer Figure 1 below.

Te Ngākau Civic Square Precinct		
ISPP	CCZ-PREC01-S1	Maximum height
1. The following maximum height limit above ground level must be complied with:		Assessment criteria where the standard is infringed:  1. Dominance and shading effects with in the Precinct and on adjoining sites; and 2. Streetscape and visual amenity effects.
<b>Location</b>	<b>Limit</b>	
a. Entire Precinct	40m	
This standard does not apply to:		
<ul style="list-style-type: none"> <li>a. Solar panel and heating components attached to a building provided these do not exceed the height by more than 500mm;</li> <li>b. Satellite dishes, antennas, aerials, chimneys, flues, architectural or decorative features (e.g. finials, spires) provided that none of these exceed</li> </ul>		

**FIGURE 1:** CCZ-PREC01-S1

6.13 I do not support the retention of the maximum height concept for the Precinct. In my opinion the approach to building height for the CCZ should also apply to the Precinct, which of course is located within the CCZ.

6.14 Maximum height in this instance again does not mean ‘maximum’ given that the relevant rule (CCZ-PREC01-R8) enables additional height above the maximum height to be consented as a Restricted Discretionary activity.

6.15 The assessment criteria where the maximum height standard is infringed (refer right-hand column in Figure 1) are:

- dominance and shading within the Precinct and on adjoining sites; and
- streetscape and visual amenity effects.

6.16 City Outcomes Contribution(s) would not come within the Council’s discretion under Rule CCZ-PREC01-R8 given that CCZ-PREC01-S1 does not (unlike CCZ-S1 - refer Figure 2) require compliance with the City Outcomes Contribution.

ISPP

CCZ-S1		<u>Maximum height City Outcomes Contribution Height Threshold</u>
1. <u>There are no maximum heights for buildings and structures in the City Centre Zone.</u> 2. <u>Above the following maximum height limits thresholds the City Outcomes Contribution must be complied with (measured above ground level unless otherwise specified):</u>		<b>Assessment criteria where the standard is infringed:</b> - 1- <u>Streetscape and visual amenity effects;</u> 2- <u>Dominance and privacy effects on adjoining sites; and</u> 3- <u>The extent to which taller buildings would substantially contribute to increasing residential accommodation in the city.</u>
Location	<u>Limit Height threshold</u>	
a. Height Control Area 1 – Thorndon Quay	35.4m	

FIGURE 2: CCZ-S1

6.17 Furthermore, although Rule CCZ-PREC01-R8 refers to the “Centres and Mixed-Use Design Guide” as a matter of discretion, the City Outcomes Contribution (G97) has been removed from the Design Guide.

6.18 The conclusion I come to is that in circumstances where the PREC01-S1 maximum height standard was ‘infringed’ there would be no ability under Rule CCZ-PREC01-R8 to require compliance with City Outcomes Contributions. As a consequence, potentially new buildings that exceeded 40m in height in the Precinct would not have to ‘deliver’ the public amenity outcomes sought through the application of the City Outcomes Contribution (Appendix 16).

6.19 This outcome is contrary to the PDP (as publicly notified) which, through the inclusion of the City Outcomes Contribution (G97) within the Centres and Mixed-Use Design Guide, allowed Council to



consider the City Outcomes Contribution when exercising its discretion.

6.20 The remedy in my opinion is for the City Outcomes Contribution to apply to new buildings within the Precinct. Therefore, CCZ-PREC01-S1 should be amended to:

- a) replace “maximum height” with “City Outcomes Contribution Height Threshold”;
- b) delete the assessment criteria where the standard is infringed (as is recommended for CCZ-S1); and
- c) delete CCZ-PREC01-S1.1: “the following maximum height limit above ground level must be complied with: Entire Precinct 40m” and replace with:

*1. there are no maximum heights for buildings and structures in the Te Ngākau Civic Precinct;*

*and*

*2. above the 40 metre height threshold the City Outcomes Contribution must be complied with (measured above ground level unless otherwise specified).*

6.21 If the above changes are made, it will also be necessary to add an additional matter of discretion to CCZ-PREC01-R8 as follows:

*xx. City Outcomes Contribution as required by Appendix 16 for any building that exceeds the CCZ-PREC01-S1.*

6.22 Given the important and distinctive role of the Te Ngākau Civic Square Precinct as Wellington’s civic precinct, I consider it is important that where buildings infringe the 40m height limit, as they can do under Rule CCZ-PREC01-R8, the very best outcome from a public amenity point-of-view is the ‘sought-after’ environmental result. This, in my opinion, is best achieved through application of the City Outcomes Contribution method. It provides

greater certainty as to the matters required for 'over height' buildings than the assessment criteria currently contained within CCZ-PREC01-S1.

