

## Summary Statement: Daniel Batley – WCC

1. This summary intends to highlight the key matters from my s42A Report as pre-circulated on 25 November 2015. As this report has been available for some 3 weeks I do not intend to address it in full, rather I will take it as read.
2. This summary also intends to address those matters that have arisen throughout the hearing that require a response, or clarification, from the Council's part.
3. I also wish to highlight that as a result of what has been presented and discussed in the hearing, I do not intend to alter the overall recommendation included in my s42A report.
4. In regards to my s42A report, I wish to highlight the following key aspects with respect to what has been discussed in this hearing to date.
  - First, I wish to confirm that I have considered the proposed plan change and in my opinion believe that it establishes a robust and sufficient planning framework to manage any future development on the subject site (320 The Terrace). The use of a Restricted Discretionary Activity (RDA) is a common approach within the WCC District Plan and a common way in which to treat new development. This approach allows Council to assess a development proposal on its merits with respect to the specific effects generated and also overall design and appearance, amongst other matters of discretion. This, in conjunction with the Victoria University Design Guide, provide a suitable amount of flexibility and certainty in assessing a development proposal.
  - Second, with respect to the issue of notification, I wish to confirm that the plan change allows for notification where there is a non-compliance with one or more of the standards under the Permitted Activity Rule in the Institutional Precinct (for example building height, site coverage etc). Also, the plan change allows for notification of an application under the proposed RDA rule for any development on the subject site, only where special circumstances occur. Despite this, it is my opinion that the possibility for 'limited notification' under the new RDA rule should not be ruled out completely. It is my recommendation that the possibility for this to occur remains. This provides Council with the opportunity to notify potentially affected parties of a development proposal on the subject site if it considers this necessary. This is not to say that every application will be notified, but rather give Council the opportunity to do so should it consider it appropriate following a notification assessment.
  - Third, on the issue of the appropriateness to 'de-list' the GWF from the Council's District Plan Heritage List, the approach I have taken in my assessment is one of balancing the relevant matters and drawing a conclusion under the premise of the purpose of the RMA (sustainable management). It is not disputed that the building has 'some' heritage value, however the conclusion I have drawn is that when balanced against all the relevant matters, 'de-listing' can be considered appropriate (see my paragraph 114 of s42A Report).
  - Last, based on the assessment and analysis undertaken throughout my s42A Report, I consider that the plan change (subject to the recommendations in the s42A report and agreed to within this hearing) is the most appropriate way to achieve the purpose of the Act when assessed against the overall purpose of the plan change.
5. I will now address the various matters that have arisen throughout the hearing.
6. The issue of a front yard setback has been raised by the commissioners, with a particular question as to whether one is necessary for the subject site. Miss Desrosiers and myself, share the opinion that a front yard setback is not necessary, in particular a '1 metre' front yard setback as has been suggested in this hearing. Our preference is that a suitable front yard setback is negotiated through the resource consent process and assessed against the Victoria

University Design Guide (VUDG). To this effect, amendments have been suggested to the VUDG.

NB: Please see attached marked up VUDG showing the suggested changes. Also, please see the following paragraph which addresses the VUDG changes (as a result of the hearing – shown in green) with respect to section 32AA of the RMA. These changes have also been agreed to by the requestor.

7. With respect to the proposed changes to the VUDG and s32AA of the Act, these changes are considered necessary to provide further clarification of the matters the guide is aiming to address. The changes are not considered to change the intention of the proposed plan change, but rather enhance the planning framework to provide further clarity to the Council when it comes to consideration of the guide against a future development proposal before them. It is my opinion that the changes do not alter the original intent of the plan change, nor the intent of the changes as recommended (and considered against s32AA) in my s42A report. Therefore, these changes are considered to contribute to the appropriateness of the plan in achieving the purpose of the Act. They are also considered to be consistent with the test of being an efficient and effective way to achieve the objectives of the plan. I consider my assessment against s32AA included from paragraph 183 of my s42A report to also be directly relevant to these changes.
8. The issue of the escarpment has also been canvassed by the commissioners throughout this hearing, in particular the protection of 'views' of the escarpment when removed from the subject site. It is agreed that the escarpment forms part of a wider landscape feature of significance to the character of the central city. The matter of a building setback from the southern boundary of the subject site has been raised and explored. To this effect it has been agreed by the Council and the Requestor to amend Item 4 of proposed Appendix 4 (Permitted Building Standards for 320 the Terrace) as follows. Other minor amendments have also been proposed to the VUDG to further strengthen the framework with regard to this matter.

