

# **Hearing Panel Recommendation**

## **PLAN CHANGE 81**

**Rezoning of 320 The Terrace & de-listing of the Gordon Wilson Flats**



**Report and Recommendation of the Hearing Panel appointed by  
the Wellington City Council pursuant to Section 34 of the Resource  
Management Act 1991**

**19 April 2016**

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## SCHEDULE OF APPENDICES

- **APPENDIX 1:** Panel recommendations on relief sought by submission;
- **APPENDIX 2:** Panel minutes
- **APPENDIX 3:** Annotated version of Plan Change provisions
- **APPENDIX 4:** Explanation for proposed amendments arising since notification

## Wellington City Council

### Report of the Hearing Panel

**Proposal Description:**

Proposed (Private) Change 81 to the Wellington District Plan:  
Rezoning 320 The Terrace and de-listing the Gordon Wilson Flats

**Panel Members:**

Andy Foster (Councillor, Chair),  
Mark Peck (Councillor),  
David McMahon (Commissioner)

**Date of Hearing:**

15, 16 & 21 December 2015

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## 1.0 INTRODUCTION

### Report purpose

- 1.1 This report sets out our recommendation to the Wellington City Council (“WCC” or “the Council”) on Proposed Plan Change 81 (“PC81” or “the Plan Change”) to the operative Wellington District Plan.
- 1.2 We were appointed by the Council to hear submissions made on the Plan Change and to consider and make a recommendation to the Council as to whether PC81 should be declined, approved or approved with amendments<sup>1</sup>.
- 1.3 The Plan Change was privately-initiated by Victoria University of Wellington (“the Requestor” or “VUW”). It seeks to rezone 320 The Terrace in Central Wellington from Inner Residential Area to Institutional Precinct, and to make amendments to the District Plan provisions that apply to the Institutional Precinct. The proposal also seeks the de-listing of the existing Gordon Wilson Flats from the District Plan schedule of heritage buildings.
- 1.4 The Plan Change has an extensive background, which we will canvas in due course. It has been the subject of a “section 32” report<sup>2</sup>, consultation with stakeholders, and of course the public notification and hearing, culminating in this report.
- 1.5 Before setting out the details of PC81, the submissions to it and our substantive evaluation, there are some procedural matters that we will address, beginning with our role as a Hearing Panel.

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<sup>1</sup> pursuant to Schedule 1, Part 2, Clause 29(4)(a), RMA

<sup>2</sup> Section 32 of the RMA sets out the requirements for preparing and publishing reports that evaluate the appropriateness of a plan change.

### **Role of Hearing Panel and report outline**

- 1.6 As noted above, our role is to make a recommendation to the Council about the approval (or otherwise) of the Plan Change. The final decision-making power rests with the Council; and in the event that the Council adopts our recommendations, then this report will become the Council Decision.
- 1.7 Having familiarised ourselves with PC81 and its associated background material, read all submissions, conducted the hearing, and having visited the site and locality on several separate occasions, we hereby record our recommendations.
- 1.8 In this respect, our report is generally organised into the following parts:

(a) Factual context for the Plan Change:

This non-evaluative section (comprising report Section 2) is largely factual and contains an overview of the site and locality subject to the Plan Change and an outline of the background to the Plan Change, including the sequence of events leading to this report. It also outlines the main components of the Plan Change as notified. This background section provides relevant context for considering the issues raised in submissions to the Plan Change. Here, we also describe the submissions received to the Plan Change, and provide a brief account of the hearing process itself and our subsequent deliberations.

(b) Evaluation of Key Issues:

The second part of our report (comprising Sections 3-5) contains an assessment of the main issues raised in submissions to PC81, and where relevant, amplification of the evidence/statements presented at the hearing (in Section 3). We conclude with a summary of our recommendations (in Section 5), having had regard to the necessary statutory considerations that underpin our considerations (in Section 4). These parts of the report are evaluative, and record the results of our deliberations on substantive matters.

### **Comments on the parties' assistance to us**

- 1.9 In advance of setting out the plan change context, we would like to record our appreciation at the manner in which the hearing was conducted by all the parties taking part. In particular, we would like to acknowledge the following endeavours:
- the constructive input provided by all submitters appearing before us;
  - the helpful role of Council's Business Support Administrator, Ms Leslie Guerin in dispatching our various Minutes, coordinating the scheduling of parties and general administrative assistance;
  - the reporting and planning input from the Council's Planner, Mr Daniel Batley;

- the additional advice provided by other experts appearing for the Council, including Ms Lucie Desrosiers, Ms Viv Rickard and Mr Ryan Cameron;
- the expert evidence presented on behalf of the Requestor and the assistance provided by VUW's legal counsel, Mr Morgan Slyfield; and
- the support of our Hearing Advisor, Mr Jason Jones of Resource Management Group Ltd.

1.10 The above actions promoted a focused hearing process that greatly assisted us in assessing and determining the issues, and in delivering our recommendation.

1.11 These initial thoughts established, we now set out the factual background to the Plan Change.

## 2.0 PLAN CHANGE CONTEXT

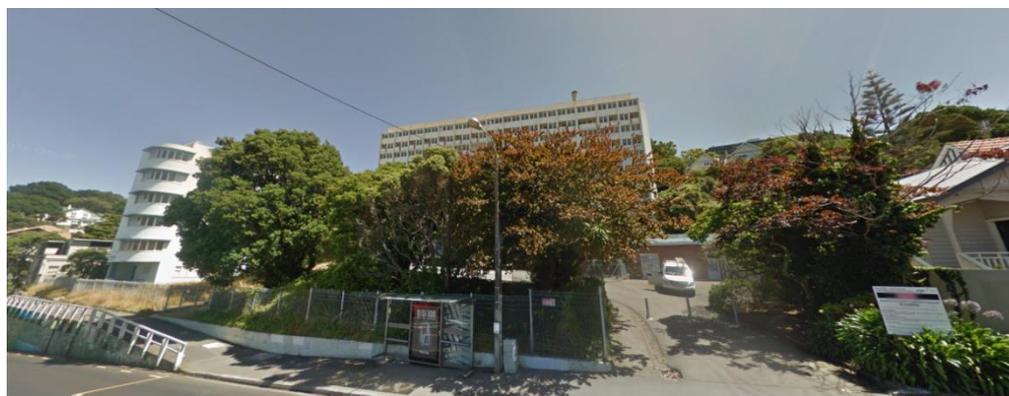
### Site and local environment

2.1 As shown in **Figure 1** below, the site is located at 320 The Terrace.



**Figure 1:** Plan Change site & environs. (base image source: <http://eplan.wellington.govt.nz><sup>3</sup>)

2.2 The site presently has a unique residential character, defined primarily by the large Gordon Wilson Flats. The flats themselves are setback generously from The Terrace, with screening provided along the road frontage by mature vegetation (**Figure 2**).



**Figure 2:** The Terrace Frontage, looking west (image source: [google maps](https://www.google.com/maps)<sup>4</sup>)

2.3 The wider environment is transitional in character. The immediate area along the Terrace is characteristic of Wellington's Inner Residential area, with a mixture of standalone and multi-unit housing ranging from single storey houses to 4 or 5 storey flats. To the east, the Wellington Urban Motorway runs between the residential area and the 'low city'<sup>5</sup> of the Wellington Central Area.

<sup>3</sup> retrieved 15 February 2016

<sup>4</sup> retrieved 16 February 2016

<sup>5</sup> Section 12.1.5 of the District Plan describes the 'high city' and 'low city'. It reads: "The 'high city' relates to the downtown area where most of the city's high rise buildings are clustered. The Low City is effectively the balance of the Central Area where the lower buildings spread out north and south."

- 2.4 The University's main Kelburn campus lies immediately to the west of the site, and the extent of built form between the site and campus is punctuated by a vegetated escarpment that straddles the shared property boundary between.
- 2.5 Further afield, Boyd Wilson Field and Kelburn Park are two major recreational facilities located to the southwest and the north of the site (respectively).
- 2.6 The site itself is topographically varied, rising from the Terrace frontage to the flat platform on which Gordon Wilson Flats is founded, and rising steeply again toward the western boundary with the campus. The overall fall of the land from west to east continues east of the site to the motorway and Central Area.

### Heritage Inventory: Description of Gordon Wilson Flats

- 2.7 A Council-initiated review of the inventory of Wellington's listed heritage buildings in 2012, included an assessment of the Gordon Wilson Flats. It provided the following useful architectural description of the building:

*The Gordon Wilson Flats are a multi-storey block of social housing that varies in height from 7–10 storeys depending on topography. The building was designed with bedsitting rooms on the ground floor level(s) along with a caretaker's office, and storage for baggage and prams.*

*There were 75 maisonette flats above ground floor and laundry washing and drying facilities on the roof. Each 64m<sup>2</sup> maisonette consisted of a lounge and kitchen at entry level, with a stair to two bedrooms and a bathroom on the upper level.*

*Exterior of the building is dominated by the expressed structural grid pattern. A primary grid denotes the individual two-storey, two bay maisonette tenancies, and this is further divided by a secondary grid that divides the elevation of the maisonettes at bedroom floor level, and vertically through the bedroom and living room windows. Most of the visible structural elements are concrete, particularly the wall and floor slabs, the precast spandrel panels and window (mullion) posts. The balcony fronts were vitreous enamelled metal and were once decorated in an alternating pattern of red & blue, although this appears to have been over-painted at a later date.*

*The concrete structure was designed as a fair-faced finish, although the internal walls of the apartments were generally papered or painted. The internal floors within the maisonettes were constructed in timber.*

*The building was partly built into a site that sloped steeply and the hillside was stabilised with a series of crib walls that step back into the hillside and retain up to 20m vertically. The building's piling system was a new technology for its time and consisted of pre-drilling the holes, filling them with reinforcement and aggregate, and pumping them full of a wet mix of sand and cement.<sup>6</sup>*

- 2.8 Additional description of the Flats is provided in section 3 of the report below.

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<sup>6</sup> "Council Assessment of the Gordon Wilson Flats (May 2012)" appended as Attachment H to the s42A report. Section 2.1. Page 7.

### Pre-Plan Change Initiatives and Sequence

- 2.9 The plan change request<sup>7</sup> notes that VUW acquired the site in 2014, after being originally approached by the previous owner – Housing New Zealand – in 2012 in relation to potential purchase.
- 2.10 We were advised<sup>8</sup> this acquisition was consistent with VUW’s campus development strategy to expand the main Kelburn Campus wherever possible. Driven by strategic Regional economic guidance<sup>9</sup>, the University’s own Strategic Plan<sup>10</sup> aims to double the current roll to approximately 30,000 students over the next 20 years.
- 2.11 While the site was identified as a strategic match for VUW’s growth aspirations, due diligence undertaken by the University prior to acquisition of the site identified various aspects of the Gordon Wilson Flats as a significant disincentive to acquisition. In summary<sup>11</sup>, the University was aware at that early stage that the Flats:
- a. were an identified listed heritage building;
  - b. were uninhabited since 2012 due to safety concerns with the building’s structural integrity; and
  - c. presented a number of challenges, risks and limitations with respect to redevelopment options, including:
    - i. practical obstacles and inefficiencies associated with trying to reconfigure the building for student accommodation, research, tuition or office space;
    - ii. significant cost required to strengthen the building to meet earthquake safety requirements;
    - iii. uncertainties around the consent process for the level of modification required to strengthen and/or modernise the building.
- 2.12 Notwithstanding the above factors and because of the long-term importance to the University of securing expansion opportunities for the Kelburn Campus and a physical link to The Terrace and the Central Area, the University ultimately proceeded with the purchase<sup>12</sup>.
- 2.13 Following the acquisition of the site, VUW commissioned the following detailed expert reports in support of a private plan change request (in summary):
- a. redevelopment feasibility study;
  - b. heritage assessment;
  - c. structural engineering and building services reports;
  - d. asbestos survey;

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<sup>7</sup> Plan Change Request, Section 1.3, p.2

<sup>8</sup> Evidence of Jenny Bentley (1 December 2015), pp.3-4, paras 11-13

<sup>9</sup> Including the *Wellington Regional Strategy 2012*

<sup>10</sup> *Victoria University of Wellington Strategic Plan: Capital thinking. Globally minded.* (2014)

<sup>11</sup> Plan Change Request, Sections 1.5-1.7, pp. 3-7

<sup>12</sup> Evidence of Jenny Bentley (1 December 2015), p.5, para 20

- e. quantity survey;
- f. architectural review and building adaptation studies;
- g. review of existing building against WCC Urban Design Guide;
- h. demolition management plan;
- i. acoustic assessment;
- j. landscape plans; and
- k. various urban planning studies, reports and application documents.

2.14 We draw on the substance of these reports in section 3 below.

2.15 VUW also carried out consultation with local residents and stakeholders as part of its plan change preparations. A summary of the consultation is set out in section 1.6 of the plan change request, and additional detail on consultation feedback is provided elsewhere in the proposal<sup>13</sup>. We will not repeat that, but simply reflect the proposal's summary that:

- a. feedback was received from 12 local neighbours, all of which support demolition of the flats, though some also expressed concern about demolition management, and/or site stability;
- b. Housing NZ expressed support for demolition of the flats in its capacity as owner of the adjoining land at 320A The Terrace, and noted its unwillingness to rehabilitate the flats in its former ownership capacity;
- c. Heritage NZ noted that the flats are not identified on the New Zealand Heritage List/Rārangi Kōrero, and did not express any concern with the building's possible demolition;
- d. Wellington Electricity Ltd raised concern about potential reverse sensitivity issues in relation to its existing substation adjoining 320 The Terrace; and
- e. Wellington City Planning and Transport staff were engaged with prior to lodgement for various administrative and substantive reasons.

2.16 The formal Plan Change Request was eventually lodged with the Council in June 2015. At its meeting on 5 August 2015, the Council's Transport and Urban Development Committee accepted<sup>14</sup> the Plan Change for the purposes of notification. The Plan Change was then publicly notified later that month.

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<sup>13</sup> including at Section 4, Appendix 4 and Appendix 5 of the plan change request

<sup>14</sup> pursuant to Clause 25(2)(b) of Schedule 1

## Plan Change purpose and reasons

2.17 Unlike a Council-initiated plan change, a private plan change request must explain the purpose of, and reasons for, the proposal<sup>15</sup>. The **purpose** of PC81 is set out in Section 2.3 of the Plan Change Request as follows:

*The purpose of the [plan change] ...is to:*

- *Remove Gordon Wilson Flats from the District Plan heritage building list.*
- *Provide for the sustainable management of the site for university purposes.*
- *Avoid, remedy or mitigate adverse effects.*

2.18 This purpose statement is an important consideration for our statutory evaluation of the proposal against the purpose of the Act, as discussed in section 4 of our report below.

2.19 The **reasons** for the request follow<sup>16</sup> the purpose, and include:

- *Gordon Wilson Flats is uninhabitable because its facades are structurally unsafe and failing. The building requires total refurbishment. There are significant uncertainties associated with the structural integrity of the piles and other fundamental aspects of the building. The building is non-complying under the District Plan and has lost its existing use rights under the RMA for residential use. The units do not comply with the District Plan standards and the District Plan's Residential Design Guide. The heritage listing of the building's exterior significantly increases the constraint, complexity, uncertainty, risk and thus cost associated with potentially refurbishing and re-using the building. Consenting risks are high.*
- *The risks and thus costs to attempt to rehabilitate the building are prohibitive.*
- *Removal of Gordon Wilson Flats from the District Plan list of heritage buildings will enable its demolition. This is a necessary pre-requisite for the site to be redeveloped and sustainably used by Victoria University in a way that integrates the site into the Kelburn Campus.*
- *The existing Kelburn Campus is zoned "Institutional Precinct". It makes good sense from an integrated resource management perspective that this additional site acquired by Victoria University for expansion purposes should have the same zoning as its Kelburn Campus.*
- *The site specific provisions proposed by Victoria University are necessary to enable the construction of new buildings that are efficient, that make good use of the site, and that are fit for university purposes.*
- *Site specific provisions are also necessary to avoid, remedy, or mitigate potential adverse effects.*

2.20 There is no requirement for us to evaluate these reasons; they are cited here simply for completeness.

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<sup>15</sup> pursuant to Schedule 1, Part 2, Clause 22(1), RMA

<sup>16</sup> at section 2.4 of the plan change request

### Summary of proposed amendments

2.21 The details of the amendments to the Plan proposed by PC81 (as notified) are canvassed in the Plan Change Request<sup>17</sup> and the Council s42A Report<sup>18</sup>. Broadly, the Plan Change proposes to rezone the majority of the site, and to include new provisions within the Plan to manage the future use and development of the site.

2.22 More specifically, the notified proposal sought to:

- a. re-zone the land at 320 The Terrace from Inner Residential Area to Institutional Precinct;
- b. amend the provisions of the Institutional Precinct as they relate to the site by:
  - i. introducing five building standards that control height, site coverage, massing, building recession planes and side yards;
  - ii. introducing a controlled activity rule for demolition;
  - iii. including a new restricted discretionary activity rule for any building development;
  - iv. amending the Victoria University Design Guide to include site-specific guidance;
  - v. amending Planning Maps 12, 16 and 17.
- c. remove the Gordon Wilson Flats from the District Plan's heritage list.

2.23 Expanding upon matter 'i.' above, the detail of the proposed building bulk and location provisions (as notified) include:

- a. retention of Inner Residential Zone building bulk and location standards, including site coverage (50%) and building recession planes<sup>19</sup>;
- b. additional 5m yard setback and building height/massing requirements from adjoining residential properties to manage built dominance<sup>20</sup>;

2.24 All of the proposed amendments were assessed in terms of their appropriateness in the Requestor's s32 Evaluation at Section 3 of the request. That assessment found that:

*The provisions proposed by Victoria University's [proposed plan change] have been evaluated under s32 of the RMA.*

*This evaluation supports the conclusion that the proposed provisions are appropriate and that they will be effective and efficient.*

*This conclusion will be tested through the public notification process.<sup>21</sup>*

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<sup>17</sup> Plan Change Request, Sections 2.1-2.2, pp. 9-10

<sup>18</sup> s42A Report, Section 3.1, p.7

<sup>19</sup> The operative Institutional Precinct contains no site coverage or recession plan controls for new or altered buildings.

<sup>20</sup> The proposal notes that these provisions do not apply to the site boundary with the existing substation.

