

**BEFORE INDEPENDENT HEARING COMMISSIONERS AT  
WELLINGTON**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** the hearing of submissions on the  
Proposed Wellington City District Plan

**STATEMENT OF EVIDENCE OF MACIEJ WIKTOR LEWANDOWSKI ON BEHALF  
OF STRATUM MANAGEMENT LIMITED (SUBMITTER 249)**

**HEARING STREAM 5 – GENERAL DISTRICT WIDE MATTERS**

**AUGUST 2023**

**PLANNING**

**1. INTRODUCTION**

1.1 My name is Maciej (Mitch) Wiktor Lewandowski. I am a Resource Management Consultant and Director of Building Block Planning Ltd, a Wellington based planning and resource management consultancy. I have held my current role since April 2022.

**Qualifications and Experience**

1.2 I hold a Bachelor of Resource Studies from Lincoln University, a Master of Resource and Environmental Planning from Massey University, and a Post Graduate Diploma in Management from Massey University. I am a Full Member of the New Zealand Planning Institute and accredited resource management commissioner.

1.3 I have 21 years' professional experience. In my current role I assist a range of private and public sector clients, including Stratum Management Ltd ("**Stratum**"), across a range of resource management matters.

1.4 Prior to my current role I was employed by Urban Perspectives Limited as a Resource Management Consultant for a period of 3 years. Prior to that role, I was employed by the Wellington City Council for a period of 5 years, as Principal Advisor Planning within the Council's District Plan team.

**Involvement in Stratum Managements' submission to the Proposed District Plan**

1.5 I provided Stratum with advice to inform its submission, and further submission, to the Proposed District Plan ("**PDP**").

**Involvement in the Proposed District Plan**

1.6 I note that I have assisted the Council in the development of the Character Precinct and Mt Victoria North Townscape Precinct provisions of the PDP. I was the reporting officer for those topics for Hearing Stream 2. I was also on the Council's Technical Review Panel during the development of the PDP.

1.7 I have presented evidence for Stratum as part of Hearing Stream 4 – Centres.

**Code of conduct**

1.8 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

**2. SCOPE OF EVIDENCE**

2.1 Stratum's submission in respect of the Three Waters chapter addressed the following provisions:

(a) Objective THW-O3 – Hydraulic neutrality

(b) Policy THW-P1 – Water sensitive design

(c) Policy THW-P5 – Hydraulic neutrality

- (d) Rule THW-R4 – Incorporation of water sensitive design methods – 4+ units and non-residential activity
- (e) Rule THW-R5 – Hydraulic neutrality
- (f) Rule THW-R6 – Hydraulic neutrality 4+ units

2.2 I address these submission points, and the response to them provided through the Council's Section 42A ("s42A") report, in the following sections.

### **3. THREE WATERS**

#### **Objective THW-O3 – Hydraulic neutrality**

- 3.1 The objective seeks no increase in offsite stormwater peak flows and volumes as a result of subdivision, use and development in urban areas.
- 3.2 The Stratum submission acknowledged that the proposed approach seeks to codify existing practice, however its universal applicability and in particular its applicability to the City Centre Zone ("CCZ") was opposed.
- 3.3 The objective is given effect by policy THW-P5 which I discuss at 3.8 to 3.33 below.
- 3.4 Notwithstanding that I support the relief sought by Stratum, on further consideration of the objective I do not believe that the drafting of the objective requires amendment to accommodate the exclusion of the CCZ. Rather, that can be achieved through the associated rule THW-R6 and I suggest appropriate changes below.

#### **Policy THW-P1 – Water sensitive design**

- 3.5 The policy seeks that water sensitive design methods are incorporated into new development in order to achieve a range of listed outcomes.
- 3.6 For the reasons outlined below at 3.34 to 3.43 in respect of the associated rule THW-R4, I consider that the requirements of this policy are uncertain, would apply universally including in areas where compliance with the requirements may be overly onerous, will impact on the design of development in an uncertain way, will impact on resultant development capacity and in-turn the efficient use of land.
- 3.7 In the absence of the policy and associated rule being amended to provide the required certainty as to what the policy and rule are seeking to achieve,

and importantly how this will be measured, I consider that the policy is overly subjective, uncertain and that it will give rise to cost and time delays. I resultingly consider that in its current form it should be deleted.

