

15 September 2023

Hearings Panel  
Proposed Wellington District Plan  
c/- Wellington City Council  
PO Box 2199  
Wellington 6140

Wellington  
Level 2  
5 Cable Street  
PO Box 24137  
Wellington 6142

Auckland  
Level 4  
12 Viaduct Harbour Avenue  
PO Box 2007  
Auckland 1140  
willisbond.co.nz

For: Jaskirat Kaur, Hearings Administrator

## **Wellington Proposed District Plan: Wrap-up Hearing (ISPP Provisions) – Submitter Statement / Speaking Notes**

### **1. Introduction**

- 1.1. In its submissions, Willis Bond and Company Limited (“Willis Bond”) opposed the inclusion of the Design Guides in the Proposed District Plan (“PDP”). Like many other submitters, our view was that the Design Guides should be non-statutory tools which provide guidance to applicants.
- 1.2. Following Hearing Stream 2, the Hearings Panel requested expert conferencing and further review of the Design Guides. Willis Bond’s expert, Nick Owen, participated in the expert conferencing. Mr Owen has signed the joint witness statement of urban design experts and provided a separate statement of evidence.
- 1.3. In this statement, we set out Willis Bond’s revised position on the Design Guides. We look forward to speaking to this statement at the hearing.

### **2. Willis Bond’s revised position**

- 2.1. The expert conferencing has resulted in extensive revision and rationalisation of the Design Guides. In our view, the Design Guides are much more fit for purpose.
- 2.2. We would like to acknowledge the work of the experts, Boffa Miskell and Council in the revisions to the Design Guides. It has been a significant improvement in a relatively short period of time.
- 2.3. We support the inclusion of the amended Design Guides in the PDP, subject to the following amendments:
  - 2.3.1. the linkage with the PDP is amended so that the Design Guides are the sole reference point in the PDP on design matters;
  - 2.3.2. the introductory chapter section in each Design Guide is amended to make it clear how they are to be used;
  - 2.3.3. the “Design Guide Introduction” document is removed; and

2.3.4. the minor changes proposed in section 7 of our statement below are incorporated in the Design Guides.

### 3. The sole reference point for design matters

3.1. In the Section 42A Report (Part 2), the author sets out her justification for the Design Guides being included in the PDP (at para 26, referring to her comments in the Hearing Stream 2 Section 42A Report):

...

*b. I consider that having Design Guides as a statutory part of the plan will provide the applicants, designers, the public and resource consent planners with certainty over the design principles that are to be considered in designing a building;*

*c. I consider that removal of the Design Guides as a statutory component of the PDP would reduce certainty, as alternatives (including generic 'design' matters of discretion or nonstatutory Design Guides) will lead to a less efficient and uncertain resource consenting process as there will no common set of design principles for applicants and councils' officers to work from;*

...

3.2. We agree with the rationale. Our view was that the Design Guides (as initially notified) were not sufficiently certain. The current Design Guides, while they still contain an element of subjectivity, are capable of providing the "certainty over the design principles" that the author refers to.

3.3. However, for the Design Guides to provide that certainty, they must be the sole method of assessing design matters in the PDP.

3.4. The Section 42A Report author (at para 206) recommends the following method of incorporating the Design Guides in the PDP:

*a. That the matters of discretion referring to Design Guides are removed from the rules, on the basis that the matters of discretion also require consideration of the relevant policies, which include design considerations.*

*b. That the Design Guides are included in the design and residential-amenity related policies, to correspond with the change above and ensure that the Design Guides are captured under the matters of discretion.*

*c. That the policies refer to "meeting the requirements" of the relevant Design Guide "where relevant".*

3.5. The issue with this approach is that Council's discretion now includes *both* the Design Guides and the design considerations included in the relevant policies.

3.6. For example, rule CCZ-R20 applies to the construction of new buildings and services in the City Centre Zone. This will almost always be a restricted discretionary activity with Council's discretion limited to those matters listed in the rule.

3.7. The matters of discretion include policies CCZ-P9 (Quality design outcomes) and CCZ-P10 (On-site residential amenity). These policies refer to the Design Guides and include a number of design statements. Some examples of these design statements are listed below and compared against design outcomes within the Centres & Mixed Use Design Guide:

CCZ policy excerpt	Design outcome – Centres & Mixed Use Design Guide
Provides a safe or comfortable pedestrian environment (CCZ-P9)	O7. New development maintains or enhances the walkability and permeability of the pedestrian network.
Enhances the quality of the streetscape and the private/public interface (CCZ-P9)	O4. New development is configured and designed to contribute positively to the visual quality, spatial definition, amenity, and safety of adjacent streets and the public realm.
Achieve a high standard of residential amenity (CCZ-P10)	O17. Internal environments provide healthy, comfortable, convenient, functional and attractive places for occupants.

