

STATEMENT OF EVIDENCE PREPARED BY JUDY KAVANAGH

I am a public policy professional with experience and expertise in evaluating evidence and in making evidence-based policy recommendations to Government.

I have been engaged by Matthew Keir and Sarah Cutten to evaluate the evidence used to support the addition of their home, the former Toomath House at 28 Robieson Street, to the Wellington District Plan Schedule of Historic Heritage Buildings.

INTRODUCTION

My full name is Judy Margaret Kavanagh

QUALIFICATIONS AND EXPERIENCE

- 1991 Post graduate diploma in Health Economics (with distinction) University of Tromsø
- 1985 Master of Arts Economics University of Canterbury
- 1979 College diploma (with distinction) Christchurch Teachers College

- Director Inquiries at Te Waihanga, New Zealand Infrastructure Commission since 2022
- Twenty years as a public sector economist and policy professional, ten of those at the New Zealand Productivity Commission
- Fifteen years as lecturer and senior lecturer in Economics at Canterbury University and Victoria University of Wellington

I am an expert in conducting studies and designing processes and methods to develop evidence, in evaluating evidence and in building consensus around evidence. I develop evidence-based policy advice and actionable recommendations based on that advice to Government.

In my ten years at the New Zealand Productivity Commission, I was involved in eight inquiries that were tabled in Parliament including inquiries into *Using land for housing*, and *Regulatory institutions and practices*. These inquiries carry significant weight with many inquiry recommendations accepted and implemented by Government.

As an academic, I have had seven papers published in peer reviewed academic journals and written many more occasional papers and presented at conferences throughout my career.

CODE OF CONDUCT

I have read the Code of Conduct for Expert Witnesses set out in the Environment Court Practice Note 2023. I have complied with the Code of Conduct in preparing my evidence. Except where I state that I rely on the evidence of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not knowingly omitted to consider material facts that might alter or detract from my expressed opinions.

CONTEXT

I have been asked to assess and comment on the evidence provided in the Council's Historic Heritage Evaluation that is being used to support the addition of 28 Robieson Street, the former home of architect Bill Toomath, to the Wellington District Plan Schedule of Historic Heritage Buildings. I am not a heritage professional and do not provide an opinion on heritage matters. I am, however, an expert on standards of evidence and present my findings in this report.

I have read:

- [The Historic Heritage Evaluation report on Toomath House, 28 Robieson Street](#).
- [The revised evaluation – in Appendix 4](#) from the statement of evidence prepared by Moira Smith on behalf of the Council.
- [Submission 141](#) on the merits of including 28 Robieson Street on the District Plan schedule of historic heritage buildings, prepared by Johanna Theodore, Principal Architect and Heritage Expert from Foster Melville Architects.

- [Submission 415](#) on the proposal to include 28 Robieson Street on the District Plan schedule of historic heritage buildings, prepared by the homeowners Matthew Keir and Sarah Cutten.
- [Statement of supplementary heritage evidence \(rebuttal\) by Moira Smith on behalf of Wellington City Council](#)
- [The Methodology and Guidance for evaluating Wellington’s historic heritage \(Feb 2021\)](#).
- [A guide to historic heritage identification](#) Greater Wellington Regional Council (2010)
- [Regional Policy Statement for the Wellington region](#) (Policy 21) Greater Wellington Regional Council

STATEMENT

The Methodology and Guidance for evaluating Wellington’s historic heritage provided by the Council sets the following purpose:

... to ensure that there is consistency in the way places are evaluated and that evaluations contain a sufficient level of detail so that subjectivity is minimised, and evaluations are consistent, defensible and transparent.

In my view the evaluation, evidence, and conclusions reached in the Heritage Evaluation Report and the revised evaluation as per Appendix 4 of Moira Smith’s report are subjective and do not reach the standard expected to inform regulatory decision making or legal matters.

I expand on the reasons for my view in the points below.