### **Policy THW-P5 – Hydraulic neutrality**

- 3.8 Policy THW-P5 supports objective THW-O3 discussed above. The policy states (emphasis added):

#### **THW-P5 Hydraulic neutrality**

Require new subdivision and development to be designed, constructed and maintained to sustainably manage the volume and rate of discharge of stormwater to the receiving environment so that the rate of offsite stormwater discharge is reduced as far as practicable to be at or below the modelled peak flow volume for each site in an undeveloped state.

- 3.9 The Stratum submission noted that the approach of the policy ignores the existing environment by requiring the starting point for stormwater attenuation to be the site in an undeveloped state. All existing practice, in my experience, accounts for existing buildings and other impervious materials when assessing stormwater attenuation requirements in existing urban areas.
- 3.10 Both Ms Cook and Ms Nitsche address this point. Ms Cook at paragraph 100 of her s42A report comments on the definition of hydraulic neutrality<sup>1</sup> and the loss of existing use rights as follows (emphasis added):

“Council cannot take away existing use rights as set out by s10 of the RMA, and the rule requiring hydraulic neutrality for new developments is no different from any other rule that imposes a new and more stringent requirements as compared to a previous district plan. To make an ‘existing use rights’ argument, the onus is on the applicant to prove they apply, and they only apply if the use was lawfully established before the proposed plan was notified and the effects are the same or similar in character, scale, and intensity. The use of the phrase ‘undeveloped state’ within the definition will, however, limit an applicant’s ability to use an existing environment argument in the resource consent process.”

- 3.11 Ms Cook’s discussion of existing use rights is in my view somewhat of a red herring. The issue does not relate to existing use rights as may be applicable, for example, to an existing building that falls foul of a new recession plane requirement or setback standard. The issue rather is that of the existing

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<sup>1</sup> The Stratum submission did not directly address the definition of hydraulic neutrality, but rather addressed policy THW-P5 which effectively duplicates that definition.

environment and the validity of considering that as the starting point for addressing any additional effects. Ms Cook acknowledges the issue raised by Stratum (and others) that the policy as worded would remove that existing environment consideration. In my view this is the wrong starting point for determining what effects a new development should reasonably be required to address.

3.12 Ms Cook goes on to state, at her paragraph 101, that requiring modelling to an undeveloped state is to give effect to clause 3.5(4) of the National Policy Statement on Freshwater Management (“**NPS-FM**”). She sets out the relevant clause from the NPS-FM but nothing within that clause supports the position that within an existing urban area the existing environment should be set aside for the purposes of assessing stormwater attenuation requirements.

3.13 At her paragraph 102, Ms Cook goes on to state:

“The inclusion of the phrase ‘undeveloped state’ is consistent with WWL’s guidance document “Managing Stormwater Runoff – the use of approved solutions for hydraulic neutrality”, which in paragraph 4.2 defines pre-development as the site before it was developed, (i.e. it is undeveloped).

3.14 Ms Cook is confusing a site prior to development with a site being undeveloped, and is instead drawing a direct comparison between the two where she states – “i.e. it is undeveloped”. The two matters are not equivalent.

3.15 I have reviewed the Wellington Water document Ms Cook references. The relevant document does not contain paragraph numbers<sup>2</sup> so I was unable to make a direct comparison with the section she mentions, but I did find the following references. At page 6, the document records the following two statements:

“To manage the additional runoff directly attributed to your development, you need to ensure the maximum peak flow off your land is no greater than what it was pre-development. This is our definition of hydraulic neutrality.”

“We define hydraulic neutrality as capturing post-development peak runoff so that it does not exceed the pre-development peak flow rate.”

3.16 Both of these statements recognise the pre-development state of a site, rather than the undeveloped state of a site. Both statements conflict with Ms Cook’s

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<sup>2</sup> <https://www.wellingtonwater.co.nz/assets/Resources/Developing/Managing-Stormwater-Runoff.pdf?file-size=1.3+MB&file-type=pdf>

interpretation. Clearly if a site was truly undeveloped, then that would be the appropriate starting point for an assessment of its pre-development state.

3.17 Ms Cook then goes on at her paragraph 104, referencing the evidence of Ms Nitsche – that the proposed approach should be consistent with the modelling required by Wellington Water ‘Quick Reference Guide for Design Storm Hydrology’ and that undeveloped state is most appropriately defined as a grassed state.