<sup>21</sup> Plan Change Request, Section 3.6, p.14

## Notification and submissions

- 2.25 As noted above, the Plan Change was publicly notified on 27 August 2015. Thirty-three submissions were received, and a summary of those submissions was prepared and subsequently notified for further submissions on 15 October 2015 with the closing date for receiving further submissions being 30 October 2015. Six further submissions were received<sup>22</sup>.
- 2.26 We provide a full summary of the submissions received in **Appendix 1**, including our recommendations on the relief sought by each submitter.
- 2.27 For completeness, we note<sup>23</sup> that two of the original submissions were received after the deadline stated in the public notice. We were not advised by the parties at the hearing whether our delegation includes the power to grant a waiver or extension of time for the late submission<sup>24</sup>. As an administrative exercise, we have subsequently confirmed that the delegation for granting waivers rests with the Council Chief Executive, and that he duly granted a waiver for Submissions 22 and 33 by internal memo<sup>25</sup>. We simply record this for the record.
- 2.28 Overall, the submissions ranged from support to opposition, with many submitters seeking specific amendments to the content of the provisions within the Plan Change.
- 2.29 Briefly, the key themes emerging from the submissions received include (among other matters):
- a. opposition to the de-listing and demolition of the Gordon Wilson Flats;
  - b. support for the de-listing and demolition of the Gordon Wilson Flats;
  - c. opposition of the rezoning, including in particular the associated enabling of student accommodation to be provided on site;
  - d. related to the previous point, concerns about public safety, increased anti-social behaviour and other adverse effects on residential amenity anticipated by activities permitted under the Institutional Precinct Zone;
  - e. concerns about new built development and associated effects on outlook and residential amenity;
  - f. opposition to proposed non-notification clauses to be adopted for future resource consent applications;
  - g. a desire to see improved and safe pedestrian access to and through the site;
  - h. opposition to the potential loss of housing resource; and
  - i. concerns about physical effects of demolition on neighbouring properties.
- 2.30 We discuss the submissions and associated issues in greater detail under our evaluation in section 3 below.

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<sup>22</sup> All further submissions were lodged by one of the original submitters (Submitter #5)

<sup>23</sup> this was recorded on the public notice calling for further submissions

<sup>24</sup> under s37 of the RMA

<sup>25</sup> a copy of this memo is available on the Council file

### Pre-hearing directions from the Panel

- 2.31 In readiness of the hearing, we issued a memorandum (**'Minute 1'**) to the parties on 2 November 2015. A copy of the minute (and all other minutes we subsequently issued) is attached at **Appendix 2**, but in summary, Minute 1:
- a. confirmed the dates for the hearing;
  - b. set out a timetable for the exchange of Officer reports and expert evidence prior to the commencement of formal proceedings;
  - c. outlined the procedures for parties to follow in presenting evidence or submissions to us;
  - d. called for parties to indicate any particular sites we should visit to inform our understanding of the proposal and the local environment; and
  - e. encouraged the parties to engage in pre-hearing meetings and expert witness conferencing;
- 2.32 Generally, the timetable and other directions we set out were followed by the parties, and we record our gratitude for that. There were, however, a couple of procedural matters arising from the pre-hearing exchanges that we are compelled to note for the record below.

### Pre-hearing procedural matters

- 2.33 We firstly record that the s42A report was circulated a day late. This did not present any material concern for us, and we were satisfied that no party was prejudiced by its lateness.
- 2.34 Of greater moment, we had to attend to matters surrounding the conferencing and evidence exchange of heritage experts. In summary, while heritage expert conferencing was undertaken, and an associated joint witness statement produced, this did not involve all of the heritage witnesses who eventually provided expert evidence to us.
- 2.35 The conferencing session involved Viv Rickard for the Council, Adam Wild for VUW and Mr Ken Davis (Submitter 21). One matter which was not clarified in that session was whether Mr Davis was appearing in his capacity as an expert, as a submitter or both.
- 2.36 Under 'normal' circumstances, that ambiguity would present some challenges to us in terms of the weight we could apply to Mr Davis' involvement in the conferencing – and indeed the distinction between the role of an expert and of a submitter was not unique to Mr Davis (as we discuss below). However, as it transpired, Mr Davis did not sign the joint witness statement produced and signed by Ms Rickard and Mr Wild – and accordingly, the statement is only of use to us to the extent that it records the shared views of Ms Rickard and Mr Wild.
- 2.37 We understand that Mr Davis' reluctance to sign the statement stemmed from his view that the statement did not accurately reflect all of the matters discussed. He is certainly entitled to that position; however, we must record that as a result, we can give no substantive consideration to his role in conferencing.

- 2.38 We record our disappointment that we were not presented with a more fulsome joint witness statement that involved the views of all those who provided us with expert evidence - including Mr Jeremy Salmond and Ms Linda Tyler, who were eventually commissioned to present expert evidence on behalf of several submitters. It is also disappointing that Mr Salmond and Ms Tyler were not able to appear at the hearing. As we discuss further below, this directly determines the weight we can ultimately afford to their expert views.
- 2.39 We also record that Mr Salmond's evidence was received late. In the interests of fairness, we signalled to the Requestor that we were of a mind to allow that late evidence, whilst also providing the Requestor the opportunity to comment in the event of potential prejudice.
- 2.40 For the record, the process that was followed in respect of this matter is summarised as follows:
- a. Mr Davis indicated to Ms Guerin on 4 December 2015 that he would be providing expert heritage evidence on behalf of himself, DOCOMOMO and Messrs Schrader, Kelly and Cochran by the 8 December deadline;
  - b. Mr Davis advised Ms Guerin at 5:26pm on 8 December that he was not yet in possession of the expert evidence (from Ms Tyler and Mr Salmond), seeking an extension to table the material – he sent additional correspondence the following afternoon, seeking the expert evidence to be received on the evening of the 9<sup>th</sup>;
  - c. Mr Slyfield expressed to Ms Guerin on the morning of 9 December that VUW could not accept the late filing of the submitters' evidence for reasons of potential prejudice;
  - d. Ms Guerin appraised us of this issue, and we duly convened a pre-hearing meeting on Thursday 10 December for the express purpose of considering the matter;
  - e. that same day, we invited Mr Davis (through Ms Guerin) to respond to Mr Slyfield's concerns on the submitters' behalf, which Mr Davis promptly did – Mr Davis' response was shared with Mr Slyfield for his comment;
  - f. on the evening of the 10<sup>th</sup>, Ms Guerin dispatched an email to Mr Davis and Mr Slyfield to respond to specific questions arising from our pre-hearing meeting;
  - g. both provided a response the following morning per our directions, with:
    - i. Mr Davis explaining the reasons for the lateness of his experts' evidence and non-attendance, and clarifying his own role in the proceedings as a submitter (with expertise), but not as an expert witness;
    - ii. Mr Slyfield confirming VUW's willingness to accept the lateness of the evidence, provided that the Requestor would have the opportunity to address the evidence adequately at the hearing and/or in closing;
  - h. we convened again on the 11<sup>th</sup> of December, having read all the information provided by the parties, and ruled to accept the late evidence; and

- i. Ms Guerin conveyed the following messages to Mr Davis and Mr Slyfield on our behalf:

*Firstly, the Panel is disappointed it had to make such a decision [on this matter] in the first instance. There were clear directions given in the Minute regarding pre-circulation of evidence and expert conferencing; and notwithstanding the reasons advanced by Mr Davis and Mr Salmond for lateness (which the Panel does not dispute), the Panel are concerned to hear that the experts representing the Submitter at the [expert conferencing] are different to the experts that will be providing evidence on behalf of the submitter at the hearing. Whilst the Panel acknowledges that this is completely the prerogative of the submitter, it does cast some uncertainty over how much weight the Panel can place on the PHC statement which has recently been filed – and particularly if there is any substantive difference between the submitter’s expert views at the [expert conferencing] versus the view expressed in Mr Salmond’s evidence.*

*Secondly, the Panel will, as they indicated in the email last night, use the variety of options available to them to accommodate the Applicant’s request to comment on Mr Salmond’s evidence. This can either be during the opening submissions for the Applicant, in an addendum to the EiC of the Applicant’s heritage expert, as rebuttal evidence by that expert, or as part of the right of reply (either at the hearing or in writing should that occur post-adjudgment). A combination of these opportunities may be appropriate. The Panel do not see the need to lock in this point at this stage but would appreciate the Applicant canvassing this matter in its opening on Day 1.*

- 2.41 This concluded the pre-hearing sequence, and our attention turned to the formal proceedings which we describe now.

### **The Hearing**

- 2.42 The hearing was convened at 9:15am on Tuesday 15 December 2015 in Committee Room Two at Wellington City Council’s main offices.
- 2.43 There were no procedural issues raised by any party and the hearing was generally focussed on the presentation of evidence and submissions from the various parties present. Over the course of the proceedings, we heard from the following people:

#### Plan Change Requestor

- Mr Morgan Slyfield, Barrister and legal counsel for VUW
- Ms Jenny Bentley, Director of Campus Services at VUW
- Mr Maurice Clark, engineering advisor to VUW
- Mr David Wood, engineering advisor to VUW and Director of Structural Engineering at BECA consultants
- Mr Bob Hall, demolition management advisor to VUW and independent Construction Industry Consultant with RJHA Ltd
- Mr Adam Wild, historic heritage advisor to VUW and Director of Archifact – Architecture and Conservation Ltd
- Mr Andrew Burns, urban design advisor to VUW and Director of McIndoe Urban Ltd

- Mr Andrew Croskery, development advisor to VUW and property consultant with Wareham Cameron + Co
- Mr Peter Coop, VUW planning expert and resource management consultant at Urban Perspectives Ltd

#### Council Advisors<sup>26</sup>

- Mr Daniel Batley, Council Reporting Officer and Senior Advisor – District Plan at WCC
- Ms Lucie Desrosiers, Urban Design Advisor at WCC
- Ms Viv Rickard, Principal Heritage Advisor, District Plan
- Mr Ryan Cameron, Environmental Noise Officer at WCC

#### Submitters

- Ms Ellen Blake and Ms Paula Warren on behalf of Living Streets Aotearoa (“Living Streets”)
- Mr John Blincoe and Ms Wendy Walker, residents in the local neighbourhood
- Mr Kenneth Bowater, resident in the local neighbourhood (speaking to the joint submission of his wife, Lynda, and himself)
- Ms Nicola Koptisch, resident in the local neighbourhood (speaking to the joint submission of her husband, Norbert, and herself)
- Dr Christine McCarthy on behalf of the Architectural Centre Incorporated (“the ArchCentre”)
- Mr Kenneth Davis, resident of Auckland
- Ms Anna Ronberg, resident in the local neighbourhood
- Ms Debra Cranko on behalf of DOCOMOMO New Zealand (“DOCOMOMO”)
- Dr Ben Schrader, Mr Michael Kelly and Mr Chris Cochran residents of Wellington

2.44 Messrs Schrader, Kelly and Cochran presented together. We acknowledge that they are all qualified and respected experts in the fields of historic heritage and/or conservation architecture. Similarly, Dr McCarthy and Ms Cranko have relevant qualifications in the field of architecture. However, all of these parties appeared before us as submitters, and not in their respective expert capacity.

2.45 As per our discussion above in relation to Mr Davis’ involvement in the hearing, it is important for us to record here that we have been unable to treat the submissions or presentations from the above parties as expert evidence. These are matters we return to in our evaluation of heritage issues in section 3 below.

2.46 For all parties who presented to us, we took the opportunity to ask questions at the proceedings. In most instances, our questions were promptly and readily addressed ‘on the spot’. However, there were a number of other matters we raised with the Requestor and the Council in particular which clearly would require additional time to be addressed to the extent we required.

2.47 Accordingly, we resolved to leave the hearing open at the adjournment on the final sitting day. Given the pending holiday period and the signal from several

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<sup>26</sup> We note that the s42A report included additional Council Officer input, including from Mr Mathew Borich in respect of environmental noise, and Mr Soon Teck Kong in respect of transport matters. The report also attached engineering advice from Mr John Devine, Director of Spencer Holmes Limited, which we discuss below. For the record, these advisors were not in attendance at the hearing.

representatives for the Council and Requestor of limited availability during January and early February 2016, we did not set a firm deadline for the parties to circulate the additional material requested though it was expected by mid to late February.

*Post-adjudgment information received*

- 2.48 Mr Batley verbally offered to update his closing statement presented at the hearing with responses to questions we raised during that presentation. Having taken Mr Batley up on his offer, we formally received his updated statement in writing on 19 January 2016.
- 2.49 On 22 February 2016, we received the following additional material from Mr Slyfield<sup>27</sup>:
- a. supplementary legal submissions;
  - b. final Design Guide amendments agreed by WCC and VUW urban design advisors, with annotated changes;
  - c. visual materials that the urban design advisers relied upon in relation to the assessment of potential 'viewshafts' to (and across) the site;
  - d. a revised version of the Appendix 4 map;
  - e. a more formal/legible version of the map tabled by Mr Coop at the hearing, depicting the extent and nature of consultation he undertook;
  - f. a formal record of VUW's policy in relation to %NBS [footnote];
  - g. a joint conferencing statement from Mr Coop and Mr Batley dated 9 February 2016 relating to RPS policies on heritage and their relevance to PC81; and
  - h. A s32AA assessment prepared by Mr Coop and Mr Batley in relation to the proposed refinements to the PC81 provisions since notification.
- 2.50 Having reviewed the material, we were satisfied the responses were complete. Our deliberations subsequently gave rise to an additional information request, which we discuss in the section that follows.

### **Deliberations and Hearing Closure**

- 2.51 We commenced our deliberations on Tuesday 22 December 2015. This session was limited to preliminary and administrative matters, owing to the hearing remaining open for the receipt of further information from the parties.
- 2.52 Our deliberations continued in late February after receiving the aforementioned information from Mr Slyfield. During that time, we identified an omission to the information we were anticipating – namely, evidence from Mr Coop and Mr Batley in relation to comments made by Mr Coop at the hearing that the proposed demolition rule could be improved in light of Mr Hall's evidence.

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<sup>27</sup> through our Hearing Advisor, Mr Jones

- 2.53 We were initially inclined not to raise this with the parties as we considered the evidence before us on this matter was sufficient for us to make a ruling and associated amendments to the provisions as necessary. However, in reviewing the proposed rule, we also identified some drafting issues which we thought best would benefit from input from the parties.

*Minute 2*

- 2.54 Accordingly, we issued **Minute 2** on Tuesday 1 March 2016. The minute described the technical drafting issue as follows:
- a. the structure of the proposed demolition rule is different to other controlled activities in the Institutional Precinct Zone Chapter in that it 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;
  - b. as drafted, the rule presents a potential future compliance issue if consent for demolition is granted on the basis that works will be in accordance with an approved management plan, but is subsequently deemed to not be in accordance with that plan;
  - c. relatedly, the drafting 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;
  - d. we were also unclear about the use of the word ‘approved’ in the rule, and specifically who the “approver” would be, what is required in order to obtain approval, and whether (or not) the approval must precede any resource consent application made under Rule 9.2.3.

- 2.55 In the interests of expediency, we asked our Hearing Advisor, Mr Jones, to draft amendments to the rule that both reflected the evidence of Mr Hall and overcame the ambiguities highlighted immediately above. This revised rule was then distributed to all parties, and we sought feedback from the Council and VUW to ensure that the revised provision was technically accurate and consistent with the format otherwise adopted in the District Plan.

- 2.56 Council and the Requestor responded via email dated Friday 4 March 2016, noting their agreement with the proposed amendment with one minor wording change. We discuss this more substantively under our evaluation of Issue 5 below (in report section 3).

*Hearing Closure and Minute 3*

- 2.57 Having received all further information requested, we completed our deliberations on Friday 11 March 2016.
- 2.58 This was accordingly signalled to all parties in **Minute 3** on 17 March 2016 along with confirmation of the formal closure of the hearing.

### 3.0 EVALUATION OF ISSUES

#### Overview

- 3.1 As in the s42A report, we have grouped our discussion of the submissions and the reasons for accepting, rejecting, or accepting them in part by the *matters*<sup>28</sup> to which they relate – rather than assessing each issue on a submitter by submitter basis.
- 3.2 This approach is not to downplay the importance of the input from submitters; to the contrary, such input has been invaluable in shaping the grouping of issues and our collective consideration of those matters. However, we consider it will be to everyone’s benefit for our recommendation to be as tightly focused on the key issues as possible.
- 3.3 For those parties who are only interested in a particular matter as it pertains to their submission(s), reference can be made to the submitter-by-submitter summary of decisions requested in **Appendix 1**, which includes our recommendation on each relief point sought. Those specific decisions have been derived from our issues assessment below.
- 3.4 We have organised our discussion of issues as follows:
- **ISSUE 1:** Positive effects
  - **ISSUE 2:** Historic Heritage and Building Condition
  - **ISSUE 3:** Activity effects on local amenity
  - **ISSUE 4:** Built form – streetscape, townscape & effects on neighbours
  - **ISSUE 5:** Demolition management
  - **ISSUE 6:** Access & connectivity
  - **ISSUE 7:** Other matters

#### Evaluation Preamble – Statutory Framework

- 3.5 Before formally recording our consideration of the above issues, we summarise here the relevant statutory matters that frame our evaluation.
- 3.6 We note the assistance provided to us by Mr Slyfield in this respect. He was most helpful in ensuring we follow the correct decision-making pathway, and in helping us both identify and untangle some of the statutory elements potentially in tension. We received no guidance from other counsel, so have adopted Mr Slyfield’s submissions unconditionally on these matters.
- 3.7 Mr Slyfield<sup>29</sup> firstly advised that the Council’s decision-making power for this proposal is set out in clause 29(4) of Schedule 1 of the Act. Under this clause, the Council may decline the proposal, approve it, or approve it with modifications.

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<sup>28</sup> Clause 10(2)(a) of Schedule 1, RMA sets out that a plan change decision may address submissions by grouping them according to either the provisions of the plan change to which they relate, *or* to the matters to which they relate.

<sup>29</sup> Opening legal submissions for the Requestor (15 December 2015), p.3, para 4

The Council must give reasons for the decision it reaches. In arriving at its decision, the Council must undertake the further evaluation required under s32AA and have regard to that evaluation.

- 3.8 While we are ‘recommenders’ and not decision-makers in this case, we have followed this structure so that our recommendation is valid, should it be adopted as the Council’s decision.
- 3.9 Mr Slyfield clarified that the further evaluation under s32AA is required only in respect of any changes arising since the plan change was notified<sup>30</sup>. This evaluation must:
- a. examine the extent to which the objectives of PC81 are the most appropriate way to achieve the purpose of the Act;
  - b. examine whether the policies, rules, standards, zoning and other methods of PC81 are the most appropriate way to achieve the existing Plan objectives and the PC81 objectives;
  - c. in relation to ‘b.’ above:
    - i. identify any other reasonably practicable options for achieving the existing and proposed objectives; and
    - ii. assess the efficiency and effectiveness of the provisions in achieving the objectives; and
  - d. contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal.
- 3.10 In relation to **matter ‘a’** above, Mr Slyfield explained that the plan change objectives that relate to our primary assessment against Part 2 are derived from the purpose of the plan change, which is cited in section 2 of our report above<sup>31</sup>. In this respect, the term ‘objective’ is synonymous with the plan change’s goals or aspirations and not the technical meaning of the term otherwise used in the Plan<sup>32</sup>.
- 3.11 For our evaluation of the provisions of the plan change against the objectives (**matter ‘b’** above), however, the term ‘objective’ assumes a dual meaning:
- a. those goals or aspirations set out in the plan change’s purpose; and
  - b. the relevant (and settled) objectives of the operative Plan<sup>33</sup>.
- 3.12 This evaluation structure was confirmed by Mr Slyfield in both his closing submissions at the hearing, and subsequently in the written submissions<sup>34</sup> circulated after the close of proceedings.
- 3.13 Mr Slyfield also spent some time addressing us in closing about the relevance of s74 of the Act for our consideration of the proposal. In his submission, that section applies only to a plan change if it is initiated by a local authority<sup>35</sup>, which is not the

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<sup>30</sup> Opening legal submissions for the Requestor (15 December 2015), p.3, para 5

<sup>31</sup> Closing legal submissions for the Requestor (21 December 2015), p.6, paras 25-26.