1. Much of the Historic Heritage Evaluation report content is of limited relevance

While the historic heritage evaluation report appears lengthy, much of the report is of limited relevance to either Bill Toomath or his former home, for example several pages are devoted to Kupe and the early history of Mount Victoria. I note that with respect to the house itself, a significant amount of the material in the original report relates to the interior of the home (including the addition of a study in 2007) which is not relevant to the proposal and has been removed in the revised evaluation.

2. The Historic Heritage Evaluation report is not written in neutral language to support objective decision making

Neutral language refers to language that is free from bias, prejudice, or emotional influence, and is objective and impartial in its tone and content. On the other hand, biased language is language that reflects a particular perspective, attitude, or prejudice, and may be intended to influence or persuade the reader or listener in a certain way. It is important to use neutral language where objectivity and impartiality are valued. This is particularly the case in public policy making, regulating, and in legal matters.

The Historic Heritage Evaluation report is best described as a ‘pitch’ for Bill Toomath’s former home to be added to the Wellington District Plan Schedule of Historic Heritage Buildings. As such it uses the language of a pitch citing opinions such as “without the impact of Bill Toomath, Wellington would be a very different place” and that the house as a “low maintenance icon”. While perhaps defensible in the context of a pitch, this language is not neutral and is unsuitable in an evaluation that has implications for regulation. The language reflects a particular perspective that is intended to influence the reader to support the conclusions of the evaluation.

3. The Historic Heritage Evaluation report is biased in that it relies on memorial sources as evidence

The Historic Heritage Evaluation recommendation for including 28 Robieson Street on the District Plan schedule of historic heritage buildings is based on two considerations – that the house is associated with the life and work of Bill Toomath and that the house itself is architecturally notable. The issue at hand for me is:

- What weight should be given to the evidence cited in the Historic Heritage Evaluation report?

That is:

- Has the report established the significance of Bill Toomath as a New Zealand modernist architect, and that his former house is significant as an example of New Zealand modernist architecture?

I have analysed the sources that are cited in the footnotes and references to the Evaluation report on the significance of Bill Toomath as an architect and of his house as a noted example of modernist architecture.

Of the citations relating to Bill Toomath, over half come from four obituary articles written in memorial following his death in 2014.¹ These references cannot be cited as a reliable source of evidence for the significance of Toomath's contribution or the importance of his home. Memorial articles are intended to celebrate the lives of individuals and encourage people to reflect fondly on the individual and their contribution to their chosen profession. They do not meet the threshold for consideration to inform regulatory decisions and legal considerations before the Commissioners.

The majority of the direct quotes that are repeated within the report are from these memorial sources. The use of these quotes undermines the integrity of the report and imports significant emotive language. In my view, these quotes and references should be largely discounted.

It is also well understood that those who write bibliographies are open to biases. Those seeking to provide impartial evidence must avoid being drawn into such literary biases of any author they reference. The best way to guard against this is to cross reference amongst multiple sources to support each fact. The references cited in the Historic Heritage Evaluation report provide limited opportunity for cross referencing and validation of the claims of significance made.

4. What sources could I have expected to see presented in evidence? And what did they say?

I have not undertaken an exhaustive search of the literature that might give an indication of the relative contribution of Bill Toomath as a New Zealand modernist architect or the importance of his home as an example of a modernist New Zealand architecture. However, I have looked in some obvious places.

¹ The Honey, "Montane Essay" published 25 March 2014, 5 days after Bill Toomath's death is referenced 14 times. Davies, "The Legacy of William Toomath" published 9 April 2014, 19 days after Toomath's death is referenced 3 times. ArchitectureNow, "Vale, Bill Toomath" published 21 March 2014, 1 day after Toomath's death is referenced twice. Dominion Post, "A Life Story: Capital Owes Much to Toomath for Preservation of Landmarks" published 26 April 2014, a month and 5 days after Toomath's death is referenced once.

Te Ara: The Encyclopedia of New Zealand

One source is Te Ara: The Encyclopedia of New Zealand is an online encyclopedia established in 2001 by the New Zealand Government's Ministry for Culture and Heritage.

