

**Before Wellington City Council**

**Under** the Resource Management Act 1991  
**In the matter of** Plan Change 81 : Rezoning 320 The  
Terrace and de-listing the Gordon Wilson  
Flats

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**SUBMISSIONS TO ACCOMPANY FURTHER INFORMATION**

**22 February 2016**

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## INTRODUCTION

1. This hearing for Plan Change 81 was adjourned on 21 December 2015 on the basis that Victoria University of Wellington (**VUW**) is to provide further information on a range of matters specified by the Panel. The further information has now been compiled, and is attached.
2. The purpose of this submission is to outline what is covered in the further information, and to provide some brief clarification on three legal matters that have arisen during the hearing.

## FURTHER INFORMATION

### Design

3. Andrew Burns and Lucie Desroisiers have discussed refinements to the proposed Design Guide, and have reached agreement, jointly supporting the Guide in an amended form (**Attachment 1**). The Guide shows all refinements marked-up, and a set of notes to explain the refinements has also been agreed (**Attachment 2**). Please note, that the mark-ups employ a colour code to reflect the timing of each of the proposed refinements, from the notified version of PC81 through to the present time (the key for the colour code is incorporated on the proposed Design Guide document itself).
4. Also attached are the visual materials on which Mr Burns and Ms Desrosiers have relied in coming to their joint position on matters of view protection (specifically, views towards and across the site, from Ghuznee Street) (**Attachment 3**). (NB. These were issued in draft only, and are in addition to the other visual simulations on which Mr Burns and Ms Desrosiers have relied, which were attached to Mr Burns' evidence.)

### Building Standards / Appendix 4

5. A revised version of Appendix 4 is also attached (**Attachment 4**). For illustrative purposes, the revised version has been prepared in two forms: one showing all the text *deleted* since the notification of PC81, and the other showing all the text *added* since the notification of PC81. This is simply because marking up a single document to show

all deletions and additions would have prevented the information from being shown on a single page.

6. Please note, the changes to Appendix 4 have not been colour coded to show when the changes were made, as the extent of change has been relatively small; and the extent of change since the hearing is fully described below.

*New site-coverage controls for the escarpment*

7. The revised version of Appendix 4 introduces an additional site-coverage protection for the escarpment (or, at least, that part of the escarpment that is within the site), consistent with the offer made by VUW on 21 December 2015. This is effected in Appendix 4 in three ways:
  - (a) the addition of green diagonal lines and a black dashed boundary on the aerial photograph to show the area to which the additional site coverage control applies;
  - (b) the addition of an associated definition of the "escarpment sub area" in the key;
  - (c) the addition of text to specify the new site coverage constraint, within item 2 of the notes.
8. The boundary for the escarpment 'sub-area' does not attempt to follow a single elevation contour, as there is no single contour that best represents the edge of the existing vegetation. Much of the escarpment on the site is retained by an extensive crib-wall and some concrete wall, so the top of those structures has been chosen as the most logical place to define the escarpment area. That has been jointly agreed between Ms Desrosiers and Mr Burns.
9. The additional site coverage control is now proposed to be more restrictive than was offered during the hearing. During the hearing VUW offered a control of 40% within the escarpment area. Now that the area has been properly defined, VUW is able to offer a 35% site coverage standard, to provide a stronger assurance that the degree of coverage in this area will be kept appropriately low.

### *Other changes*

10. In response concerns expressed at the hearing about legibility, the way in which Appendix 4 sets up the AGL and AMSL height controls has also been amended – though the controls themselves remain unchanged. To achieve this, note 1 sets the default permitted height standard as 10m AGL, and the two areas that were previously marked “10m AGL” on the plan are no longer marked. The only height markings on the plan are in the three areas (shaded in white) where distinct AMSL heights apply, as an exception to the default AGL standard. The AMSL notations have all been enlarged slightly, for easier legibility.
11. A related change is proposed in the key, where the words have been amended from “MAXIMUM HEIGHT IN METRES ABOVE MEAN SEA LEVEL” to “PERMITTED HEIGHT IN METRES ABOVE MEAN SEA LEVEL”. This is intended to avoid any misperception that the height limit is a ‘prohibition’ rather than a consent trigger.
12. VUW’s consultants have also considered adding contour lines to Appendix 4, as was discussed at the hearing. They have concluded that adding contours will make the information on the plan considerably harder to read, and may confuse matters given none of the controls is specifically contour-related. For those reasons contour lines have not been added.

### **Consultation Plan**

13. As requested, VUW is providing a more legible version of the map that Mr Coop tabled at the hearing, which depicts the extent and nature of consultation that Mr Coop undertook with neighbours (**Attachment 5**).

### **VUW’s %NBS Policy**

14. During the hearing Ms Bentley gave evidence about VUW policy for achieving %NBS for its buildings, and VUW undertook to provide a formal record of this. The policy is not captured in a VUW Council resolution, but is formally confirmed in a letter from the Chief Operating Officer (**Attachment 6**).

