

He aha te mea nui o te ao? He tangata, he tangata, he tangata

What is the most important thing in the world? It is the
people, it is the people, it is the people

Introduction

We have made every effort to make sure our submissions are well informed and have engaged experts in their fields to support them (at considerable expense).

This includes researching and understanding the:

- Implications of listing before we determined how we should respond.
- The history of our home and any heritage values.
- The legislative context behind the Council's proposal, RMA, NPS-UD, RPS etc
- The statutory tests that must be met to list a building.

We appreciate that heritage protection can be a polarizing topic – especially under the Council's current regime settings. We are not opposed to heritage or all protection.

We are advocates for:

- Good policy and rules that sets clear incentives for sustainable heritage outcomes
- Evaluation process that weighs and balance competing costs and benefits
- Informed decisions that meet the statutory requirements of evidence
- Good process and high regulatory standards

We have sought expert advice to support our submission

We have informed and supplementary submissions with the advice and evidence of the following experts.

- KERRY ANDERSON, DLA Piper
- JOANNA THEODORE - ANZIA, Registered Architect and Heritage Specialist.
- NINA SMITH - BSc; FRICS; ANZIV; SPINZ; Registered Valuer.
- JUDY KAVANAGH – An evidence-based policy expert and academic
- NICK LEKO – ANZIA, Registered Architect

Primary relief we are seeking

- **Remove item 514 from SCHED 1 of the Proposed District Plan.**
- **Remove 28 Robieson St from the Council's unlisted heritage items database.**

Our submission sets out the following

- The unbalanced incentives for the Council to over-provide heritage protection under the current regime. (pg 21)
- That the Council has failed to established a shortage of modernist buildings or homes in SCHED1
- The impact of listing on ourselves and potential magnitude of impact for the community.
- The failure of Council to meet requirements under the RMA and consider options, identify effects, or undertake a cost benefit analysis (pg 52)
- The failure of the Council to follow or the standards of good regulatory practices (pg 27)
- To poor evidential basis presented in the HEE that in shown to be inadequate (pg 29)

We conclude by presenting a compelling case that the heritage value of our home is low and the listing would result in any positive net benefits for society.

Would like to expand on the following points to assist the Panel in their consideration

1. The consequence of listing
2. The registered valuation we have provided as evidence
3. The Council referenced studies and evidence on valuation impacts
4. Our evaluation on net-benefit of listing under MFE's value framework
5. IPI vs First Schedule
6. Auckland comparison
7. Access and visibility

Consequence of listing

What do we see as the heritage value of our house?

- We value the connection to the place, Mt Victoria. We have long standing family connections to Mt Victoria (since early 1900's.)
- We appreciate the modern simplistic style and the attractiveness of our house - that is part of the reason we purchased it
- We used to love the story of our home- this has diminished significantly through this heritage process.
- The vintage of our house is not recognised by most people as heritage. Most people would think of Victorian villas or Pa sites – things that are old, not a house built in the mid 1960's.

The consequence of listing is significant

- We have no confidence that the Councils claim that Heritage provisions are designed to be enabling and does not prevent alteration of heritage buildings.
- *Having worked on several heritage projects with WCC, I can confirm that Council's heritage advisors have often challenged the proposed solution, even when led by an experienced heritage architect, and even when there is evidence, such as cost or constructability issues, which support the proposed solution.* (Joanna Theodore)
- *Resource Consents for scheduled or listed buildings are always more complicated, thereby adding significant costs and burden to owners, sometimes to the point that projects are no longer viable.* (Joanna Theodore)
- The NZIA Speaker in this hearing further confirmed these statements.

We have applied considerable effort to understand the consequence of listing on our home

- We have read the Heritage Policies, Rules, Standards, most definitions, the Heritage Design Guide, the Rules Guide (ODP), and the MFE's technical guide to resource consents
- We have talked to 2 heritage professionals, Council heritage staff, and **HNZPT** about the scope of work required for our home
- All gave conflicting detail on what they would consider allowable for external cladding (wood, composites, or aluminum)

Who is eligible for a reimbursement

You may be eligible for a reimbursement of up to \$2,500 for each resource consent application if:

- your application required a resource consent because of a heritage listing
- the Council supports the proposed works.

We may also consider other relevant heritage conservation matters when deciding if your application meets our criteria for a reimbursement.

Resource consent fee reimbursement is not guaranteed

Limitations

- Our submission stands in opposition to increased heritage restrictions on isolated homes.
- As you have no doubt discovered, is difficult for owners of new private homes to get across this detail. We have limited voice.
- We are reliant on the panel to consider general views of homeowners in their consideration of the rules.
- These rules have no change proposed in the 42a report for these standards.

| Standards | | | | | |
|--|---|-------|---|--|--|
| ISPP | <table border="1"> <tr> <td>HH-S1</td> <td>Permitted additions, alterations and partial demolition</td> </tr> <tr> <td>All zones:</td> <td> <p>1. The works must be internal to <u>built heritage</u> and not:</p> <ul style="list-style-type: none"> a. Involve <u>buildings</u> where the whole interior, or individual interior elements have been specifically scheduled (and the work affects the scheduled interior or elements; or b. Result in new internal walls or floor levels visible from the exterior of the <u>building</u> (except for <u>non-heritage buildings</u> and <u>structures in heritage areas</u>). <p>This standard does not apply to <u>non-heritage buildings</u> and <u>structures in heritage areas</u>.</p> </td> </tr> </table> | HH-S1 | Permitted additions, alterations and partial demolition | All zones: | <p>1. The works must be internal to <u>built heritage</u> and not:</p> <ul style="list-style-type: none"> a. Involve <u>buildings</u> where the whole interior, or individual interior elements have been specifically scheduled (and the work affects the scheduled interior or elements; or b. Result in new internal walls or floor levels visible from the exterior of the <u>building</u> (except for <u>non-heritage buildings</u> and <u>structures in heritage areas</u>). <p>This standard does not apply to <u>non-heritage buildings</u> and <u>structures in heritage areas</u>.</p> |
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Our home is in poor condition and need remedial work

- Our home needs re-cladding, regardless of the heritage status, this is one of multiple issues with our home.
- The untreated old growth redwood panels have degraded significantly. The condition can't be evaluated from a distance.
- Due to the nature of the site, we would want to re clad in a maintenance free material - for the same reasons as Bill Toomath sought too.
 - Wood requires oil or staining every 2-5 years
 - Scaffolding is expensive ~\$25k



Nearly all work requires resource consent

MAINTENANCE AND REPAIR DEFINITION

means

- a. To make good decayed or damaged fabric to keep a building or structure in a sound or weatherproof condition or to prevent deterioration of fabric; and
- b. regular and on-going protective care of a building or structure to prevent deterioration.

(For the purposes of the HH-Historic heritage chapter)

In addition to the above, maintenance and repair of built heritage must not result in any of the following:

- a. Changes to the existing surface treatment of fabric;
- b. Painting of any previously unpainted surface;
- c. Rendering of any previously unrendered surface;
- d. Changes to the design, texture, or form of the fabric;
- e. Use of materials other than those the same as the original or most significant fabric, or the closest equivalent.
- f. The affixing of scaffolding to unless the work is reasonably required for health and safety;
- g. The damage of fabric from the use of abrasive or high-pressure cleaning methods, such as sand or water-blasting;
- h. The modification, removal or replacement of windows (all joinery, including frames, sashes, sills, casements, mullions, glazing bars), except;
 - i. modifications as necessary to replace an existing clear single glazed window pane with a clear double glazed pane.

Re-cladding triggers clause (a) →

Limitations

| Heritage buildings and structures | |
|-----------------------------------|---|
| ISPP | <p>HH-P7 <u>Additions, alterations and partial demolition of heritage buildings and structures</u></p> <p>Provide for <u>additions</u> and <u>alterations</u> to, and <u>partial demolition of heritage buildings and heritage structures</u> where it can be demonstrated that the work does not detract from the identified heritage values, having regard to:</p> <ol style="list-style-type: none">1. The extent to which the work:<ol style="list-style-type: none">a. Supports the <u>heritage building</u> or <u>heritage structure</u> 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 <u>heritage building</u> or <u>heritage structure</u>;d. Is compatible with the scale, form, proportion and materials of the <u>heritage building</u> or <u>heritage structure</u>;e. Respects the identified relationship of the <u>heritage building</u> or <u>heritage structure</u> with its setting;f. Enables any adverse effects on identified heritage values to be reversed;g. Minimizes the loss of <u>fabric</u> and craftsmanship;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;j. Fulfils the intent of the <u>Heritage Design Guide</u>;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 <u>Heritage New Zealand Pouhere Taonga</u>, and6. The identified heritage values of the <u>heritage area</u>, where located within a <u>heritage area</u>. |

Current (ODP) guide to rules

- Under the current ODP, some exceptions could be granted with support of the Council.
- HNZPT views may have been sought under a section 92 referral, but the Council did not have to give regard to the views unless it was HNZPT listed.
- If the Council determined the changes being requested were minor and could grant a non notified resource consent or seek a limited notification.
- This approach retires with the ODP.

21A.2 Discretionary Activities (Restricted)

Section 21A.2 describes which activities are Discretionary Activities (Restricted) in respect of heritage buildings or objects. Consent may be refused or granted subject to conditions. Grounds for refusal and conditions will be restricted to the matters specified in the following rules.

A decision on whether or not a resource consent application will be notified will be made in accordance with the provisions in the rules under 21A.2 or the provisions on notification in the Act. Where:

- a heritage building or object is subject to a heritage order from a heritage protection authority, Council will advise the authority that an application has been made.
- a heritage building or object is registered by the New Zealand Historic Places Trust, Council will advise the Trust that an application has been made.

21A.2.1 Any modification to any listed heritage building or object which is not a Permitted Activity, or the demolition or relocation of any listed heritage building or object, except:

- modifications required to erect signage (which require consent under rule 21D)

is a Discretionary Activity (Restricted) in respect of:

21A.2.1.1 Historic heritage

21A.2.1.2 Height, coverage, bulk and massing of buildings (to the extent that these affect historic heritage).

Non-notification

The written approval of affected persons will not be necessary in respect of items 21A.2.1.1 and 21A.2.1.2, where:

- work does not involve the modification of any part of the main elevation of any listed heritage building ;
- work does not extend the existing building footprint (at ground level) by more than 10% or add an additional storey (or stories) beyond the existing building envelope.

Notice of applications need not be served on affected persons and the application need not be notified.

Standards and terms

Resource consent must also be sought and concurrently granted under the relevant area-based rules (if any).

Heritage rules

- The new HH chapter does include notification status notes
- there appears to be fewer 'exceptions' to Council's usual obligation to consider whether notification is warranted or not which is based on an Assessment of Effects undertaken as part of a resource consent application (ref Emily Bayliss)
- For a restricted discretionary activity, this could mean either notification or non notification, as outlined in s95A and B of the RMA (complex)

Resource consent under the PDP

1) Prepare our Resource Consent application

- Including our expert's heritage advice

Incremental Heritage cost

**\$6,000 for
each revision**

2) Lodge Resource Consent (Notified)

- Under a s92(2) referral HNZPT (written) advice will have to be sought
 - This review stops the clock, and the council will be required to wait for HNZPTs response.
 - No required timeframe for response.
- Council will have to **give regard** to this advice and determine their position

\$11,000

2-3 months +/-

**\$5,000 for
each revision**

Resource consent under the PDP

Incremental Heritage cost

- 3) If Council or HNZPT don't agree with the proposed resource consent application this results in a stalemate
 - We are unlikely to garner the approval of HNZPT as we are reducing the authenticity of the building by not using like for like (old growth redwood) cladding.