3.18 The evidence of Ms Nitsche in turn also comments on the assessment methodology proposed. She states at her paragraph 31 - 32 (emphasis added):

After collaboration between GW, the Council and Wellington Water, it is proposed to amend the definition for Undeveloped State as noted in paragraph 19. The definition would not take existing buildings into consideration in the calculations.

As I have explained earlier (paragprahs 19-27), this will capture the biggest impacts and environmental consequences from development.

3.19 Ms Nitsche mentions at her paragraph 30 that a submission by Greater Wellington Regional Council notes that Proposed Change 1 (“PC1”) to the Regional Policy Statement includes a new definition of hydrological controls in relation to a sites undeveloped state referenced in Policies FW.3 and 42.

3.20 I have reviewed both Policy FW.3 and Policy 42 of the notified version of PC1. Neither mention the words ‘undeveloped state’ but rather both reference ‘hydrological controls’. I have checked and there is no definition of ‘undeveloped state’ proposed by PC1. There is a notified definition of ‘hydrological controls’ which is set out as follows:

For greenfield development:

(a) the modelled mean annual runoff volume generated by the fully developed area must not exceed the mean annual runoff volume modelled from the site in an undeveloped (pastoral) state

(b) the modelled mean annual exceedance frequency of the 2-year Average Recurrence Interval (ARI) so-called ‘channel forming’ (or ‘bankfull’) flow for the point where the fully developed area discharges to a stream must not exceed the mean annual exceedance frequency modelled for the same site and flow event arising from the area in an undeveloped (pastoral) state.

For brownfield and infill development:

(a) the modelled mean annual runoff volume generated by the fully developed area must, when compared to the mean annual runoff volume modelled for the site prior to the brownfield or infill development, be reduced as far as practicable towards the mean annual runoff volume modelled for the site in an undeveloped state

(b) the modelled mean annual exceedance frequency of the 2-year ARI so-called 'channel forming' (or 'bankfull') flow for the point where the fully developed area discharges to a stream, or stormwater network, shall be reduced as far as practicable towards the mean annual exceedance frequency modelled for the same site and flow event in an undeveloped state.

3.21 Two primary matters arise:

- (a) The proposed definition differentiates between greenfield development and brownfield/infill development; and
- (b) The references to 'undeveloped state' differ between the two sections of the definition with the words 'pastoral' being added in brackets as part of the greenfield definition.

3.22 This approach supports the very distinction that the Stratum submission has sought to draw, and contrasts with the interpretation of Ms Cook and Ms Nitsche. While I support a degree of caution being applied as to how much weight is placed on the provisions of PC1 given its stage of development, it is in my view erroneous of Ms Cook to make the following comment at paragraph 105 of her s42A report:

“...in my opinion the notified definition of hydraulic neutrality and the proposed definition of undeveloped state are consistent with the relevant definitions in PC1”.

3.23 In my opinion, the two approaches are inconsistent.

3.24 Lastly, in terms of the evidence of Ms Nitsche, I note that she contradicts herself in her use of pre-development and undeveloped. She notes at her paragraphs 45 and 51 for instance:

The Regional Standard for Water Services section 4.4.2.1 states that detention should be designed to limit the peak discharge from the development to not greater to the existing peak discharge from pre-development. Pre-development is not defined in the PNP (sic) but hydrologically implies the modelled grassed (pastoral or urban open space) state of the site prior to urban development.

The definition therefore does not contradict the Regional Standard of (sic) Water Services for environmental water quality retention or detention.

- 3.25 In my view the words from the regional standard should be taken as they appear – that pre-development means the site as it exists prior to development occurring. A given site may be greenfield, or it may have existing development on it. No meaning should need to be “implied” through a hydrological lens, and contrary to Ms Nitsche’s view, in my opinion a direct contradiction exists.
- 3.26 For clarity, I express no view on the proposed definition of ‘undeveloped state’ as it might apply to a greenfield site. My concern relates to the PDP considering all sites to be undeveloped. Such an approach is fundamentally at odds with the concept of the existing environment and existing practice.
- 3.27 Turning to the relief sought by Stratum, I consider two changes are required. Firstly, the issue of undeveloped state needs to be resolved. The Stratum submission sought that the existing environment continue to be recognised. Policy THW-P5 could in my opinion be amended as follows:

**THW-P5 Hydraulic neutrality**

Require new subdivision and development to be designed, constructed and maintained to sustainably manage the volume and rate of discharge of stormwater to the receiving environment so that the rate of offsite stormwater discharge is reduced as far as practicable to be at or below the modelled peak flow volume for each site prior to development occurring ~~in an undeveloped state~~.