<sup>32</sup> Closing legal submissions for the Requestor (21 December 2015), pp.6-7, para 26.

<sup>33</sup> Closing legal submissions for the Requestor (21 December 2015), p.7, para 27.

<sup>34</sup> Submissions to accompany further information (22 February 2016), pp.6-7, paras 24-25.

<sup>35</sup> Closing legal submissions for the Requestor (21 December 2015), p.6, para 21.

case for this proposal. However, he also stressed that our assessment mirrors that required by s74 in all material respects given the wider considerations of the Act which are relevant to our broad authority<sup>36</sup>.

- 3.14 Mr Slyfield's supplementary submissions also expanded upon his verbal advice to us that s75 of the Act is applicable. Specifically, he advised:

*...s75 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.*

*The particular relevance of that to PC81 arises from the requirement in s75(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.<sup>37</sup>*

- 3.15 Consistent with Mr Slyfield's advice, we have accordingly considered whether the proposed Plan Change:

- a. has been designed to accord with, and assist the Council to carry out its functions so as to achieve the purpose of the Act<sup>38</sup>;
- b. gives effect to any relevant national policy statements ("NPS") and the New Zealand Coastal Policy Statement ("NZCPS")<sup>39</sup>;
- c. gives effect to the regional policy statement ("RPS")<sup>40</sup>; and
- d. is consistent with any regional plans<sup>41</sup>.

- 3.16 In considering these matters, we record that our decision is based on the notified Plan Change and s32 evaluation, the submissions and further submissions received, the Council s42A report, and the statements/presentations from all parties appearing before us.

- 3.17 It is not for us to introduce our own evidence, and we have not done so – rather, our role has been to:

- a. establish that all relevant evidence is before us (or where it isn't, consider whether we should commission additional reports or information<sup>42</sup>); and
- b. test the evidence of others, and to determine the most appropriate outcome based on the views we consider best achieve sustainable management.

- 3.18 At a fundamental level, the agreed message we received from the relevant expert witnesses attending the hearing<sup>43</sup> was that the site is suitable for the proposed

<sup>36</sup> Closing legal submissions for the Requestor (21 December 2015), p.6, para 22.

<sup>37</sup> Submissions to accompany further information (22 February 2016), p.5, paras 17-18.

<sup>38</sup> Under s72.

<sup>39</sup> Under s75(3).

<sup>40</sup> Under s75(3).

<sup>41</sup> Under s75(4).

<sup>42</sup> Under s 41C(4) of the Act.

<sup>43</sup> This of course does not include the evidence of Ms Tyler or Mr Salmond (who did not attend the hearing), or of any of the submitters (including those who may otherwise have expertise in relevant fields).

rezoning and the building's de-listing is appropriate. However, there was some disagreement at the expert level about the most appropriate methods the Plan Change should adopt to manage effects associated with future development. These matters of expert disagreement were largely resolved as at the close of proceedings.

3.19 The submitters we heard from during the hearing largely fell into one of two groups:

- a. local residents concerned about increased anti-social behaviour and nuisance effects arising from an expansion of the university campus, and in particular through new student accommodation facilities in the area; and
- b. those who hold affinity for the heritage and architectural values of the Gordon Wilson Flats and are opposed to the building's demolition.

3.20 In highlighting these high-level positions expressed to us during the hearing, it is not our intention to undercut the more detailed findings we set out below. We do, however, consider it appropriate to record these generic themes here to provide a broad context within which our evaluation is framed.

3.21 In closing this preamble, we observe that s32AA(1)(d)(ii) enables our further evaluation reporting to be incorporated into this report as part of the decision-making record. To this end, our evaluation of issues has been structured to satisfy the evaluation report requirements of s32AA as outlined above. Essentially this means that in those instances where we have recommended an alteration to the as-notified plan change, we have explicitly assessed the appropriateness of that alteration in terms of s32AA.

3.22 With these contextual matters established, we now turn to our evaluation of issues, before providing our summary evaluation of the above statutory requirements.

### **Issue 1: Positive Effects**

3.23 In discussing these matters here, we acknowledge that they relate to some of the other issue categories we discuss below. For example, streetscape is a matter we consider both here and under Issue 4 below. While this approach has resulted in some 'double handling,' we consider it is to the benefit of our evaluation to structure it as we have.

#### *Issue identification*

3.24 The plan change request identifies several positive effects arising from the proposal. Broadly, these relate either to the operation of the University and to the streetscape and relationship of built form to the public realm. More specifically, the **plan change request**<sup>44</sup> notes the following:

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<sup>44</sup> at sections 4.3 and 4.4

- a. enhanced amenity for the VUW community and local residents in the form of temporary recreation and open space areas following the demolition of the flats;
  - b. enhanced pedestrian connections between the city and the VUW;
  - c. long term protection of the site's future development for expansion of campus activities contiguous with the existing campus;
  - d. the proposed built form standards will result in future buildings that enable better views through the site relative to the existing Flats; and
  - e. the restricted discretionary rule approach for new buildings and landscaping is anticipated to deliver a better overall design outcome relative to the controlled activity approach otherwise applying in the Institutional Precinct Zone.
- 3.25 The request describes the above effects as "*positive and cumulatively significant*<sup>45</sup>" and that same terminology was utilised in the s42A report<sup>46</sup>.
- 3.26 In her evidence, **Ms Bentley** described additional positive effects from the proposal. She noted that the University is a significant contributor to Wellington's social, educational, economic and cultural fabric. That includes more than \$1billion contribution to the regional economy each year<sup>47</sup>.
- 3.27 Second only to the New Zealand Government, VUW is Wellington's largest employer with more than 23,000 staff and students presently<sup>48</sup>. However, VUW's strategic aim is to nearly double its current roll to 30,000 over the next 20 years. Ms Bentley advised that, to achieve this level of growth, the University requires additional land than it currently occupies at its facilities in Kelburn, the Central City, Island Bay and Karori. In her view, the plan change will enable that demand to be met (at least in part), and moreover the immediate proximity of the site to the Kelburn Campus affords significant educational, research and economic synergies<sup>49</sup>.
- 3.28 The evidence of **Mr Burns**<sup>50</sup> also touched on the positive effects to be realised from the proposal. As noted in the application, these relate to the potential for improved development interface with the street frontage along The Terrace, and to breaks in built form that allow for more views through the site and between the CBD and University generally. We note that, ultimately, these effects are to be realised through subsequent resource consent processes; however, the Plan Change plays a critical role in ensuring those positive design outcomes are achieved.
- 3.29 This finding was shared by **Ms Desrosiers**, who expressly supported the increased level of discretion afforded to the Council for future applications (relative to the operative Institutional Precinct Zone rule)<sup>51</sup>. The remainder of her addendum to the s42A report was focussed on analysing the extent to which the proposed provisions would successfully manage potential adverse effects of future development, which we canvas further under Issue 4 below.

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<sup>45</sup> Plan change request, Section 4.3, p. 16

<sup>46</sup> S42A report, p.32, para 136

<sup>47</sup> Evidence of Jenny Bentley (1 December 2015), p.3, para 10

<sup>48</sup> Evidence of Jenny Bentley (1 December 2015), p.3, para 10

<sup>49</sup> Evidence of Jenny Bentley (1 December 2015), p.4, paras 14-15

<sup>50</sup> Evidence of Andrew Burns (1 December 2015), pp.6-9, paras 14-24

<sup>51</sup> Attachment C, s42A report, p.7

*Discussion and findings*

- 3.30 No submissions were received that called into question the positive effects anticipated by the proposal; and very little consideration was given to this suite of effects in the s42A report and at the hearing by all parties.
- 3.31 In this same respect, Ms Bentley's statements about the synergistic benefits to be harnessed from the immediate proximity of the site to the Kelburn Campus were unchallenged; however, they were not quantified either and so the level of significance ascribed to those synergies in anything other than anecdotal terms is not as straightforward as it might otherwise have been presented.
- 3.32 We accept that there are undoubtedly co-locational and connectivity benefits to be realised through the 'annexing' of the site for University purposes. Moreover, we recognise the proposal's fit with VUW's own Strategic Plan. Again, we have no evidence to the contrary.
- 3.33 However, we must record that we were not provided with information of any rigour to be able to conclude that the benefits overall are "significant" – either in an absolute sense or relative to other potential options for expansion of the Kelburn or other campus facilities.
- 3.34 While not fatal, we would have expected that level of rigour to be provided in the application and/or in evidence given the steer provided by s32(2) to assess the opportunities for economic growth and employment as part of a proposal's overall cost-benefit assessment (and to quantify those where possible).
- 3.35 Short of being provided with that detail, we have relied on Ms Bentley's evidence that the University is already a significant economic, cultural and social asset to the City and the wider Region and that the expansion of the campus to the application site will be of benefit to the University in that role.
- 3.36 We also accept the uncontested evidence that the design-led discretionary assessment approach for redevelopment of the site will have benefits to the local environment relative to the status quo Plan provisions. We note that the proposed bulk and location provisions and design guides were modified during the hearing, and those changes have a bearing on the realisation of these benefits through future applications.
- 3.37 We discuss the bulk and location provisions and design guides matters further under Issue 4 below, including the required 32AA assessment of the proposed amendments.

## Issue 2: Historic Heritage and Building Condition

### *Issue identification*

- 3.38 A key environmental outcome anticipated by the proposal is the eventual demolition of the Gordon Wilson Flats. Unsurprisingly, the overall impact of the plan change on historic heritage was a matter that received a great deal of attention in the plan change request, in submissions and during the hearing.
- 3.39 The **plan change request** considers the impact of the Flats' demolition through an array of assessment 'lenses.' In this respect, the plan change, and indeed our own assessment, canvasses a number of technical disciplines in order to form a view on heritage significance and the associated need (or otherwise) for protection, and (by association) the feasibility of protection and re-use of the building.
- 3.40 The request firstly notes that the Flats and their use for residential activity is a non-complying activity under the Plan as:
- a. the building height and recession planes significantly exceeds the maximum standards for the Inner Residential Zone;
  - b. the building and use fail to provide for anticipated car parking and on-site ground level open space by a substantial margin;
  - c. the building scale, design and external appearance are considered inconsistent with the Residential Design Guide in Volume 2 of the Plan<sup>52</sup>.
- 3.41 The request also notes that the building would normally be 'protected' by these non-compliances by s10 of the RMA, which allows for existing use rights. However, existing use rights are lost after 2 years of discontinued use, and the proposal rates the associated need to obtain a resource consent to recommence *any* use of the Flats as a 'major risk.'<sup>53</sup>
- 3.42 The proposal draws on a number of technical investigations to further inform the appropriateness (or otherwise) of the Flats' continued heritage listing, including:
- a. an assessment by Wareham Cameron + Co Ltd of the condition of the Flats and the options for its adaptive reuse;
  - b. an assessment of effects on historic heritage by Archifact Architecture and Conservation Ltd;
  - c. assessments by Beca Ltd of the Flats' structural condition and seismic performance and of the condition of building services;
  - d. a redevelopment feasibility assessment by Mr Maurice Clark of Cheops Holdings Ltd and McKee Fehl Construction;
  - e. a concept estimate by Rider Levett Bucknall; and
  - f. an architectural review of redevelopment options for student accommodation and teaching/office function by Athfield Architects Ltd.

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<sup>52</sup> Plan change request, Section 1.4, pp.3-4

<sup>53</sup> Plan change request, Section 1.4, p.4

- 3.43 Those documents are now all held on the WCC files. Collectively, these investigations provided a range of conclusions that have informed the plan change request; namely VUW's recommended delisting of the Flats from the District Plan Heritage list.
- 3.44 Of particular note, the conclusions reached in those investigations include:
- a. the building is earthquake prone and uninhabitable due to its unsafe conditions, in particular there is significant spooling of the concrete façade with parts of the concrete increasingly detaching from the building ('concrete cancer');
  - b. there is a potential structural risk and associated cost with the building piles;
  - c. rehabilitating the failing external façade of the building whilst maintaining the integrity of its design and appearance is a significant risk and cost;
  - d. related to the above, options that would significantly modify the exterior to make it safe would undermine the building's heritage value and listing;
  - e. the building is unsuitable for conversion to student accommodation or for university offices, teaching space and the like due to a number of factors and constraints;
  - f. the risks and costs to VUW associated with refurbishing the building and façade are prohibitive. Achieving any refurbishment in a manner that retains its exterior heritage values is considered impractical;
  - g. the building could be strengthened and refurbished for public housing, but the likely providers of such housing are unlikely to do so given the associated costs;
  - h. the building is unattractive for conversion to private apartments with significant complications of achieving the required standard for amenity, car parking and open space;
  - i. the assessment of heritage value found that the Flats have:
    - i. no exceptional heritage significance;
    - ii. considerable historical and social significance;
    - iii. moderate aesthetic, architectural and townscape significance;
    - iv. minor scientific and technological significance and
    - v. (therefore) moderate heritage significance overall.
- 3.45 The authors of VUW's various technical reports also prepared briefs of evidence and presented them at the hearing. Each of these witnesses provided a summary of their previous investigations and spoke to matters raised in submissions. In most cases, the experts took the opportunity to amplify or clarify matters covered in previous assessments.
- 3.46 For example, the Requestor's engineer, **Mr Wood**, explained the Flats' status as earthquake prone was attributed to the façade which was assessed as achieving less than 34% NBS<sup>54</sup>. The 'spine wall' responsible for seismic loading of the long direction of the building (roughly north-south) was assessed by Mr Wood as

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<sup>54</sup> NBS = New Building Standard, or the seismic design standard that would apply for a new building on the site.

achieving approximately 50% NBS, while the transverse (east-west) bracing walls were assessed at an 80% NBS level.<sup>55</sup>

- 3.47 Mr Wood also noted that he undertook an inspection of the building's piles following the lodgement of the plan change request. That inspection uncovered that the octagonal piles indicated on the building's architectural drawings were not in place, and rather that the piles appeared to be bored concrete. The inspection was unable to include a reliable test of the piles' integrity, but the level of information gathered did not lead Mr Wood to revisit any of his findings from the original seismic assessment accompanying the plan change request.<sup>56</sup>
- 3.48 **Mr Clark** briefly spoke to his evidence, which reinforced his opinion that the Wareham + Cameron assessment was thorough and comprehensive. His evidence also reiterated his view that the building is beyond economic use for any purpose or occupier. Mr Clark confirmed that the further understanding of the building's piles summarised by Mr Wood had no material bearing on his overall view.<sup>57</sup>
- 3.49 We heard from VUW's heritage expert, **Mr Wild**, who amplified the findings in his original assessment. He further considered the possibility of replacing the building's facade, and in particular commented on the suggestion by submitters that a 'curtain wall' could be used for that purpose. In this respect, Mr Wild gave the view that such works could undermine the heritage values of the building, noting:

*I am aware of options being explored by Beca on behalf of VUW which considers two primary options for recladding the building. We have discussed effects arising on heritage values from either of these options and my concerns recognise that a fundamental architectural element contributing to the building's heritage values is represented by the relief in the elevational rhythms established by the expressed horizontal and vertical structural elements typical of the most essential modernist idiom in combination with the relief afforded those elevations by the balconies to the east and west elevations. A curtain wall would effectively reduce the elevations to a two-dimensional and enclosed flat skin. My concerns with such an intervention is that this is the language of a very different type of building.*<sup>58</sup>

- 3.50 Mr Wild clarified at several instances<sup>59</sup> in his evidence that his assessment of the Flats' heritage values was based on best conservation practice in that it assessed the building 'as found.' He advised that such an approach "*avoids predeterminations as to value and recognises that values are dynamic and can go up and down over time.*"<sup>60</sup>
- 3.51 VUW's property consultant, **Mr Croskery**, also spoke to his evidence at the hearing. He noted that his original assessment had considered 5 potential redevelopment options, being student accommodation (under two distinct configurations), university or academic use, private residential or social housing.

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<sup>55</sup> Evidence of David Wood (1 December 2016), pp.3-5, paras 10-19.

<sup>56</sup> Evidence of David Wood (1 December 2016), p.4, paras 15-16.

<sup>57</sup> Evidence of Maurice Clark (1 December 2016), p.3, paras 9-10

<sup>58</sup> Evidence of Adam Wild (1 December 2016), p.10, para 32

<sup>59</sup> For example, at paras 41, 44 and 47

<sup>60</sup> Evidence of Adam Wild (1 December 2016), p.12, para 41

- 3.52 Mr Croskery emphasised a number of his previous findings which we canvassed previously, and also added the view that:
- a. the building does not meet modern design requirements for student accommodation, private residential or social housing, nor can it be converted for University academic or office use;
  - b. changing, or intensifying the use of the building for university purposes, social housing or residential letting is not practically or economically feasible;
  - c. refurbishment costs are significantly higher than replacement costs, with the cost estimate to refurbish ranging between \$32.50m and \$40.50m (\$4,550/m<sup>2</sup> to \$5,680/m<sup>2</sup>), plus an additional \$2.0m to \$3.0m if converted to private residential use.<sup>61</sup>
- 3.53 Moreover, during our questioning of Mr Croskery and Mr Wood<sup>62</sup>, it was ascertained that roughly double the estimated sum should be allowed for the repair of the parts of the façade where concrete is visibly failing to address the rest of the façade, where water damage could be reasonably expected to be occurring. We were told this would add a further \$6-7.2 million to the above cost estimates.
- 3.54 It also became apparent during questioning of the above witnesses that:
- a. the façade of the Gordon Wilson Flats was constructed with a lesser thickness of concrete than other appears to be the case with other buildings of this social housing genre; and
  - b. there was an estimated negative value of a minimum of \$17 million in any of the five different development options considered by VUW.
- 3.55 Furthermore, in response to issues raised by submitters that the maintenance of the building had been deliberately neglected, it was noted by Mr Slyfield<sup>63</sup> that Housing New Zealand had recently spent approximately \$1.5 million in maintenance immediately before discovery of the 'concrete cancer' caused it to immediately evacuate its tenants and subsequently approach VUW to purchase the site.
- 3.56 Similar to Mr Wood and Mr Clark, Mr Croskery updated his findings to consider the additional information made available since his original assessment. Of note, he advised:
- a. the further work undertaken by Beca post lodgement indicates that the façade can be removed and replaced to make it safe, and this work would fall within the refurbishment cost range described immediately above;
  - b. a new curtain wall façade would, however, add an additional \$5.5m to that estimate; and
  - c. the further information from Beca about the nature of the building's piles does not change any of Mr Croskery's substantive conclusions.