- 4) If we don't give up at this point, this becomes a **forced notification** (at our request) resulting in a hearing

1-2 months +/-

Resource consent under the PDP

Incremental Heritage cost

- 5) The Resource Consent has to go to a notified hearing
 - We overlook Oriental Bay, we may attract additional submitters because of this
 - Adjudicated by Councilors acting as Commissioners
 - Requires many more people
 - Council Planners
 - Council Heritage Experts
 - Our Planner
 - Our Heritage Expert
 - Plus compliance monitoring

1-2 months +/-

\$5,000

\$5,000

\$5,000

\$5,000

\$5,000

- 6) At the conclusion of the hearing, the Consent may either be granted or declined

\$58,000

7-10 months +/-

Assuming only one revision

Fees

Initial application fee

| Item | Fee |
|---|-------------|
| Non-notified consent: land use | \$2,145.00 |
| Non-notified consent: subdivision | \$2,600.00 |
| Non-notified consent: subdivision and land use | \$3,510.00 |
| Limited notified consent: subdivision and/or land use | \$10,920.00 |
| Publicly notified consent: subdivision and/or land use | \$20,800.00 |
| Boundary activity | \$604.50 |
| Marginal or temporary activities (fixed fee) | \$403.00 |
| Change or cancellation of resource consent conditions (s127 RMA) | \$1,352.00 |
| Certificate of compliance (s139A RMA) | \$1,352.00 |
| Existing use certificate (s10 RMA) | \$1,352.00 |
| Extension of time (s125 RMA) | \$1,352.00 |
| Change or cancellation of consent notices (s221 RMA) | \$1,352.00 |
| Initial application fee - s226 | \$806.00 |
| Amalgamation (s241 RMA) | \$1,352.00 |
| Creation of a right of way easement (s243 RMA or s348 LGA) or similar | \$1,352.00 |
| Outline plan of works (s176A RMA) | \$1,352.00 |
| Outline plan of works waiver (s176A(2)(c) RMA) | \$390.00 |

Compliance monitoring fees

| Item | Fee |
|--|----------------------|
| Monitoring compliance with conditions of a resource consent: subdivision or land use - minimum of 1 hour, then per hour thereafter | \$201.50 |
| Monitoring administration, per hour administrative officer | \$117.00 |
| Cost of disbursements - for example, materials, consultant investigations | Based on actual cost |

Other fees that may apply

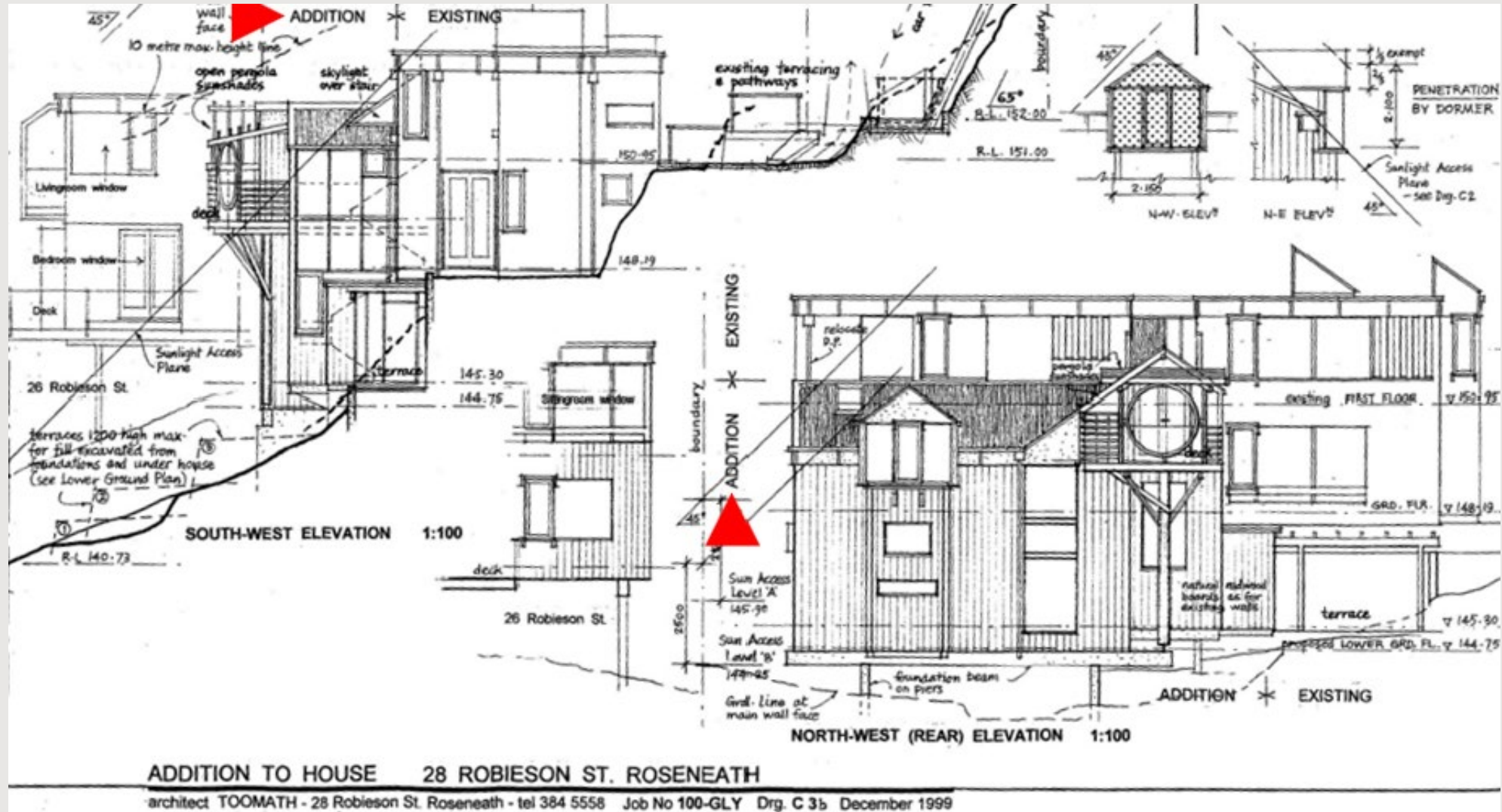
You may also need to pay some or all of the following charges, depending on the project.

Administration, disbursements and pre-application meetings

| Item | Fee |
|---|-------------------------------|
| All pre-application meetings: planner and advisors | \$201.50 per hour per officer |
| All consents: planner and advisors | \$201.50 per hour per officer |
| All consents: administrative officer | \$117.00 per hour |
| Cost of all disbursements - for example, venue hire, photocopying, catering, postage, public notification | Based on actual cost |
| External resource / specialist consultants (including consultant planners) | Based on actual cost |
| Independent Commissioners | Based on actual cost |

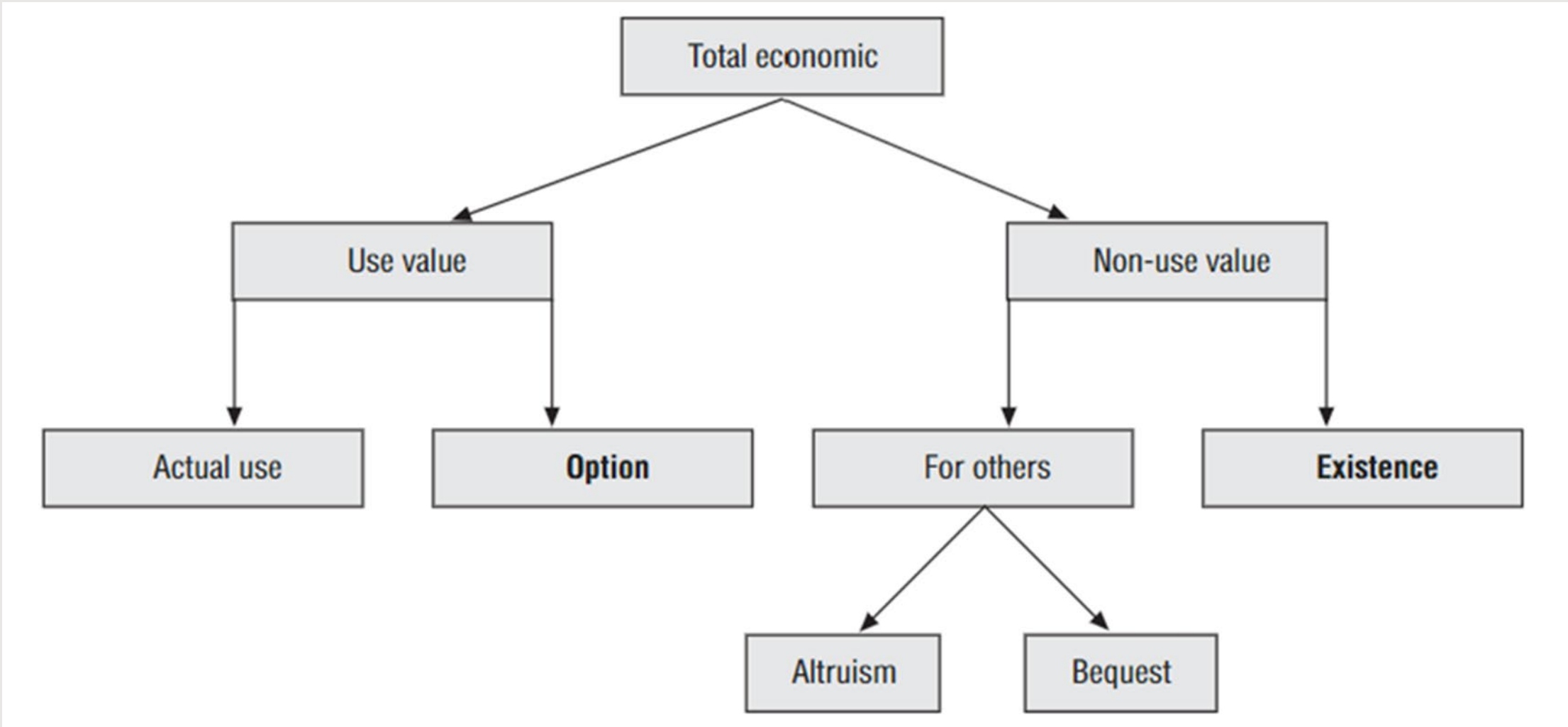
Fee status is unknown - you have the base cost plus an uncertain additional cost

Even Bill Toomath sought to change and improve the home



There are no net benefits to listing our home

Total value using MFEs framework



No net-benefits through Actual use value

Change through listing of our home

| | | People | Community |
|------------------|----------|---|---|
| Actual use value | Social | <p>Reduced</p> <p>Mental wellbeing stress of being listed. Financial stress. Relationship stress. Reduced ability to pursue our interests and make our house our own. Longer timeframes to bring our home to a healthy standard. More complex and frustrating processes and subsequent toll. Reduced enjoyment of living in our home. Sentenced to work for another decade to recover lost equity.</p> | <p>Small reduction</p> <p>This is a private home - so the community has no actual use other than the housing it provides for people within the city. The community does benefit from the supply of housing. Loss of amenity improvements (balance in NPS Policy 6).</p> |
| | Economic | <p>Reduced</p> <p>Significant loss in value and unfair retrospective burden applied. Substantially reduces our ability to borrow further funds to remediate significant issues with our home. Increases costs to remediate the issues with our home, through the need for additional expert and consenting fees. Reduced financial security, retirement certainty, and wellbeing.</p> | <p>Neutral</p> <p>The community benefits from the rates, and maintenance we spend just like any other private home. The house is not visible, accessible, and this is not a business premise.</p> |
| | Cultural | <p>Reduced</p> <p>Listing will both delay and reduce our ability to remediate our home. Reduces our satisfaction from preserving its heritage. Reduce the pride we have in our home. Leaves us aggrieved and the loss of our property rights and freedoms to enjoy our home as others can.</p> | <p>Neutral</p> <p>Small increase through protected amenity value (balance in NPS-UD Policy 6). Likely low value given not a single person has exercised their option value. However, the property will degrade further due to the financial impact listing would have on our ability to effect needed repairs.</p> |