- 3.8. The result is that Council's discretion is limited both to the Design Guides (which are included in CCZ-P9 and CCZ-P10) and the general design-focused statements above. The policies and the Design Guides are broadly consistent, but they are not the same, creating the potential for inefficiency and confusion.
- 3.9. In our view, it should be sufficient to solely use the Design Guides for a design assessment of resource consent applications.
- 3.10. The potential for overlap is further reinforced by the following statement included in the introductory section to each Design Guide:

***Other requirements***

*This Design Guide does not address the range of other requirements that may apply to development, including those set out in the objectives, policies, rules and standards of the District Plan, other relevant RMA planning documents and regulations, relevant Council bylaws, or requirements under other Acts (such as the Building Act 2004).*

- 3.11. This seems to say that any policies, including policies relating to design, will apply in addition to the Design Guides.
- 3.12. In our view, it only makes sense to include the Design Guides in the PDP if they cover the field on design matters.
- 3.13. This could be achieved by:
- 3.13.1. amending the matters of discretion in activity rules so that they refer directly to the Design Guides as a matter of discretion and not to the policies which comment on design matters (including CCZ-P9 and CCZ-P10); or
  - 3.13.2. including a statement in the Design Guides that explains that compliance with the Design Guides is intended to satisfy all design matters within the relevant PDP policies.
- 3.14. Our preference is the first option as that ensures there is no double-up. The second option would help by providing guidance to assessors and applicants, and improves the current position, but it does not solve the fundamental issue.

#### 4. Clarity on use

- 4.1. The Design Guides should also more clearly explain how they are to be used.
- 4.2. The experts adopted a two-tier approach incorporating *design outcomes* and *guidance points*. Guidance points demonstrate how to achieve a design outcome. It is also possible to achieve a guidance point through alternative means. Mr Owen's evidence explains this distinction and recommends that it be clarified in the Design Guides.
- 4.3. Matt Heale (expert for Kainga Ora) makes the same point in his evidence: "Design Guides should reference the two-tiered approach to wording in each introduction section" (at 9.8).
- 4.4. Another important concept in the Design Guides which Mr Owen raises is the difference between *directive guidance points* and *consideration guidance points*. Consideration guidance points (which start with "consider") are not mandatory, as Dr Farzad Zamani explains in his expert evidence (at para 35, commenting on internal amenity):

*Also, it is important to note that these matters are to be considered and they are not mandatory requirements to be complied with.*

- 4.5. We propose the following amendments to the introductory section of each Design Guide to address these issues:

***Design outcomes*** are the outcomes that would be demonstrated by a well-designed, well-functioning urban environment.

***Guidance points*** provide guidance on how development can be designed to achieve the design outcomes.

*Guidance points are either directive guidance points (for example, they use words such as "design to", "provide for" or "locate") or consideration guidance points (which use the word "consider").*

*To achieve the design outcomes, applicants may either use the relevant guidance points within that section of the Design Guide or demonstrate an alternative solution.*

*If the applicant follows the guidance points, the applicant should incorporate all directive guidance points within their application and either incorporate consideration guidance points within their application or provide a rational reason as to why the guidance point has not been incorporated (for example, it may not be appropriate to the context, or may not align with the outcomes of the development proposal).*

- 4.6. Nick Rae (also an expert for Kainga Ora) proposes similar wording to explain how design outcomes and guidance points work and what is meant by "consider":

***Design outcomes*** are the outcomes that would be demonstrated by a well-designed, well-functioning urban environment.

***Guidance points*** provide guidance on how development can be designed to achieve the design outcomes.

There are directive guidance points including terms such as “design”, “provide”, “locate”, “Configure”, “Create”, “minimize” which are fundamental to achieving the design outcomes where it is expected that the matter is integrated into the design.

In addition, there are consideration guidance points including the word “consider”. It is expected that an applicant will consider the matter and integrate this within the design where appropriate, and if not, supported by a rational reason for not doing so.

Advice notes provide advice and additional information to the guidance points. Where these include terms such as “consider”, they shall be read in relation to the advice and shall not influence the status of the guidance point.

- 4.7. We are generally comfortable with Mr Rae’s proposed wording, although would also like to see the introduction sections clarify that design outcomes can be achieved by alternative means to the guidance points as included in our proposal at paragraph 4.5 above.
- 4.8. Mr Heale proposes changing the way the Design Guides are referenced in CCZ-P9 and CCZ-P10. The wording in the PDP as notified was “Fulfilling the intent of”. The Section 42A Report author recommends changing this wording to “meeting the requirements of”. Mr Heale’s proposal is that it should read “Achieving the Design Outcomes of...”.
- 4.9. We support Mr Heale’s proposal. It recognises the ability for applicants to achieve the design outcomes through other means than the guidance points.
- 4.10. As proposed in paragraph 3.13.1, matters of discretion should refer directly to the Design Guides and not the policies including design considerations. When combined with Mr Heale’s proposal, that would mean that the matters of discretion refer directly to the design outcomes in the Design Guides.

