

WELLINGTON CITY COUNCIL
PROPOSED (PRIVATE) PLAN CHANGE 81
MINUTE 2 OF HEARING COMMITTEE

Introduction

1. Following the hearing adjournment in December 2015, we have now received the further information we requested from the Council and Victoria University over the course of the hearing proceedings. This information will be provided on the Council website in due course.
2. We have commenced our deliberations, and in doing so have identified an issue that we require further assistance from the parties on.
3. The **purpose of this minute** is to explain the issue we require additional input on and the process we propose to obtain that information.
4. We will issue a further minute to confirm the hearing closure once we have received the additional information we require and have completed our deliberations.

Issue identification

5. We wish to make it very clear at the outset that the information we seek is purely to resolve a **technical drafting matter** relating to the proposed controlled activity rule for building demolition that arose during the course of the hearing. In particular the focus is on the role and content of the Demolition Management plan (DMP). We require input on the resolution of this matter in order for our deliberations to be informed by a suite of proposed provisions that are both clear and functional.
6. This exercise should **not** be interpreted by any party as an indication that we have reached a determinative view on the proposal, including the appropriateness (or otherwise) of the proposed demolition of the Gordon Wilson Flats. We stress again that the hearing remains open and our deliberations on substantive matters are yet to be completed.
7. With that clarification made, we note that the evidence of the University's demolition expert, Mr Hall, emphasised the critical importance of community communication and complaints procedures as a method for managing the effects of any future demolition of the Gordon Wilson Flats. We note that his comments were in direct reference to issues raised in submission about the potential effects of demolition.
8. At the hearing, we tested with Victoria's planner, Mr Coop, whether - in light of Mr Hall's evidence - the demolition rule should be revised to ensure the critical issue of communication was encapsulated by the rule. Mr Coop's response at that time was that such an amendment could well be sensible, and he signalled that he would confer with Mr Batley to present us with some proposed drafting.
9. While Mr Coop and Mr Batley have helpfully attended to a number of our further information requests, it appears to us that this drafting advice has been inadvertently omitted. This is not fatal to us; however, in examining the rule more closely during our

deliberations, we also identified the following issues with the ‘mechanics’ of the rule (as notified).

10. Firstly, **the structure of the rule is different to other controlled activities** in the Institutional Precinct Zone Chapter (and, we observe, other chapters). Namely, the rule does not contain any *standards and terms* which must be met in order for the controlled activity status to apply; however, the rule itself is drafted in such a way that it (essentially) contains a standard. It reads:

9.2.3 The demolition of Gordon Wilson Flats at 320 The Terrace shall be undertaken in accordance with an approved Demolition Management Plan and will be assessed as a Controlled Activity in respect of:

[our emphasis]

11. This drafting presents a potential future compliance issue if consent for demolition is granted on the basis that works will be in accordance with a management plan, but is subsequently deemed to *not* be in accordance with the plan. This made us question whether a consequence would be that works must stop at that stage and a discretionary activity resource consent must be applied for and obtained for failure to ‘comply’ with this controlled activity rule.
12. In a related sense, it led us to question how any future revisions to the management plan made after consent is granted under Rule 9.2.3 – for example to accommodate preferred construction practice by the nominated contractor – might also frustrate the intent of the rule to enable demolition to proceed as a controlled activity.
13. We also are **unclear about the reference to the word “approved”** in the rule. For example, it is unclear who the “approver” is, what is required in order to obtain approval, and whether (or not) the approval must precede any resource consent application made under Rule 9.2.3¹.
14. In light of these ambiguities and to address the point we made above in relation to Mr Hall’s evidence, we consider it is appropriate to canvas some potential edits to the provisions at this stage in the process.
15. To resolve this matter in the most time-efficient manner, we have asked our Hearing Advisor, Mr Jones, to draft amendments to the rule to reflect the evidence that we have been presented with and to match the structure and drafting approach of the operative District Plan where practicable.
16. Mr Jones’ proposed drafting amendments are attached as **Appendix 1** to this minute. In summary the changes:
 - (a) relocate the ‘undertaken in accordance with’ pre-condition to demolition from the body of Rule 9.2.3 to a new *standard and term*;
 - (b) alter the approach of the pre-condition to be more of an information requirement for applications lodged under this rule, rather than a compliance matter (as reflected in the first *standard and term*);