No net-benefits through Option value

Change through listing of our home

| | | People | Community |
|--------------|----------|---|--|
| Option value | Social | <p>Reduced</p> <p>Reduced ability to alter our home to meet our needs - for example to additional accommodation for elderly parents and family members studying in Wellington.</p> | <p>Reduced</p> <p>Lost option to use land to provide housing for the community. Lost amenity improvements (balance in NPS Policy 6). Loss of much needed additional accommodation near the CBD through reduced development. Impacts to fairness, equity, and principles of natural justice</p> |
| | Economic | <p>Reduced</p> <p>Reduced ability to make efficient use of our home and land. Reduced future financial security.</p> | <p>Reduced</p> <p>Restricting efficient use of land and buildings. Further reductions in efficiency due to the loss of property rights.</p> |
| | Cultural | <p>Reduced</p> <p>Reducing in our freedom to choose to preserve the best aspects of the home. People do look after heritage for the enjoyment and value they get from doing so.</p> | <p>Neutral</p> <p>Small increase through protected amenity value (balance in NPS Policy 6). Likely low value given not a single person has exercised there option value. However, the property will likely degrade further due to the financial impact listing would have on our ability to effect needed repairs.</p> |

No net-benefits through Altruism/Bequest values

Change through listing of our home

| | | People | Community |
|------------------------|----------|--|---|
| Altruism/Bequest value | Social | <p>Small reduction</p> <p>Reduced ability to provide friends and family that come and stay a healthy and warm home. Our conversations with friends about the heritage of our home are now negative conversations relating to this process rather than positive like they used to be.</p> | <p>Reduced</p> <p>Community observe unfair treatment of property rights and ownership rights. Disincentivises others to promote their home or heritage values. Other heritage disincentive. Less housing in walking or ebike distance form CBD. Lost amenity of improvements (balance in NPS Policy 6). Reduced sustainability.</p> |
| | Economic | <p>Reduced</p> <p>Significant loss in value and unfair retrospective burden. Reduces our means to support and provide for other friends and family.</p> | <p>Reduced</p> <p>Restrictions on the efficient use of land impact outcomes now and in the future.</p> |
| | Cultural | <p>Reduced</p> <p>Listing would reduce the pride we have in our home and therefore the effort and funds we commit to restoration. People choose to look after heritage for the enjoyment and value they get from doing so.</p> | <p>Neutral</p> <p>Acknowledging that other people (incl. in the future) would have option value. Likely low value given not a single person has exercised their option value. However, this is contingent on property being maintained which is reduced due to financial impact listing would have on our ability to effect needed repairs.</p> |

No net-benefits through Existence values

Change through listing of our home

| | | People | Community |
|-----------------|----------|---|--|
| Existence value | Social | <p>Reduced</p> <p>Listing would significantly reduce our property rights and freedoms to enjoy our home as we choose.</p> | <p>Reduced</p> <p>Reduced due to existence of unfair restrictions and community knowledge that private rights are weak. Impact on existence of less housing stock. Reduced sustainability.</p> |
| | Economic | <p>Reduced</p> <p>What we pass on with in our family will come with the burden of a being heritage listed property. Our financial wellbeing will reduce support to family.</p> | <p>Reduced</p> <p>The existence of restrictions on isolated homes in suburbia reduces efficient use of land. This is not a tourist attraction where heritage can have value like a CBD business.</p> |
| | Cultural | <p>Neutral</p> <p>We appreciate that the heritage of our home may be preserved. However, being forced to do this reduces the value and satisfaction we would attain from allowing us this choice. Listing would reduce the pride we have in our home.</p> | <p>Neutral</p> <p>Small increase of the protected amenity value (balance in NPS-UD Policy 6). Likely low value given not a single person has exercised their option value. However, this is contingent on property being remediated which is reduced due to financial impact listing would have on our ability to effect needed repairs.</p> |

Incentives and Auckland comparisons

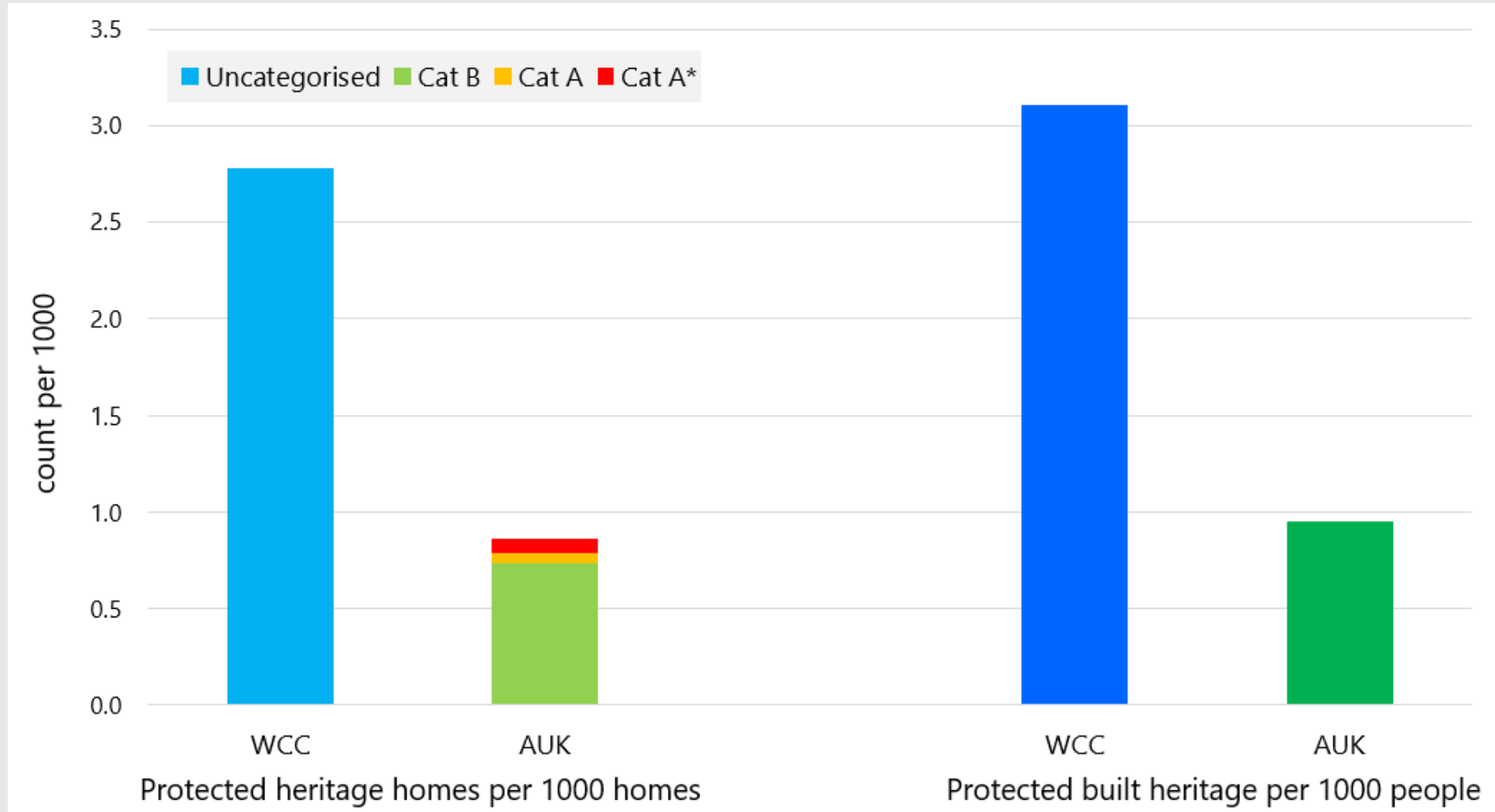
How much is enough?

The Panel is an important check and balance within the system on the unbounded incentives of the Council to over-provide heritage.

- *This approach entrenches divergences between the incentives faced by owners and the community, and introduces incentives to list and conserve historic heritage places where the benefits are less than the costs of conservation. It also provides an incentive for listing agencies to continue to press for further conservation effort until there are few more benefits to be had – irrespective of the costs involved.* [Productivity commission – page 22 in our submission]
- *It is now textbook economics that interest groups demand regulation in order to better achieve their specific (private interest) goals; and that such pressure may arise from groups small in number but large in influence (concentrated interests) which are far from representative of society as a whole (the diffuse interest).*

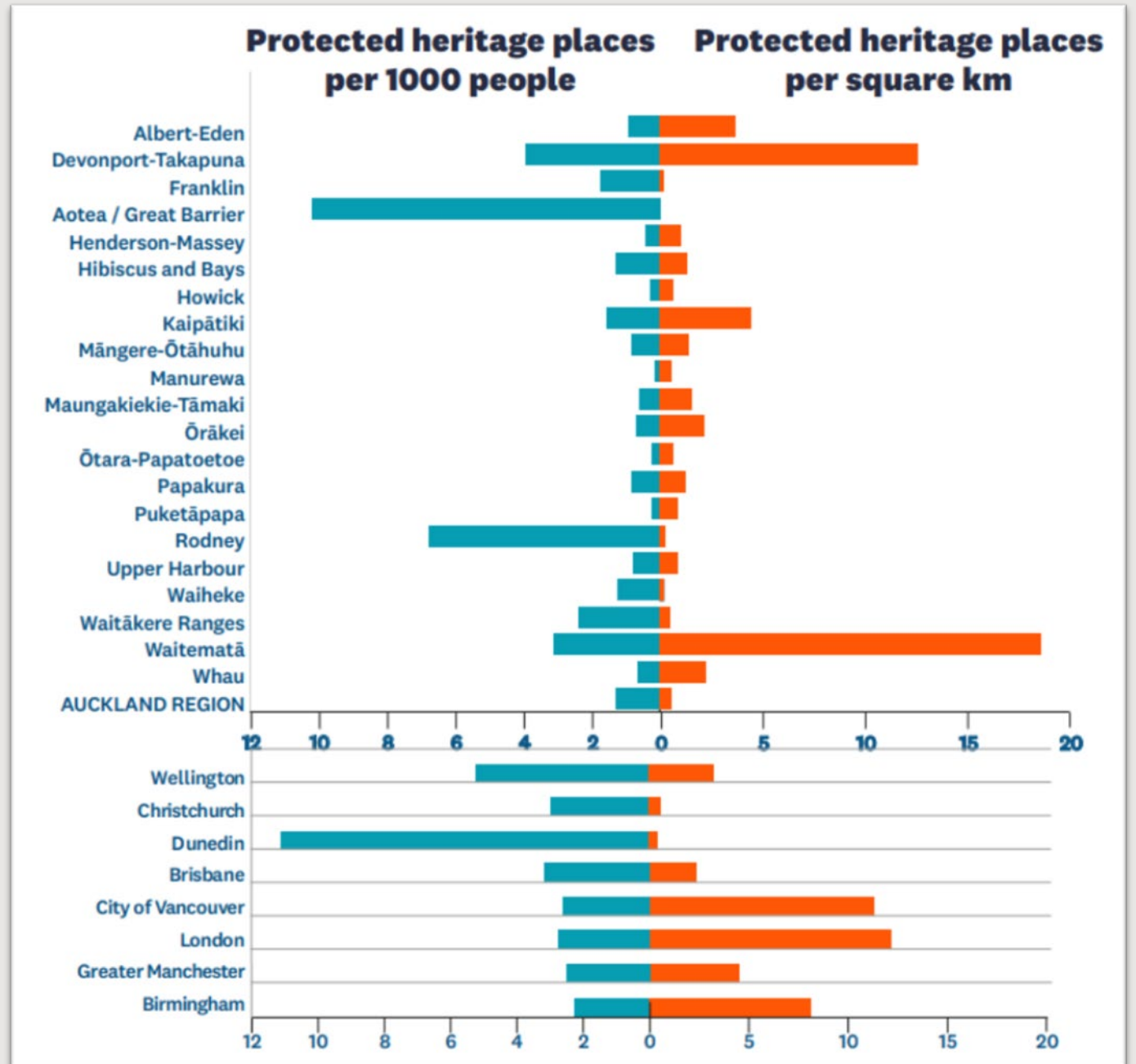
[Submitted evidence on Protection of Private Property Rights – page 35]

Auckland comparisons



Auckland comparisons

The Council's rebuttal.



Visibility and access

Visibility and access

Natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures.

How can people gain
**understanding and
appreciation**
of a physical site that is
not visible or accessible?

Neither the Council and authors of the HHE have not sought to undertake a site visit to inform their assessment.

Clearly this demonstrates that they believe there is enough information from non-physical sources (online articles etc) to gain sufficient **understanding and appreciation** of our home to write reports and recommend listing, that imposes a substantial burden and significant consequences.