Te Ara devotes a page to early modernist architecture in New Zealand noting that the architecture developed by European architects in the 1920s, was being practised in New Zealand **by the late 1930s**.

In domestic architecture, this meant flat – or at least flattish – roofs, large expanses of glass, minimal ornamentation, increasingly open floor plans and greater connection between indoor and outdoor spaces. New Zealand's first modernist houses include architect Robin Simpson's own house in Greenlane, Auckland (1938), and Humphrey Hall's own house in Timaru (1938).

Te Ara makes special mention of the émigrés who settled in New Zealand including Henry Kulka, Fred Newman and Ernst Plischke and their **contribution in the 1940s and 50s**.

Plischke was the best-known of these. He lived in Wellington, working initially for the Department of Housing Construction and then in partnership with Cedric Firth. Plischke's houses, including the Kahn House in Ngaio (1941–42), the Lang House in Karori (1947) and the Sutch House in Brooklyn (1953–56), exhibited all the attributes of international modernism, even though they were largely built in timber. A later émigré, Vladimir Cacala, produced similar houses in Auckland.

Te Ara notes that other architects (Paul Pascoe, Vernon Brown and Auckland's **Group Architects**) aimed to develop a modern architecture that would be "locally specific, incorporating references and responses to local precedents, conditions and ways of life".

Te Ara focuses on Christchurch architects in the later modern period (Miles Warren, Maurice Mahoney, and Peter Beaven) before turning to the contributions of Wellington 'dissidents' Ian Athfield and Roger Walker. In the 1970s Te Ara notes the work of Beaven, Athfield, Walker, John Scott and Claude Megson, and two of New Zealand's most notable Auckland houses of this period – the Mike Austin-designed Chapple House on the North Shore (1966–68) and the Ron Sang-designed Brake House at Titirangi (1977).

Hansen J (ed) (2013) **Modern: New Zealand homes from 1938 to 1977**

My second source is *Modern* which provides details of 24 modernist houses built between 1938 and 1977. The intention of the book is to tell the story of modernism's arrival in New Zealand and the ways in which local architects adapted this international style. The book includes chapters on:

Donner House Titirangi, Auckland, 1947

McKenzie House Ngaio, Wellington, 1958

Halberstam House Karori, Wellington, 1948

Uren House Raumati, Kapiti Coast, 1965

Sutton House Richmond, Christchurch, 1963

Lomas House Lake Rotoroa, Hamilton, 1954-1955

Patience House Meadowbank, Auckland, 1950

Martin House Ngatarawa, Hawke's Bay, 1969-70

Wilson House St John's Hill, Whanganui, 1958-1960

Clifton Hill House Sumner, Christchurch, 1965

Tapper House Kohimarama, Auckland, 1957

Brake House Titirangi, Auckland, 1976-1977

Foster House Havelock North, Hawke's Bay, 1973

Driver House Parawai, Thames, 1959

Alington House Karori, Wellington, 1959-1962

Martin Bach Ruatapu, Hokitika, 1974

Henderson House Bridge Hill, Alexandra, 1950

Manning House Stanley Point, Auckland, 1955-1960

Simpson House Greenlane, Auckland, 1938

Rutherford House Belleknowes, Dunedin, 1959-1961

Robertson House Glendowie, Auckland, 1961-1963

McCoy House Vauxhall, Dunedin, 1959

Newcomb House Parnell, Auckland, 1962-1963

Craig House Pinehaven, Wellington, 1968

From these sources, and some further checking on the comparator architects used in the Historic Heritage Evaluation, I have the following observations:

- Bill Toomath is not listed in either Te Ara or in Hansen's compendium of New Zealand's modernist houses and their architects.
- Plischke and Firth are mentioned in Wellington City Council's Wellington Thematic Heritage Study for their modernist architecture. Bill Toomath is not.
- Bill Toomath's former home is not listed by Heritage New Zealand Pouhere Taonga. In contrast, Alington house (used as a comparator in the comparative analysis in the Historic Heritage Evaluation) is listed by Heritage New Zealand Pouhere Taonga. The rationale and evidence presented for the Heritage New Zealand Pouhere Taonga listing of Alington house is that it is an important New Zealand example of Modern Movement architecture and Alington is recognised internationally.
- Both Alington house and Manning house (Manning house is also used in the comparative analysis of the Historic Heritage Evaluation) met the threshold for inclusion in *Modern: New Zealand homes from 1938 to 1977* but Toomath house did not.
- The Group architects, of which there were many members over the years, along with other architects such as Pascoe and Brown, were all concerned with 'a New Zealand architecture'. Toomath was not unusual in this regard.

