

Before the Independent Hearings Panel
Wellington City Council

Under	the Resource Management Act 1991
In the matter of	submissions and further submissions in relation to the Proposed Wellington District Plan (Hearing Stream 2)
By	Willis Bond and Company Limited Submitter

Statement of Evidence of Nick Owen

16 March 2023

INTRODUCTION

1. My full name is Nicholas Geoffrey Owen.

Qualifications and Experience

2. I am a Senior Development Manager at Willis Bond and Company Limited (“Willis Bond”) with experience in large scale commercial, residential and mixed-use property development.
3. I hold a Bachelor of Architecture (Honours) from Victoria University of Wellington.
4. I was a registered architect in New South Wales, Australia (NSW Registration Number 8522) from 2010 until 2021. My registration has lapsed since my return to New Zealand.
5. I have worked for several large companies in the Australian property industry, most recently, Mirvac from 2018 to 2021 as a Project Design Manager and HASSELL from 2011 to 2018 as an Associate Architect.
6. I have particular experience with the New South Wales Apartment Design Guide, having been involved in the development of multiple large-scale residential projects including, most recently, Waterloo Metro Quarter Development (Mircvac), Harbourside Re-development (Mircvac) and Central Barangaroo Development (HASSELL).
7. My recent experience is leading several projects in Wellington, including *One Tasman | Pukeahu Park*, a circa 220 dwelling residential development proposed for 1 Tasman Street, Mount Cook, Wellington. As part of the consenting process for *One Tasman | Pukeahu Park*, I have been involved in an assessment of the project against the Design Guidelines in the Proposed District Plan (“Plan”).
8. I am chair of the Willis Bond Design Review Group.

Scope of Evidence

9. Willis Bond has called me to provide evidence relating to aspects of its submission on the Plan.
10. Willis Bond is my employer and I have a financial interest in Willis Bond Capital Partners IV, a property development fund managed by Willis Bond. While this evidence represents my opinions based on my expertise and experience, I acknowledge I am not independent of the submitter.
11. In this evidence, I only comment on issues that are within my area of expertise. In particular, I focus on how the Design Guides may affect development in Wellington, so as to assist the Panel in understanding the likely effects of the Design Guides.
12. I appreciate there is a broader question raised by some submitters as to whether (and to what extent) greater development is positive for Wellington. I do not comment on this question in my evidence – and do

not believe it is appropriate for me to do so given my current role – but note the direction in the National Policy Statement on Urban Development 2020 for district plans to enable greater urban density (Objective 3).

Code of Conduct

13. I have read the Code of Conduct for expert witnesses in the Environment Court Practice Note 2023 and I have complied with it when preparing this evidence. My evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

DESIGN GUIDES

Introduction

14. Willis Bond has opposed the inclusion of the Design Guides in the Plan (see submission points 416.197-416.204).
15. As an alternative, Willis Bond has proposed that:
 - a. if the Design Guides are retained, they are significantly pared back and reviewed for double-up / alignment with the objectives and policies in Part 3 of the Plan; and/or
 - b. a Design Excellence Panel (or similar) is constituted for each project (with representatives agreed by Council and the developer) and is charged with ensuring the development achieves the quality urban outcomes sought by Council.
16. In this evidence, I will describe some of the potential issues that I see with the Design Guides based on my expertise and experience. I also explore some options to amend the Design Guides to address these issues, however this is not exhaustive and I recommend a more comprehensive review is undertaken by the Panel and/or Council.
17. Overall, I agree with the intent of the Design Guides and the outcomes the Design Guides seek to achieve. I am concerned, however, that there is a lack of certainty in the Design Guides and too much scope for interpretation. This is problematic given the statutory nature of the Design Guides, and the implied requirement (of varying levels) for compliance. This is likely also to lead to subjectiveness and inconsistency in the assessment of consents, prolonging consenting processes and ultimately making it more difficult to achieve the greater density proposed in the Plan.
18. I have read the statement of evidence of Dr Farzad Zamani on behalf of Wellington City Council and the submission of McIndoe Urban Limited, Graeme McIndoe and Andrew Burns (submission 135), both of which address the Design Guides in the Plan. I comment on the issues raised by Dr Zamani and McIndoe Urban Limited throughout this statement.