Visibility of our home



[Google street view link](#)

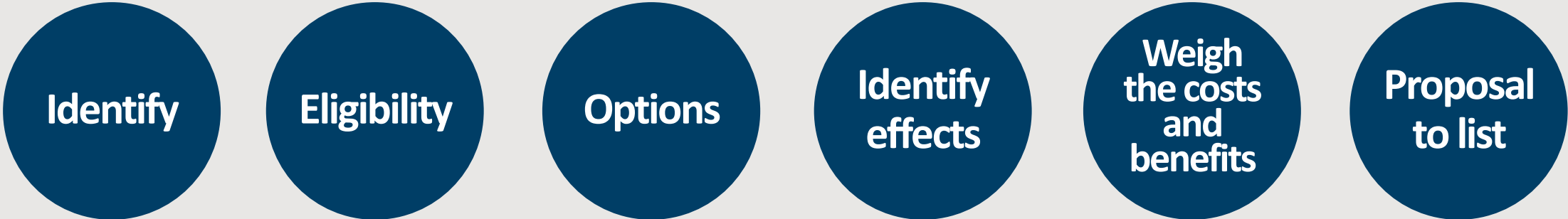
Section 32 and 77J evaluations

National guidance is provided for heritage by the purpose of the RMA and the evaluation requirements

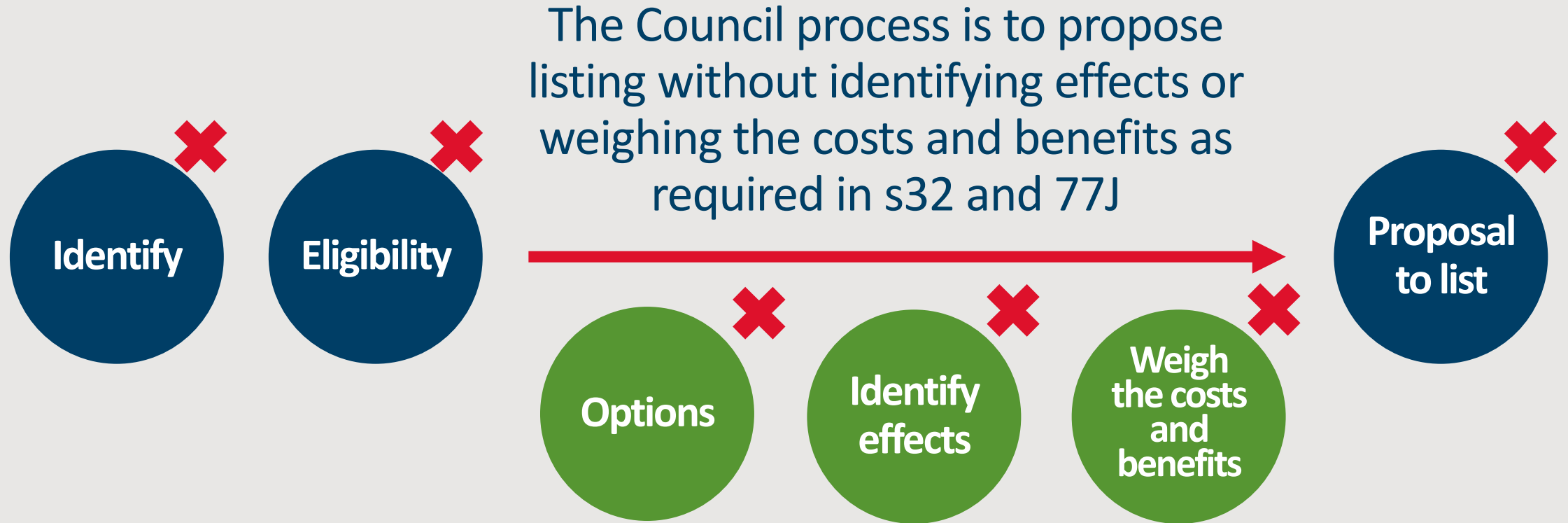
Identifying options, effects, and weigh the benefits against the purpose of the RMA.

| | | Wellbeing | | |
|---------|------------|-----------|----------|----------|
| | | Social | Economic | Cultural |
| Society | Comunities | ✓ | ✓ | ✓ |
| | People | ✓ | ✓ | ✓ |

Process steps to identify, evaluate, and list heritage



Process steps to identify, evaluate, and list heritage



Mr Whittington appears to assert that the Panel should fulfil the Council's obligations under s32 by suggesting that it is your job to [identify effects?] and weigh the costs and benefits that they have not done. [Stream 3 Day one discussion: 1:00:00 to 1:04:30]

Mr Whittington agrees statutory tests must be met

This is not to say that the private impacts are not a matter to be considered in weighing up whether to recommend new heritage listings under ss 32 and 77J, only that there is no basis for the argument that listing amounts to an expropriation of property rights without compensation (or requiring compensation) or that “the bar should be a high one” as Dr Keir and Ms Cutten suggest. The statutory tests are the statutory tests. And of course, s 85 provides an avenue should the effects render use unreasonable.

Section 32 and 77J

77J Requirements in relation to evaluation report

- (1) This section applies if a territorial authority is amending its district plan (as provided for in section 77G).
- (2) The evaluation report from the specified territorial authority referred to in section 32 must, in addition to the matters in that section, consider the matters in subsections (3) and (4).
- (3) The evaluation report must, in relation to the proposed amendment to accommodate a qualifying matter,—
 - (a) demonstrate why the territorial authority considers—
 - (i) that the area is subject to a qualifying matter; and
 - (ii) that the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 for that area; and
 - (b) assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and
 - (c) assess the costs and broader impacts of imposing those limits.

32 Requirements for preparing and publishing evaluation reports

- (1) An evaluation report required under this Act must—
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
 - (iii) summarising the reasons for deciding on the provisions; and
 - (c) 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.

An assessment under subsection (1)(b)(ii) must—

- (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
- (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
- (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

The Council's s32 essentially dismissed the impact of listing individual homes

In request 3(a) we asked:

Could you please provide us with the material (including early drafts) that detail the process, assessment framework, and findings of the consideration of the costs on owners of newly heritage listed buildings?

Council response:

There is no such material (documentation) relating to the costs on owners of newly heritage listed buildings. [1 day]

Specific quantification of the benefits and costs beyond the information and evidence outlined in section 5.2 of this report is neither practicable nor readily available. However, a qualitative assessment of identifiable costs and benefits associated with this proposal is provided below and, where relevant, in the assessment of policies, rules and other methods contained in section 10 of this report.

The number of owners of properties subject to the heritage provisions numbers approximately 1000, which in the scheme of all properties in the city is small.

The proposals represent a low change from the status quo.

The proposal is primarily centred around managing effects relating to the use and development of a moderate number of heritage resources.

Overall, the scale and significance of the proposed provisions are low for the following reasons:

Most proposals are not a significant change from the operative plan. It is recognised there are some changes to policy approach, including permitting internal seismic strengthening and removal of chimneys.

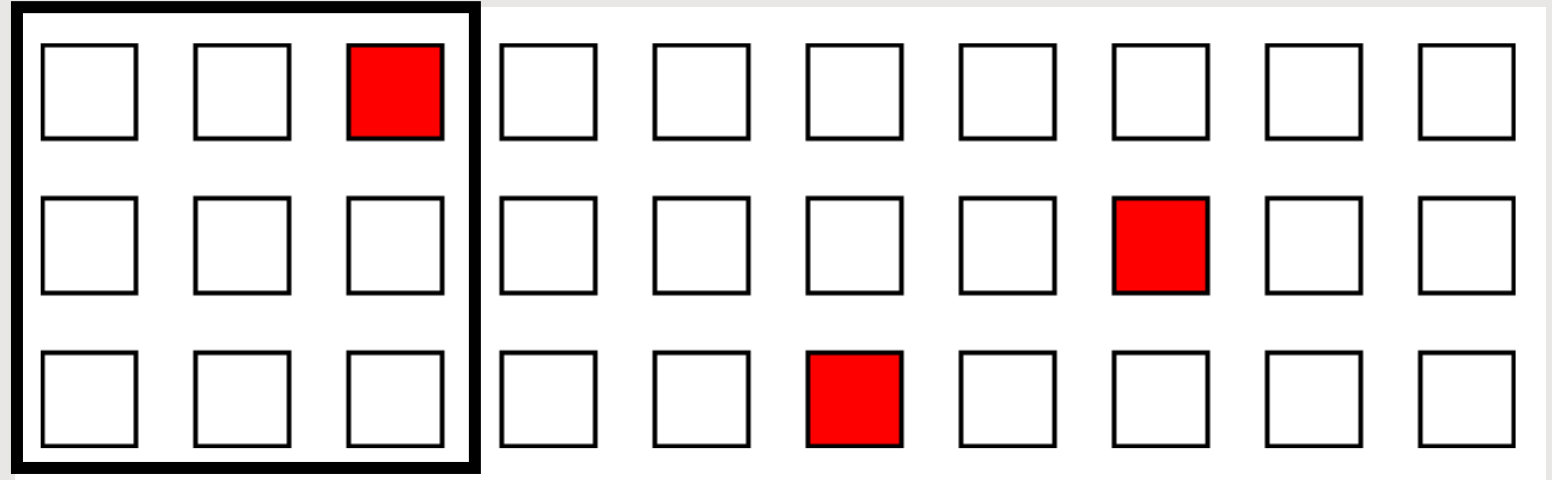
New buildings, structures and areas are being added to the heritage schedules, which has impact on a small number of affected owners.

Consequently, a high level evaluation of these provisions has been identified as appropriate for the purposes of this report.

[Section 8 and 8.4 of our submission]

What about the Council's s77J assessment?

- Was published after the consultation period.
- **Did not include new heritage.**
- Failed to take into account the scaling impact on development of isolated heritage.
- Appears to have assessed capacity independently from location. For example assumed its all equally valuable.



| | | |
|--|------------------------|---|
| <p>The property owners affected by these constraints incur a cost in the form of lost development potential.</p> | <p>Moderate / HIGH</p> | <p>This is an issue of fairness. Owners on whom these development restrictions are placed face an additional cost for the benefit of the wider community. However, these controls are already in play within the ODP and therefore should already be reflected in the market value.</p> |
|--|------------------------|---|

Impact on value of our home

Direct impact on property value from listing

**29 % drop
in value
(\$450k)**

- This is significant.
- A loss in equality at this level greatly reduces our financial, social, cultural wellbeing near and long term.
- This considerably restricts any ability we have to finance much needed remediation of our home.
- How can preventing this remediation be a good outcome for heritage?

Example illustrating impact

| Example | 1 June 2022 (Market) | 1 March 2023 (Market) | 1 March 2023 (SCHED1) |
|--------------|-------------------------|--------------------------|--------------------------|
| Market value | \$1,153,000 | \$ 971,000 | \$ 680,000 |
| Mortgage | \$ 922,000 | \$ 920,000 | \$ 920,000 |
| Equity | \$ 231,000 | \$ 51,000 | -\$ 290,000 |
| Equity (%) | 20 % | 5.2 % | - 43 % |

The effect of such an outcome has not been identified by the Council but this amounts to taking property from homeowners, and having a significantly negative impact on their social, economic, and cultural wellbeing.

Valuation approach meets international standards

11.2 VALUATION APPROACH

To establish the Market Value of the property, we have adopted the Market Approach in accordance with International Valuation Standard 105. The Market Approach provides an indication of value by comparing the asset with identical or comparable (that is similar) assets for which price information is available.

Within the Market Approach we have considered the Comparable Transactions method, encompassing the following units of comparison:

- Direct Comparison
- Net Rate

[Page 25]

The net-rate method results are compared to those from direct comparison method.

Mr. Whittington's valuation feedback

Mr. Whittington noted a discrepancy between the text of the registered evaluation and the table.

We agree, and have asked Ms. N. Smith for comment, but have yet to receive a response.

If we calculate the numbers, Mr. Whittington commented that the 'as is case' is calculated at 1,000 sqm. We also add the "As if Heritage listed" is calculated at 250/Sq m.

11.3.2 Conclusion

Based on our analysis of the sales, we have concluded an indicated Market Value 'As Is' of **\$1,550,000** and an indicated Market Value 'As if Heritage Listed' of **\$1,100,000** utilising the Direct Comparison method.

