

**Under** the Resource Management Act 1991

**In the matter of** hearings of submissions and further submissions on the Proposed Wellington City District Plan

**By** **Wellington's Character Charitable Trust Inc**  
Submitter

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**LEGAL SUBMISSIONS BY WELLINGTON'S CHARACTER CHARITABLE TRUST FOR  
HEARING STREAM THREE  
5 MAY 2023**

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## **Introduction**

1. Wellington's Character Charitable Trust (WCCT) is scheduled to make a presentation to the Panel on Tuesday 16 May 2023 at 9.40am as part of Hearing Stream 3. WCCT's presentation will be made jointly with Historic Places Wellington (HPW).
2. The topics that WCCT wishes to address the Panel on are as follows:
  - (a) Facadism;
  - (b) Demolition by neglect;
  - (c) Additional nominations for heritage listing proposed by HPW and WCCT;
  - (d) The proposal to remove Gordon Wilson Flats from the heritage schedule; and
  - (e) Hay Street Heritage Area.
3. These submissions expand WCCT's position on these five topics.

## **Facadism**

4. HPW and WCCT do not support facadism as an approach for heritage listed buildings. Facadism involves demolishing most of the heritage building, retaining only the street façade, or part thereof.
5. HPW proposes that a further new policy or rule should be included in the PDP's Historic Heritage Chapter to make it clear that only in exceptional instances will façadism be appropriate, and only if consistent with ICOMOS guidelines. WCCT supports that proposal.
6. The reporting officer Mr McCutcheon agrees that when poorly executed, facadism can be detrimental to heritage values. However, he does not support a new policy or rule, and suggests that policy HH-P7 and guideline G37 in the Heritage Design Guide provide sufficient direction about the

nature and extent of works proposed where demolition is sought behind the façade of a scheduled building.<sup>1</sup>

7. WCCT agrees with the response in the evidence of Amanda Mulligan and Michael Kelly that there is no good reason to permit façade-only retention of heritage buildings, except in unusual and specific circumstances.<sup>2</sup>
8. In light of those comments, WCCT proposes that policy HH-P7 could provide clearer direction about the appropriateness of facadism by way of the following track changed amendments (in red), which would go some way to alleviating the submitters' concerns about facadism:

**HH-P7 Additions, alterations and partial demolition of heritage buildings and structures**

Provide for additions and alterations to, and partial demolition of heritage buildings and heritage structures where it can be demonstrated that the work does not detract from the identified heritage values, having regard to:

1. The extent to which the work:
  - a. Supports the heritage building or heritage structure having a sustainable long term use;
  - b. Promotes, enhances, recovers or reveals heritage values;
  - c. Retains the main determinants of the architectural style or design of the heritage building or heritage structure and the integrity of all components of the heritage building or heritage structure;
  - d. Is compatible with the scale, form, proportion and materials of the heritage building or heritage structure;
  - e. Respects the identified relationship of the heritage building or heritage structure with its setting;
  - f. Enables any adverse effects on identified heritage values to be reversed;
  - g. Minimizes the loss of fabric and craftsmanship throughout the entire heritage building or heritage structure;
  - h. Is in accordance with any conservation plan that has been prepared by a suitably qualified heritage professional;
  - i. Increases structural stability, accessibility and means of escape from fire;

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<sup>1</sup> Section 42A report – Hearing Stream 3 at [166].

<sup>2</sup> Statement of evidence of Amanda Mulligan and Michael Kelly at [64].

- j. Fulfils the intent of the Heritage Design Guide;
  - 2. The visibility of the work from street frontages;
  - 3. Whether the works would lead to cumulative adverse effects on identified heritage values;
  - 4. Whether there has been any change in circumstances since scheduling in the District Plan, including damage from natural disaster;
  - 5. Any advice that has been obtained from a suitably qualified heritage professional including Heritage New Zealand Pouhere Taonga;
  - 6. Whether the works are consistent with ICOMOS NZ Charter and other policy documents and guidelines that are incorporated by reference in APP1 – Historic Heritage Advice Notes; and
  - 7. The identified heritage values of the heritage area, where located within a heritage area.
9. In terms of the reference to the ICOMOS NZ Charter, WCCT notes that ICOMOS is a global non-government organisation dedicated to promoting the application of theory, methodology, and scientific techniques to the conservation of architectural and archaeological heritage. Its New Zealand specific charter is therefore a document that is worthy of express reference and consideration in the policy assessment under HH-P7.

