30 July 2023

# Wellington City Council
# Proposed District Plan
# Hearing Stream 5

# Submission to Hearings Commissioners

## 1. Submitters Details


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## 2. Introduction

Our interest in the Stream 5 Hearing is with respect to:

- Subdivision Provisions;
- Earthworks;
- Three Waters.

## 3. Subdivision Provisions

SUB-R1

We sought that the three non-notification statements should refer to the relevant standards with respect to the number of units involved. That is, for the non-notification statements that are only related to 1 – 3 unit subdivisions, there is no need to include compliance with MRZ-S2, as this standard is only applicable for developments of 4 or more units.

Similarly, for the non-notification statement that relates to 4 or more units, there is no need to refer to compliance with MRZ-S1, which is only applicable for 1 – 3 units.

The Section 42A report considers that no change is needed as it is obvious which standard would apply in the circumstances. We find this approach intriguing, particularly when the required change is minimal and that the Officer highlights that there is also in incorrect reference to compliance with MRZ-S7 for a 4 or more unit subdivision – and there have been no submissions on this point. We would have thought the objective would be to achieve a District Plan without any confusion as to how to apply the rules.

SUB-R2 and SUB-R3

We sought that the various subdivision rules include the ability to recognise existing use rights with respect to compliance with standards.

SUB-R2 applies to subdivision around existing buildings where a vacant lot is not created. This obviously means that the buildings and their services are existing, which implies that they are functioning entirely satisfactorily.

However, to qualify as a permitted activity, SUB-R2.1 requires that the subdivision complies with standards SUB-S1, SUB-S2, SUB-S3, SUB-S4, SUB-S5 and SUB-S7. Standards SUB-S2, SUB-S3, SUB-S4 and SUB-S5 are 'engineering standards' relating to the provision of three waters services and also power / telecommunications services. These subdivision standards require the existing services to be provided in accordance with Wellington Water's Regional Standard for Water Services, which is a component of Council's current Code of Practice for Land Development.

This would require existing buildings (particularly older buildings) to be provided with new three waters services where these existing services are not up to current standards. We do not see what adverse effect is being addressed by the rule. Therefore, recognition of existing use rights for existing servicing arrangements that are perfectly adequate should be allowed for by the permitted subdivision rule.

Additionally, we note that there would be significant investment required by an applicant to ascertain compliance with these subdivision standards, which still has to be agreed by Council (i.e. Wellington Water).

An example is a subdivision to convert cross lease properties to freehold titles. Cross lease subdivision was regularly used in the 1980's and often included shared common drains for sewage and stormwater as well as copper pipes for water supply. These arrangements would not comply with the current Regional Standard for Water Services, December 2021.

We note that the equivalent standard in the Operative District Plan only refers to new services needed for the subdivision.

Thus the more likely outcome is that these subdivisions would be sought as a restricted discretionary activity under SUB-R2.2 and an assessment of the existing services is required. Though we note that the assessment criteria are mostly to address whether the proposed services would be sufficient.

Similarly for SUB-R3 (boundary adjustments), we consider that if the boundary adjustment involves existing serviced buildings that are to be retained, that the existing services should be able to claim existing use rights.

Again, the more likely outcome is that these boundary adjustment subdivisions would be sought as a restricted discretionary activity under SUB-R3.3 and an assessment of the existing services is required.

Our experiences with Wellington Water are that they would be highly unlikely to accept services that are not compliant with the current Regional Standard. Particularly under their recent 'regional standard dispensation procedure'. Thus applicants are having to replace or upgrade existing drains and water connections with new drains and water connections. This imposes significant costs and time delays where there is no adverse effect to be mitigated.

We also make the side comment that our expectations are that the relevance of the 'Three Waters' chapter, rules and standards in the District Plan may become redundant in any event (or will be revisited again in the near future) depending on the outcome of the Government's Three Waters Reforms.

SUB-S1

This standard is to do with practical, physical and legal access to an allotment. We sought the removal of this standard as this matter is a mandatory matter to be addressed for all subdivisions under Section 106 RMA, and because the determination of whether compliance is achieved involves an exercise of discretion by Council.

The Section 42A report would appear to confirm our concerns. The Officer notes that the standard includes an additional requirement over Section 106, by the inclusion of the requirement that the access is also *practical*. We would expect that the *legal and physical* test of Section 106 is sufficient as it has been since 2003, and we are not sure what the purpose of an additional *practical* assessment requires. However, the Officer suggests

that it is more than physical access. This implies that Council would have to make a judgement call as to whether the access is practical or not to comply with the standard. The exercise of such discretion is not appropriate for a standard.

While the standard appears to be taken directly from the Operative District Plan standard 5.6.4.3, this operative standard is really only applied to a permitted activity status subdivision (which hardly ever occurs anyway for other reasons). For controlled activity subdivisions, the terms of operative rule 5.2.2 allowed existing use rights to be claimed, or an existing land use consent to be recognised. Thus the operative access standard was not applied to all subdivisions and a controlled activity subdivision could claim existing use rights without being elevated to discretionary status.