11.4 NET RATE

Under this method the sale prices are analysed to derive a residual value for the dwelling, after deducting the value of the land, other improvements, and chattels. That residual dwelling value is analysed to a rate per square metre of floor area of the recorded dwelling floor area, or a 'net' rate.

Having analysed the sales to a net rate, comparison is then made with the subject dwelling to determine an appropriate rate, which is then applied to the dwelling floor area to establish its value. The value of the land, other improvements and chattels are then added to the dwelling value to establish the Market Value of the property using this method.

The analysed evidence provides an approximate net rate range from \$140/m² to \$6,000/m² which is a very wide range reflecting the varying size, condition and date of the sales. Usually the larger the floor area, the lower the net rate although dependent also on condition and quality etc. Having regard to the size, layout, accommodation, and condition of the dwelling, and the market movement that occurred since some of the properties sold, we have adopted a low rate for the dwelling at \$750/m² for the dwelling 'as is', and \$250/m² for the dwelling 'as if Heritage Listed' to reflect the not only the current condition but also the added time and cost to maintain a Heritage listed property, together with the loss of amenity and quiet enjoyment of the property with the restrictions that a Heritage listing would impose.

Our calculations are as follows:

11.4.1 'As is'

| Net Rate Method | | Value |
|------------------------|---|--------------------|
| Land value | | \$1,250,000 |
| Dwelling | 218 m ² @ <u>\$1,000/m²</u> | \$218,000 |
| Outdoor areas | | \$5,000 |
| Other improvements | | \$10,000 |
| Other buildings | | \$60,000 |
| Total improvements | | \$293,000 |
| Chattels | | \$10,000 |
| Indicated market value | | \$1,553,000 |
| Adopt | | \$1,553,000 |

11.4.2 'As if Heritage Listed'

| Net Rate Method | | Value |
|------------------------|---|--------------------|
| Land value | | \$950,000 |
| Dwelling | 218 m ² @ <u>\$150/m²</u> | \$54,500 |
| Outdoor areas | | \$5,000 |
| Other improvements | | \$10,000 |
| Other buildings | | \$60,000 |
| Total improvements | | \$129,500 |
| Chattels | | \$10,000 |
| Indicated market value | | \$1,089,500 |
| Adopt | | \$1,090,000 |

Are the differences in the net method numbers material?

Using the figures from the Text (page 26)

| 11.4.1 'As is' | | Value |
|------------------------|---|---|
| Net Rate Method | | |
| Land value | | \$1,250,000 |
| Dwelling | 218 m ² @ \$1,000/m² | \$218,000 \$168,500 |
| Outdoor areas | | \$5,000 |
| Other improvements | | \$10,000 |
| Other buildings | | \$60,000 |
| Total improvements | | \$293,000 |
| Chattels | | \$10,000 |
| Indicated market value | | \$1,553,000 |
| Adopt | | \$1,553,000 \$1,498,500 |

| 11.4.2 'As if Heritage Listed' | | Value |
|--------------------------------|---|---|
| Net Rate Method | | |
| Land value | | \$950,000 |
| Dwelling | 218 m ² @ \$150/m² | \$54,500 |
| Outdoor areas | | \$5,000 |
| Other improvements | | \$10,000 |
| Other buildings | | \$60,000 |
| Total improvements | | \$129,500 |
| Chattels | | \$10,000 |
| Indicated market value | | \$1,089,500 |
| Adopt | | \$1,090,000 \$1,090,000 |

Difference \$408,500

Using the figures from the Table (page 26)

| 11.4.1 'As is' | | Value |
|------------------------|---|---|
| Net Rate Method | | |
| Land value | | \$1,250,000 |
| Dwelling | 218 m ² @ \$1,000/m ² | \$218,000 |
| Outdoor areas | | \$5,000 |
| Other improvements | | \$10,000 |
| Other buildings | | \$60,000 |
| Total improvements | | \$293,000 |
| Chattels | | \$10,000 |
| Indicated market value | | \$1,553,000 |
| Adopt | | \$1,553,000 \$1,553,000 |

| 11.4.2 'As if Heritage Listed' | | Value |
|--------------------------------|---|---|
| Net Rate Method | | |
| Land value | | \$950,000 |
| Dwelling | 218 m ² @ \$150/m ² | \$54,500 \$32,700 |
| Outdoor areas | | \$5,000 |
| Other improvements | | \$10,000 |
| Other buildings | | \$60,000 |
| Total improvements | | \$129,500 |
| Chattels | | \$10,000 |
| Indicated market value | | \$1,089,500 |
| Adopt | | \$1,090,000 \$1,068,200 |

Difference \$484,800

Compared with \$450k used in our submission from the comparative analysis

Council's s32 evidence on valuation impacts

Response to the Council s32 evidence and valuation studies

- GWRC guidance for RPS Policy 21 clearly states that **primary sources** of evidence should be used whenever available. Secondary sources are a good resource to use to find primary sources of evidence.
- Ms. Smith sites three pieces of evidence:
 - A UK study – **this study must be discounted** as the has UK financial incentives, and the definition of heritage in the study broad, even including parks.
 - An Australia study – **this study and its 12% figure must be discounted** as it relates to a period with incentives with agencies required look after the assets on behalf of the community.
 - An Auckland study – this study is only applicable to Heritage Areas and **is not relevant for individual homes both negative and significant (-10%) with a range from (+9% to -26%)**. Understanding individual listings are more variable and negative than heritage Areas – this supports our valuation.

The UK heritage study must be discounted

Concludes:

72. UK studies of property prices have found that “there is substantial value attached to a number of natural habitats, designations, heritage sites, private gardens and local environmental amenities.”³¹

- UK Heritage protection is under a different regulatory system, which **incentivises protection** (tax incentives etc.) **This must be discounted – it is in no way comparable to Wellington.**
- This study **does not address or consider heritage protection** in the evaluation, rather it attempts to assess the value of “heritage” - which is a different question entirely.
- The study is broad in nature (the entire UK) and its definition of heritage; specifically natural habitats, parks, and environmental amenities.

Historic environment (page 10) includes

- A city or town with historic character
- A historic building open to the public
- A historic park, garden or landscape open to the public
- A place connected with industrial history or historic transport system
- A historic place of worship attended as a visitor
- A monument such as a castle, fort or ruin
- A site of archaeological interest
- A site connected with sports heritage

Natural Habits (Page 11) includes

- Canals
- Rivers
- Beaches
- Country Parks
- Gardens
- Wildlife attraction / nature reserve
- Zoo or safari park

The Australia Study must be discounted

- The “study” Ms. Smith provides the link to is a glossy brochure advocating for heritage protection.
- This includes the claims of **up to 12% improvement of resale values in some cases.**
- It references four items.

MYTHS AND FACTS

ONE: HERITAGE LISTING STOPS CHANGE OR INHIBITS GROWTH

FACTS: Changes are often made to heritage places in the ACT. However, as with development for places that are not heritage listed, these changes may need development approval. The approvals process promotes sympathetic changes which retain the authenticity of the heritage place.

Usually, only changes affecting the exterior facade will require approval. However, there are some exceptions to this rule, particularly where internal features are considered to be of sufficient heritage significance to warrant protection. Heritage listed places can be converted to new uses without approval where this doesn't affect significant fabric. You can talk to ACT Heritage or the ACT Government's free and independent Heritage Advisory Service for advice on these or other changes.

Smaller works at heritage listed places may be undertaken without approval; for example, most day-to-day gardening, interior alterations, basic maintenance and replacing materials with like-for-like.

For further information visit the [Council's General Conservation Policies](#).

Managing our limited heritage resources in this way can revitalise unique precincts and drive long-term growth, including improved environments, property values, and visitor numbers.

TWO: HERITAGE LISTING DEVALUES PROPERTY

FACTS: Studies conducted in NSW and Victoria show that listing has no effect on residential property value in most cases, and sometimes improves resale value by up to 12%. Heritage buildings are often quality buildings with a special appeal. As they are limited in supply, their rarity and authenticity are attractions that cannot be built or recreated anywhere else. Therefore, heritage listings of Garden City and other precincts within the ACT can be considered protection for an owner's investment.

For further information visit the [Impact of Heritage Listing on Residential Property Values Factsheet](#).

THREE: HERITAGE LISTING TURNS MY PLACE INTO A MUSEUM

FACTS: Listing does not oblige owners to freeze a place in time or open it to the public as a museum. In fact, finding a viable use is a priority for listed places. The Council recognises that some change is often required to ensure heritage homes provide a comfortable and contemporary living standard. Normal day-to-day maintenance is encouraged. An owner is not required to reverse any previous works to date at the time of listing, although this may be highly desirable.



IMPACT OF HERITAGE LISTING ON RESIDENTIAL PROPERTY VALUES

THE IMPACT OF HERITAGE LISTING ON RESALE VALUE IS A COMMON CONCERN FOR OWNERS AND PROSPECTIVE BUYERS OF RESIDENTIAL PROPERTY.

Studies show heritage listing has no effect on property values in most cases, and sometimes improves resale value. Listed residences with well maintained heritage features have been found to attract a price premium compared to equivalent non-listed places in independent studies.

Among the many interstate studies on this topic, one completed by Deodhar in 2004 for Ku-ring-gai in Sydney's North Shore compares well with many Garden City precincts in the ACT with socio-economic indicators like income, education and occupation, as well as block size, low density housing, landscape features and gardens.

The study conclusively establishes that 'heritage-listed houses in Ku-ring-gai enjoy a price premium compared to unlisted houses. After controlling for other property attributes, heritage-listed houses command a premium of 12% on average. This premium reflects the combined value that the market places on their heritage character, their architectural style element and their statutory listing status.'¹

Property values generally for both heritage and non-heritage buildings, are determined by many factors including zoning, other planning requirements, lot sizes, types of surrounding properties, the level of amenities and services in the surrounding area, tenancy opportunities, prevailing trends in the 'market cycle', the social profile of areas and the quality and maintenance of individual buildings.

¹ Deodhar, V., Does the housing market value heritage? Some empirical evidence, 2004



Limited in supply, the rarity and authenticity provided by heritage places are attractions that cannot be built or recreated anywhere else. Real estate agents are only too aware of heritage qualities of historic residential property and precincts. These are generally emphasised as a positive attribute in marketing campaigns by developers and agents.

Heritage buildings are often 'quality' buildings with a special appeal. Because historic buildings are rare and there is a demand in the community for them, it can be expected that a portion of the community will be prepared to pay a premium to purchase such property.

LINKS

Some recent Australian studies, study evaluations, and case law which conclude listing has a positive or no effect on property values and economic viability includes:

ABELSON & DOMINY
→ Economics of Heritage Listings

PRODUCTIVITY COMMISSION
→ Conservation of Australia's Historic Heritage Places

COTTERIL
→ Value of Heritage to the City of Ballarat-Case Study

HERITAGE VICTORIA
→ Heritage Listing & Property Valuations in Victoria

MOORE, T (HELOU V STRATHFIELD MUNICIPAL COUNCIL)
→ Helou v Strathfield Municipal Council [2006]

"THE OWNERS WHO BOUGHT INTO THE HERITAGE-LISTED AREAS WERE POSITIVELY INFLUENCED TO DO SO BY THE EXISTENCE OF HERITAGE LISTING, WHICH WAS PERCEIVED AS PROTECTION FOR THEIR INVESTMENT."²

² Heritage Council of WA, The impact of heritage listing on property values in Western Australia, 2001

1981
(old)

1986
general
analysis
(old)



2004 study on a single suburb in Sydney. This is where Ms Smith quotes the 12% increase.

We can't find the original paper, but it's important to note - at the time of publication, heritage was protected under: The [Heritage Act 1977](#) (NSW)

Under Section 170 of the ACT agencies were required to compile a register and look after the assets on behalf of the community.

*The Act was revised in 2010 (post publication)

This is a Legal case that simply acknowledges the lack of evidence

The engineering evidence

23 As a consequence of the agreement on the heritage matters but the lack of appropriate evidence upon which I might determine what might be described as the economic issue, the on-site hearing was adjourned to permit those experts to confer on both rectification methodologies and costs.

What about other Australian findings?