#### **Demolition by neglect**

- 10. The submitters are concerned about a serious system gap in the current regulatory framework whereby property owners of heritage listed buildings can neglect to maintain or repair buildings so they are effectively “demolished by neglect”.
- 11. HPW has proposed that this be addressed by including a new policy to the PDP's Historic Heritage Chapter on Maintenance and Repair along the following lines:
  - “Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision.”
- 12. That provision is taken from the English National Policy Planning Framework.
- 13. If included in the PDP it would address the situation where an owner argues as part of a resource consent application that the benefits of a new building (which substantially demolishes a listed heritage building) outweighs its value as an intact or restored heritage building. Such an argument should not be

available or given weight where an owner has contributed to that state of affairs through deliberate neglect and lack of maintenance. A practical example is the situation of the Adelaide Hotel heritage building at 114 Adelaide Rd.

14. Mr McCutcheon's report acknowledges that the concern about demolition by neglect is valid and raises a difficult issue. He suggests that it should be addressed by amendments to policy HH-P10 so that there is consideration of the reasons why the building is in the state that it is.<sup>3</sup>
15. WCCT does not consider that Mr McCutcheon's proposed amendments are sufficient to enable consideration of the reasons why the building is in the state that it is. The wording needs to make clear that an assessment is required of whether regular maintenance and repair is (or was) a reasonable alternative to total demolition.
16. In the following we have set out Mr McCutcheon's amendments to HH-P10 in **red**, and WCCT's proposed rewording in **blue**:

#### **Total demolition of heritage buildings and heritage structures**

Avoid the total demolition of heritage buildings and heritage structures unless it can be demonstrated that there are no reasonable alternatives to total demolition, including:

1. Maintenance and repair, **including taking into account the extent to which ~~this~~ this has been regularly undertaken;**
2. Seismic strengthening;
3. Additions, alterations or partial demolition, including to enable reuse;
4. Repositioning; and
5. Relocation.

#### **Additional heritage listing nominations**

17. HPW and WCCT proposed in their submissions that the following buildings be included in the heritage schedule as heritage buildings:
  - (a) Wellington Central Library, and Te Ngākau Civic Square;

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<sup>3</sup> Section 42A report – Hearing Stream 3 at [172]–[177] and [185].

- (b) Hurston house, 1 Mersey St, Island Bay;
  - (c) Wilkinson holiday flats, 5–7 & 9–11 Grass St, Oriental Bay;
  - (d) Newman House, 15 & 17 Hawkestone St, Thorndon;
  - (e) Samuel Brown House, 22 Hanson St, Mt Cook;
  - (f) Burns Upholsterer, 47–49 Martin Square, Te Aro;
  - (g) Coffey House, 230 Oriental Parade; and
  - (h) Salvation Army Citadel, Jessie Street.
18. In terms of procedure, this aspect of WCCT's submission for these additional heritage listings is advanced as a submission on the Part 1 Schedule 1 instrument. WCCT submits that the relief it seeks is within the scope of the notified Part 1 Schedule 1 instrument, for the reasons outlined in Mr Winchester's advice to the Panel.<sup>4</sup>
19. I now comment further on each of the proposed heritage buildings.
20. *Wellington Central Library*: Mr McCutcheon and Ms Smith's response is that as this building is the subject of a resource consent to redevelop it, it should be reassessed against heritage criteria when those building works are complete in 2026.<sup>5</sup>
21. WCCT agrees with Ms Mulligan's evidence that the fact that changes to the building have been the subject of a resource consent is not sufficient grounds to defer a heritage assessment of this building as part of the PDP process.<sup>6</sup> The question of whether the Central Library should be in the PDP's heritage listing should be decided now, and not left to be influenced by somewhat controversial political and budgetary questions about how and when the Library is redeveloped.
22. The Central Library building was given a Category 1 Historic Place listing by Heritage New Zealand Pouhere Taonga (HNZPT) in 2021. WCCT is concerned about the prospect of waiting until 2026 for the Council to reflect this

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<sup>4</sup> Advice from James Winchester dated 8 March 2023 at [71]–[73].

<sup>5</sup> Section 42A report – Hearing Stream 3 at [902]–[903].

<sup>6</sup> Statement of evidence of Amanda Mulligan at [117].

recognised heritage value of the Central Library, given the apparent constraints on the Council's resources and lack of firm commitment to future plan changes to list heritage buildings.