Certainty

19. I agree with Dr Zamani that it is crucial that the Design Guides set a clear baseline to avoid subjective assessments (para 17.2). However, I do not agree with Dr Zamani that the Design Guides, in their current form, provide such a clear baseline.
20. The Design Guides contain a rating system of one to three dots to show the priority of the guidelines (Residential Design Guide, p 5):
 - *Guidelines rated with three dots are considered essential and must be applied to all proposed development.*
 - *Guidelines rated with two dots will apply to most proposals; if a proposal does not meet a design guide rated 2, the applicant may be required to justify or revise the design.*
 - *Guidelines rated with one dot can support a proposal to meet the outcomes of the Design Guide. However, they may not apply to all developments.*
21. However, the Design Guides state that the priorities are indicative only and “the priority of each guideline should ideally be confirmed with Council”. Council could, theoretically, elevate a one-dot guideline to a three-dot guideline and reject a consent on that basis.
22. This uncertainty, and the requirement to confirm priorities with Council, would put significant strain on the pre-application process, and at such a fine level of detail not practical to cover entirely in the pre-application process (particularly for larger projects).
23. It also makes it difficult for developers and architects to assess development options and work on preliminary designs prior to the consenting stage. It should be possible to read the Plan and understand what the requirements are for a particular site. The uncertainty in the Design Guides undermines the ability to do so.
24. The Design Guides should be clearer in stating which guidelines are critical and which are “nice to have” but not strict requirements. The guidelines need to be drafted in such a way that it is easily discernible which apply and therefore are critical, and which are not.
25. Many of the guidelines are also highly subjective. I comment on several of these which have three dots within the Residential Design Guide below (my emphasis):
 - a. G11 – “Where retaining walls or large building support structures are necessary, provide a *high-quality design response* that takes into account their visibility and formal composition.”
 - b. G21 – “Development must be designed to *positively contribute* to the adjacent street’s amenity, vibrancy, and safety.”
 - c. G54 – “The frequency, design and width of vehicle crossings must not *undermine* the pedestrian experience of the street.”

- d. G95 – “*Integrate* large scale plant fixtures such as vents and transformers as *explicit and coherent parts of the overall architectural composition*. This may be part of the roof or at the ground or basement level.”
 - e. G108 – “Ensure the design and composition of any building has an *overall coherence that integrates all relevant design guide requirements in a coordinated way*.”
26. The guidelines above read more like outcomes or principles than a clear baseline for developers to follow.
27. As a comparison, the NSW Apartment Design Guide (available: <https://www.planning.nsw.gov.au/apartmentdesignguide>) clearly articulates for each subject an “Objective”, “Design Criteria” – which provides *measurable* requirements for how an Objective can be achieved – and “Design Guidance”. Satisfying the Design Criteria means satisfying the Objective (unless a conscious decision is made to depart from this, in which case an applicant must use Design Guidance to demonstrate compliance with an Objective). This approach has the effect of providing certainty by distilling critical items into measurable requirements and treating guidance exactly as the name suggests.
28. The subjective nature of the guidelines as drafted requires an applicant to demonstrate compliance with subjective issues, and in doing so this demands a lot from planners. While planners are competent and professional, they do not necessarily have the design expertise, the resources or the time to assess subjective design matters, particularly when faced with inconsistent advice from experts acting respectively for Council and an applicant.