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<sup>61</sup> Evidence of Andrew Croskery (1 December 2016), p.12, para 41

<sup>62</sup> with some supporting quantity survey information provided by Mr Tony Sutherland of Rider Levett Bucknall

<sup>63</sup> Closing submissions (21 December 2015), p.18, para 77

- 3.57 The **s42A Report** reached similar conclusions to the plan change request, and the Requestor's experts.
- 3.58 For example, **Ms Rickard's** review of the heritage assessment concluded that the building has a moderate level of heritage significance and is not the most important example of its genre<sup>64</sup>. Her own finding was based on the assessment of Mr Wild and on an assessment of the Flats undertaken by the WCC Heritage Team in 2012.
- 3.59 With respect to the latter, Ms Rickard advised that the Council assessment was part of a wider research, assessment and re-evaluation project undertaken in the period 2012-2015. That project evaluated all buildings on the District Plan Heritage list to a consistent standard.<sup>65</sup>
- 3.60 In the discussion section of her report, Ms Rickard noted the following:
- a. the WCC 2012 assessment of the Flats confirmed the building comes within the range of buildings that qualify for inclusion on the Heritage List, though that assessment has had no regard to economic, structural or other extrinsic factors;
  - b. there are two other examples of heritage buildings of a similar style/genre in Wellington, being the Dixon Street Flats and the Centennial Flats in Berhampore; and
  - c. Dixon Street Flats and Centennial Flats are afforded the highest significance (Category 1) on the New Zealand Heritage List administered by Heritage New Zealand, whereas the Gordon Wilson Flats are not on the list at all.<sup>66</sup>
- 3.61 Ms Rickard's concluding comments included the following observations:
- Options for future uses of the building have also been considered and assessed. The reports provided by the applicant come to the conclusion that it will be difficult to adapt the building for a new use within reasonable economic limits. For a building to survive into the future it must be able to be reused and adapted to new uses and also stand comparison to the cost of a new purpose built structure. From the information and professional reports provided by the applicant, it appears that these objectives will be difficult to meet.*<sup>67</sup>
- 3.62 Drawing on the expertise of Ms Rickard and on the findings in the plan change request, **Mr Batley** also provided the view that the proposed de-listing is appropriate. The reasons he cited for this conclusion include (in summary):
- a. the heritage assessment of VUW and CCC's experts are that the building is of moderate significance (including when assessed across a variety of evaluation criteria);
  - b. removal of the building from the heritage list will not result in the loss of an exceptional example of a building of this type or era;
  - c. other examples of this type of building remain;

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<sup>64</sup> Attachment E to s42A report, Section 8

<sup>65</sup> Attachment E to s42A report, Section 3

<sup>66</sup> Attachment E to s42A report, Section 7

<sup>67</sup> Attachment E to s42A report, Section 8

- d. the building is not on the HNZ list, nor have HNZ raised any concerns with the building's proposed de-listing;
  - e. prior to demolition, the building will be accurately recorded to ensure its heritage values are not entirely lost;
  - f. demolition of heritage buildings is provided for in the District Plan albeit that the discretionary activity (restricted) assessment criteria are reasonably narrow and prescriptive meaning that wider positive effects cannot be taken into account;
  - g. alternatives to demolition have been assessed, with no alternatives being considered reasonable or viable;
  - h. de-listing does not undermine the integrity of the District Plan heritage inventory, nor does it set a precedent; and
  - i. the plan change promotes a development opportunity for VUW which will result in social and economic benefits for the locality, city and wider region<sup>68</sup>.
- 3.63 As discussed previously, several submitters commissioned expert evidence from Ms Linda Tyler and Mr Jeremy Salmond.
- 3.64 **Ms Tyler's** written evidence was that the Flats are vitally important in NZ's architectural, social and political history<sup>69</sup>. Her statement of evidence contained an assessment of the building's historic heritage value using the criteria from s66 of the Heritage New Zealand Pouhere Taonga Act 2014. In contrast to Mr Wild and Ms Rickard, Ms Tyler's view was that the building has:
- a. considerable aesthetic and townscape significance;
  - b. considerable to exceptional architectural significance and functional significance;
  - c. moderate scientific and technological significance; and
  - d. exceptional social significance.
- 3.65 Among other points of note, Ms Tyler gave the view that the Flats are unique and both nationally and internationally significant as part of a group of high rise social housing buildings - along with the Dixon St and McLean flats - located in close proximity. Ms Tyler noted the buildings are linked stylistically, functionally and aesthetically both to each other and to the international modern movement of which they are part. She described the Gordon Wilson Flats as the 'apogee' of that social housing development programme.
- 3.66 Ms Tyler's rating of exceptional social significance for the Flats drew upon the building's association with the reforming first Labour Government and its social and economic policies, which sought to eradicate slum housing and improve social and economic equality.
- 3.67 **Mr Salmond** adopted the same assessment approach as Ms Tyler, using the Heritage New Zealand criteria. In his evaluation, the building has
- a. considerable aesthetic, functional and townscape significance;

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<sup>68</sup> s42A report, p. 28, para 114

<sup>69</sup> Evidence of Linda Tyler (7 December 2015), first page. Note - Ms Tyler's findings below are not cited as they found throughout her evidence, which contains no page or paragraph numbers.

- b. exceptional architectural and historical significance and;
  - c. minor or no scientific significance;
  - d. moderate technological significance; and
  - e. exceptional social significance.<sup>70</sup>
- 3.68 Mr Salmond shared Ms Tyler's view that the Flats' exceptional significance stems from it being part of a group<sup>71</sup> of buildings of similar style and from the association with the first Labour Government<sup>72</sup>.
- 3.69 In Mr Salmond's opinion, the only grounds or justification for de-listing of the building under a plan change request would be if the request demonstrates that the building should not have been listed. His view was that the heritage evidence before us does not support that finding.<sup>73</sup>
- 3.70 Mr Salmond also commented on the appropriateness of the Requestor seeking demolition of the Flats through a plan change request, as opposed to a resource consent. In his view, the recent Environment Court and High Court cases in relation to the Harcourts Building<sup>74</sup> showed that economic considerations are not a justification for giving consent, and cannot therefore be a justification for a plan change.<sup>75</sup>
- 3.71 For the reasons described in our previous report section, we afforded **Mr Wild** the opportunity to present additional evidence in response to the statements of Ms Tyler and Mr Salmond. He presented this 'rebuttal' statement at the hearing, adopting the same assessment criteria used by the submitters' experts.
- 3.72 Mr Wild's additional evidence did not change any of his substantive findings, but merely expanded upon his rationale for reaching his own conclusions about the respective assessment categories, as distinct from the justification of Ms Tyler and Mr Salmond. We do not repeat that additional assessment here, but will draw on some of Mr Wild's comments subsequently.

### *Submissions*

- 3.73 The s42A report identified twenty-one submissions that take issue with the conclusion that the Flats' heritage significance is moderate. As we noted above, several of these submitters appeared at the hearing to speak to their submissions.
- 3.74 For example, Dr McCarthy presented an extensive written statement in support of the **Architecture Centre** submission. Her presentation included a summary of the Centre's submission and provided a description of the Architecture Centre and its interests.

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<sup>70</sup> Evidence of Jeremy Salmond (undated), paras 15-23

<sup>71</sup> Evidence of Jeremy Salmond (undated), para 15

<sup>72</sup> Evidence of Jeremy Salmond (undated), para 21

<sup>73</sup> Evidence of Jeremy Salmond (undated), para 26

<sup>74</sup> *Lambton Quay Properties Nominee Ltd v Wellington City Council* [2013] NZRMA 39; *Lambton Quay Properties Nominee Ltd v Wellington City Council* [2014] NZRMA 257 (HC); and *Lambton Quay Properties Nominee Ltd v Wellington City Council* [2014] NZEnvC 229.

<sup>75</sup> Evidence of Jeremy Salmond (undated), para 26

- 3.75 It was the Centre's express view that the requirement under RMA s75(3)(c) for the District Plan to give effect to the RPS is the "decisive matter" for the proposal<sup>76</sup>. Furthermore, Dr McCarthy, provided a detailed assessment to underpin the Centre's view that the proposal fails to implement Policy 21 of the RPS, which directs District Plans to identify places of significant historic heritage value<sup>77</sup>. We address the proposal's policy implications in section 4 below, but note here that Dr. McCarthy's illumination of this issue was useful for us.
- 3.76 The joint presentation from **Dr Schrader, Mr Kelly and Mr Cochran** was also extensive. Among other matters, they expressed the following:
- a. the Flats meet 8 of the 12 criteria for listing of heritage buildings in the District Plan;
  - b. the building is significant architecturally as it was the second example of maisonette design used in New Zealand;
  - c. it has significant townscape value, given its visibility and context;
  - d. the building is one of a group of three significant state housing buildings in close proximity;
  - e. the building's linkage to Gordon Wilson and to the policies of the first Labour Government give it historical significance;
  - f. the building's piles and seismic movement measuring equipment give it considerable scientific significance;
  - g. the building has considerable social significance and is able to be adapted for student accommodation without detriment to its heritage value;
  - h. the building's heritage value is of national significance; and
  - i. the building can be seen as Wilson's swansong.<sup>78</sup>
- 3.77 **Ms Cranko** made a brief presentation on behalf of DOCOMOMO NZ. She generally spoke to the group's submission, emphasising their view that the building's heritage values are considerable to exceptional. Ms Cranko also questioned whether the most appropriate assessment criteria had been used to determine the building's heritage significance.
- 3.78 **Mr Davis** outlined his experience with upgrade and adaptive reuse of heritage buildings, and his specific expertise on Gordon Wilson dating back to Mr Davis' University education. He made similar observations to the other submitters appearing in opposition to the de-listing of the building, including:
- a. the building is a very important piece of modernist architecture;
  - b. it is one of two buildings in New Zealand with two level maisonette planning; and
  - c. it is likely that the Flats' heritage value will increase over time with greater societal recognition of architectural modernism's importance.<sup>79</sup>

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<sup>76</sup> Outline of oral submissions, Architectural Centre Incorporated (15 December 2015), p. 8, para 34

<sup>77</sup> Outline of oral submissions, Architectural Centre Incorporated (15 December 2015), pp. 8-16, paras 36-53

<sup>78</sup> Oral submission by Dr Ben Schrader, Michael Kelly and Chris Cochran (16 December 2016), pp. 2-4, paras 11-24

<sup>79</sup> Statement of Ken Davis (16 December 2015), paras 3.2-3.6

- 3.79 Mr Davis acknowledged that different experts ascribed different levels of significance to the building's values; however, he also highlighted that all experts have ascribed at least some heritage significance to the building.<sup>80</sup>
- 3.80 Mr Davis described the manner in which he considered the building could be adapted to accommodate 5-bedroom student flat arrangements, and noted the potential for further site development to occur around the building on the balance of the site as part of the University gateway.<sup>81</sup>

*Discussion and findings*

- 3.81 Before turning to our substantive evaluation of this matter, we firstly need to clarify our position on the **weighting of expert and submitter views** before us.
- 3.82 Mr Slyfield provided us with the view that the only two experts we can rely on with respect to historic heritage expertise are Mr Wild and Ms Rickard<sup>82</sup>. He said:

53. *The other information before you is of two sorts. First is information tendered in the form of submissions or advocacy. In this category is the information of Mr Kelly, Dr Schrader, Mr Cochran, Ms McCarthy, Mr Davis and Ms Cranko. While each of them has some qualifications relevant to assessing heritage matters (some perhaps less qualified than others) they all chose to provide their views in the form of submissions/advocacy. You cannot place the same weight on opinions offered in that way, as you can on opinions offered in the form of independent expert advice.*

54. *The second sort of information before you is in the form of documents prepared by experts, who did not present at the hearing. In this category are the statements of Ms Tyler and Mr Salmond. While their material is arguably more 'independent' than the views offered by the submitters themselves, the failure to have them attend the hearing, listen to the evidence offered by the applicant, confirm the opinions expressed in their written documents, and answer questions in relation to that material, means that you can place no reliance upon it.*

- 3.83 No party appearing before us provided a view contrary to Mr Slyfield's and we accordingly adopt his position, which we consider accurately represents the procedural requirements of the Act.
- 3.84 All of the submitters falling into the first 'sort' highlighted by Mr Slyfield made clear that they were not appearing as experts. In some instances – for example in Mr Davis' statement – the submitters clarified they had a 'special interest' or personal affinity for the building, which directly speaks to an inability to demonstrate independent expertise on the matter.
- 3.85 The inability for us to test the evidence of Ms Tyler and Mr Salmond (the second sort of information described by Mr Slyfield) also presents an insurmountable hurdle to our reliance on their views as independent experts. Were these witnesses able to attend the hearing to confirm their views and address any

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<sup>80</sup> Statement of Ken Davis (16 December 2015), para 3.5

<sup>81</sup> Statement of Ken Davis (16 December 2015), sections 4 and 5

<sup>82</sup> Closing submissions (21 December 2015), p.12, para 52

questions arising from us, our evaluation of heritage significance may well be tasked with balancing the differing views of four experts. As it transpired, the expertise we are able to draw upon is indeed limited to the shared views of Mr Wild and Ms Rickard.

- 3.86 This is not to denigrate from the useful information provided by the submitters or their experts to assist our own evaluation. Indeed much of that information greatly enhanced our understanding of the building's significance and its historical context. However, that information and the significance attributed to the building by submitters simply does not qualify as expert evidence.
- 3.87 Before, evaluating the evidence of Mr Wild and Ms Rickard, we wish to briefly comment on the role of the District Plan provisions in our evaluation. That comment is simply to note that the Council's District Plan is itself of little assistance in coming to a view as to the relative heritage significance of listed buildings, as the Plan deems all listed buildings as being of equal merit; however, that clearly is not the case. It therefore falls to us to weigh up the evidence before it and come to a conclusion on this matter.
- 3.88 Against the above backdrop, the shared view of Mr Wild and Ms Rickard is that **the overall significance of the building is moderate**, and we accept that evidence.
- 3.89 As noted above, there was some **contention from submitters about the validity of the assessment criteria used** by Mr Wild and Ms Rickard. Some parties favoured the District Plan criteria for listing; others the Heritage New Zealand criteria, and others still the provisions in the RPS. We accept that these mediums differ slightly in their approach, but this is not materially troubling having compared the various criteria. In that respect, we agree with Mr Slyfield that there is sufficient overlap between the different assessment approaches and sufficient rigour in the assessments themselves such that we need not pick one set of criteria over the others.<sup>83</sup>
- 3.90 We do return to this particular point in section 4, however, as it relates to the proposal's strategic fit with the RPS and the policy outcomes Dr McCarthy focussed on. We are also compelled to note that the 2012 WCC assessment that Ms Rickard drew upon (which also found the building to be of moderate value) was subject to internal peer review and also independent review from Mr Kelly.
- 3.91 Related to this, Mr Batley tabled a copy of the District Plan heritage inventory with annotations from Mr Kelly in his independent advisor capacity during the 2012-2014 WCC review process. The table included notations for 80 listed buildings labelled as "very significant," with the remainder of buildings coming under the label "significant or remove".
- 3.92 We were not able to test with Mr Kelly or Ms Rickard the specific context surrounding the generation of this table, what (if anything) has been done with the information as part of the Council's work programme, or how the table might be of use to our own evaluation of the building's significance. As such, we are reluctant to afford any material weight to it, other than to note that the table does not directly conflict with the finding that the building's significance is moderate.

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<sup>83</sup> Closing submissions (21 December 2015), p.15, para 60

3.93 Similarly, we are cautious not to artificially apply meaning to **the submission from Heritage New Zealand (HNZ)**, or its position of not opposing the building's de-listing and potential demolition. Several parties speculated about the submitter's position during the hearing, but we do not find merit in doing the same. In this respect we simply note the comments of Mr Slyfield who said:

*Victoria does not suggest that Heritage New Zealand's stance is a significant matter for (our) consideration, yet it is a matter to take into account. Heritage New Zealand's position is less compatible with the submitters' assertions of exceptional heritage value, than it is compatible with Mr Wild and Ms Rickard's expert assessments of moderate heritage value.*<sup>84</sup>

3.94 The HNZ submission clarified that the neutral position was on the basis that the Gordon Wilson Flats building is not on the national list administered by Heritage New Zealand, though HNZ does list two other Wellington buildings (Centennial Flats and Dixon St Flats) of this social housing genre as Category One buildings. We simply acknowledge that latter point that the building's heritage value has not been identified as nationally significant or of such local or regional significance to warrant listing to date.

3.95 More significantly, we also found compelling the Requestor's evidence that reasonable alternatives to demolition have been considered in great depth, and that those investigations have ruled out any alternatives as viable. The scale of the financial gap between the cost of strengthening and refurbishment, and the resultant value, for any purpose, is of such a magnitude that we accept it makes retention of the building unviable.

3.96 Even if adaptive reuse of some sort was deemed to be viable, the expert evidence is also that the nature and scale of works required to sufficiently strengthen the building would have significant effects on the heritage values of the building. Moreover, these effects would be compounded by the additional modifications required to modernise the facilities and make them fit for their adapted purpose.

3.97 These findings, coupled with the potential positive effects to be derived from redevelopment of the site for University purposes and the finding of (overall) moderate heritage significance for the existing building, support the case for de-listing in our view.

3.98 We note our agreement with Mr Batley that neither de-listing nor demolition of heritage buildings are prohibited by the District Plan. In fact, the Plan contemplates the very scenario where no reasonable alternative exists as the *only* reason for considering demolition.<sup>85</sup>

3.99 In reaching the finding that de-listing is appropriate, we record that our view may well have been different if the heritage value of the building was deemed to be exceptional. Similarly, if the Requestor had not successfully demonstrated that the assessment of reasonable alternatives was exhaustive and fruitless, we may have reached a different view on the appropriateness of the de-listing.