- 3.28 A consequential and equivalent amendment would be required to the definition of hydraulic neutrality:

**Hydraulic neutrality**

means managing stormwater runoff from subdivision, use and development through either on-site disposal or storage, so that peak stormwater flows and volumes are released from the site at a rate that does not exceed the modelled peak flows and volumes from the site prior to development occurring ~~in an undeveloped state~~.

- 3.29 I acknowledge that there may be other means to achieve an equivalent outcome that keeps the definition of ‘undeveloped state’ but would also require an additional definition of ‘pre-development’ or an equivalent term. I consider that the amendment I propose is appropriate and effective in achieving objective THW-O3. Further, it is consistent with the established practice of considering the existing environment as sought by Stratum.

- 3.30 Secondly, in my view the policy and associated rule should exclude the CCZ. Building on the earlier discussion around the appropriateness of considering the existing environment, I note the the CCZ is a significantly built up area. Site coverage for any given site is high, with a large number of sites having total built site coverage, or total impervious coverage.
- 3.31 In this context, any benefits from an approach that recognises the existing environment will likely be minimal. Moreover, new development in the CCZ will achieve a high level of site coverage as confirmed in the evidence of Mr Stewart.
- 3.32 The advice provided with Mr Stewart's evidence addresses the practicality of achieving hydraulic neutrality through detention tanks within the CCZ. In my view, that advice suggests that the use of underground tanks will have significant development costs in respect of foundation design, and different but still consequential impacts if tanks are to be accommodated at ground floor level. The evidence of Mr Stewart further addresses the development impacts of tanks at ground floor level.
- 3.33 Resultingly, I consider that the CCZ should be exempt from these requirements. While the Stratum submission sought that the policy be amended to include that exemption, I consider that an amendment to rule THW-R6 will be sufficient and will not cause conflict with the policy as presently drafted. I address this below.

**Rule THW-R4 - Incorporation of water sensitive design methods – 4+ units and non-residential building**

- 3.34 Rule THW-R4 gives effect to policy THW-P1. It requires resource consent as a restricted discretionary activity and requires the incorporation of water sensitive design methods for any non-residential building, or four or more residential units. There is no permitted activity status.
- 3.35 Therefore an automatic consent requirement is created for any non-residential building and for any development of 4 or more residential units.
- 3.36 I agree with the Stratum submission that the rule and supporting policy are uncertain. The uncertainty stems from not knowing what exactly the rule requires. The heading suggests incorporation of water sensitive desing methods, but what is left unsaid relates to what method, how many methods, how much of a given method, and what is the target state that is sought to be achieved. In other words, a plan user designing a development will be left no clearer as to what is to be achieved, in whatever zone is relevant.

- 3.37 Ms Cook in her s42A report comments at paragraph 166 that “[t]he proposed matters of discretion recognise that the extent to which this can be achieved will vary between sites” and that “[t]he onus is on the applicant to show how they’ve complied”.
- 3.38 Ms Cook highlights the very subjectivity that the Stratum submission is concerned with when she says that the extent to which this can be achieved will vary between sites. And while it is of course an applicants role to demonstrate how it meets district plan requirements, the issue that is highlighted by the Stratum submission is that it is wholly unclear what those requirements may be and at what point they may be satisfied.
- 3.39 The rule references the Wellington Water Regional Standard for Water Services, and the Wellington Water ‘Water Sensitive Design for Stormwater’ documents as a matter of discretion. In considering the ‘Water Sensitive Design for Stormwater Document’, itself a 142 page document, it’s scope appears to be limited to:
- (a) Constructed wetlands;
  - (b) Bioretention (rain gardens);
  - (c) Vegetated swales; and
  - (d) Pervious paving.
- 3.40 Excepting permeable paving, the other three methods referenced are generally space intensive. The practicality of their application in the CCZ is limited outside of public areas or roads, or would impact on the extent of development of a given site in order to accommodate them. Other methods are of course available – rainwater tanks, green roofs and proprietary tanks for example – but again the rule is entirely uncertain as to what is to be achieved and how.
- 3.41 The Regional Standard for Water Services is a further 132 page document referenced as a matter of discretion. In my review of that document, one paragraph addresses water sensitive design<sup>3</sup>. I do not consider that it provides certainty on what would be expected through this rule. Rather, it creates a situation of a project by project determination of what may be required, what may be feasible and what may be reasonable. This by definition creates uncertainty.