*4. A 5m yard shall apply to the boundaries with the Inner Residential Area except for the boundaries indicated in blue on the plan below where a 1m yard shall apply, and along the boundary with 324 The Terrace where a 10m yard shall apply.*

NB: Please also see attached marked up VUDG showing the suggested changes relevant to this matter. Also, please see paragraph 6 (of this summary) which addresses the amendment to Item 4 of proposed Appendix 4 (Permitted Building Standards for 320 the Terrace) and the VUDG changes (as a result of the hearing – shown in green) with respect to section 32AA of the RMA. These changes have also been agreed to by the requestor.

9. The question of the suitability of a structure plan for the subject site has been raised. I do not consider a structure plan necessary in this case as I believe the RDA status for any future development to provide sufficient scope to the Council to consider and manage any future developments.
10. The matter of ground level has been raised in relation to maximum height, I can confirm that maximum height is measured from the existing ground level (pre-development application) unless it is a prescribed 'AMSL' which is measured against a relevant datum.
11. Existing use rights has also been raised with regard to the GWF. I can confirm that the building itself has existing use rights as it still physically stands of the site and was lawfully established. However, with regard to the activity of the site, it is considered that these rights no longer exist and that if the building was to be repopulated as it currently stands, a new resource consent would be required (primarily focused on car parking provision).
12. The status of student accommodation has also been raised under the existing District Plan. I can confirm that under the Inner Residential Area, student accommodation is a permitted activity subject to specific standards. Also, the construction of a new building is also a permitted

activity subject to specific building standards. Non-compliances with either set of standards triggers a RDA consent with the provision for notification where necessary.

13. The status of landscaping and walking tracks under the current plan has also been questioned. I can confirm that if the plan change was successful and the GWF removed, landscaping the site would not trigger the need for a resource consent. Walking tracks would also be acceptable and not require resource consent provided they comply with the earthworks provisions of the district plan.
14. The commissioners have also raised questions around the use of a 'Controlled Activity' status for the demolition of the GWF (should the plan change request be successful) as well as the consideration had under the building consent process. I acknowledge that the building consent process requires a demolition management plan (DMP) as part of a consent and will not grant that consent unless the DMP is sufficient. However, the building consent process is not set up to consider wider environmental effects, for example noise and traffic effects. A resource consent for any demolition would theoretically be required prior to obtaining a building consent. The resource consent would enable Council to ensure that the DMP considers and appropriately manages and potential environmental effects. This process also provides Council with the ability to place any necessary conditions on the consent to ensure that these effects are appropriately avoided, remedied or mitigated.
15. There has also been some questions raised around the use of the plan change process as opposed to the resource consent process as the tool to enable the demolition of the GWF. Ultimately, the Act provides both avenues to a landowner and does not weight one over the other in terms of preference. Despite this, it is my opinion (and one that is shared by the Council) that this make up of requests is most appropriately dealt with through the plan change process as a single package as it represents a significant policy decision under the plan.
16. Lastly, policies 21, 22, 31 and 46 of the Regional Policy Statement have been raised as being particularly relevant to the consideration of this plan change. At the outset, I wish to highlight that I consider (in my opinion) the plan change to be consistent with each of these policies. I address each as follows:

- **Policy 21 and 22:** In short, Policy 21 requires Council to identify sites of significant historic heritage value under one or more of a listed set of criterion. Policy 22 then requires Council to protect such sites.

Firstly, I do not consider that the reference to identification under this policy directly corresponds to a requirement to list a site in the district plan. The prospect for any site (or building) that is considered to have significant value under one or more of the criteria as justifying a district plan listing to be both unrealistic and inappropriate.

Rather, I consider this to mean that Council is required to identify such sites and then go through a process of considering these further and determining whether these should be included on its list of heritage buildings. This is currently the process Council follows. Therefore, I consider that the WCC district plan is consistent with this policy in that it protects approximately 900 sites or places with significant heritage value.