3.100 However, on the evidence we were presented, we find that de-listing the building is the most appropriate outcome.

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<sup>84</sup> Closing legal submissions for the Requestor (21 December 2015), p.10, para 39

<sup>85</sup> Policy 20.2.1.2

### Issue 3: Activity effects on local amenity

#### *Issue identification*

- 3.101 This section focusses on issues of local amenity arising from the proposal. For legibility purposes, this section does not address the impact of built form on amenity or on amenity effects attributed to potential demolition of the Gordon Wilson Flats – those matters are addressed subsequently.
- 3.102 Broadly, the matters canvassed here relate to nuisance effects associated with student behaviour – most notably noise and anti-social behaviour.
- 3.103 The **plan change request** notes that, to the extent that these effects are relevant to the plan change, these effects are proposed to be managed by the operative District Plan standards for noise. This includes the standards under Clause 9.1.1.2 in the District Plan, which comprise the following requirements of most relevance:
- a. noise emission limits of 60dB ( $L_{A_{EQ}(15\text{ min})}$ ) and 85dB ( $L_{A_{Fmax}}$ ) measured within the boundary of any site or at the outside wall of any building on any site in the Institutional Precinct Zone other than the site in which noise is emitted;
  - b. when measured on any residential site in the Inner Residential Area noise limits must not exceed:
    - i. 55dB ( $L_{A_{EQ}(15\text{ min})}$ ) Monday to Saturday 7am to 7pm
    - ii. 50dB ( $L_{A_{EQ}(15\text{ min})}$ ) Monday to Saturday 7pm to 10pm
    - iii. 40dB ( $L_{A_{EQ}(15\text{ min})}$ ) all over times; and
    - iv. 70dB ( $L_{A_{Fmax}}$ ) all days 10pm to 7pm
- 3.104 Council’s Manager Compliance and Advice, **Mr Matthew Borich**, provided an addendum to the s42A report in relation to noise matters<sup>86</sup>. Mr Borich’s report noted that noise levels emanating from activities associated with a rezoned 320 The Terrace would be highest at immediately adjacent sites, with noise levels reducing with distance and potential screening at the other residential sites<sup>87</sup>. Accordingly, and given the nature of the receiving environment, his report concentrated on the possible effects from the proposed rezoning at the immediately adjoining Inner Residential sites.
- 3.105 The noise report observes that, relative to the operative Inner Residential Zone noise standards applying to the site presently, the plan change will result in an increase in permitted daytime noise generation from 50 to 55dB ( $L_{A_{EQ}(15\text{ min})}$ ) for noise generated by general activities and from 45 to 55dB ( $L_{A_{EQ}(15\text{ min})}$ ) for noise emanating from mechanical plant. Notwithstanding this increase, Mr Borich’s view was that:
- a. a noise limit of 55dBA is the upper recommended noise limit specified in the relevant New Zealand Standard (NZS 6802:2008) for the acceptable level of daytime noise received in residential areas;

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<sup>86</sup> Attachment D to s42A report

<sup>87</sup> Attachment D to s42A report, first page

- b. the ambient daytime noise environment was observed as being notably higher than the 55dBA standard; and
  - c. accordingly, the overall effect of the increase in permitted daytime noise limits proposed by the plan change will be negligible.<sup>88</sup>
- 3.106 In addition, Mr Borich's report advised that day to day activities that may cause a nuisance such as parties or loud stereos are subject to the excessive noise provisions in s326 of the RMA<sup>89</sup>. We have interpreted Mr Borich's meaning that the provisions of s327 and 328 are also applicable – these sections grant enforcement powers to Council and set out compliance obligations to generators of excessive noise (respectively).
- 3.107 We also acknowledge the input of **Mr Cameron**, who appeared at the hearing on Mr Borich's behalf, having adopted his report. Mr Cameron provided additional information about the Council complaints process for excessive noise and subsequently tabled a sample noise complaint inventory for our consideration.
- 3.108 He noted that – contrary to the statement of Mr Bowater – *all* complaint calls get logged, irrespective of whether the same caller made a previous call on the same day or in respect of the same incident. He clarified that call logs record the name of the caller, the time and date, and a description of the nature and severity of the noise.
- 3.109 He also explained that callers are instructed to call back after 20 minutes if the noise persists, and during that 20 minute 'stand down' period, enforcement officers are not deployed to investigate. However, given the complaints history for Kelburn Park, Mr Cameron advised that the 20 minute stand down does not apply where complaints are received in relation to the Park, and officers are dispatched immediately.
- 3.110 Of particular note, Mr Cameron advised that compliant records for Kelburn Park for the previous two years had been reviewed in readiness for the hearing. While many attendances were made by enforcement officers to the Park over that time, noise generated there was not once deemed to be 'excessive' by the attending staff.
- 3.111 **Ms Bentley's evidence** spoke to the concerns raised by submitters about poor student behaviour and associated nuisance. She gave the view that the submissions give an 'erroneous' impression that the bad behaviour is widespread or constant<sup>90</sup>. She also described the frequency of nuisance complaints received as 'occasional' and 'extremely small considering the number of students [accommodated] across [VUW's] halls of residence.'<sup>91</sup>
- 3.112 Ms Bentley added:

*While the University provides accommodation for students, they are responsible for their own behaviour. We would all like students to behave in socially acceptable ways and almost all of them do. However, we are not guardians of the very small minority who occasionally do not. They are adults and members of the community, and the occasional disturbance that affects some of our*

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<sup>88</sup> Attachment D to s42A report, fourth page

<sup>89</sup> Attachment D to s42A report, fourth page. RMA section 326 sets out the meaning of excessive noise.

<sup>90</sup> Evidence of Jenny Bentley (1 December 2015), p.8, para 31

<sup>91</sup> Evidence of Jenny Bentley (1 December 2015), p.8, paras 32-33

*neighbours tends to occur from public places. That creates some difficulties for the University that we are working hard to address.*<sup>92</sup>

- 3.113 Ms Bentley noted that to date the University has implemented a number of measures to mitigate poor student behaviour, including:
- a. official guidelines and briefings to students about appropriate behaviour;
  - b. provision of vans to transport students to and from the CBD;
  - c. health and well-being support and safe alcohol consumption education;
  - d. implementation of alcohol management strategies including alcohol free areas and floors in halls of residence;
  - e. penalties for breaches of behaviour regulations including community service, suspension or eviction;
  - f. regular security patrols; and
  - g. regular clean-up of Kelburn Park.<sup>93</sup>
- 3.114 Notwithstanding these measures, Ms Bentley acknowledged that VUW's attempts to mitigate poor student behaviour were unsatisfactory to some of the University's neighbours, and that improvements could be made<sup>94</sup>.
- 3.115 She closed her discussion on the matter by reminding us that student accommodation is a permitted activity in the existing Inner Residential Zone (i.e. the current zoning over the site), subject to meeting activity standards. Further, Ms Bentley cautioned us against the prohibition (or non-permission) of student accommodation for reasons of precedent. In her view, it is not justified to deny such a housing resource on the basis that it is not considered acceptable by some residents.<sup>95</sup>

### *Submissions*

- 3.116 As foreshadowed above, this was one of the key matters addressed by submitters who appeared at the hearing proceedings.
- 3.117 We heard from several local residents in the vicinity of VUW that there are current problems with excessive noise and anti-social behaviour by students in the vicinity. A theme that emerged from the presentations of these submitters was that there were particular 'trouble spots' for excessive noise and nuisance effects – namely around Kelburn Park and around the Terrace.
- 3.118 **Mr Blincoe and Ms Walker** added that they have communicated their disquiet about student behaviour with VUW since 2011. In their view, the adverse effects of student behaviour are significant and systemic. Likewise, they disputed that the frequency of anti-social student behaviour is occasional or representative of a small minority.<sup>96</sup>

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<sup>92</sup> Evidence of Jenny Bentley (1 December 2015), p.8, para 34

<sup>93</sup> Evidence of Jenny Bentley (1 December 2015), pp.8-9, para 35

<sup>94</sup> Evidence of Jenny Bentley (1 December 2015), p.9, para 36

<sup>95</sup> Evidence of Jenny Bentley (1 December 2015), p.9, para 37

<sup>96</sup> Tabled Hearing Statement of John Blincoe and Wendy Walker (15 December 2015)

- 3.119 **Mr Bowater** signalled clearly that he is not concerned about the demolition of the Gordon Wilson Flats or by the building(s) that would replace them. His primary concern is about the potential future *use* of the site, and the decision he sought is that the building not be used for student accommodation, student union events or as a public thoroughfare after normal business working hours.<sup>97</sup>
- 3.120 Mr Bowater advised that his family is commonly woken several times on weekend evenings by small groups talking loudly or yelling. He reported also observing littering, vandalism, and other anti-social behaviour at times.<sup>98</sup>
- 3.121 Mr Bowater noted that he has made several complaints with the Council. He expressed concern that the manner in which complaints are lodged does not paint a comprehensive picture of the scale of the problem with poor student behaviour.<sup>99</sup>
- 3.122 He also commented on his frustrations with the apparent lack of effective action from the University in mitigating the poor behaviour of its students. In his view, the problems would only be exacerbated by the proposed rezoning and enabling of student accommodation activities in particular.<sup>100</sup>
- 3.123 **Ms Koptisch** also signalled her opposition to the rezoning and the potential enabling of student accommodation on the site. She identified anxiety, stress and sleep deprivation for her and her family as consequences of poor student behaviour.<sup>101</sup>
- 3.124 Ms Koptisch expressed a desire for the Council and VUW to take accountability of the existing nuisance problem and to remedy it.
- 3.125 Like the other local submitters, we heard from, **Ms Ronberg** reported a notable increase in anti-social behaviour by students in recent years. She ascribed that increase to a change in alcohol policy at VUW, which included the introduction of a liquor curfew in residence halls from 10pm. She sought the plan change to be put on hold until such time as VUW could improve its management of student behaviour.

#### *Discussion and findings*

- 3.126 We found the presentations of the submitters to be compelling, and accordingly have difficulty accepting Ms Bentley's description of the student behaviour problem as 'occasional.' Not only does that description seem out of step with the submitters' views, it also fails to take any account of the nature or severity of the actual nuisance to local residents.
- 3.127 It is evident to us that there is indeed a nuisance that is unacceptable at times, and there is no dispute from VUW that it is predominantly its students that are to blame for that effect. For Ms Bentley to claim that student behaviour is not the

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<sup>97</sup> Tabled Hearing Statement of Ken Bowater (15 December 2015), first page

<sup>98</sup> Tabled Hearing Statement of Ken Bowater (15 December 2015), first page

<sup>99</sup> Tabled Hearing Statement of Ken Bowater (15 December 2015), second page

<sup>100</sup> Tabled Hearing Statement of Ken Bowater (15 December 2015), third and fourth page

<sup>101</sup> Tabled Hearing Statement of Nicola and Norbert Koptisch (undated), p.2

University's responsibility is unfortunate, and frankly, we expect better from an organisation of its social and cultural importance and reputation. The change in alcohol policy at VUW without any obvious review of its effectiveness (or otherwise) is but one example of this.

- 3.128 Related to the above, and whilst we acknowledge that the University has implemented a number of measures to mitigate poor student behaviour, the evidence would suggest that these are not working and that it is time to review their effectiveness as consider alternatives. In this respect, we urge VUW to improve its management of student behaviour to reduce nuisance effects to a more acceptable level including through collaboration with neighbours and the Council.
- 3.129 That said, we do not agree with the submitters that the existing nuisance effects will be exacerbated by the rezoning of the site itself. As Ms Bentley and Mr Coop illustrated, residential activities – including student accommodation – are permitted activities in the existing Inner Residential Zone. In other words, provided relevant bulk and location standards are complied with, halls of residence could be established as of right under the current zoning. In this respect, there is a net nil effect in the rezoning itself as it relates to amenity effects arising from permitted activities in the proposed and operative zones.
- 3.130 While we certainly have sympathy for the neighbours given their presentations, we agree with Ms Bentley that it is not appropriate for us to discriminate against a particular type of housing, or more specifically type of resident, particularly when there is no evidence that that housing *itself* is creating an adverse effect. Discriminating against a type of resident is, in our view, clearly inconsistent with the Resource Management Act and the District Plan provisions. In fact, the common theme from the submitters was that the nuisance was concentrated predominantly in Kelburn Park, or in the array of public and private spaces between the CBD and the halls of residence - not within, or immediately outside of, the halls themselves.
- 3.131 Again, we find this speaks more to the need for a greater custodial role of the University, the Council and (in limited circumstances) the Police than it does to the limitation of otherwise appropriate student activities on the plan change site.
- 3.132 To this end, we do not recommend the acceptance of the submissions seeking that student accommodation be prohibited and/or that such activities proposed on the site be publicly notified as a matter of course.
- 3.133 We also accept the evidence presented by the Council that the proposed permitted activity rules for noise generation are appropriate, and are generally consistent with the approach already adopted in the District Plan for similar sites. In satisfying ourselves that this is the case, we note also that sufficient regard has been given to the ambient noise environment and to Council's complaint procedure and compliance and enforcement functions.
- 3.134 Overall, we find that the rezoning itself and the associated activity controls in the Operative District Plan and plan change package are appropriate to manage effects of future land use activities on the surrounding residential environment. We have not been presented with any evidence to unequivocally link the rezoning of the site or the associated permitted activities enabled by the Institutional Precinct Zone to an increase in nuisance effect.

- 3.135 In concluding this issue discussion, we acknowledge the University's aspirations to grow its roll, and to focus growth to the greatest extent in and around the Kelburn campus. It is not unreasonable, in our view, for local residents to be wary of an associated increase in nuisance effect with a greater student population. Accordingly, we again urge VUW to take greater accountability of its students' behaviour and better ensure the existing nuisance on the surrounding community is sufficiently mitigated.

#### **Issue 4: Built form – streetscape, townscape & effects on neighbours**

##### *Issue identification*

- 3.136 This section of our report considers the impact of future development enabled by the plan change request.
- 3.137 **The plan change request** addresses this issue at multiple junctures. It describes bespoke provisions adopted by the proposal to manage the impact of future development on the immediate environment, as well as on broader townscape values.
- 3.138 For example, the adoption of the Inner Residential Zone sunlight recession plane standards will ensure immediate neighbours retain the level of daylight amenity currently provided by the operative plan rules. Retention of the Inner Residential Zone site coverage standard and a new proposed 5m maximum wall length for buildings are similarly proposed to manage building dominance on neighbours and the streetscape.
- 3.139 The proposal also elevates the 'entry' activity status for new buildings relative to the existing provisions in the Institutional Precinct from controlled to restricted discretionary. This approach aligns with the expectation for multi-unit housing in the Inner Residential Zone which requires restricted discretionary activity consent for building design and appearance.
- 3.140 New building proposals will be assessed against the Victoria University Design Guide, which has in turn been updated to include site-specific design objectives and guidelines for 320 the Terrace.
- 3.141 The design guide amendments and proposed building and landscaping provisions were informed by an urban design assessment from Mr Andrew Burns and **McIndoe Urban at Appendix 8 to the request**. The assessment focused on ten key principles for site redevelopment, including (in summary):
- a. establish a new gateway;
  - b. manage the residential to institutional character transition;
  - c. work with natural contours;
  - d. enhance connections between the Terrace and University campus;
  - e. manage built form, massing and height;
  - f. achieving a mix of open spaces;
  - g. manage built form to respect short, medium and long range views;
  - h. create legible, visible entrances to the site;

- i. explore elevated secondary spaces with connections to buildings and views out from the site; and
- j. activate building edges.

3.142 The **s42A report** also addressed this issue from several perspectives. Of most note, **Ms Desrosiers** provided an urban design review of the proposal at Attachment C to the report, which presented the following opinions:

- a. the permitted building height 'zones' in the proposed provisions are appropriate as they maintain amenity to neighbours, provide a suitable transition in scale and enable an appropriate scale of building to be established along the Terrace;
- b. the proposed site coverage standard is appropriate as it maintains partial views of the vegetated escarpment;
- c. the retention of the Inner Residential sunlight access plane standard is appropriate to further ensure amenity for neighbours;
- d. notwithstanding her general support for the majority of the building bulk and location standards and the Design Guide, Ms Desrosiers proposed three amendments, being:
  - i. amend the proposed building standards such that no façade of any building exceeds 30m in length (rather than just facades within 10m of residential neighbours);
  - ii. amend the massing guideline in the Design Guide to align with the above recommendation about building length; and
  - iii. add a new guideline read, "*Minimise encroachment by buildings into the area of vegetated escarpment visible from Ghuznee Street*".<sup>102</sup>

3.143 Ms Desrosiers proposed the third amendment above in recognition of her opinion that the view corridor between Ghuznee Street and the vegetated escarpment warrants specific consideration as part of future development proposals.<sup>103</sup>

3.144 **Mr Batley** largely adopted Ms Desrosiers' assessment and signalled his general agreement with the assessment of this issue in the plan change request. However, Mr Batley did signal a difference of opinion from Mr Coop in relation to one matter, being the non-notification clause for proposed Rule 9.3.2. In Mr Batley's view, the Council's ability for limited notification should be reserved and assessed on a merits basis for any future application.<sup>104</sup>

3.145 **Mr Coop** addressed this matter in his evidence. He gave the view that adoption of Mr Batley's preference would have significant implications for investment confidence. He added that retaining the option for limited notification would have a 'destabilising effect' and could 'erode support for Council control of building aesthetics.'<sup>105</sup>

3.146 Mr Coop presented a table of the various rules in the District Plan that control building design and appearance, including in the Institutional Precinct Zone,

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<sup>102</sup> Attachment C to s42A report, pp. 1-7

<sup>103</sup> Attachment C to s42A report, p. 6

<sup>104</sup> s42A report, pp. 35-36, para 156

<sup>105</sup> Evidence of Peter Coop (1 December 2015), p.16, para 59

Residential Zones, Business Areas and Central Area. The table demonstrated that the prevailing approach in the Plan for *all* of these areas is for such proposals to be considered on a non-notified basis with matters of design and appearance resolved by discussion between urban design experts for applicants and Council. He gave the view that there is no persuasive reason for 320 the Terrace to change this typical approach in the Plan.<sup>106</sup>

- 3.147 Both **Mr Coop and Mr Burns** disagreed with Ms Desrosiers' recommendation for a new guideline to preserve views of the escarpment from Ghuznee Street. Mr Coop's concern was based on the lack of clarity in the proposed guideline about the exact location along Ghuznee for the guideline to be assessed from. He feared the guideline would ultimately be overly restrictive following demolition of the Flats and associated opening up of broad views of the escarpment.<sup>107</sup>
- 3.148 Mr Burns' concern about the proposed guideline related to a large portion of the vegetated escarpment being located outside of the plan change site. His opinion was that the proposed combination of building standards and guidelines seeking visibility of the escarpment generally would ensure sufficient views of the escarpment are retained.<sup>108</sup>
- 3.149 Mr Burns also attached proposed amendments to the design guide arising from pre-hearing discussions held between the Requestor and Council. In summary, these amendments included new objectives and guidelines relating specifically to view retention of the escarpment, breaking down the mass of built form to 'step' up and across the site, and modulation of building length.<sup>109</sup>
- 3.150 We discuss these and other proposed changes to the provisions arising over the course of the hearing subsequently.

#### *Submissions*

- 3.151 A number of submissions<sup>110</sup> opposed the proposed rezoning, owing to a preference for the Residential Zone development rules to prevail.
- 3.152 **Mr and Mrs Sage's** submission highlighted their general concern about the impact of new development on the value of their property, including as a result of effects on views.
- 3.153 **Living Streets Aotearoa's** submission sought that full notification be enabled under proposed Rule 9.3.2, given the prominence of the site and its location. This outcome was shared by **Roland Sapsford**, who also considered the importance of the site warrants consideration of future development as a fully discretionary activity.
- 3.154 The submission from **MANA Newtown** considered that the site's current residential character should be retained, and that the Institutional Precinct provisions would not be appropriate.

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<sup>106</sup> Evidence of Peter Coop (1 December 2015), pp.15-16, paras 57- 62

<sup>107</sup> Evidence of Peter Coop (1 December 2015), p.14, para 52

<sup>108</sup> Evidence of Andrew Burns (1 December 2015), pp.17-18, paras 40-42

<sup>109</sup> Evidence of Andrew Burns (1 December 2015), pp.13-14, paras 29-30

<sup>110</sup> For example, Submission 4

- 3.155 **Fernhill Body Corporate** sought a 15m yard setback for new development adjoining its shared boundary with the plan change site. The submission also sought direct notification of the body corporate for any future development proposal.