- According to Gatley (2010), Toomath is associated with the Group Architects in that he was a founding member, but he had already left for Wellington and was designing a house for his parents in Lower Hutt by the time the Group constructed 'First House' in 1954.
- Newton in the *Journal of New Zealand studies* makes the point that the Group were 'second generation nationalists' with earlier architects at the forefront of modernism in New Zealand. Toomath's own house was built in 1964 more than 25 years after the architectural style was well developed.
- Ian Athfield, a 'dissident' of the later modern period started his house in 1965 a year after Bill Toomath's house was constructed. It is listed in the Wellington City Council District Plan Schedule. The evidence presented for listing 105 Amritsar Street, especially with respect to the architect and his association with the house (it was also where he worked), the architecture, its place in the townscape, its surroundings and the technology used, provides a stark contrast to the weak evidence presented for adding 28 Robieson Street to the Wellington District Plan Schedule.

Placing the contribution of Bill Toomath and the significance of his house at 28 Robieson Street in the context of New Zealand's architectural heritage in this way, puts the Commissioners in a far better position to make an assessment as to whether 28 Robieson Street should be considered for the Wellington District Plan Schedule of Historic Heritage Buildings.

5. The evidence threshold

I find that the material presented [The Historic Heritage Evaluation report on Toomath House, 28 Robieson Street](#) and [the revised evaluation – in Appendix 4](#) from the statement of evidence prepared by Moira Smith on behalf of the Council:

- contains material that is irrelevant
- is not written in neutral language to support objective decision making
- is biased in that it relies on memorial sources as evidence
- omits to place Bill Toomath's contribution and the significance of his former home in the context of New Zealand modernism, especially with respect to the choice of comparators
- is not defensible and has failed to remove subjectivity
- does not reach the standard needed to inform regulatory decision making or legal matters, such as adding a house to the Wellington District Plan Schedule of Historic Heritage Buildings

The revised Historic Heritage Evaluation cannot be used to support a decision to add 28 Robieson Street to the Wellington District Plan Schedule of Historic Heritage Buildings.

In the course of preparing this statement and on reading [Moira Smith's statement of evidence](#), I have similar concerns about the objectivity and veracity of the evidence presented in other evaluations currently under consideration.

6. My recommendations

- The Commissioners cannot make a decision to add 28 Robieson Street to the Wellington District Plan Schedule of Historic Heritage Buildings based on the evidence presented. The Historic Heritage Evaluation should be rejected.

- The Commissioners should question the level of evidence presented in other Historic Heritage Evaluations, and given the seriousness of the consequences, consider whether they meet the requirements of being defensible and transparent, and that subjectivity has been minimised.

REFERENCES

Gatley, J (ed) (2010) *Group Architects: Towards a New Zealand Architecture*. AUP.

Hansen, J (ed) (2013) *Modern: New Zealand homes from 1938 to 1977*. Godwit. Home.

Heritage New Zealand Pouhere Taonga <https://www.heritage.org.nz/list-details/7698/Alington%20House>

Newton, J (2011) 'With the back of an axe': Reading the Group Architects. *Journal of New Zealand Studies*.

Te Ara: The Encyclopedia of New Zealand <https://teara.govt.nz/en/domestic-architecture/page-3>;
<https://teara.govt.nz/en/domestic-architecture/page-4>

Wellington City Council (2013) [Thematic heritage study of Wellington. Wellington.](#)

Wellington City Heritage <https://wellingtoncityheritage.org.nz/buildings/301-450/380-athfield-house>