## 5. The “Design Guide Introduction” document

- 5.1. In addition to the introductory sections in each Design Guide, there is a separate “Design Guide Introduction” document.
- 5.2. The Section 42A Report author (at para 74) recommends that the Design Guide Introduction be retained.
- 5.3. We agree with the submission of McIndoe Urban Limited, as supported by the expert evidence of Graeme McIndoe and Andrew Burns (at para 15), that the Design Guide Introduction should be removed from the PDP. It is confusing both having an introduction within each Design Guide and then a separate Introduction document.
- 5.4. As Mr McIndoe and Mr Burns explain, it also introduces additional principles for good design on top of what is already in the Design Guides. The overlap does not help.
- 5.5. The Design Guide Introduction document also doubles up on the explanation of design outcomes. This is already covered in the introduction sections and can be clarified further with the wording we propose at paragraph 4.5 above.

## 6. Limited application

- 6.1. We agree with the Section 42A Report author that the Residential Design Guide should only apply within residential zones (at paras 37-38). The Centres & Mixed Use Design Guide includes provisions relating to residential development.
- 6.2. This is a sensible solution and will make the Design Guides easier to navigate for applicants and their architects and designers.

## 7. Comments on particular guidance points

- 7.1. We request the following amendments to guidance points within the Design Guides (references are to the Centres & Mixed Use Design Guide):

- 7.1.1. As drafted, G4.7 is unclear on the obligation is to incorporate existing (but unlisted) trees in developments. There is some acknowledgement that this may not be possible through the wording “consistent with the development outcome for the site” but, as Mr Owen mentions in his evidence, it is unclear whose development outcome applies. In our view, this should be a consideration point, which would require applicants to provide a rational reason if existing trees are not incorporated:

7. consider integrating existing established trees into the planning for planting, where they are of good quality and will contribute to achieving positive amenity outcomes, and are consistent with the development outcome for the site.

- 7.1.2. G44 should also be amended to include the wording “where practicable” (which is similarly used in G45):

- G.44. Where practicable, locate and design living areas within residential units to receive winter sunlight.

- 7.2. Otherwise, we are comfortable with the design outcomes and guidance points in the amended Design Guides.

## 8. Urban Design Panels

- 8.1. Urban Design Panels are currently included as a proposed method in the PDP (as recommended by Council in its right of reply to Hearing Stream 4):

### CCZ-M1 Urban Design Panel

Subject to obtaining relevant approvals and supporting funding, Council will seek to establish and facilitate an independent, non-statutory Urban Design Panel to inform urban design assessment of relevant policies and matters of discretion that apply to significant resource consent applications as required.

- 8.2. Willis Bond supports the use of urban design panels for the reasons given by Mr Owen in his evidence (at paras 37 to 41).
- 8.3. CCZ-M1 does not offer any certainty that urban design panels will be used. While we appreciate the cost pressures on Council, it is not sufficient and arguably inappropriate for Urban Design Panels to

be “subject to... funding”. Many of the initiatives in the Design Guides will create cost for the development community and, consequently, for end users. Council can help ensure the Design Guides work well by resourcing and providing an effective means of conducting design assessments for large projects through urban design panels.

8.4. As Mr Owen says in his evidence, urban design panels should have the final say on design matters (at para 41).

8.5. We propose the following amendments to CCZ-M1:

**CCZ-M1 Urban Design Panel**

~~Subject to obtaining relevant approvals and supporting funding, Council will seek to establish and facilitate an independent, non-statutory Urban Design Panel to inform urban design assessment of relevant policies and matters of discretion that apply to significant resource consent applications as required. The Urban Design Panel’s assessment of design-related matters will be treated as definitive by Council in respect of the relevant matters of discretion, except in the case of manifest error.~~

8.6. Note, the reference to policies has been removed in light of our comments that the Design Guides should be the sole reference point on design matters. We also do not believe the wording “non-statutory” is needed. In some respects, the Urban Design Panel *is* statutory through its incorporation in the PDP.

**9. General comments**

9.1. Our comments in this statement focus on the CCZ and the Centres & Mixed Use Design Guide. For consistency, the same amendments should be made to sections of the PDP relating to other zones and to other Design Guides.

Yours sincerely,  
Willis Bond and Company Limited



Rosalind Luxford  
Senior Development Manager



Jimmy Tait-Jamieson  
General Counsel