- 6.23 If this is to be the case, then CCZ-PREC01-S1 and CCZ-PREC01-R8 should be amended as recommended above in 6.20 and 6.21.

#### **Notification Statement**

- 6.24 The notification statement for new buildings in the Precinct (as notified) under Rule CCZ-PREC01-R8 is that:

*An application for resource consent made in respect of CCZ-PREC01-R7 must be publicly notified.*

- 6.25 Willis Bond (submission point 416.180) submitted that the requirement for public notification would unnecessarily fetter development in the Precinct and add cost and delay even to minor alterations or additions to structures within the Precinct and requested the following amendment:

*Notification status: an application for resource consent made in respect of rule CCZ-PREC01-R7 which complies with CCZ-S1, CCZ-S3 and CCZ-S5 to CCZ-S13 is precluded from being either limited or publicly notified.*

- 6.26 The s42A Report records at paragraph 778 that:

*I agree with the submission point in part of Willis [and] Bond. With respect to additions and alterations to existing buildings, I consider it remains appropriate, given the level of public interest in the space that new buildings and structures are publicly notified. I recommend that the notification clause for the rule is refined to achieve this.*

- 6.27 The recommended amended statement is:

*Notification status: An application for resource consent in respect of rule CCZ-PREC01-R78.1 for a new building or structure, but*

*excluding any additions and alterations to a building or structure, must be publicly notified.*

The identified ground/reason for 'must be publicly notified' is a perceived level of public interest.

- 6.28 In my opinion, stating that all new buildings and structures must be publicly notified indicates an element of pre-determination. It is quite possible that new buildings and new structures do not generate any public interest, and this could well be the outcome of public consultation under the Local Government Act 2002, which would precede an application for resource consent.
- 6.29 I accept that it might be appropriate for some significant buildings and structures to be subject to public notification, an outcome that could be the result of the assessment of the application under the notification provisions of the Resource Management Act 1991 (the Act) (s95A-s95E) which require public notification where a prospective development is assessed as having adverse effects on the environment that are more than minor (s95A(8)(b)) or identified special circumstances exist (s95A(9)) exist.
- 6.30 Accordingly, I consider notification status should be based on the tests under s95A of the Act to determine whether public notification should occur or not. Thus, public notification would not be precluded but (also) it would not be pre-determined.
- 6.31 There is precedence for this approach. In the s42A Report for Heritage (Stream 3), and in response to a Willis Bond submission seeking to preclude public notification for new buildings in Heritage Areas, the report writer recommended that the s95 notification provisions should determine whether notification should occur or not (para 493, p 91). The report writer commented that:

*Overall, I consider it appropriate that reliance is placed on the tests under s95 of the Act to determine whether notification should occur or not. Depending on the scale of a proposal I consider that there*

*are circumstances in relation to applications under this rule where notification would be appropriate and should not be precluded.*

6.32 Therefore, as for new buildings in Heritage Areas (Rule HH-R13.2 and HHR13.3 - now Rule HH-R20.2 and HH-R20.3) I consider reliance on the s95 assessment to determine if public notification is warranted is appropriate. The s95 assessment provides flexibility to publicly notify an application where it is considered appropriate without the risk of requiring public notification for applications where it is not warranted. While the Precinct is not a Heritage Area, similar levels of public interest are to be expected, justifying a similar approach.

6.33 Also, I can envisage a situation where a new building has been granted resource consent following public notification, but the consent has not been implemented nor the building constructed (so, there is no existing building), and the consent holder seeks to undertake some amendments that might trigger the need for a s127 application, or potentially a new s88 application given a new/additional District Plan rule is triggered. Would public notification be required for a second time, even though the amendment is not in any material way significant in terms of adverse effects on the environment? As currently drafted, the proposed rule would likely require public notification.

6.34 In my opinion, such a potential situation should appropriately be assessed under s95 of the Act regarding potential public notification and not be pre-determined.



Alistair Aburn  
12 June 2023