*Discussion and findings*

- 3.156 Overall, we signal our agreement with the Council and Requestor's planning and urban design experts that the approach to managing building design and appearance is appropriate. That said, the provisions evolved over the course of the pre-hearing, hearing, and post-hearing stages. Accordingly, we consider it necessary to record the process and reasons for the changes in approach from notification to this point.
- 3.157 Before we do that, however, we want to record our view on some of the high-level points in contention for this issue. Turning firstly to the issue of **notification for future proposals under Rule 9.3.2**, we signal our agreement with Mr Coop that the design and appearance assessment matters are most appropriately considered through a non-notified process, provided that the building standards set out in proposed Appendix 4 are adhered to.
- 3.158 Where those standards for height, site coverage, recession planes, yards or building length are not met, we understand from the evidence of Mr Batley and Mr Coop that the presumption for non-notification will be lost. Such proposals are to be considered as a fully discretionary activity under Rule 9.4.1 which encapsulates any activity not specifically provided for as a permitted or controlled activity.
- 3.159 We agree with Mr Coop that there is no credible justification before us to warrant a departure from the typical notification approach adopted in the District Plan for design and appearance-led development controls. In this same respect, we do not share the view Mr Batley gave in response to our questioning that this site and its context warrant a more 'conservative approach' to notification where technical design considerations are at issue.
- 3.160 The Council retains the ability to notify neighbours where breaches of the proposed bulk and location standards may affect neighbouring amenity, and we ultimately consider that is the appropriate arena for potential third party involvement – not through resolution of technical design matters.
- 3.161 We note that by the close of the hearing, there was full agreement between the planning and urban design experts for the Council and Requestor about the specific amendments to the notified provisions that should be adopted. In summary, these include:
- a. the following amendments to proposed Appendix 4 to Institutional Precinct Rules:
    - i. clarification about permitted height levels for improved legibility;
    - ii. enhancement of provisions to manage effects of built development on the visibility of the escarpment, including identification of a 'sub-area' overlay over the escarpment with a reduced 35% site coverage for that area;

- iii. increase of the 5m yard standard along the site's southern boundary with 324 The Terrace to 10m to ensure views of the escarpment from Ghuznee Street;
  - iv. adoption of Ms Desrosiers suggested 30m façade length provision; and
  - b. revisions to the Design Guide to improve clarity, and better implement the 10 key principles underpinning Mr Burns' original assessment and Ms Desrosiers suggested amendments described above.
- 3.162 We have adopted these proposed amendments in our copy of the annotated plan change provisions at **Appendix 3**. We have also included at **Appendix 4** to our report a copy of the information provided by the planning and urban design witnesses justifying and explaining the various amendments. For the record, we adopt that assessment as our own.
- 3.163 Finally, we have taken the opportunity to refine the 'mechanics' of the plan change amendments to Chapter 9, and to make some consequential changes to the more informative elements of the chapter (as opposed to the statutory elements) to assist with integration of the provisions into the Operative Plan. In summary, these amendments include:
- a. consequential addition of Rules 9.2.3 and 9.3.2 into the 'Guide to Rules' at the start of Chapter 9;
  - b. consequential addition of proposed Appendix 4 to the 'Schedule of Appendices' at the start of Chapter 9;
  - c. relocation of the notified permitted activity standard for buildings (9.1.1.1.3) to a new (rephrased) standard and term under Rule 9.3.2, and inclusion of a margin note under Rule 9.1.1 to clarify that Rule 9.3.2 prevails for buildings and structures at 320 The Terrace;
  - d. a new exception under the Controlled Activity Rule for new buildings and structures (Rule 9.2.1) to clarify that the rule does not apply to buildings or structures at 320 The Terrace;
  - e. consequential reference to new rule 9.3.2 in the introductory statement to section 9.3; and
  - f. an addition to Discretionary Activity (Unrestricted) Rule 9.4.1 to more explicitly signal that non-conformity with the proposed standards in Appendix 4 defaults to Rule 9.4.1.
- 3.164 These amendments are 'cosmetic' only. In our view, they are clearer than the notified provisions, and achieve the same outcome, being that new buildings and structures:
- a. will be assessed as a discretionary activity (restricted) and non-notified where they comply with the standards in Appendix 4; and
  - b. will be assessed as a discretionary activity (unrestricted) where the Appendix 4 standards are not met, with no presumption for non-notification.
- 3.165 With these amendments made we find that the proposed approach to the management of future built development is appropriate. The restricted discretionary consent pathway, in conjunction with the provisions of the Design Guide will ensure a high-quality design outcome that manages effects on

neighbours, the streetscape, and short, medium and long range views of the escarpment. Neighbouring amenity and views of the escarpment will be further managed and enhanced through the building bulk and location provisions in Appendix 4 to Chapter 9.

*S32AA summary*

- 3.166 For the reasons set out immediately above and in **Appendix 4** to this report, we consider the annotated provisions in **Appendix 3** are more effective at achieving the settled and proposed objectives of the Plan than the notified provisions. Greater clarification and certainty of design outcomes anticipated have been incorporated into the rules and design guide provisions to ensure the future consent process for development is as efficient as possible.
- 3.167 Accordingly, we consider the provisions as amended in Appendix 3 are the most appropriate to achieve the objectives and policies of the Plan.

## Issue 5: Demolition management

### *Issue identification*

- 3.168 Section 4.7 of the **plan change request** identifies the effect issues associated with the potential demolition of Gordon Wilson Flats. While the physical effects of demolition are largely temporary, they are potentially wide ranging and include:
- a. health and safety, security and protection of life and property;
  - b. management of hazardous materials;
  - c. management of dust and noise effects; and
  - d. traffic management.
- 3.169 In addition, the request notes an important aspect of demolition management in established urban areas is the procedures for receiving and resolving complaints.
- 3.170 The primary means proposed to be adopted to manage these physical effects is through a demolition management plan ('DMP'). The plan change also proposes a new controlled activity rule (Rule 9.2.3) specifically to manage the effects of the Flats' demolition. The matters of control specified under the proposed rule include:
- a. noise effects assessed against the relevant NZ construction noise standard<sup>111</sup>;
  - b. the demolition method, duration, timing and hours of operation;
  - c. effects on amenity; and
  - d. a physical record of the building prior to demolition.
- 3.171 Appendix 9 of the plan change request contains a draft DMP prepared by **Mr Bob Hall**, a highly experienced and respected practitioner in demolition management and construction practice.
- 3.172 Mr Hall also presented a brief of evidence to us and responded to a number of questions we raised. He noted his support for the proposed controlled activity approach, which enables Council to have an oversight role in the demolition process.
- 3.173 He also strongly supported the use of a DMP, which has two main purposes in his view:
- a. the primary purpose is to provide information on how the physical activity of demolition is proposed to proceed, who is likely to be affected, and how any concerns relating to environmental effects, well-being, and health & safety of neighbours and the general public have been considered and addressed; and
  - b. it also sets the operational basis for future contractors to work within, including the requirement for a complaints procedure to be followed.<sup>112</sup>

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<sup>111</sup> NZS6803:1999 Acoustics – Construction Noise

<sup>112</sup> Evidence of Bob Hall (1 December 2015), pp.3-4, paras 11-12

- 3.174 Mr Hall also highlighted the independent acoustic review of the draft DMP by Marshall Day Acoustics (also contained in Appendix 9 to the plan change request). The acoustic review underscored the need for community liaison and complaints procedures given the nature of the demolition required and the characteristics of the receiving environment.<sup>113</sup>
- 3.175 Mr Hall's evidence also commented on submissions relating to demolition effects<sup>114</sup>. He firstly responded to concerns raised about asbestos which would be encountered during deconstruction of the Flats. Mr Hall noted that the DMP would include specific procedures which must be followed, including (among others):
- a. removal would be overseen by a recognised asbestos expert who must be accredited for the work by Work Safe NZ;
  - b. specific removal, temporary protection and decontamination measures;
  - c. appropriate containment and removal procedures;
- 3.176 In his view, sufficient measures would be in place to manage adverse health impacts from asbestos exposure associated with the proposed demolition.
- 3.177 Mr Hall also responded to submitter concerns relating to the extent of consultation that would be undertaken by VUW and its contractors before and during demolition<sup>115</sup>. Mr Hall noted in evidence that the consultation and communication would be undertaken within an appropriately broad catchment of potentially affected parties.<sup>116</sup>
- 3.178 **Mr Borich's** addendum to the s42A report addressed the proposed approach to demolition management. His overall conclusion was that, provided "*the demolition is undertaken in accordance with an approved DMP that is in general accordance with draft DMP, the noise effects from the demolition of the Gordon Wilson Flats at 320 The Terrace will be reasonable.*"<sup>117</sup>
- 3.179 Another addendum<sup>118</sup> was attached to the s42A report from **Mr Soon Teck Kong**, Council's Manager, Transport Network. Mr Kong's view that the proposed controlled activity rule will give Council sufficient ability to assess the DMP and to impose conditions to avoid, remedy or mitigate the temporary adverse effects of demolition on the transport network was uncontested.

### Submissions

- 3.180 As alluded to above, **Submission 22** from Mr Ken Mitchell raised concerns about asbestos exposure during proposed demolition activities. The submission sought that a specific plan be prepared and made publically available for that purpose,

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<sup>113</sup> Appendix 9 of the plan change request, Letter of 18 June 2015 from Marshall Day Acoustics to Peter Coop entitled *GORDON WILSON FLATS – DEMOLITION PLAN NOISE REVIEW*. Page 2

<sup>114</sup> In particular, Submission 22 (Mr Ken Mitchell)

<sup>115</sup> In particular, Submission 33 (Fernhill Body Corporate)

<sup>116</sup> Evidence of Bob Hall (1 December 2015), pp.6-7, paras 22-24

<sup>117</sup> Attachment D to s42A report, sixth page

<sup>118</sup> Attachment B to s42A report

and that the plan includes specific measures to minimise any adverse effects of asbestos on the public.

- 3.181 **Submission 28** (Ms Patricia Gruschow) sought that local residents be notified of all demolition and construction plans.
- 3.182 Finally, **Submission 33** (Fernhill Body Corporate) raised the issue discussed above about the extent to which future communication and consultation with neighbours should be carried out. Specifically, the submission noted that Housing NZ and Wellington Electricity Ltd would be expressly consulted with, whilst other parties were not expressly identified.
- 3.183 None of the above submitters presented to us at the hearing.

*Discussion and findings*

- 3.184 Generally, we accept the uncontested evidence of Mr Hall that the proposed controlled activity rule and DMP-led management approach will be appropriate to manage the effects of the proposed demolition of the Gordon Wilson Flats. However, as indicated previously we consider that the evidence strongly points to a need for some minor refinements to the rule as notified.
- 3.185 Given the recommendations of the Marshall Day Report and Mr Borich's review, a number of our questions to Mr Hall focussed on the consultation and communication aspects of the DMP. We took comfort when he expressed he would be "horrified" if the DMP was developed and/or implemented without VUW and its contractors first initiating a comprehensive communication plan with the wider community.
- 3.186 We also appreciate the emphasis Mr Hall stressed to us about the complaints procedure as an ongoing mechanism to maintain that line of communication. In his view, the plan change provisions make it clear that these matters will be sufficiently addressed, and the Council's role in administering the controlled activity consent for the demolition would provide further quality assurance.
- 3.187 However, in our questioning of both Mr Hall and Mr Coop, it was accepted that the proposed controlled activity rule is silent on the need for pre-demolition communication with neighbours or a complaints procedure. This, in our view, is the shortcoming of the rule, particularly given the importance of those elements stressed in the University and Council's evidence.
- 3.188 Accordingly, we are compelled to 'plug the gap' in the controlled activity rule as it relates to communication with neighbours.
- 3.189 For the record, we note that we tested with Mr Hall and Mr Coop whether the controlled activity approach might even be redundant given that the demolition will also require a building consent. They both noted that the building consent process will provide for some duplication of assessment with the proposed controlled activity rule and the latter provides an additional level of certainty that appropriate management practices will be followed, including the requirement for a DMP and a photographic record of the building.

- 3.190 We also observed with the witnesses that demolition is otherwise a permitted activity<sup>119</sup> in both the Inner Residential Institutional Precinct Zones. In this respect, it is not a typical expectation of the District Plan to require resource consent for demolition, let alone require a DMP or any consultation of any kind with neighbours. Nevertheless, Mr Coop and Mr Batley were in full agreement that the proposed controlled activity rule approach is appropriate. We have no reason to disagree.
- 3.191 Finally, we record our understanding of the plan change ‘mechanics’ that any future application for demolition that is not ‘undertaken in accordance with an approved DMP’ will be a fully discretionary activity under Rule 9.4.1. This is a ‘catch all’ rule for activities that are not expressly permitted, controlled or discretionary.
- 3.192 Overall, and based on the evidence presented, we consider this is an appropriate default status where proposals for demolition do not meet the standard and term in the rule as amended. For completeness, we provide our evaluation of the amended rule immediately below.

*S32AA summary*

- 3.193 Overall, we consider the proposed amendments to the Controlled Activity Rule 9.3.2 proposed to manage future demolition of the Gordon Wilson Flats in **Appendix 3** are more appropriate than the notified provisions as:
- a. the amendments are specifically to implement the unchallenged expert evidence before us that consultation with neighbours before and during demolition is necessary to manage adverse effect;
  - b. the changes better align with the format otherwise used in the District Plan for controlled activities; and
  - c. the minor rule ambiguities inherent in the notified clause have been removed.
- 3.194 We note that the revised provision adopts the additional refinement proposed by Council and VUW in the joint response to Minute 2, being the amendment of our proposed matter of control “Demolition Management Plan” to “demolition management.” Again, we consider this adjustment better aligns with the format and content of the Plan generally.
- 3.195 These proposed provisions will more effectively implement the operative objectives and policies in the Plan, which we discuss in more detail in section 4 below. The amendments will also enable a more efficient administration of the resource consent process proposed for the demolition of the Flats, owing to reduced likelihood of unintended compliance issues arising from the notified drafting of the clause.

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<sup>119</sup> For the purposes of this discussion, we mean demolition of non-heritage buildings.

## Issue 6: Access, parking and connectivity

### Issue identification

- 3.196 The **plan change request** outlines the approach for addressing transportation issues at sections 4.3 and 4.5. Generally, these include:
- a. consideration of options for a pedestrian path to be constructed through the site, connecting the Terrace to the Kelburn campus; and
  - b. recognition that the proposed restricted discretionary rule for new buildings, which includes vehicle parking, servicing and site access as matters of discretion, affords a greater level of control than the operative Institutional Precinct Zone provisions.<sup>120</sup>
- 3.197 The plan change request justifies the higher level of control described in 'b.' above on the grounds that:
- a. this part of The Terrace carries heavy traffic flows;
  - b. it is important that future University buildings are provided with appropriate loading and unloading facilities; and
  - c. the amount of any car parking that is proposed or required should be subject to assessment through the resource consent process.<sup>121</sup>
- 3.198 The **urban design review from McIndoe Urban** attached to the plan change request set out 10 key development principles for future development of the site. Of particular relevance to this issue discussion, was Principle 4 (connections and access) which is as follows:

*Establish new physical links from The Terrace to Wai-te-Ata Road and to connect further up to the main campus. Links to work with the contours to create a unique experience of the hill side and creating new views to the city. Links to interconnect with the ground and with future buildings. Potential for multi-modal connections exist but require further investigation. Access to utilise the existing entry point onto the Site but could consider a basement vehicular access towards the southern end of the street front.<sup>122</sup>*

- 3.199 In response to submissions, **Mr Burns'** evidence recommended some revisions to the Design Guide to better implement Key Principle 4 from his original assessment. These amendments included:
- a. revision to the heading 'Circulation' under the Objectives (section 4.0) and Guidelines (section 5.0) of the Design Guide to be "Circulation and Connections;"
  - b. a new guideline under the new Circulation and Connections heading to 'Promote connections between the Kelburn Campus and The Terrace by facilitating a new university "front door" and link to the city through 320 The Terrace.'<sup>123</sup>

<sup>120</sup> Plan change request, pp. 16-17

<sup>121</sup> Plan change request, Section 4.5, p.17

<sup>122</sup> Plan change request, Appendix 8 – Urban Design Report. Appendix A – Ten Key Development Principles for 320 The Terrace, p.8

<sup>123</sup> Evidence of Andrew Burns (1 December 2015), Appendix 3

3.200 **Ms Desrosiers** recorded her agreement with the above amendments in her addendum to the s42A report.<sup>124</sup>

3.201 **Mr Kong's** addendum to the s42A report commented on both the pedestrian access and on the proposed restricted discretionary rule. In summary, his view was that the proposed rules are appropriate from a transport network management perspective.<sup>125</sup>

#### *Submissions*

3.202 **Mr Davis** noted in his submission that the rezoning affords a great opportunity to open a connection or gateway between the Terrace and the University.

3.203 This same sentiment was shared by **Living Streets Aotearoa**, who sought 24-hour pedestrian access through the site to be ensured by the plan change provisions. The submitter also sought a pedestrian crossing to be provided along The Terrace.

3.204 **Ms Warren** presented a written statement on behalf of Living Streets Aotearoa at the hearing. Her statement touched on the importance of walking and walkability to public health, on the economic benefits to society that can be derived from walkability and on the importance of safety and good design creating successful pedestrian links<sup>126</sup>.

3.205 A matter that Ms Warren placed particular emphasis on was the need to ensure future linkages through the site by way of legal instrument.<sup>127</sup> In her view, without an appropriate mechanism in place, the aspirations of the plan change to deliver a safe 24-hour pedestrian linkage through the site may not be realised. Ms Warren cited examples of that sub-optimal outcome in other parts of Wellington where legal instruments were not in place prior to developments proceeding.

3.206 For completeness, we note the evidence of Mr Coop who indicated that VUW extended an invitation to Living Streets Aotearoa to collaborate with the University on the design of a future pedestrian linkage. Mr Coop advised that the invitation was accepted by the submitter.<sup>128</sup>

3.207 **Mr Paul Lee** also raised concerns about pedestrian access, vehicle parking and loading and pressure on the local road network. He sought that pedestrian and traffic management designs are incorporated into the proposal.

#### *Discussion and findings*

3.208 Overall, we find that the proposed provisions (as amended in Appendix 3) are appropriate to manage access, parking and connectivity issues. We agree with the

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<sup>124</sup> Attachment C to s42A report, p.6

<sup>125</sup> Attachment B to s42A report

<sup>126</sup> Statement of Paula Warren (11 December 2015), paras 9-32

<sup>127</sup> Statement of Paula Warren (11 December 2015), paras 33-42 and 49-52

<sup>128</sup> Evidence of Peter Coop (1 December 2015), p.10, para 36

planners that this will largely be delivered through the design-led restricted discretionary rule for new development on the site.

3.209 The rule in turn cross references the Victoria University Design Guide, which includes operative *and* proposed provisions<sup>129</sup> to deliver safe and well-designed connections through the site, including:

- a. operative Objective 18, which seeks to make the circulation routes for pedestrians (the main group of users of campus facilities) as safe, convenient and pleasant as possible;
- b. addition of the word 'safe' to operative Guideline G23 (in the notified plan change) such that it reads "*Existing through-routes should be enhanced. Future development of the campus circulation structure should allow for safe cross-site pedestrian links with connection to city streets and pedestrian pathways*"; and
- c. operative Guideline G24 which seeks to minimise the impact of vehicles on pedestrian amenity and to deploy specific design responses to give pedestrians precedence at vehicle entrances and on internal circulation routes.

3.210 These provisions are in turn supported by the proposed amendments (as notified) to the supporting narrative in the analysis section of the Design Guide<sup>130</sup>, including the express desire to establish a safe pedestrian connection from the Terrace to the campus.