23. *Te Ngākau Civic Square*: WCCT agrees with Ms Mulligan's comments that the buildings in Civic Square already have recognised heritage values, as shown by the creation of the Civic Square Heritage Area by Plan Change 48.<sup>7</sup> If any further research is required before those buildings can be scheduled, then there should be a direction for expert conferencing between Ms Mulligan and Ms Smith.
24. *Hurston House*: Ms Smith identifies that this building was listed by HNZPT as a Category 2 Historic Place in May 2021. The Panel must have regard to that listing in hearing submissions on the PDP.<sup>8</sup>
25. Ms Smith and Mr McCutcheon propose that further assessment is required before the Hurston House could be scheduled. WCCT does not agree. There has already been a public notification, submission and assessment process undertaken by HNZPT as part of its listing process. There is therefore no barrier to the heritage schedules in the PDP being amended to reflect the listing by HNZPT.
26. *Wilkinson Holiday Flats, Newman House, Samuel Brown House, Burns Upholsterer, and Coffey House*: WCCT and HPW have provided expert evidence about these proposed new heritage buildings from Michael Kelly. Mr Kelly's view is that these nominated buildings could meet the criteria for heritage listing under Policy 21 of the Regional Policy Statement, subject to further research and detailed heritage evaluation.<sup>9</sup> Ms Smith agrees that these buildings are good candidates for further research and evaluation.
27. The owners of these properties have had an opportunity to make further submissions in response to this proposed listing, by way of the public notification of the summary of submissions. It seems that the owners have not elected to make a further submission. There would therefore be no

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<sup>7</sup> Statement of evidence of Amanda Mulligan at [125]–[131].

<sup>8</sup> Resource Management Act 1991, s 74(2)(b)(iia).

<sup>9</sup> Supplementary evidence of Michael Kelly at [6].

procedural reason why they could not be included in the heritage schedule, based on the expert evidence from Mr Kelly.

28. In the alternative, WCCT would support there being a recommendation for the Council to process a plan change to include these buildings in the heritage schedule within a reasonable timeframe. WCCT is however concerned about whether the Council has sufficient resourcing and commitment to do so within an appropriate timeframe.
29. *Salvation Army Citadel*: WCCT supports the submission by Wayne Coffey and Gregory Young, who have provided detailed information about the Salvation Army Citadel and its heritage values.<sup>10</sup> As above, this building should either be included in the heritage schedule now, or there should be a recommendation for any necessary further consultation and then a plan change to include this building in the heritage schedule within a reasonable timeframe.

#### **Gordon Wilson Flats**

30. Te Herenga Waka Victoria University of Wellington submitted that Gordon Wilson Flats should be removed from the heritage schedule.
31. There is overwhelming expert evidence in opposition to this submission, from Mr McCutcheon and Ms Smith (for the Council), Dr James Jacobs (for HNZPT) and Mr Bill McKay (for WCCT and HPW). This is not surprising in light of the Environment Court's 2017 decision and HNZPT's decision to assign the Gordon Wilson Flats a Category 1 heritage status.
32. There is no contrary expert evidence lodged by Te Herenga Waka Victoria University of Wellington.
33. Accordingly, Gordon Wilson Flats should clearly be retained on the heritage schedule.

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<sup>10</sup> Submission 347: Wayne Coffey and Gregory Young.



## Hay Street Heritage Area

34. WCCT supports the submission by Pukepuke Pari Residents Inc to include Hay Street as a heritage area. This proposal is supported by the Hay Street Heritage Report prepared by Michael Kelly and Sarah Poff.<sup>11</sup>
35. Ms Smith considers that this proposal has merit and that the report is carried out to a high professional standard. She suggests that some further research is required to assess individual properties before proceeding with classifying Hay Street as a heritage area.<sup>12</sup> She agrees with Mr Kelly's supplementary evidence.<sup>13</sup>
36. Mr McCutcheon recommends conferencing take place between Ms Smith and Mr Kelly to determine the extent of the heritage area. There should be a direction for that conferencing to take place and for a joint witness statement to be provided.
37. Mr McCutcheon raises a procedural concern that properties in Hay Street should not be added to the schedule without the owners having opportunity to make a submission or speak to the hearings panel regarding this. WCCT notes in response that:
  - (a) The proposal to include Hay Street as a heritage area was publicly notified in the summary of submissions, and there has therefore been an opportunity for owners to make a further submission and speak to the hearings panel; and
  - (b) Ms Victoria Stace, Secretary of Pukepuke Pari Residents Inc, will be attending WCCT and HPW's presentation on 16 May 2023 to inform the Panel about consultation that she has undertaken

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<sup>11</sup> Supplementary evidence of Michael Kelly at [8].

<sup>12</sup> Statement of evidence of Moira Smith at [1014]–[1019].

<sup>13</sup> Statement of supplementary evidence of Moira Smith at [62]–[63].

with Hay Street residents. Pukepuke Pari is a representative group of Hay Street residents.

A handwritten signature in black ink that reads "D W Ballinger". The letters are cursive and fluidly connected.

**D W BALLINGER**  
**COUNSEL FOR WELLINGTON'S CHARACTER CHARITABLE TRUST**  
5 May 2023