Overlap

29. Aspects of the Design Guides appear to overlap with other legislation, other parts of the Plan and, in some cases, other Design Guides and the guidelines within them.
30. I acknowledge Dr Zamani’s response that Design Guides need to be able to be read in isolation, however, as page 6 of the Residential Design Guide indicates (“Knowing which design guides and appendices to consider”), it is more than likely than one Design Guide will appear, particularly for inner-city development.
31. The examples below are from the Residential Design Guide. The list is not exhaustive, but highlights the need for a further reconsideration of the guidelines.
- a. G31 – “Consider the scale of adjacent heritage buildings and areas in the design.” How does this relate to the heritage rules within the Plan?
 - b. G37 (with two dots) – “Entrances should be of adequate dimensions to provide universal access for all and allow for movement from a wide range of users, including moving furniture and wheelchairs.” This contrasts with G133 which says (with one

dot) “Where possible, provide ground-level access that is accessible by people using wheelchairs...”.

- c. G76 and G79 overlap with the outdoor and communal space requirements in the Plan. For example, in the City Centre Zone, CCZ-S10 provides dimensions for communal space. Can communal space meet the requirements in CCZ-S10 but not be of an “appropriate proportion” under G76? Sunlight access (referred to in G79 and G118 to G120) is also something capable of being specified with greater precision, as it is for public open space in the Plan.
- d. The private open space requirements in G80 to G86 and balconies and sunrooms requirements in G87 to G89 overlap with the specific outdoor space requirements in the Plan (e.g. CCZ-S10 for the City Centre Zone).

Overreach

- 32. Broadly, I understand the intent of the Design Guides is to ensure good design outcomes for Wellington. Generally, the guidelines themselves, although subjective at times, reflect that intent.
- 33. However, there are some guidelines in the Residential Design Guide that potentially overreach and introduce requirements that would be more appropriately placed within the Plan where they would receive greater scrutiny and be recorded with greater precision.
- 34. G45 (with three dots) reads “Create new publicly accessible pedestrian links through a site as part of the site redevelopment where a link would enhance local pedestrian connectivity.” That is potentially quite a significant ask for a development and would presumably involve the grant of an easement to Council. G45 also contradicts the City Outcomes Contribution (Table 3) where a “lane-way or through block connection” is an optional requirement and provides points to the applicant which may count towards additional height.
- 35. Other guidelines of concern are G74, G99 and G101 to G105. G74 appears to require charging capability for electric cars, facilities for transport options other than private cars and end of journey facilities and bike storage. Bike storage is also covered in G99 and G101 to G105. It will not always be possible to provide these facilities. It is also unclear how many of these facilities are required (e.g. how much charging capability, how much bike storage?) and what the facilities involve (do end of journey facilities require showers and lockers, as they typically do in a commercial context?).
- 36. Some of the guidelines deal with internal matters which will have no effect on those outside the development. In the Residential Design Guide, this includes G62, the private open space requirements in G80-G86, internal living space requirements in G114-G116, communal internal amenity requirements in G124-G129 and internal storage requirements in G130-G131.

City Outcomes Contribution

37. If the City Outcomes Contribution framework is to remain in the Plan, it needs to provide certainty. There is significant investment in achieving many of the City Outcomes Contributions criteria, and sometimes these are achievable only through development yield (scale, mass) or the ability to offset (e.g. dedicated ground plane for public use in exchange for over height floor area).
38. In its current form, there are a series of requirements to *become eligible* for more height. Some of these requirements are measurable (e.g. “Green Star 6), however, others are subjective (e.g. “Reduction in embodied carbon in buildings”).
39. It is unclear how the City Outcomes Contribution relates to other parts of the Plan. There needs to be an acknowledgement that investment in achieving the criteria will entitle the developer to the benefits, not to be “trumped” by other unrelated Plan requirements. Put practically, in earning the additional height for a development, concerns of height should no longer be an item of concern from other aspects of the Plan (e.g. increased overshadowing, increased scale relative to context, etc).
40. I agree with McIndoe Urban Limited that the importance of the City Outcomes Contribution is such that it should be included within the body of the Plan.