Furthermore, Policy 22 explicitly states in the explanation that it is not intended to prevent change to historic heritage. It also requires protecting sites of value from inappropriate subdivision, use, and development, which suggests that there is a possibility for cases where use and development are considered appropriate, particularly where the historic heritage value has changed. We have heard and been presented with extensive material that renders this building appropriate for 'de-listing' and as not being of significant historic heritage value any longer.

Therefore, I consider that the plan is consistent with policies 21 and 22 of the RPS in that the de-listing to enable demolition of the GWF is not considered to be an inappropriate use or development. There is also no provision within these policies that requires a

building, site or place to be protected for 'eternity' where they meet at least one of the criteria listed.

- **Policy 31:** In short, this policy requires Council to identify key centres and locations with good access to the strategic public transport network, suitable for higher and/or mixed use development and include policies, rules and/or other methods that encourage higher density in these locations.

The policy does not explicitly provide a criteria for 'suitable' locations. I consider this policy to require Council to identify locations it considers to be suitable for higher density and/or mixed use development and provide for them within the district plan. This is currently achieved in the operative district plan and is also being considered under a number of current Council projects.

The subject site is not one the Council considers suitable for higher density and/or mixed use development under this specific policy. Therefore, the plan change is considered to be consistent with this policy.

- **Policy 46:** This policy, despite its wording, is also considered to apply to this plan change. However, despite a weighting towards retention of heritage buildings, it (1) does not create an obligation higher than 'particular regard' and (2) also allows for 'appropriate' activity that affects heritage. This is consistent with my assessment of policies 21 & 22 above and therefore it is considered that the plan change is consistent with this policy also.

17. Other matters that I will address orally are (post hearing text added in *italics*):

- **Earthquake prone status of the GWF.**

*For the purposes of clarity for the panel, I provide the following timeline outlining the earthquake prone (EQP) status of the GWF. Also, I wish to outline that from the Council's perspective, an IEP is a 'broad brush' tool used to determine the EQP status of a building.*

<b>Year</b>	<b>Report Completed by</b>	<b>Result</b>
2010	Beca (on behalf of WCC)	41% NBS
2012	Clendon Burns Park (on behalf of Housing NZ)	Potentially EQP – further detailed assessment 58% NBS
2013	Beca (review on behalf of WCC)	Agreed building was not EQP
2014	Beca (on behalf of VUW)	50% NBS – façade considered EQP therefore GWF overall rated EQP
2015	Spencer Homes	Agreed with 2014 Beca assessment – GWF is EQP

*WCC now considers the GWF as EQP and has included it on its EQP list. A 'yellow sticker' notice is due to be issued sometime in early 2016. The notice requires the building owner to either strengthen or demolish the building within 15 years of the notice being issued.*

- **WCC District Plan Heritage List context.**

*To provide additional context on heritage within the District Plan I will work through various parts of the Heritage section (Section 20/21 or S20/21) of the plan.*

*Firstly, the introductory section of S20 under 20.1.1, in particular the first paragraph, provides a context for listing buildings, objects etc. The paragraph reads as follows:*

*The evidence of Wellington's heritage is seen in buildings, structures, objects, archaeological sites and areas. At the same time protecting the city's built heritage is not about locking it up. The continued use of a heritage building is essential to its survival but it should not be at the loss of its historic and architectural integrity. The challenge is to protect*

*the most valued heritage places in an evolving environment while meeting the needs of a rapidly changing community.*

*Essentially, this recognises that things do change and that the plan should be adaptable to accommodate change as and where it occurs, provided it is considered appropriate.*

*Secondly, Objective 20.2.1 is the main S20 objective relevant to this plan change and reads; "to recognise the City's historic heritage and protect it from inappropriate subdivision use and development."*

*Beneath this objective, Policy 20.2.1.1 requires Council to "identify, record and list the city's significant historic heritage". I think it is important here to highlight that the policy recognises identification and listing as separate means within a wider 'identification' process. This is useful to highlight in respect of the questions raised around policy 21 of the Wellington RPS. The process is that Council is to identify buildings with potential heritage value (of significance), record such buildings and determine their overall significance, and then list those builds considered significant and worthy of greater protection by the plan.*

*Policy 20.2.1.2 aims to discourage demolition unless there are no reasonable alternatives. We have been presented with extensive information both in the application and in the hearing that suggests there are no reasonable alternatives to demolition. It is this information that has helped me form my opinion and the recommendations in my s42A report.*