- The Australia Productivity Commission Report (footnote 7 in our submission) notes Heritage Areas, can have a positive impact on property values, and
- Clearly warns of significant negative price impacts and that impacts can differ significantly between properties.

DRAFT FINDING 6.1

While under some circumstances (particularly where neighbourhood amenity is to be preserved) heritage listing can have a positive impact on property values, the constraints on development potential associated with listing can have a significant negative impact on the prices of individual properties. The potential for owner detriment to arise from development controls may differ significantly between properties.

The Auckland study must be discounted for isolated heritage listings

- The study is relevant for Heritage Areas and Special Character areas.
- It is not relevant for isolated heritage listings and therefore must be discounted for this purpose.
- The effect of a heritage area listing on house prices is both negative and significant (-10%) with a range from (+9% to -26%).
- This supports the scale of our valuation

Filippova, 2009), it is not clear how heritage capitalises into housing prices. For the purpose of this paper we differentiate heritage sites between heritage areas (i.e. residential areas), heritage features (i.e. individual features such as monuments or lighthouses) and special characters areas (SCA, hereafter), which are residential or business street-scape areas identified as having collective and


a dataset for all sales transactions between 2006 and 2016 in Auckland, New Zealand. We found that price premiums exist for houses with heritage sites within a 50 m. (1.7%), 100 m. radius (1.4%), 200 m. radius (0.5%) or if located within an SCA (4.3%). This suggest a positive external effect of heritage through the density variables, which declines with respect to the radius of the buffer around the house. That is, heritage provides positive spillovers to houses nearby which represent aesthetic or landscape values (Moro et al., 2013). However, for houses located within an HA the effect on the price is negative, high and significant (-10%).

Comparative analysis of valuation methods

- Registered Valuation produced by a professional valuer, taking into account the current market, and market perception of heritage
- Included a comprehensive site visit and understands the condition of the property
- Method was Peer Reviewed
- Same valuer works for the WCC
- Scale of the effect is supported by evaluation of the Auckland case study.
- Blindly applying studies from different regulatory regimes with incentives and different heritage classifications.
- Considers “glossies that appear in my mailbox” to assess that there is “no cheap heritage homes in Wellington” as relevant.
- Mr Whittington acknowledges that he is not an expert
- Ms Smith and Mr Whittington have not visited the site

IPI vs First Schedule

Listing new heritage buildings through the IPI is beyond the powers given to the Council under the RMA



**IPI vs First
Schedule**

Our position:

The Council has no authority to list new heritage buildings through the IPI, the new listings should be removed from the PDP.

Further points to consider

- What would the Council have lost by using the First Schedule process to list new heritage buildings? What's their motivation for pushing it through the IPI?
- Did the Councillors make a decision to include new heritage listings in the IPI?

What can be scope of the IPI? A matter of much debate.

Our position is supported by:

- **The departmental report**
 - *As the MDRS and NPS-UD are directive in their outcomes and application, the ISPP was designed accordingly, and the removal of appeal rights was deemed appropriate.*
 - *The ISPP has not been designed for full plan reviews. We do not think it is appropriate for the ISPP to be used for this purpose, particularly as there are likely to be matters where it would not be appropriate to have no appeal rights (e.g. significant natural areas).*
- **Kerry Anderson, DLA Piper** through our legal submissions
 - *The new heritage listing for their property at 28 Robieson Street is not a provision that can lawfully be part of the IPI. The listing is a matter that should follow the usual Schedule 1 process because that is what section 80E of the RMA requires and also because of the significant costs and limitations on development that this listing imposes. This of itself shows that it should not be included as a 'related provision' to an IPI, which is focussed on increasing density and development in residential areas. [Original submission and Paragraph 25.2 response to Minute 7]*
- **Judge Dwyer, through Environment Court Decision 056 (under appeal)**
 - *For the reasons we have endeavoured to articulate we find that the purpose of the IPI process inserted into RMA by the EHAA was to impose on Residential zoned land more permissive standards for permitted activities addressing the nine matters identified in the definition section and Schedule 3A.*
 - *Changing the status of activities which are permitted on the Site in the manner identified in para 55 of WLC's submissions goes well beyond just making the MDRS and relevant building height or density requirements less enabling as contemplated by s 77I. By including the Site in Schedule 9, PC2 "disenables" or removes the rights which WLC presently has under the District Plan to undertake various activities identified in para 55 as permitted activities at all, by changing the status of activities commonly associated with residential development from permitted to either restricted discretionary or non complying. [Paragraph 31]*
- **Legal advice received by Hutt City Council** (discussed in earlier in this hearing sessions)
 - Demolition rules from the IPI and they are beyond the scope of 3A.

Summary

New qualifying matters can't be introduced through the IPI when they are not related to the intensification provisions and they bring in new constraints outside of Schedule 3A.

Further:

- s80E(1)(a) makes accommodation within the MDRS by varying heights and densities for qualifying matters – our view is that these qualifying matters must already exist or be introduced through s80E(1)(b)
- s80E(1)(b)(iii) is limited by a the test that related provisions must support or be consequential on the intensification policies.

Legislative context, Policy 4, s80E

Policy 4: Regional policy statements and district plans applying to tier 1 urban environments modify the relevant building height or density requirements under Policy 3 only to the extent necessary (as specified in subpart 6) to accommodate a qualifying matter in that area.

80E Meaning of intensification planning instrument

- (1) In this Act, **intensification planning instrument** or **IPI** means a change to a district plan or a variation to a proposed district plan—
- (a) that **must**—
 - (i) **incorporate the MDRS**; and
 - (ii) give effect to,—
 - (A) in the case of a tier 1 territorial authority, **policies 3 and 4 of the NPS-UD**; or
 - (B) in the case of a tier 2 territorial authority to which regulations made under section 80I(1) apply, policy 5 of the NPS-UD; or
 - (C) in the case of a tier 3 territorial authority to which regulations made under section 80K(1) apply, policy 5 of the NPS-UD; and
 - (b) that **may** also amend or include the following provisions:
 - (i) provisions relating to financial contributions, if the specified territorial authority chooses to amend its district plan under section 77T;
 - (ii) provisions to enable papakāinga housing in the district;
 - (iii) **related provisions**, including objectives, policies, rules, standards, and zones, **that support or are consequential on**—
 - (A) the MDRS; or
 - (B) policies 3, 4, and 5 of the NPS-UD, as applicable.
- (2) In subsection (1)(b)(iii), **related provisions** also includes provisions that relate to any of the following, without limitation:
- (a) district-wide matters:

77G Duty of specified territorial authorities to incorporate MDRS and give effect to policy 3 or 5 in residential zones

- (1) Every relevant residential zone of a specified territorial authority must have the MDRS incorporated into that zone.
- (2) Every residential zone in an urban environment of a specified territorial authority must give effect to policy 3 or policy 5, as the case requires, in that zone.
- (3) When changing its district plan for the first time to incorporate the MDRS and to give effect to policy 3 or policy 5, as the case requires, and to meet its obligations in section 80F, a specified territorial authority must use an IPI and the ISPP.
- (4) In carrying out its functions under this section, a specified territorial authority may create new residential zones or amend existing residential zones.
- (5) A specified territorial authority—
 - (a) must include the objectives and policies set out in clause 6 of Schedule 3A:
 - (b) may include objectives and policies in addition to those set out in clause 6 of Schedule 3A, to—
 - (i) provide for matters of discretion to support the MDRS; and
 - (ii) link to the incorporated density standards to reflect how the territorial authority has chosen to modify the MDRS in accordance with section 77H.
- (6) A specified territorial authority may make the requirements set out in Schedule 3A or policy 3 less enabling of development than provided for in that schedule or by policy 3, if authorised to do so under section 77I.
- (7) To avoid doubt, existing provisions in a district plan that allow the same or a greater level of development than the MDRS do not need to be amended or removed from the district plan.
- (8) The requirement in subsection (1) to incorporate the MDRS into a relevant residential zone applies irrespective of any inconsistent objective or policy in a regional policy statement.

77I Qualifying matters in applying medium density residential standards and policy 3 to relevant residential zones

A specified territorial authority may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate 1 or more of the following qualifying matters that are present:

- (a) a matter of national importance that decision makers are required to recognise and provide for under section 6:
- (b) a matter required in order to give effect to a national policy statement (other than the NPS-UD) or the New Zealand Coastal Policy Statement 2010:
- (c) a matter required to give effect to Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River:
- (d) a matter required to give effect to the Hauraki Gulf Marine Park Act 2000 or the Waitakere Ranges Heritage Area Act 2008:
- (e) a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure:
- (f) open space provided for public use, but only in relation to land that is open space:
- (g) the need to give effect to a designation or heritage order, but only in relation to land that is subject to the designation or heritage order:
- (h) a matter necessary to implement, or to ensure consistency with, iwi participation legislation:
- (i) the requirement in the NPS-UD to provide sufficient business land suitable for low density uses to meet expected demand:
- (j) any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area, but only if section 77L is satisfied.

Legislative context – 77J

77J Requirements in relation to evaluation report

- (1) This section applies if a territorial authority is amending its district plan (as provided for in section 77G).
- (2) The evaluation report from the specified territorial authority referred to in section 32 **must, in addition to the matters in that section,** consider the matters in subsections (3) and (4).
- (3) The evaluation report **must,** in relation to the proposed amendment to accommodate a qualifying matter,—
 - (a) demonstrate why the territorial authority considers—
 - (i) that the area is subject to a qualifying matter; and
 - (ii) that the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 for that area; and
 - (b) **assess the impact that limiting development capacity,** building height, or density (as relevant) will have on the provision of development capacity; and
 - (c) **assess the costs and broader impacts of imposing those limits.**

Historic Heritage Evaluation

The HHE recommendation oversteps the purpose and scope of the assessment

The HHE is only designed to assess eligibility for listing. An HHE assessment does not include the information required to inform a recommendation for listing.

The HHE for our home goes beyond the scope that is intended and makes a recommendation to list without addressing the necessary evaluation required by the RMA.

Recommendations

Based on the preceding evaluation, make a recommendation on whether the place meets the **threshold for eligibility as a Heritage Building, Heritage Object, or Heritage Area.**

[Council methodology and guidance for HHE (page 22).]

Recommendations

Toomath House meets the threshold for eligibility as a Historic Heritage Building and is **recommended to be added to the District Plan Schedule of Historic Items.**

[HHE report on Toomath house (page 24)]

Provided evidence that the

- A legal review of the HHE from KERRY ANDERSON, DLA Piper.
- A review, and rebuttal to Ms Smith, of the HHE by JOANNAH THEODORE, a registered architect and heritage specialist.
- A review of the evidence within the HHE by JUDY KAVANAGH, an evidence-based policy expert and academic.
- Our own analysis.

Evidence that the existence value is low

Existence values are typically supported through the revealed preference of some people exercising their optional use value:

- No requests from Council staff (either to assess or educate/inform us of any heritage aspects they believe may exist)
- No requests from the heritage experts engaged by the Council to undertake their heritage assessment,
- No requests from Julia Gatley, Docomomo, and Author, who nominated the home for listing in 2007 to visit or to enquire into its condition or maintenance,
- No requests from any other architectural interest groups, and
- No requests from anyone studying or researching architecture or Bill Toomath.

The profile of our home is over stated

- Is not included in the NZ heritage list
- Was nominated by Docomomo in 2007 (16 years ago).
- Does not feature on the Docomomo “Top 20 list” of modernist buildings
- Does not sit on the Docomomo register that they have selected to invest research and effort into.
- Was not nominated as an important piece of Wellington architecture by the Wellington Architecture Centre in 2007 (when Bill Toomath was involved)
- Has never been nominated by any other individuals or interest groups for listing.
- Has received no support from the original nominator or anyone else through the PDP consultation process.
- Has received no support from anyone to our knowledge through the hearing process.