We therefore disagree with the Officer's recommendation, and request that the Hearings Panel delete the standard as it requires Council to exercise discretion, and also seeks to impose even greater requirements than has been accepted and legislated through Section 106 RMA.

SUB-S2

This standard is to do with the provision of water supply to an allotment. We sought amendments to the standard on two matters. Firstly, the standard refers to the 2019 version of the Regional Standard for Water Services, whereas the Three Waters Chapter refers to the 2021 version. It seems the Officer has missed this point.

Secondly, we sought that the specific provisions from the Regional Standard should be written into the standard rather than via a cross reference. While I accept that technical documents can be incorporated into the District Plan by reference, in practice Table 6.1 of the Regional Standard sets the maximum and minimum water pressure limits for a new water supply connection to an allotment, which could easily be transcribed. Table 6.2 relates to requirements for new reservoirs, which would very rarely by triggered in practice.

We also supported the submission of AdamsonShaw (#137), which sought to apply SUB-S2 only to new vacant allotments. The Officer's Report helpfully confirms that an existing water connection to a dwelling has existing use rights where that dwelling is not being altered or subdivided (e.g. by a unit title subdivision). We understood the intention of the AdamsonShaw submission is with respect to freehold subdivisions. Therefore, we suggest that the intended outcome (consistent with the Officer's Report) could be achieved with an amendment to the standard to refer to 'freehold' allotments and principal units and cross lease buildings as follows:

1. *Where a connection to Council's reticulated water supply systems is available, all new vacant freehold allotments, principal units and cross lease buildings must:*

SUB-S3

This standard is to do with the provision of wastewater (sewage) disposal facilities to an allotment. Similarly, to our submission on SUB-S2, we sought amendments to the standard on two matters. Firstly, the standard refers to the 2019 version of the Regional Standard for Water Services, whereas the Three Waters Chapter refers to the 2021 version. It seems the Officer has also missed this point.

Secondly, we sought that the specific provisions from the Regional Standard should be written into the standard rather than via a cross reference to a section of the Regional Standard. SUB-S3 refers to section 5.2.3 of the Regional Standard. Our concern is that some of the items listed in section 5.2.3 of the Regional Standard are non-specific. Therefore, only those items that are relevant and specific to a new connection for an allotment (so as to be an appropriate standard) should be listed. We consider that items (a), (b), (p) & (q) are not relevant to a new wastewater connection and so should not be included in SUB-S3.

SUB-S4

This standard is to do with the provision of stormwater disposal facilities to an allotment. Similarly, to our submission on SUB-S2, we sought amendments to the standard on two matters. Firstly, the standard refers to the 2019 version of the Regional Standard for Water Services, whereas the Three Waters Chapter refers to the 2021 version. It seems the Officer has also missed this point.

Secondly, we sought that the specific provisions from the Regional Standard should be written into the standard rather than via a cross reference to a section of the Regional Standard. SUB-S4 refers to Tables 4.1, 4.2 & 4.3 of the Regional Standard. Table 4.3 applies to access roads and therefore is not relevant to a new stormwater connection and so should not be included in SUB-S3.

## 4. Earthworks Provisions

Definition: Cut Height

We sought that the definition of cut height should be amended to measure the vertical change in height of the excavation. That is, the vertical distance between the existing ground surface and the excavated surface.

The notified definition would measure the apparent height of a cut batter slope.

The notified definition is a significant change from the definition of cut height in the Operative District Plan. The operative definition is as follows:

**CUT HEIGHT:**

means the maximum height of the earthworks cut at any time, measured vertically and includes any working cut height during the course of the earthworks.] PC70

As shown in the diagram below, the proposed definition leads to a greater measurement of the cut height, which will result in a lot more earthworks proposals requiring resource consent.

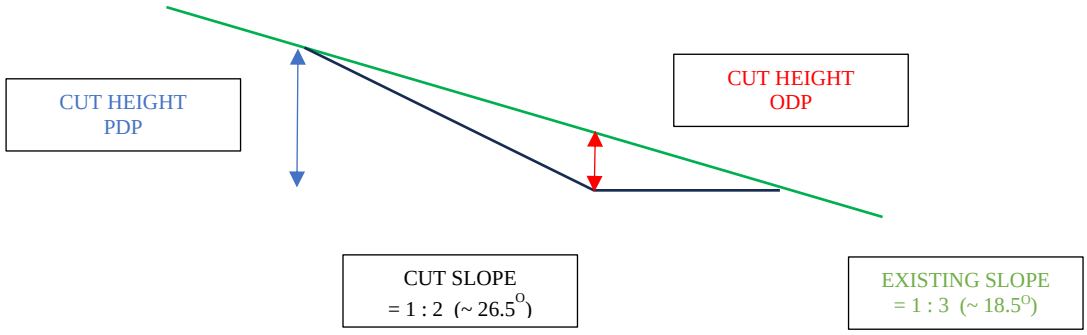



*Figure 1: Comparison of PDP and ODP definitions of "cut height"*

The proposed definition appears to be inconsistent with the Section 32 Report on Earthworks. The conclusion of the Section 32 Report is that the operative provisions should be retained. We note that the Conclusion of the Section 32 Report states:

The evaluation demonstrates that this proposal is the most appropriate option as it:

- Retains operative provisions including thresholds for consent for earthworks that remain appropriate, providing a degree of continuity and familiarity for existing resource users (e.g., thresholds relating to areas, depths of cut and heights of fill).

We consider that the proposed definition of Cut Height is inconsistent with the intentions of the Section 32 report and therefore should be changed as per our submission.

EW-R6 – Non-notification Provisions

Our submission sought that the general earthworks rule should include non-notification (both public and limited) for all standard that may be breached.

The proposed non-notification clauses would allow limited notification where EW-S2 is exceed. That is, where the cut height or fill depth of the earthworks exceeds the permitted standards.

We note that the Operative District Plan's Earthworks Chapter 30 included a general non-notification statement for all discretionary restricted rules in Section 30.2.

***Non- notification/service***
***Applications do not need to be publicly notified and do not need to be served on affected persons.***

While this non-notification statement has been criticised by the High Court, the intention of the operative non-statement is clear that public and limited notification was not going to be required. The non-notification statement complied with the RMA at the time. However, the non-notification statement was not "updated" to be consistent with subsequent changes to the RMA that introduced Limited Notification and that notification could be "precluded" by a restricted discretionary rule.

Again, we note that the proposed non-notification provisions appear to be inconsistent with the Section 32 Report on Earthworks. The conclusion of the Section 32 Report is that the operative provisions should be retained, and noted that the non-notification clauses should be clarified – given the High Court's criticism.

We consider that the proposed non-notification clauses are inconsistent with the intentions of the Section 32 report and therefore should be changed as per our submission.

## 5. Three Waters

Definition: Hydraulic Neutrality

We sought that the definition of Hydraulic Neutrality should be amended to reflect the currently accepted practice and use of hydraulic neutrality calculations. That is, neutrality should be based on the current existing state of a property. This would include any existing non-permeable areas such as roofs and sealed driveways / car parks.

The proposed definition completely re-defines the currently accepted concept of hydraulic neutrality, and is actually seeking "hydraulic positivity". That is, Council is wanting additional housing and increased development but with less stormwater run-off than is currently discharged.

The justification provided in the Officer's Report is that hydraulic neutrality will *assist with managing network capacity, managing flows and volumes and contribute to water quality improvements.*

Nevertheless, a requirement that new development achieves hydraulic neutrality is really only "fiddling with the edges". This is because the proportion of the City that is subject to development (and therefore hydraulic neutrality) is very small.

To make real gains on the stormwater network, Council should be investing in other methods to make improvements for the whole of the city – such as encouraging existing housing to retrofit stormwater detention devices and reduce impervious areas.

We would also note that the requirement for developments to be hydraulicly positive would also mean that development contributions related to the proportion of funding for any upgrades of the stormwater network, based on increased demands by growth, cannot be justified.

THW-R1 and THW-R2

We sought that the permitted standards that reference the Regional Standard for Water Services should be removed and replaced with specified minimum standards for wastewater, water and stormwater connections.

Our comments in respect of the subdivision standards SUB-S2, SUB-S3 and SUB-S4 are equally applicable to the Three Waters rules.

We also noted that the Regional Standard has not been (to our knowledge) the subject of any consultation in terms of Clause 34 of Schedule 1.

THW-R4

We sought that the matters of discretion for this rule should be amended to remove the references to the Regional Standard for Water Services and also the Water Sensitive Design for Stormwater.

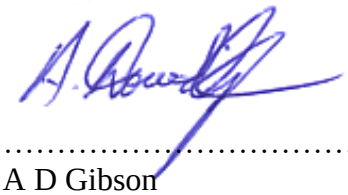
We sought removal of the documents as matters for discretion, not because they are documents incorporated by reference, but because they are by and large unworkable for multi-unit developments in our experience, which is the purpose of the rule.

This is particularly so for the Water Sensitive Design for Stormwater. For modern townhouse developments, it is not feasible to develop a wetland or swales. Pervious paving and bioretention are new technologies still being developed and so are quite expensive and experimental. We would welcome a review of the guideline to investigate water sensitive design features that can be used for modern townhouse developments.

## 6. Summary of Decision Sought

That the Commissioners amend the PDP as suggested in our submission.

Signature of person making submission.



…… Date 30 / 7 / 2023

A D Gibson

On behalf of Survey and Spatial New Zealand (Wellington Branch)