Urban Design Panels

41. In his statement, Dr Zamani says that independent urban design panels are being worked on outside the Plan (para 24).
42. I consider independent urban design panels are an important method of achieving quality design outcomes and I support the work Council is doing on urban design panels. Urban design panels are not appropriate for all projects, but they are useful for complex large-scale projects.
43. In my experience the urban design panel process generally extracts the best out of proposals and is suited to complex developments, where standard guidelines are not always appropriate. Urban design panels (when people with the right expertise are involved) have the ability to consider proposals “in the round” – as opposed to in isolation (based on subject expertise), balancing complex, sometimes contradicting issues. Urban design panels are typically better equipped to assess subjective design requirements than planners.
44. The urban design panel process does, however, have significant direct and indirect costs (and benefits) to applicants. For this reason, the process must be acknowledged in the assessment process – practically, this means the determination of the urban design panel should be binding, providing certainty to an applicant that they are not, having navigated the panel process, going to be subjected to another round of assessment on essentially the same matters.

45. It is important to understand whether urban design panels will be used when reviewing the Design Guides. If urban design panels are used, then the process should be clear and incorporated in the Design Guides. This includes information on how the panels are constituted, the scope of their review and effect of their determinations.
46. The use of urban design panels also allows for more subjective matters to be considered in the Design Guides, which affects the way the Design Guides are drafted.


Financial Implications

47. As outlined throughout this statement, I agree with the intent of the Design Guides and outcomes they seek to achieve. However, the Panel should not underestimate the financial implications that some of the guidelines will have on the industry, and the adverse effect they may have on the ability to provide the city with affordable housing solutions.
48. This is not necessarily an objection to the Design Guides, but it is something I would encourage the Panel to bear in mind as they assess the individual guidelines. It is something that I am very conscious of in my work, as it will be for others involved in development within Wellington.

Recommendations

49. Improving the Design Guides will be a considerable amount of work. In this statement, I have raised some issues with the Design Guides but I have not exhaustively reviewed the Design Guides or provided concrete recommendations on aspects to change.
50. In my view, work to revise the Design Guides needs to happen within Council. While some refinement has been suggested in the section 42A Report, it does not appear that Council has fundamentally reviewed the Design Guides. For example, the section 42A Report does not consider guidelines that were not the subject of a specific submission (despite the general requests of submitters, such as Willis Bond and McIndoe Urban Limited, to review the guidelines) (para 8, section 42A Report, Stream 2 – Part 3, Residential Zones – Part 6: Design Guides).
51. It would be helpful if the Panel could provide some guidance to Council on the general matters that need to be improved. I suggest the following:
 - a. I agree with McIndoe Urban Limited that considerable editing and tightening up is required. The Design Guides are too long and are repetitive.
 - b. The guidelines should be objectively measurable and subjective statements avoided where possible.

- c. If the dot system is the preferred approach to providing hierarchy I support it in principle. The dot system, however, must be revised as outlined below, and robust to the extent it can be fixed (and not subject to adjustment during the consenting process).
- d. The dot system should be revised so that:
 - Three dot guidelines are limited to critical requirements which are clearly measurable (in other words, they must be “bullet proof”).
 - Two and one dot guidelines are aspirational and merely recommendations. Subjective statements are less of a concern for aspirational guidelines.
- e. McIndoe Urban Limited recommends that a clear process is included for departure from the guidelines. I agree. The Design Guides need to address what happens if a developer does not comply with a guideline. To depart from a critical (three dot) guideline, the applicant should demonstrate how they are achieving overall compliance with the principles. There should be no penalty in departing from aspirational (one-two dot) guidelines, though they could be taken into account in the City Outcomes Contribution or in assessing whether an applicant is justified in departing from a critical guideline.
- f. Matters that are covered elsewhere in the Plan (e.g. communal space, outdoor space, balconies) should not be covered in the Design Guides (or, at least, not as critical guidelines). The same applies to matters that are covered by the Building Code. McIndoe Urban Limited make the point that good practice in detailed building design, specification and construction should not be included in the Design Guides; it is inappropriate and not practical to consider these matters at the resource consent stage.
- g. The Design Guides should require any subjective assessments of quality design to be made by urban design panels.



Nicholas Geoffrey Owen

16 March 2023