Appendix figures in our submission

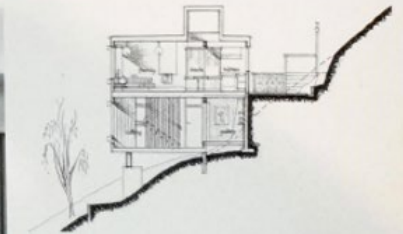
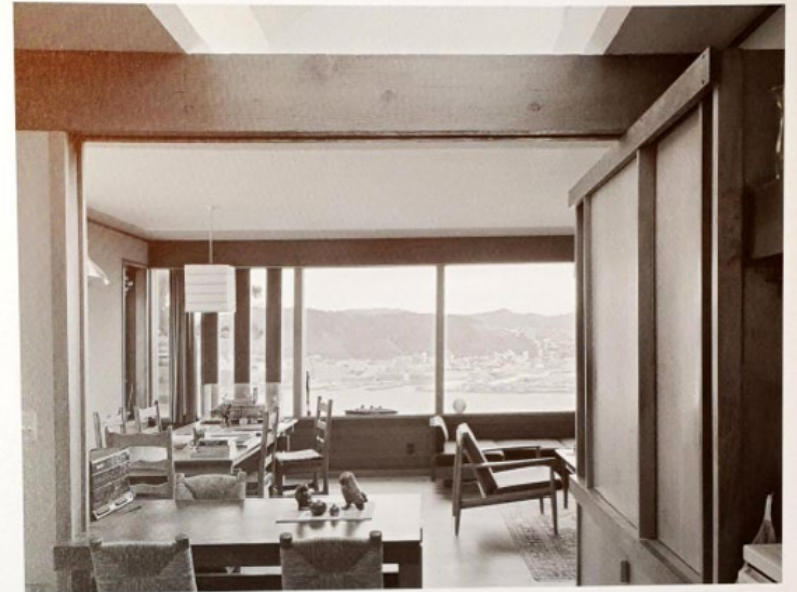
Long Live The
Modern
200 words on
Toomath
House

Toomath House

Roseneath, Wellington
Designed by: William (Bill) Toomath
Design: 1961-1963
Built: 1964
Awards: NZIA Enduring Architecture Award, 2007

This is the second in a series of four houses that forms an enclave of Toomath-designed residential buildings, dating from 1958 to 1981. The steep and wind-driven site became the key issue from which the design developed. The mass of the house, lifted away from the slope, provides a sheltered garden on the leeward side, and tailors the rawness of the hillside edge. The unpainted redwood cladding has required little maintenance and delivered an appreciated aesthetic rawness. Inside, the house has two levels, repetitions of the same plan; half living, half bedrooms, split by the spine of the stair. Echoing the words of the American architect Louis Kahn, Toomath speaks as if his design was the discovery of a pre-existing condition: 'By this time I was trying to let a building be what it wanted to be, to let it come out from the circumstances, the manner of living in it.' The house is also an active site of architectural pleasure and experimentation. Upstairs, the living room ceiling is painted to test the effect of colour on spatial perception. Recently, a study space, a three-dimensional building of a painting by Antonello da Messina, was added to the lower level.

Christine McCarthy



OPPOSITE The Toomath House today. Redwood board and batten was fixed 'inside-out' and was left to weather, uncoated. Photograph by Jim Simmons. TOP The meals table is the only divider between the kitchen and the living area. Kitchen cabinets were detailed as elements of the living room. Photograph by Jim Simmons. LEFT Doors are hinged across 2.5 metres to open the interior onto a sheltered patio. Photograph by Jim Simmons. ABOVE The cross section demonstrates the relationship between the house and its steep site. Courtesy of Bill Toomath.

Figure 1: Examples illustrating the condition of the house in 2014. (A) Partially removed walls. (B) Extremely poor condition of windowsills. (C) Seized windows and heavily corroded stays.



Figure 3: Wellington proposal and Auckland compared: Protected heritage homes per 1000 homes (on the left), and Protected built heritage per 1000 people (on the right)

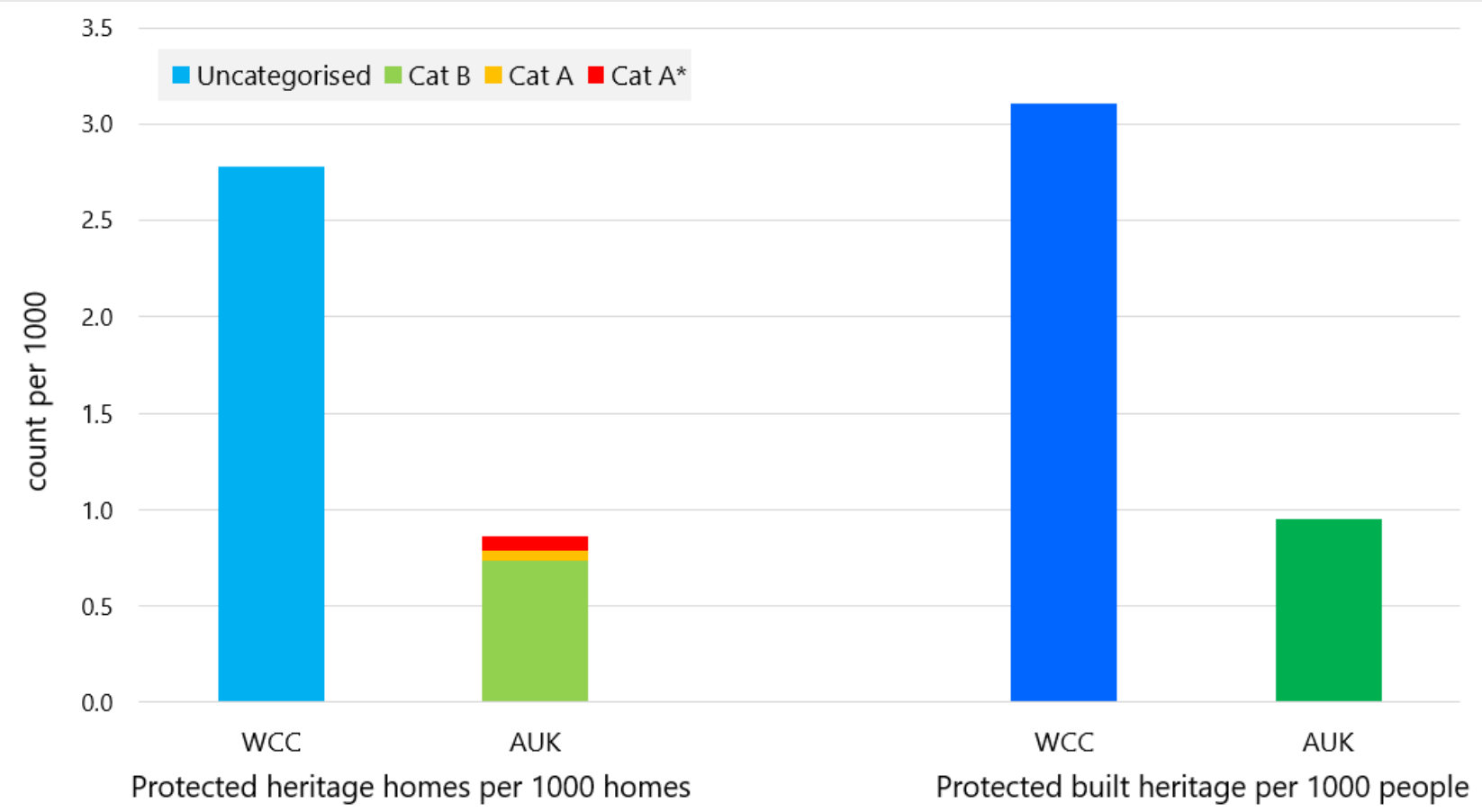


Figure 4: The society – wellbeing matrix highlights the NPS and RMA have an almost identical purpose to enable wellbeing for people and communities

| | | Wellbeing | | |
|---------|------------|-----------|----------|----------|
| | | Social | Economic | Cultural |
| Society | Comunities | ✓ | ✓ | ✓ |
| | People | ✓ | ✓ | ✓ |

Figure 5: The left is the Meteorological Office, which is classified by the Council as Modern. The PSIS and the Beehive are both classified by the Council as Brutalist and therefore not categorised as Modernist.



Figure 6: Two modernist architectural examples of unlisted Council-owned built heritage by Burren and Keen. (A) Cuba Mall Bucket Fountain. (B) The Pukehinau flats.



Figure 7: Examples of the incomplete state of the Heritage Issues and Option Paper (Page 22)

Criteria for heritage identification and assessment

Best practice guidance on the identification of heritage has been reviewed and used as an input into new draft heritage assessment templates for heritage places [\[link\]](#) and heritage areas [\[link\]](#), along with a methodology for assessment including criteria and thresholds [\[link\]](#).

Organisations that provide best practice guidance are as follows:

- RMA
- GWRC RPS
- ICOMOS NZ Charter
- HNZPT Sustainable Management of Historic Heritage guidance series
- Quality Planning website (MfE)
- Wellington Heritage Policy 2010
- WCC heritage criteria 2007
- Other New Zealand TAs
- Heritage agencies overseas including [\[link\]](#)

Figure 8: Google Street View Time Machine images of Colombo Street, before and after the 2011 earthquakes

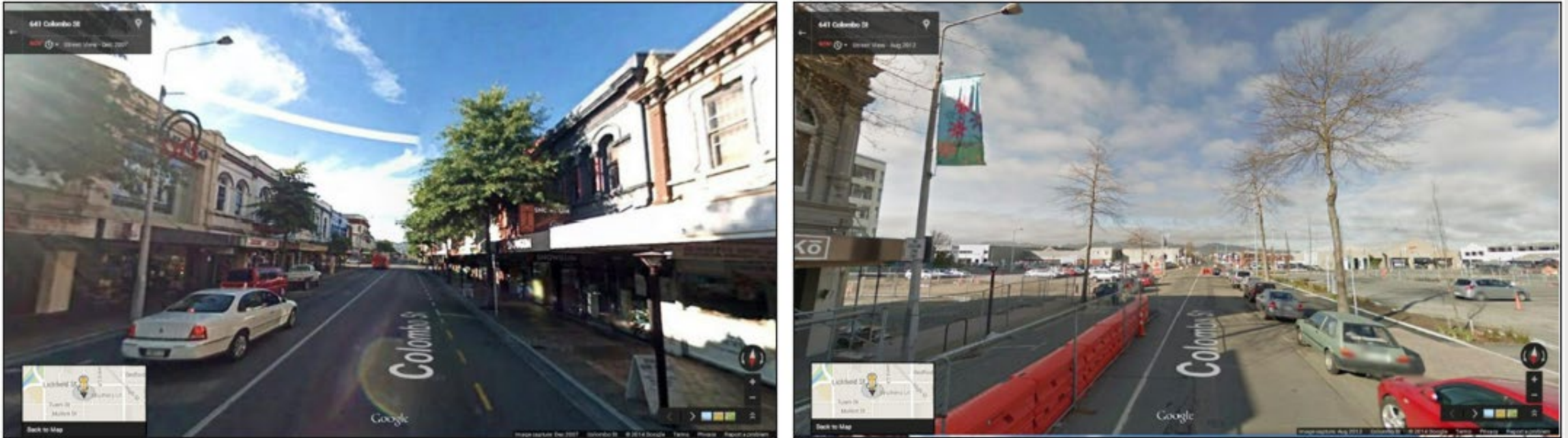


Figure 9: CityViewAR uses an everyday mobile phone to overlay historic renderings of buildings in real time.