¹ as opposed to any approval under say the Building Act

- (c) replace the matters of control in clause 9.2.3.2 with a simple reference to the Demolition Management Plan (these matters are in turn captured by the new management plan requirements described in point '(d)' immediately below);
 - (d) add a further *standard and term* that codifies the key elements in Mr Hall's draft demolition management plan² as information requirements to be addressed in any future demolition management plan submitted with a consent application made under Rule 9.2.3; and
 - (e) delete the reference to '*approved*' in relation to the management plan.
17. We note that the amendment described under matter '(b)' above stems from our understanding that compliance with any approved DMP can be ensured by conditions of consent (which are enabled by the controlled activity rule). We also accept that there may be scenarios arising that make review and future amendment to the management plan desirable (for example new measures adopted in response to complaints made).
18. For these reasons, we have asked Mr Jones to draft the rule in such a manner that future improvements to the DMP are not precluded by the precondition of the notified rule requiring works to be in accordance with the DMP.

Review Process

19. While we consider it is important for all parties to be appraised of the information request outlined above, **we are only seeking feedback** on the proposed revisions at Appendix 1 **from the University** (as Plan Change Requestor) **and the Council** (as administrator of the District Plan).
20. By way of process, we seek feedback from these parties no later than **5pm on Monday 7 March 2016**. Our strong preference is that the feedback be provided by way of a single piece of correspondence and, as much as practicable, reflects a joint position on the matter. For the sake of clarity, a memo or email will suffice and should record:
- (a) amendments (if any) required to the proposed drafting changes in Appendix 1 to address any technical issues, refine the information requirements for the DMP or to better align with typical format/approach in the District Plan and the reasons for those amendments;
 - (b) differences of opinion (if any) on amendments required and the reasons for the respective views; and
 - (c) the name and position of the parties responsible for producing the correspondence.
21. We request that the feedback be provided to Ms Guerin in the first instance.
22. To be clear, we are not seeking any substantive professional opinion or organisational preference about the merits of the overall approach in Appendix 1 versus the notified provisions (or any alternatives). In that respect, the response from the parties will be

² See Appendix 9 of the Plan Change Request

treated on a 'without-prejudice' basis for the purposes of technical drafting assistance only.

Next Steps

23. As indicated by the discussion above, we now invite the Council and Requestor to provide technical feedback on the amended provisions at Attachment 1 by 5pm on 7 March 2016.
24. If any party wishes to seek further clarification around the further information process or the proposed timetable, please contact Ms Guerin (ph. 04 801 4298 or email leslie.guerin@wcc.govt.nz) in the first instance.
25. In due course, we will also advise all parties (through Ms Guerin) when all information received by us since the adjournment is available on the Council website.

DATED this 1th day of March 2016



Commissioner DJ McMahon for
Councillor Andy Foster (Chair)

On behalf of the Hearing Panel

APPENDIX 1 – Draft Amendments to Proposed Rule 9.2.3

- 9.2.3 The demolition of Gordon Wilson Flats at 320 The Terrace ~~shall be undertaken in accordance with an approved Demolition Management Plan and will be assessed as~~ is a Controlled Activity in respect of:
- 9.2.3.1 noise effects as assessed in accordance with NZS 6803:1999 Acoustics – Construction Noise
- 9.2.3.2 ~~method, duration, timing, and hours of operation of demolition~~ Demolition Management Plan
- 9.2.3.3 amenity effects
- 9.2.3.4 recording of the building prior to demolition.

Non-notification/no affected persons

In respect of rule 9.2.3 applications will not be publicly notified (unless special circumstances exist) or limited notified.

Note: Council is seeking to ensure that the demolition of the building is undertaken efficiently and in accordance with a Demolition Management Plan containing measures to avoid, remedy or mitigate the temporary adverse effects of the activity. It is also seeking to ensure that an appropriate record of the building is prepared prior to demolition.

Standards and Terms

Any application made under Rule 9.2.3 shall be accompanied by a Demolition Management Plan.

The Demolition Management Plan shall contain the following information as a minimum:

- a. purpose of the Demolition Management Plan;
- b. site and locality description, including existing buildings;
- c. proposed demolition methodology, including sequence and timing;
- d. duration of works and hours of operation;
- e. measures to manage environmental effects, including (but not limited to) dust, construction noise, effects on the local transport network, and site remediation;
- f. communication plan, including:
 - i. any communication undertaken with neighbours in advance of demolition commencing;
 - ii. procedures for receiving and resolving complaints during demolition and site remediation; and
- g. Demolition Management Plan review procedures

Note: additional information may be appropriate for inclusion in the Demolition Management Plan, including references to other relevant Acts and associated regulations.