3.211 We also find that the additional guideline proposed by Mr Burns and Ms Desrosiers during the hearing adjournment<sup>131</sup> provides an appropriate steer regarding the desire for the linkage through the site.

3.212 No evidence was presented to suggest any additional rules or methods are required to manage effects of development on the local transport network. We therefore accept Mr Kong's unchallenged evidence that the proposed rule framework is appropriate and further note that, as a restricted discretionary activity, future proposals may be subject to conditions or declined if effects are not sufficiently managed.

#### S32AA summary

3.213 The amendments arising since the proposal was notified have been described above, and are captured on the annotated version of the provisions at Appendix 3 to this report. These include minor drafting amendments to existing Design Guide provisions and to the inclusion of new Design Guide provisions to improve the effective administration of the District Plan as anticipated by the assessments underpinning the plan change request.

3.214 The amendments reduce ambiguity present in the notified provisions and will accordingly enhance the efficient application of the design guide through future consent processes.

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<sup>129</sup> Note – the numbering referred to here is as per the provisions attached to this report. Numbers may be different to the references in the operative plan or other iterations of the plan change provisions.

<sup>130</sup> See Design Guide Section 3.0

<sup>131</sup> see discussion above and Guideline G25 at our Appendix 3

## Issue 7: Other Matters

### *Issue identification*

- 3.215 Unlike the preceding sections, this final topic area traverses a variety of issues. The reason we have organised the matters into this section is that they do not necessarily fit tidily into the issues above and/or they are relatively significant issues in their own right.
- 3.216 For clarity, we have departed somewhat from the format adopted in the preceding sections. In this respect, we take a more singular approach to issue identification and resolution for each of the following sub-issues:
- a. Housing supply;
  - b. Precedent effect;
  - c. Resource consent versus plan change; and
  - d. Interim and long term use of the site under the proposed provisions.
- 3.217 These sub-issues are addressed in turn below, and we include a brief s32AA wrap-up at the conclusion of this report section for all amendments arising.

### *Housing Supply*

- 3.218 Several submitters expressed the view that the proposed demolition of Gordon Wilson Flats would have an adverse effect on housing supply.
- 3.219 For example, the **Architectural Centre** submitted that there is currently a nationwide shortage of housing and associated need to increase the amount of social and affordable housing particularly. The submission expressed that the demolition would undermine the Council's strategies and policies for increasing the density of inner city housing in Wellington, and is a missed opportunity to meet the current demand for 1-2 bedroom accommodation.
- 3.220 Dr McCarthy expanded upon the Centre's submission in her hearing statement. She cited recent reports by the New Zealand Productivity Commission, which identify Wellington as an area with a high growth rate and note the need for more land for housing as a means of addressing current housing problems<sup>132</sup>.
- 3.221 Dr McCarthy also cited the *Housing Accords and Special Housing Area (Wellington) Order 2014*. Her statement provided the view that the rezoning of residential land explicitly undermines the government's intent with this legislation to facilitate increased land and housing supply in areas with housing supply and affordability issues<sup>133</sup>.
- 3.222 **Mr Davis's** submission echoed the Architectural Centre's position regarding 1-2 bedroom accommodation, and further considered that that proposed demolition equates to an unsustainable waste of existing building resources.

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<sup>132</sup> Architectural Centre Inc., Outline of oral submissions (15 December 2015), p. 19, para 64

<sup>133</sup> Architectural Centre Inc., Outline of oral submissions (15 December 2015), p. 19, para 65

- 3.223 The submission from **MANA Newtown** highlighted a need for housing in Wellington generally, and considered that the loss of the Flats would lead to a worsening of the existing housing crisis.
- 3.224 **Mr Batley** provided a response to these submissions in section 8.2 of his s42A report. In his view, the submissions should not be accepted as:
- a. the purpose of the plan change is to facilitate re-development of the site, and there is potential for that development to generate any number of positive effects;
  - b. the existing building was vacated in 2012 due to safety concerns, has since been assessed as earthquake prone and has been the subject of an expert assessment that no practical or reasonable options exist for reuse of the building (including for residential use);
  - c. the size of the site is insignificant as a proportion of the overall area in the city zoned to provide for new housing supply (including the Inner and Outer Residential Zones and Central Area Zone); and
  - d. it is unreasonable to require the refurbishment of the building for the reasons expressed in the plan change request.<sup>134</sup>
- 3.225 **Mr Coop** shared a similar view to Mr Batley. In particular, his evidence noted that the site area amounts to approximately 0.2% of the total land area in the Inner Residential Zone, and its rezoning is therefore negligible in resource management significance as it relates to housing supply.<sup>135</sup>
- 3.226 Mr Coop also gave the view that *“the dominant influence in increased population density in inner city Wellington is not the Inner Residential land supply but the construction of residential accommodation within the Central Area...[and this] will be unaffected by Plan Change 81”*<sup>136</sup>. He provided no references or information sources to quantify this finding or support his view in this respect.
- 3.227 Overall, we find there is no compelling evidence before us to conclude that the proposed demolition of the flats will have any material effect on housing supply in Wellington. Indeed, no party presented us with any expert evidence to confirm that there is an existing shortage in housing generally, or social housing specifically, nor was any shortage quantified in real terms. We consider from the evidence before us that the existing Gordon Wilson Flats have no future value for housing, if only because the cost of any strengthening and refurbishment project would far exceed the resultant value of housing delivered. Moreover, rezoning of the site as Institutional Precinct still allows for housing development. We further consider that while there is evident pressure for housing supply, there is also considerable value to the community in provision for other activities. In this light we note the University strategic growth objectives, which will obviously require more space to allow delivery.
- 3.228 We accept the shared view of Mr Batley and Mr Coop that the site area is not significant in terms of the District’s overall land resource for housing. Furthermore, we observe that residential activities are expressly enabled by the Institutional Precinct Zone provisions in the form of student accommodation.

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<sup>134</sup> s42A report, p.32, paras 138-142

<sup>135</sup> Evidence of Peter Coop (1 December 2015), p. 8, para 32.

<sup>136</sup> Evidence of Peter Coop (1 December 2015), p. 8, para 32.

*Precedent effect*

- 3.229 Some submitters considered that a decision to approve the de-listing of the Gordon Wilson Flats would set a precedent effect for future similar proposals.
- 3.230 The **Architectural Centre's** submission described the precedent as a scenario where a business could knowingly purchase a building on the District Plan Heritage list in a state of disrepair and have it removed from the list because of repair costs and a mismatch with its preferred development plans. The submission continued that the effect is exacerbated by the fact that there is a general under appreciation for modernist architecture in New Zealand.
- 3.231 **DOCOMOMO NZ** held similar concerns that the plan change could encourage heritage building owners to de-list buildings in order to expedite demolition.
- 3.232 The joint submission of Messrs **Schrader, Kelly and Cochran** also raised the same concern.
- 3.233 Mr Batley briefly commented on the issue of precedent in the s42A report. In summary, he advised:
- a. a site or building that contains heritage significance contains other unique aspects, and a test of the appropriateness of de-listing needs to be considered on a case by case basis; and
  - b. this conclusion and approach is also reinforced by the second decision of the Environment Court in the Harcourts Case, which declined a consent application to demolish a heritage building due to insufficient consideration of alternatives – which, in turn, supports the interpretation that there may be instances where the consideration of alternatives supports demolition.
- 3.234 Mr Slyfield gave us useful submissions on the matter. He amplified Mr Batley's view about the need for a case-by-case assessment by noting it is virtually inconceivable that there could be another situation, or combination of factors, materially similar to this proposal.<sup>137</sup>
- 3.235 Mr Slyfield added:

*Importantly, your decision is not to set a 'bright line' for determining the level of heritage value that a building must have in order to be listed. Victoria's case has never been that the building should be delisted because of its heritage value (or lack of heritage value) but rather, the listing is no longer warranted when the actual heritage value of the building (which is moderate) is assessed against the opportunities of using the site for University purposes*

*De-listing the building is necessary to enable those opportunities to be realised; so it is important to recognise that one of the costs of retaining the listing is the lost opportunity for a substantial campus expansion, and all the benefits that entails, at local and regional level.<sup>138</sup>*

- 3.236 On balance, we agree with Mr Batley and Mr Slyfield that our recommendation will not set any precedent, or challenge the integrity of the District Plan. We have

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<sup>137</sup> Closing submissions (21 December 2015), p.17, paras 71-72.

<sup>138</sup> Closing submissions (21 December 2015), p.17, paras 74-75

based our decision on the evidence before use, including site-specific considerations about the current zoning and associated uses, the proposed zoning and anticipated uses, and the costs and benefits that stem from each.

- 3.237 It will not be a foregone conclusion that any future proposals to delist heritage buildings from this or any other District Plan will be successful because of this Plan Change. Rather, those future proposals will be tested on the evidence compiled, and against the relevant statutory considerations. In the specific case of the Gordon Wilson Flats, we have concluded from the evidence presented that the heritage value is moderate, it is unlisted by Heritage New Zealand, and critically the financial costs of strengthening and restoration are prohibitive.

*Resource consent versus plan change*

- 3.238 Another matter raised by submitters was the contention that a plan change process is inappropriate for enabling the demolition of a listed heritage building, and that the resource consent process is more appropriate.
- 3.239 In particular, the joint submission from **Messrs Schrader, Kelly and Cochran** considered that the use of a plan change to demolish a listed heritage building is inappropriate, and any demolition of a listed heritage item should be assessed through the normal resource consent process. The submitters state that demolition is a fully discretionary activity under the operative Plan, and the merits of the proposal can be decided via such an application.
- 3.240 The written statement presented by these submitters in support of their submission at the Hearing reinforced this position. Therein, the submitters expressed the view that the only relevant considerations for an application to demolish the Flats are the criteria for listing in the District Plan<sup>139</sup>. We clarified in questioning that the criteria referred to by the submitters is a reference to the Heritage inventory maintained by Council's Heritage Team, rather than in the District Plan objectives, policies, rules or other methods.
- 3.241 In his closing comments to us, **Mr Batley** gave the view that the RMA provides both plan change and resource consent avenues and does not favour one over the other in terms of preference in this situation. That said, Mr Batley noted his professional opinion the plan change process is preferred for the current proposal, as it amounts to a significant policy decision under the Plan.<sup>140</sup>
- 3.242 Mr Batley also highlighted the District Plan's express contemplation that de-listing *might* occur via the very process that PC81 has followed. Namely, under section 20.1.1, the Plan reads "[i]tems may only be added to or removed from these lists by way of a Plan Change."
- 3.243 **Mr Slyfield** provided submissions on this matter, and again his position mirrored that of Mr Batley. Specifically, he noted that the RMA does not in any way direct that the plan change or resource consent is more appropriate than the other – it simply provides for both processes.<sup>141</sup>

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<sup>139</sup> Oral submission by Ben Schrader, Michael Kelly and Chris Cochran (16 December 2016), p.2, para 8

<sup>140</sup> Summary Statement: Daniel Batley (undated), third page, para 15

<sup>141</sup> Opening legal submissions (15 December 2015), p.6, para 16.

- 3.244 More materially, Mr Slyfield submitted that these two processes provide two different frameworks for assessment as follows:
- a. a resource consent to demolish the building would be a restricted discretionary activity under the Plan, allowing consideration of only the matters listed under the relevant rule (and we note this is in contrast to the interpretation of the submitters that demolition is *fully* discretionary); and
  - b. conversely, a plan change adopts a broader context, and its starting point is not to assume the existing Plan provisions are the most appropriate for achieving the purpose of the Act.<sup>142</sup>
- 3.245 In this latter respect, Mr Slyfield's submissions were that a key difference enabled by the plan change assessment framework is that the benefits of enabling University activity on the site can be given far greater account than under the restricted discretionary assessment framework.<sup>143</sup>
- 3.246 Broadly, **the s32 evaluation in the plan change request** adopts a similar rationale for favouring the plan change process over the consent pathway<sup>144</sup>, and **Mr Coop** clarified in evidence that this ~~was~~ also reflected his professional preference<sup>145</sup>.
- 3.247 In evaluating this issue, we agree with the planning experts and Mr Slyfield that there is no imperative under the Act one way or the other to suggest a plan change process is (in of itself) inappropriate in a procedural sense. The RMA provides for a private plan change request, and the Requestor has met the procedural and information requirements necessary for the proposal to be notified and tested at formal hearing proceedings.
- 3.248 In short, we have no compelling evidence before us to conclude that the plan change should be abandoned in favour of a consent process.

*Interim and long term use*

- 3.249 The final sub-issue we address here relates to the interim use of the site between demolition and redevelopment. In particular, this matter stems from the submissions of **Living Streets Aotearoa** and **Mr Ken Mitchell**.
- 3.250 As we understand it, the primary concern of the submitters is to ensure the site is made safe for people to move through it in the period following demolition of Gordon Wilson Flats and prior to construction of any new buildings.
- 3.251 By and large, we have already addressed this as it relates to pedestrian amenity under Issue 6 above; however, we note that there is a potential for people to linger on the site in informal open spaces created by the site's clearance.
- 3.252 We were not presented with any detailed evidence as to the likelihood for safety issues to arise for this site specifically, or indeed to quantify the severity or frequency of those potential effects. Accordingly, we are not convinced that any

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<sup>142</sup> Opening legal submissions (15 December 2015), p.6, para 17.

<sup>143</sup> Opening legal submissions (15 December 2015), p.6, para 18.

<sup>144</sup> Plan change request, section 3.2, p. 11

<sup>145</sup> Evidence of Peter Coop (1 December 2015), p. 6, para 23.

specific provisions need to be included in the plan change provisions to address the issue over and above the guidelines in the 'Circulation and Connections' section of the design guide. Moreover, we note our expectation that the University will not let the site devolve into an unsafe or unpleasant space for students, faculty and indeed the general public to use.

## 4.0 STATUTORY CONSIDERATIONS

### Assessment

4.1 Drawing on consideration of the plan change material, the submissions and further submissions, and the evidence presented, this part of our report addresses the statutory requirements we outlined at the start section 3 above.

4.2 We have adopted a thematic approach to presenting our findings in this respect, using the roadmap provided by Mr Slyfield to organise our evaluation.

#### *Are the proposed objectives the most appropriate way to achieve the purpose of the Act?*

4.3 As noted at the outset of section 3 above, the 'objectives' to be assessed against Part 2 of the Act in this case are the goals of the plan change to:

- a. remove Gordon Wilson Flats from the District Plan heritage building list;
- b. provide for the sustainable management of the site for university purposes; and
- c. avoid, remedy or mitigate adverse effects.

4.4 In our view, the objectives are the most appropriate means to achieve the Act's sustainable management purpose in respect of future development of 320 The Terrace.

4.5 In particular, the objectives facilitate the use, development, and protection of natural and physical resources of the site in a way that enables enhanced social, economic, and cultural well-being associated with VUW's campus development and related institutional prosperity. The objectives are also designed to sustain - if not enhance - the potential of those resources to meet the needs of future generations, while avoiding or mitigating any adverse environmental effects.

4.6 In reaching these findings, we are cognisant that sustainable management entails the need to recognise and provide for the protection of areas of historic heritage from inappropriate subdivision, use and development.<sup>146</sup> Our conclusion is that the proposal will have adverse effects on identified heritage values; however, these effects *do not* amount to inappropriate subdivision, use and development owing to the combination of factors that are distinct to this proposal, including:

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<sup>146</sup> s6(f), RMA

- a. the building's heritage significance has been assessed as moderate;
  - b. a robust assessment of reasonable alternatives has found that there are no viable alternatives to demolition; and
  - c. even if the alternatives assessed were viable, the expert heritage evidence before us is that the modifications to the building required to achieve that outcome would have significant effects on the building's heritage value.
- 4.7 We are also satisfied that the proposal and its aims have had regard to the maintenance and enhancement of amenity values<sup>147</sup> and the quality of the environment<sup>148</sup>.

***Are the provisions the most appropriate way to implement the "objectives," having regard to their efficiency and effectiveness, actual and potential environmental effects and reasonable alternatives?***

- 4.8 As set out under our preamble in section 3 of this report, there are two suites of 'objectives' that we consider here, being:
- a. the goals set out in the plan change's purpose; and
  - b. the settled, relevant objectives of the operative Plan
- 4.9 Assessing the former first, the proposed provisions have been explicitly designed to be effective and efficient at implementing the plan change's purpose. Moreover, the amendments to the provisions arising since notification have been made for the purposes of improving clarity and/or effective implementation.
- 4.10 Removal of the Flats from the heritage list is self-evident, and implementation of this aim is achieved simply by the deletion of the listing in the table of listed buildings in Chapter 21 as proposed.
- 4.11 Sustainable management of the site for university purposes is appropriately delivered by the rezoning to Institutional Precinct and through the associated amendments to the zone provisions and design guide. Likewise, the proposed suite of provisions relating to demolition and redevelopment will effectively and efficiently avoid, remedy or mitigate adverse effects on the site and local environment.
- 4.12 Turning to the settled objectives of the Institutional Precinct, we note that **Objective 8.2.1** is largely similar to the second aim of the plan change purpose in that it seeks to '*promote the efficient use and development of natural and physical resources within Institutional Precincts.*' The objective is implemented firstly by three policies which collectively:
- a. provide for effective and efficient operation and development of the institution;
  - b. permit development relating to the institution's primary purposes, and allow associated development and activities where effects can be managed;

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<sup>147</sup> s7(c), RMA

<sup>148</sup> s7(f), RMA

- c. encourage energy efficiency and use of renewable energy.<sup>149</sup>
- 4.13 The explanation to these policies anticipates campus expansion by way of plan change, which is consistent with the approach underpinning PC81. The explanation also notes Council's aim to ensure activities do not adversely affect neighbouring properties.
- 4.14 We consider that the nature and scale of development enabled by the provisions is appropriate, and the building bulk and location provisions coupled with the design-led consent process will effectively implement this overarching aim. As discussed previously, we find that a non-notified consent pathway will ensure the aims are implemented efficiently.
- 4.15 **Objective 8.2.2** seeks to maintain and enhance the amenity values of the precinct and nearby Residential Areas. Four policies implement this objective by collectively:
- a. ensuring effects of activities are managed, including noise and signage in particular; and
  - b. requiring site specific conditions for built form that is sympathetic to its context, including neighbours.<sup>150</sup>
- 4.16 We have found the building standards and design guide amendments to be appropriate, and consider they will likewise achieve the above aims to ensure development contributes positively to amenity values within the precinct and on adjoining areas.
- 4.17 The maintenance and enhancement of precincts and their adjacent streets is the aim of **Objective 8.2.3**. Two policies implement the objective by controlling the design, appearance and location of new buildings.<sup>151</sup> We consider the restricted discretionary and non-notified approach proposed by the plan change is appropriate given the nature of the site and its context, and given the scale of development anticipated.
- 4.18 **Objectives 8.2.4, 8.2.6** and **8.2.9** relate to management of subdivision, storage and use of hazardous substances and matters of significance to Maori (respectively). We received no evidence in relation to these matters, but note that the plan change does not contemplate any amendments to the provisions in the Plan that implement these objectives. Accordingly, the provisions are settled and we do not consider there is any need for us to assess them to any extent.
- 4.19 **Objective 8.2.5** relates to the management of the effects of natural and technological hazards on people, property and the environment. Policy 8.5.2.1 implements the objective through the identification of hazards and the avoidance of the effects of those hazards on vulnerable uses or activities.
- 4.20 The risks of hazards have been well identified in the plan change request, and most notably, the recognition of the Flats as earthquake prone. The proposal to de-list the Flats will enable their demolition, thereby avoiding hazard risk on

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<sup>149</sup> Policies 8.2.1.1-8.2.1.3

<sup>150</sup> Policies 8.2.2.1-8.2.1.4

<sup>151</sup> Policies 8.2.3.1-8.2.3.2

people and property. If strengthening and adaptive reuse of the building were shown to be viable, it too would implement the Objective; however, the evidence presented to us was that enabling demolition is the most appropriate method.