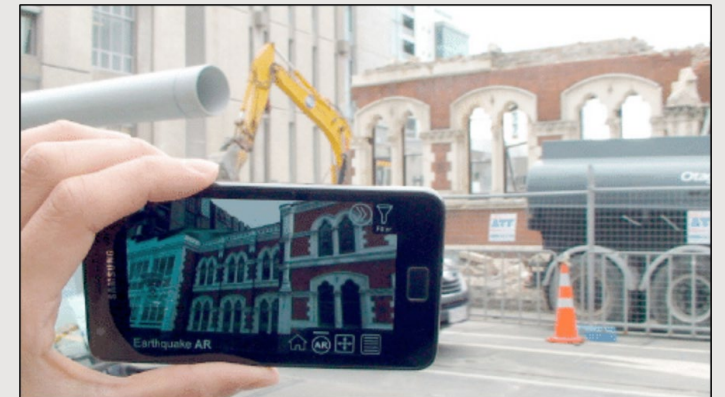


Figure 10: The Council's Section 32 evaluation fails to consider the full effects on society wellbeing as defined in the purpose of the RMA in Section 5 (2).

| | | Wellbeing | | |
|---------|------------|-----------|----------|----------|
| | | Social | Economic | Cultural |
| Society | Comunities | ✓ ✗ | ✗ | ✓ |
| | People | ✗ | ✗ | ✗ |

Figure 11: Sources of total value, Ministry for the Environment

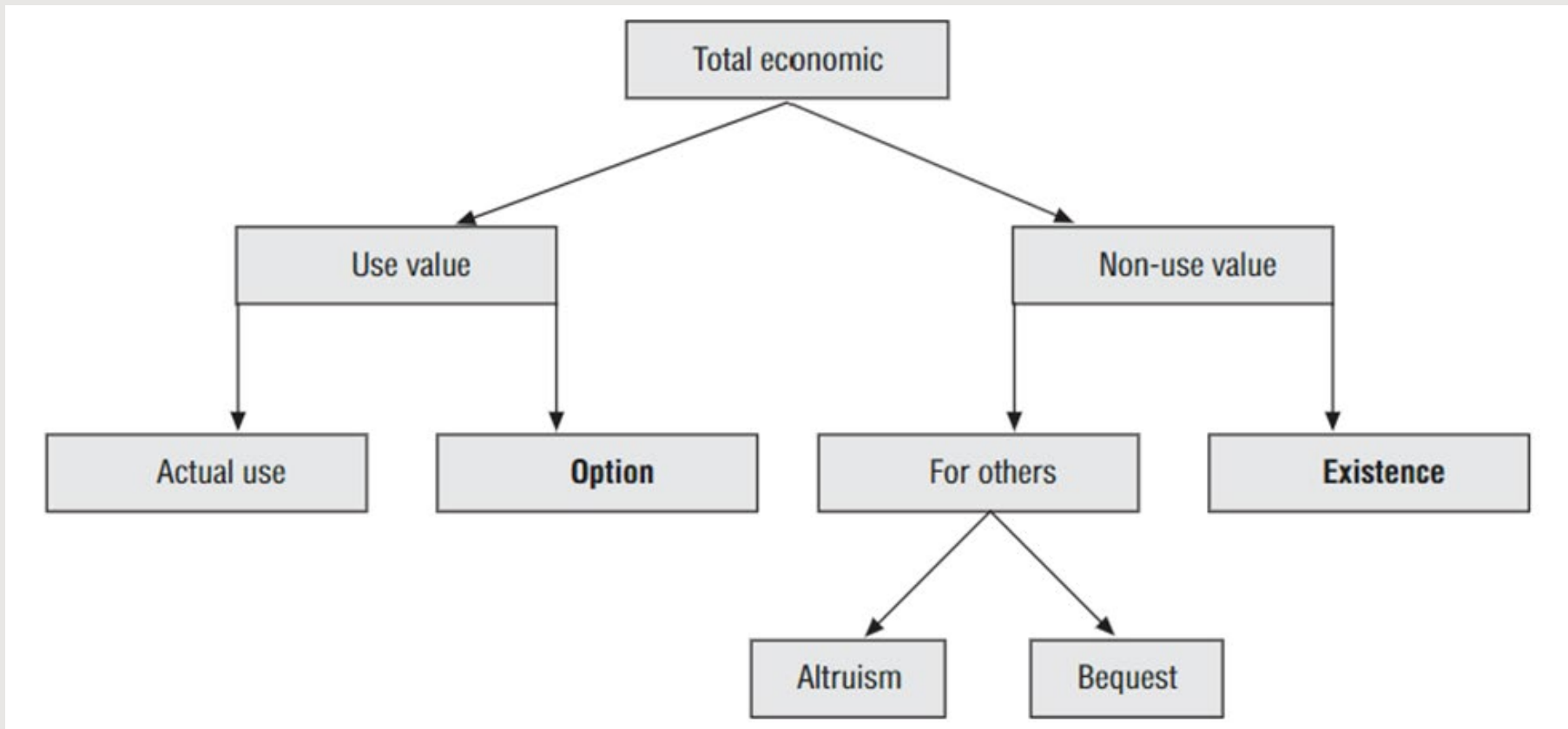


Figure 13: View of our home from halfway up Palliser Rd



Figure 14: Street amenity value – walking up Palliser Rd hill from left to right



Figure 15: Street amenity value – walking up Palliser Rd from left to right (continued)



Figure 16: Proposed development by Toomath in 1999, prior to his 2003 study design that was completed in 2007

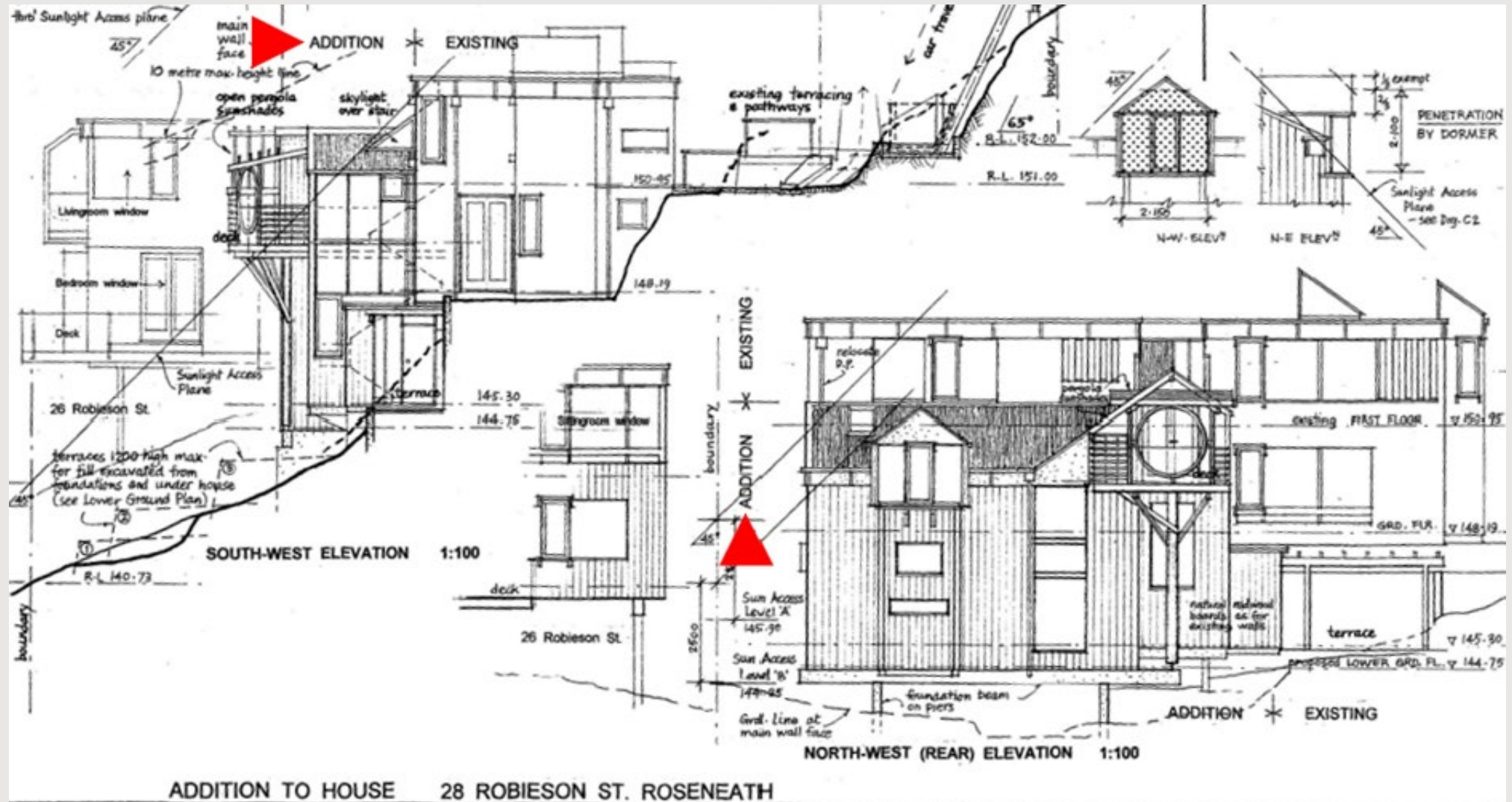


Figure 18 – 21 Condition figures

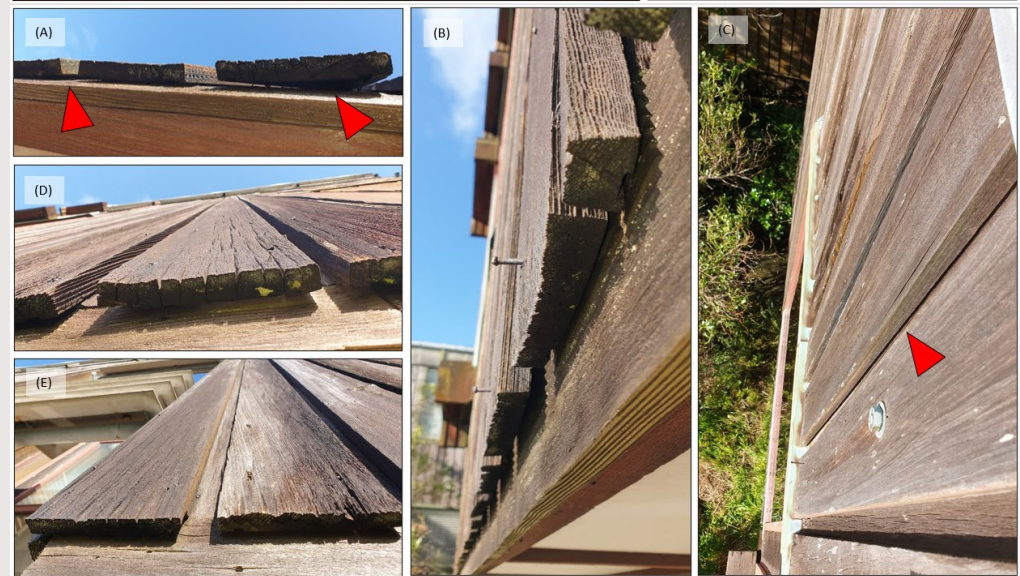
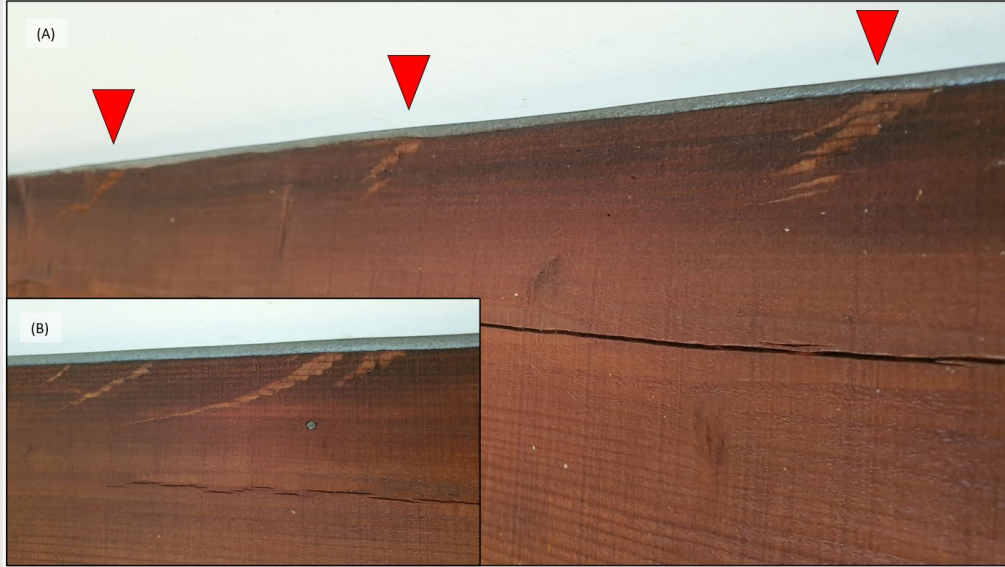


Figure 22 – 23 Condition figures