### **Planner's Conference**

15. As requested by the Panel, Mr Batley and Mr Coop have held further discussions, and have agreed a joint statement that confirms their positions on the relevant policies of the Regional Policy Statement, and their applicability to PC81 (**Attachment 7**).

### **Section 32AA Assessment**

16. As changes are being proposed to the provisions of PC81 – specifically the building standards under Appendix 4, and the guidance contained within the Design Guide – a section 32AA assessment has been jointly undertaken by Mr Batley and Mr Coop (**Attachment 8**). The assessment is short, commensurate with the scale and significance of the refinements in the context of the broader provisions of PC81 and their previous assessment against the requirements of section 32.

## **LEGAL MATTERS**

### **Relevance of section 75**

17. First, I confirm in writing the opinion I expressed in response to a question from Commissioner McMahon, that whilst s 74 does *not* apply to a private plan change, s 75 *does* apply. Specifically, s 75 sets out a number of mandatory requirements that District Plans must achieve. However, a private plan change cannot be tasked with achieving all such requirements for a District Plan. It can only be tasked with achieving such requirements as are relevant to its subject matter.
18. The particular relevance of that to PC81 arises from the requirement in s 75(3) that the District Plan must “give effect to” the Regional Policy Statement. Putting that into the context of PC81, it is not PC81's role to give effect to the Regional Policy Statement ‘across the board’. Rather, PC81 must not alter the Plan in a way that means the Plan will no longer give effect to, or cannot give effect to, the Regional Policy Statement as it relates to heritage matters.
19. For reasons already articulated<sup>1</sup> I submit PC81 does give effect to the heritage policies of the Regional Policy Statement. That is further

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<sup>1</sup> See VUW Closing Submissions at [40] – [49].

supported by the contents of the conferencing statement prepared by Mr Batley and Mr Coop (Attachment 7).

**What objectives are relevant?**

20. Secondly, it may assist to clarify what 'objectives' you are to consider.
21. In opening, I observed (at paragraph 8) that PC81 does not seek to introduce any new objectives to the Plan; and in closing I referred you to the objectives stated in PC81 (at paragraph 25). For the avoidance of confusion, these two passages are not referring to 'objectives' in the same sense:
  - (a) The first passage refers to objectives in the *technical* sense, meaning the express statements of objective contained within a District Plan. PC81 does not contain any new objectives of that sort. It simply seeks that existing objectives (i.e. those of the Institutional Precinct) be applied to 320 The Terrace.
  - (b) The second passage refers to objectives in the *lay* sense, meaning the intended goals, aspirations or purpose of the Plan Change. Those intended goals are the 'objectives' of PC81, and you must evaluate to what extent they are the most appropriate way to achieve the purpose of the Act.<sup>2</sup>
22. I submit, as set out in VUW's Closing Submissions, that the statute requires a primary and secondary assessment in relation to 'objectives', and the secondary assessment is complicated by being in two parts.
23. The primary assessment only scrutinises the higher-order elements of the Change: are the stated objectives of PC81 (i.e. its aspirations or its purpose) the most appropriate way to achieve the Act's purpose?
24. The secondary assessment scrutinizes the lower-order elements of the change, namely the 'provisions' (i.e. policies, methods and rules). It does so in two parts. First, are the policies, methods and rules the most appropriate to achieve the aspirations or purpose of the Plan Change?<sup>3</sup> Second, are the policies, methods and rules the most

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<sup>2</sup> Section 32(1)(a); as discussed in paragraphs 24 – 26 of VUW's Closing Submissions.

appropriate to achieve those existing objectives of the Plan that are relevant to the subject matter and will continue in force if the Plan Change takes effect?<sup>4</sup>

25. In my submission, this is the correct approach, based on careful analysis of the requirements set out in section 32. To the extent of any inconsistency, this supplants the less detailed description offered in paragraph 8 of VUW's Opening Submissions.

### **No reasonable alternative**

26. To avoid any perception that there is a difference of opinion, I also wish to clarify VUW's position in relation to the 'no reasonable alternative' test, which I touched on both in opening and in closing.<sup>5</sup>
27. VUW's evidence supports the conclusion that there is no reasonable alternative to demolition of the Gordon Wilson Flats. Mr Batley endorses that conclusion. It is undoubtedly open to you, depending on the view you take of the evidence, to make a finding that there is no reasonable alternative to demolition.
28. However, a finding of that sort is not a *prerequisite* for the Plan Change, as the 'no reasonable alternative' test comes from Policy 20.2.1.2; and you are not required to assess the provisions of PC81 against that existing Policy.

### **CONCLUSION**

29. In conclusion, VUW believes this document and its attachment provides all the information that was discussed and/or requested during the course of the hearing in December 2015; and remains willing to provide any further information or clarification that may assist the Panel in its task.

**M J Slyfield**  
22 February 2016

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<sup>3</sup> Section 32(3)(a).

<sup>4</sup> Section 32(3)(b).

<sup>5</sup> Opening Submissions, paragraphs 25 – 27; Closing Submissions, paragraphs 33-34.