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<sup>3</sup> Section 4.2.10.

- 3.42 In the absence of the rule providing certainty for plan users, I am of the opinion that the rule should be deleted. The rule is simply too uncertain, across all zones, to be approved in its current form. It will result in case-by-case determinations for any non-residential building or development of 4 or more residential units in consultation with Wellington Water. This will add time and cost to any development proposal without the certainty of an end outcome.
- 3.43 Should the Hearing Panel not support the removal of the rule entirely (in the absence of greater certainty being provided), then I support the alternative relief sought by Stratum to remove the application of the rule to the CCZ. The principal methods identified by the referenced guidance document appear to not be practicable in the CCZ for the rule to be achievable.

**Rule THW-R5 – Hydraulic neutrality**

- 3.44 As a more minor matter, I note that this rule (along with others in the Three Waters chapter) reference various Wellington Water standards. While I accept the validity of this approach, I note that Wellington Water standards can be changed without reference to the development sector or wider public. This creates the potential for uncertainty going forward as Wellington Water is free to amend its standards subject only to its own internal processes.
- 3.45 Therefore to the extent possible, I would support referencing core standards – such as the approved solutions for hydraulic neutrality – but equally others, within the District Plan.

**Rule THW-R6 – Hydraulic neutrality 4+ units**

- 3.46 Rule THW-R6 gives effect to objective THW-O3 and policy THW-P5. Consistent with the relief sought by Stratum in respect of those provisions, Stratum sought that this rule be deleted or that it exclude the CCZ. The rule requires hydraulic neutrality to be achieved in order to achieve a permitted activity status and defaults to a restricted discretionary activity consent requirement where compliance with the rule cannot be achieved.
- 3.47 Consistent with my evidence given in respect of policy THW-P5 at 3.8 to 3.33, and for the same reasons, I suggest the following amendments to the rule from that set out in the s42A report for this topic:

<b>THW-R6</b>	<b>Hydraulic neutrality – four or more residential units and non-residential buildings.</b>
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	<p>All Zones (except for:</p> <p>General Rural Zone</p> <p>Large Lot Residential Zone</p> <p><u>City Centre Zone</u></p>	<p>1. Activity status: <b>Permitted</b></p> <p>Where:</p> <p>...</p> <p>c. Stormwater management measures are incorporated which achieve post development peak stormwater flows and volumes which are the same or less than the modelled peak flows and volumes for the site <u>prior to development occurring in an undeveloped state.</u></p> <p>...</p>
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#### 4. CONCLUSION

4.1 My evidence has addressed two primary matters:

- (a) The blanket application of hydraulic neutrality and the basis on which hydraulic neutrality is to be measured; and
- (b) The uncertainty created by the requirement to apply water sensitive design measures without clear requirements and outcomes to measure compliance.

4.2 In respect of hydraulic neutrality, I consider that the proposed PDP approach ignores existing and longstanding practice that accounts for the existing environment in determining stormwater attenuation requirements. I further consider that the CCZ should be exempt from any requirement on account of the density of built development, and resulting imperviousness, in this part of the city.

4.3 In respect of water sensitive design measures, I consider that the requirements of the PDP create uncertainty, and through a default resource consent trigger, will result in additional costs as appropriate design solutions are negotiated on a case by case basis. I further consider that the referenced guidance does not account for the nature of CCZ development and that notwithstanding my fundamental concerns about the proposed approach, at a minimum the CCZ should be excluded from the proposed requirements.

4.4 I consider that the amendments recommended in my evidence will more appropriately give effect to the purpose of the Resource Management Act 1991.

A handwritten signature in blue ink, appearing to read 'ML', with a horizontal line extending to the right.

**Mitch Lewandowski**

**18 July 2023**