*Ultimately the plan leaves the door open for the removal of heritage listed buildings where it is considered and proven to be appropriate. The plan is directed more to demolition than de-listing as is expected in a land use management document. Despite this, I do not think this then eliminates the district plan context from the consideration of the request in front of us. Both instances (demolition and de-listing) result in the removal of a heritage building and therefore one should not be easier or harder than the other, the core considerations should remain the same. These core considerations are whether it is appropriate (or not) to remove the building in front of us and in my opinion the plan sets the test at whether there are any 'reasonable' alternatives to which I believe is entirely relevant to the consideration of this request.*

- **Council acquisition of walkway linkages for public use.**

*To my knowledge the Council does not actively seek the acquisition of informal laneways/walkways associated with uses such as VUW. Furthermore, if the landowners sought the vesting of such assets with the Council I am not entirely certain that the Council would want the ongoing maintenance of these. I would suggest that the Council's preference would be for these to remain informal connections and continue to function as the currently do so.*

- **Student behaviour.**

*I do not intend to elaborate on this matter other than to say that I do not consider it a relevant matter for consideration under this request. The plan change request has proposed a district plan regime to manage development and activities on the subject site. As detailed in my s42A report, I consider this framework to be sufficient to carry out this role and appropriately manage future development. The issues raised with respect to this site relate to removed sites and matters that are not relevant to a district plan hearing.*

- **Current district plan status for the demolition of a listed building.**

*Under Rule 21A.2.1, demolition of a listed building is provided for as a Restricted Discretionary Activity whereby an application may be notified. In determining whether or not to grant such a consent the plan provides a suite of assessment criteria for consideration. Of particular relevance to this hearing is firstly criterion 21A.2.1.14 which*

reads: "Whether there is any change in circumstances that has resulted in a reduction of the building's heritage significance since the building was identified in the plan". We have seen, in this hearing, extensive material that has highlighted that the circumstances have changed and have resulted in a reduction of the heritage significance of the GWF.

Also, criterion 21A.2.1.11 reads: "Whether professional heritage or conservation advice has been obtained from the NZHPT or any other professionally recognised expert in heritage conservation". We have heard from two heritage experts that support the plan change request. We have unfortunately not heard from NZHPT (now Heritage NZ) on this matter.

Lastly, criterion 21A.2.1.21 reads: "Whether adaptive reuse of a listed building or object will enable the owners, occupiers or users of it to make reasonable and economic use of it". Again, the applicants have provided extensive material relating to the re-use of the building. NB: The Council did not consider it necessary to peer review this information as it felt that it had been presented by reputable sources that the Council in fact uses itself.

The conclusion I have drawn here, which has informed the recommendations in my s42A report, is that the request meets the tests set out for demolishing a listed building and based on the information provided by the applicant and the advice I have received from my advisors, demolition can be considered appropriate.

- **Further heritage matters**

Firstly, I can confirm that the advice I have been given is that the reassessment of 320 The Terrace (GWF) was part of package that went to Michael Kelly for peer review. What I have been advised of is that there were no specific peer review comments filed specific to GWF. Ms Rickard recalls that the majority of the feedback was in fact provided orally. Mr Kelly met with the researchers on a regular basis and discussed issues that he'd found in reports. However, Ms Rickard has supplied me with the attached document completed by Mr Kelly, and dated in the files at February 2014, on his view of the significance of items on the heritage list. Of importance, it is worth highlighting that GWF is not noted as being of exception significance.

Secondly, with respect to the remaining heritage questions, I answer as follows:

1. Whether GWF assessment work undertaken by WCC was the subject of feedback from HNZ during the 2012 review exercise;

**Answer:** Feedback from Heritage NZ was not sought except in some cases where the item is listed by HNZ. As the project was looking at such a large number of items it would have been a very big job to get their input on everything, and their resources are limited.

2. Whether any of the HNZ proprietary research given to WCC during the 2012 review related to GWF;

**Answer:** In the bibliography to the GWF report there is no reference to HNZ research and it would have been referenced if it had been available.

3. A copy of the peer review comments/report on the May 2012 WCC Research Report on GWF led by Moira Smith.

**Answer:** There are no peer review comments filed. Recollection is that most of the feedback was verbal. Mr Kelly met with the researchers on a regular basis and discussed issues that he'd found in reports.