- 4.21 **Objectives 8.2.7 and 8.2.8** and their supporting policies aim to enable efficient, convenient and safe development and access of people and goods within precincts.
- 4.22 We consider the proposed objectives and guidelines in the Design Guide, accompanied by the design-led consent process for redevelopment will ensure access is safe and effective. A positive effect of the proposal is the anticipated conversion of the site as a gateway to the University from the CBD. This will enable improved physical access between the Terrace and VUW campus.
- 4.23 The Demolition Management Plan will also be an appropriate vehicle for health and safety considerations as it relates to the Flats' future removal.
- 4.24 We also have considered the settled **objectives and supporting policies relating to Historic Heritage**. There are only two objectives in Chapter 20 of the Plan, being:
- a. 20.2.1 - To recognise the City's historic heritage and protect it from inappropriate subdivision use and development; and
  - b. 20.2.2 - To facilitate and enable the exercise of tino rangatiratanga and kaitiakitanga by Wellington's tangata whenua and other Maori.
- 4.25 The first of these objectives - which is the more relevant for the current proposal - is implemented by eleven policies. Of particular note to our assessment here are Policies 20.2.1.1 through 20.2.1.3.
- 4.26 **Policy 20.2.1.1** implements Objective 20.2.1 through the identification, recording and listing of the City's significant Historic Heritage, and **Policy 20.2.1.2** discourages demolition except for cases where the Council is satisfied that there are no reasonable alternatives to demolition.
- 4.27 We have adopted the expert evidence of Mr Wild and Ms Rickard that the Flats have moderate heritage significance. For the reasons we stated in section 3 above, we also consider there are no reasonable alternatives to demolition.
- 4.28 We also find that the proposal has had sufficient regard to Policy 20.2.1.3, which seeks to ensure the effects of modifications on heritage values of listed items are avoided remedied or mitigated. In particular, we again acknowledge Mr Wild's view that the amendments required to make the building safe and fit for purpose would have substantial consequences for the building's heritage value.
- 4.29 We have found that the proposed rezoning of the site is more appropriate than the status quo. For the record, this finding has been informed by an assessment of the provisions against the settled **objectives and policies of the Inner Residential Zone**. We do not consider the need to provide an exhaustive recording of our assessment of those provisions, but note the following points for completeness:
- a. The design guide and proposed building bulk and location provisions will ensure that **Objective 4.2.3** and **4.2.4** and their supporting policies are

implemented – these higher order provisions seek to ensure development in residential areas is of an appropriate character and scale for the neighbourhood, and that reasonable levels of amenity are maintained;

- b. The proposal is consistent with the related aims of **Policy 4.2.3.7, Objective 4.2.8, Policy 4.2.8.1** and **Policy 4.2.8.3** which seek to manage effects on prominent escarpments and retain mature, visually prominent vegetation in association with site redevelopment; and
- c. The proposed provisions are also consistent with **Objective 4.2.7** and its supporting policies seeking to enable a range of activities in a manner that manages adverse effects – we also note for the parties concerned about student accommodation that student accommodation would be equally anticipated under either the Inner Residential or Institutional Precinct Zones.

4.30 In light of the above and our findings in Section 3, we consider the provisions as amended in Appendix 3 will be the most appropriate to achieve the purpose of the plan change and the settled objectives of the District Plan.

***Is the plan change designed to accord with, and assist the Council to carry out its functions so as to achieve the purpose of the Act?***

4.31 PC81 involves the establishment of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of Wellington City. Further, the plan change aims to control the actual or potential effects of the use, development, or protection of land.

4.32 Accordingly, we find that the plan change is designed to accord with and assist the Council to carry out its s31 functions.

***Does the plan change give effect to any national policy statement (NPS) or New Zealand Coastal Policy Statement (NZCPS)?***

4.33 No NPS, nor the NZCPS, is relevant to the Plan Change.

***Does the plan change give effect to the Regional Policy Statement?***

4.34 As foreshadowed above, this consideration was given a great deal of attention during the course of the hearing. For the record, we provide a summary of the different views expressed below; however, before we do so, we consider it appropriate to briefly summarise the main policies from the RPS that were ‘in contention. These policies relate to the management of historic heritage resources.

4.35 **RPS Policies 21** and **22** form a pair, and are the primary implementation measures for the RPS’s sole heritage objective<sup>152</sup> to identify historic heritage and protect it from inappropriate modification, use and development. Policy 21 directs the District Plan to identify places with significant historic values. It

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<sup>152</sup> Objective 15

utilises a criteria-based approach to describe the values of particular relevance when going through the identification process, including historic, physical, social and tangata whenua values, rarity, representativeness and local context. The explanation to the Policy reads:

*Policy 21 provides criteria to ensure significant historic heritage resources are identified in district and regional plans in a consistent way. The criteria are based on the Resource Management Act definition of historic heritage and commonly used assessment methodologies. They provide the basis for describing and evaluating historic heritage, including the physical, historic, social and other values that people attach to historic heritage. Wellington Regional Council, district and city councils are required to assess a place, site or area against all the criteria, but may use additional criteria. A place, site or area identified must, however, fit one or more of the listed criteria in terms of contributing to an understanding and appreciation of history and culture in a district in order to have significant historic heritage values.*

- 4.36 Policy 22 directs the District Plan to include policies, rules and methods that protect the significant heritage values of places identified in accordance with Policy 21. Importantly, the explanation notes that the policy:

*...is not intended to prevent change to historic heritage, but rather to ensure that change is carefully considered. The places, sites or areas with significant historic heritage values identified in policy 21, and the degree of significance of those values, will influence what activities would be deemed to be appropriate or inappropriate.*

- 4.37 The explanation also notes that ‘*Policy 46 will need to be considered alongside policy 22 when changing, varying or reviewing a district or regional plan.*’

- 4.38 **Policy 46** provides an assessment framework specifically for decision-makers considering plan changes<sup>153</sup> that affect historic heritage values. It sets out nine criteria to have particular regard to where making a determination on whether a proposal is inappropriate. These criteria include:

- (a) *the degree to which historic heritage values will be lost, damaged or destroyed;*
- (b) *the irreversibility of adverse effects on heritage values;*
- (c) *the opportunities to remedy or mitigate any previous damage to heritage values;*
- (d) *the degree to which previous changes that have heritage value in their own right are respected and retained;*
- (e) *the probability of damage to immediate or adjacent heritage values;*
- (f) *the magnitude or scale of any effect on heritage values;*
- (g) *the degree to which unique or special materials and/or craftsmanship are retained;*
- (h) *whether the activity will lead to cumulative adverse effects on historic heritage; and*
- (i) *whether the relationships between distinct elements of an historic place, site or area will be maintained.*

- 4.39 The explanation to Policy 46 notes that the assessment framework is an interim solution, until such time as RPS Policies 21 and 22 have been given effect to by the District Plan. There was some uncertainty expressed by the parties at the hearing

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<sup>153</sup> As well as resource consents or notices of requirement

as to whether Policies 21 and 22 have been given effect to by the Plan already, with some observing that the Plan provisions predate the RPS. As Mr Slyfield noted in his closing<sup>154</sup>, however, Policy 46 provides an assessment framework for any subsequent plan change even if Policies 21 and 22 are presently implemented by the Plan, and accordingly Policy 46 applies to PC81 irrespectively. We agree, and do not consider there is any need for us to make a finding on whether or not Policies 21 and 22 have been implemented.

- 4.40 To summarise the different views provided by the parties on the relevance of the above RPS provisions, we note the following:
- a. The **Architectural Centre** gave the view that the plan change does not give effect to the RPS, based largely on the proposal's inconsistency with RPS Policy 21;
  - b. **Mr Batley** provided an assessment of the plan change against RPS Policies 21, 22 and 46 in his closing statement, finding:
    - i. PC81 is consistent with the policies;
    - ii. the requirement for identification under Policy 21 does not correspond to a requirement to list in the Plan;
    - iii. Policy 22 explicitly states in its explanation that further change is not prevented to historic heritage, provided that the change is not 'inappropriate' and is 'carefully considered'; and
    - iv. Policy 46 does not create an obligation higher than 'particular regard' for decision-makers, and it makes allowances for activities that affect heritage values, provided they are deemed 'appropriate'<sup>155</sup>.
  - c. In the joint statement provided by Mr Batley and Mr Coop after the hearing adjournment, **Mr Batley altered his view**, noting:
    - i. Policy 21 does not apply to the plan change, owing to the fact that Gordon Wilson Flats is already listed in the Plan to the highest order possible and as it is not the role of this plan change request to perform a full review of the heritage list;
    - ii. Policy 22 is not relevant to the plan change either, as it is not the role of PC81 to perform a full review of the Plan's heritage provisions;
    - iii. Policies 21 and 22 are centred around Plan making and Plan reviewing, there is no expectation that these policies will be implemented by a private plan change request; and
    - iv. the level of information provided to us in the plan change request, submissions, and at the hearing addresses all of the matters under Policy 46.<sup>156</sup>
  - d. **Mr Coop** signalled his agreement with Mr Batley's views outlined above, also adding his opinion that:
    - i. Policies 21 and 22 have already been implemented by the Plan's heritage provisions;

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<sup>154</sup> Closing legal submissions for the Requestor (21 December 2015), p.11, para 46

<sup>155</sup> Summary Statement (undated), para 16

<sup>156</sup> Conferencing Statement (9 February 2016), p.3, para 4.

- ii. the 'change' to historic heritage anticipated by Policy 22 includes consideration of which buildings should be added to or removed from the Plan's heritage list; and
- iii. GWRC has accepted PC81 is consistent with the RPS or would have otherwise contested the proposal.<sup>157</sup>

4.41 As it transpired, it was Mr Slyfield's submissions that were of most use to us on this matter. Contrary to the shared view of Mr Coop and Mr Batley that Policies 21 and 22 are irrelevant because a private plan change cannot be expected to be responsible for a full review of the District Plan provisions, Mr Slyfield helpfully clarified that PC81 "*can only be tasked with achieving such requirements as are relevant to its subject matter.*"<sup>158</sup>

4.42 Mr Slyfield added (our emphasis):

*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.*<sup>159</sup>

4.43 We find Mr Slyfield's interpretation to be the correct one, and consider Policies 21, 22 and 46 to be relevant to this plan change. Similarly, we disagree with Mr Batley and Mr Coop that we can simply ignore Policy 21 and Policy 22 given PC81 is a private plan change.

4.44 We also agree with Mr Slyfield's interpretation<sup>160</sup> of the manner and extent to which the plan change should consider the framework established by Policies 21 and 22. Specifically, we agree that:

- a. the policies anticipate a detailed assessment of the Flats' heritage significance will be undertaken applying specific consideration of the criteria provided;
- b. the results of that assessment can then be applied to determine if a listing or de-listing is appropriate;
- c. the policies accordingly do not require the Flats to remain listed and de-listing does not amount to failure to give effect to the RPS where the evaluation finds that de-listing is not inappropriate.

4.45 We again record that Mr Wild and Ms Rickard's heritage assessments are commensurate with the rigour anticipated by these policies, as are the collective assessments of Mr Croskery, Mr Wood, Mr Clark and Mr Sutherland in respect of the viability of strengthening and refurbishment of the building. In addition, for the reasons stated previously, we have found that de-listing does not amount to inappropriate use and development. Accordingly, we do not consider that PC81 fails to give effect to Policies 21 and 22 as suggested by the Architectural Centre.

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<sup>157</sup> Conferencing Statement (9 February 2016), p.4-5, para 5.

<sup>158</sup> Submissions to accompany further information (22 February 2016), p.5, para 17

<sup>159</sup> Submissions to accompany further information (22 February 2016), p.5, para 18

<sup>160</sup> Closing legal submissions for the Requestor (21 December 2015), p.11, para 45

4.46 As for Policy 46, the evidence we have relied upon in reaching our overall recommendation leads us to the following interpretation of the policy's assessment criteria:

Criteria	Assessment
<i>(a) the degree to which historic heritage values will be lost, damaged or destroyed</i>	The historic heritage values will be lost entirely, save any detail recorded by photographic record and other reference means prior to demolition, and any further detail published subsequently.
<i>(b) the irreversibility of adverse effects on heritage values</i>	Loss of heritage value will be irreversible apart from any formal historic records produced and maintained.
<i>(c) the opportunities to remedy or mitigate any previous damage to heritage values</i>	Opportunities to remedy or mitigate damage to heritage values have been explored in depth. Alternatives to demolition are considered to be unreasonable, unviable, and at risk of undermining the building's observed moderate heritage value.
<i>(d) the degree to which previous changes that have heritage value in their own right are respected and retained</i>	N/A
<i>(e) the probability of damage to immediate or adjacent heritage values</i>	The unchallenged evidence is that the Flats are earthquake prone, and failure of the building façade could be expected from significant seismic activity. Furthermore, the building is suffering from progressive 'concrete cancer'. Options for making the building safe and fit-for-purposes have been investigated and discarded for various reasons.
<i>(f) the magnitude or scale of any effect on heritage values</i>	The expert evidence before us is that the scale of effect in this instance will be moderate at most.
<i>(g) the degree to which unique or special materials and/or craftsmanship are retained</i>	The evidence before us is that there are additional buildings of this type, era and style in Wellington and further afield in New Zealand, many of which have greater overall heritage significance. Detailed engineering investigations undertaken following notification of PC81 indicate that the building's pile system was not the novel technological system indicated on the original architectural drawings, instead adopting a more commonly used technology for the time.
<i>(h) whether the activity will lead to cumulative adverse effects on historic heritage</i>	As noted above, we do not consider that this proposal will have any precedent effect such that cumulative effects on

Criteria	Assessment
	historic heritage would arise. This plan change is based on site-specific circumstances and expert evidence that will not be universal for other proposals.
<i>(i) whether the relationships between distinct elements of an historic place, site or area will be maintained</i>	N/A

4.47 In responding to these criteria in the round, we remain of the view that the proposed de-listing does not amount to inappropriate use and development on heritage values for the reasons specified in the table and previously in this report.

4.48 Given the above findings in relation to Policies 21, 22 and 46, we record our overall view that the proposal will not amend the District Plan in such a way that it ceases to give effect to the RPS.

***Is the plan change consistent with any regional plans or proposed regional plans?***

4.49 We were not presented with any evidence to suggest the proposal is inconsistent with any operative Regional Plan or the Proposed Natural Resources Regional Plan.

***What (if any) regard should be given to relevant management plans and strategies under other Acts, including any relevant entry in the Historic Places Register?***

4.50 As per our discussion under Issue 2 in section 3 above, the Flats are not contained in the Heritage New Zealand list. We have had regard to this to extent that it does not contradict the expert evidence before us that the overall heritage significance of the Flats is moderate.

**Summary**

4.51 In summary, we conclude that when assessed against the relevant statutory framework and the individual elements produced under that framework, PC81 as amended in Appendix 3 is the most appropriate outcome for the site.

**Concluding comment regarding anti-social behaviour**

4.52 As noted in section 3 above, we heard concerns from several submitters who live in the vicinity of the plan change site who are very concerned about current (and potentially additional future) anti-social behaviour and nuisance effects associated with VUW students residing in the area, predominantly in the halls of residence. Those submitters considered that the plan change proposal, particularly any new student accommodation facilities in the area, would amplify existing nuisance effects associated with student behaviour.

4.53 From the presentations of those submitters we found that:

- a. there is clearly a nuisance effect on local residents that is unacceptable at times, and that it is predominantly students that are to blame.
  - b. the nuisance is concentrated predominantly in Kelburn Park, or in the array of public and private spaces between the CBD and the halls of residence - not within, or immediately outside of, the halls themselves.
- 4.54 For the above reasons, we found it appropriate in Section 3 of this report to urge the University to be a better neighbour; however, we did not agree with submitters that the proposed rezoning itself would exacerbate the existing effect. Accordingly, we have recommended the adoption of the proposed rezoning largely as notified. Furthermore, we have not recommended the acceptance of the submissions seeking that student accommodation be prohibited and/or that such activities proposed on the site be publicly notified as a matter of course.
- 4.55 Notwithstanding the above, we believe the concerns raised by the submitters speak more to the need for a greater custodial role of the University, the Council and (in limited circumstances) the Police than it does to the limitation of otherwise appropriate student activities on the plan change site.
- 4.56 To this end we have proffered some non-statutory recommendations in the final section of this report that we would like to see the Council consider and adopt where practicable. We acknowledge that these recommendations have no RMA weight but such was the concern of the submitters that it would be remiss of us not to address this issue to the Council and VUW and to suggest some means of addressing what are clearly very real concerns of local residents.

## 5.0 OVERALL RECOMMENDATION

5.1 Based on our consideration of all the material before us, including the section 42A report from the council advisors, submissions, further submissions, evidence presented at the hearing and following consideration of the requirements of Section 32 and other relevant statutory matters, we make the following **statutory recommendations** to the Council:

(a) that The plan change be accepted as amended in **Appendix 3** and that all submissions on the plan change be accepted or rejected to the extent set out above (and summarised in **Appendix 1**); and

(b) that pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991, Council give notice of its decision on submissions to Plan Change 81.

5.2 We also encourage the Council to consider the wider and non-statutory recommendations made below by us in reflection of the evidence we heard from VUW (notably Ms Bentley), various submitters (in the Kelburn locality) and Council officers (notably Mr Ryan Cameron) in respect to previous and ongoing anti-social activities in the area. These matters are all beyond the scope of the Plan Change as they are not matters which the District Plan is able to control.

5.3 Our **non-statutory recommendations** are:

(a) That the **Council** form and convene a Working Committee (or similar) comprised of representatives of Council Officers (particularly Council's Compliance and Parks/Reserves Units), the ward councillor(s), VUW, the Kelburn Resident's Association, the VUW Student's Association, and NZ Police to:

(i) gain a full understanding of the nature and reasons for the nuisance issues being raised by Kelburn residents;

(ii) identify and (where possible) implement, inter-agency measures to address the nuisance issues; and

(iii) regularly monitor and report back to Council on the success of the measures adopted by the Committee.

(b) That **VUW** adopt an active programme of education, communication and enforcement measures to both identify and address issues of anti-social behaviour of students in the Kelburn locality.

DATED AT WELLINGTON THIS 19th DAY of April 2016



Andy Foster  
City Councillor (Chair)



Mark Peck  
City Councillor



David McMahon  
Independent Commissioner

**APPENDIX 1**

Panel recommendations on relief sought by submission

**APPENDIX 2**  
Panel Minutes

**APPENDIX 3**

Annotated version of Plan Change provisions

**APPENDIX 4**

Explanation for proposed amendments arising since notification