

Wellington City Council PDP Hearing

Submitter 415 & FS 91 – Submitter statement and speaking notes for Hearing Stream 3

A list of material we have presented to the panel is provided below.

Original submissions

1. [Submission 415](#) - 28 Robieson Street should be removed from the Historic Heritage Schedule of the Proposed District Plan.
(Including Legal memoranda from KERRY ANDERSON, DLA Piper)
2. [Submission 141](#) (Part 2) – JOANNA THEODORE - ANZIA, registered architect and heritage specialist

Further submissions

3. [Further submissions to Wellington City Council FS 091](#)

Stream 1: Responses to minutes

4. [Response to Minute 1](#) – Allocation of topics between the ISPP and normal First Schedule process under the RMA
5. [Response to Minute 7](#) – Legal memoranda from KERRY ANDERSON, DLA Piper
6. [Response to Minute 7](#) – The procedural matter on the Hearing Panel’s jurisdiction to consider challenges and recommend remedies on the current classification of plan provisions between the ISPP and First Schedule plan making process

Stream 1: Hearing speaking notes

7. [Submitter statement and speaking notes](#): Hearing stream 1 – Strategic objectives

Stream 3: Submitted evidence and tabled content

8. [Registered valuation of the impact of heritage listing 28 Robieson St](#) – Nina Smith – BSc; FRICS; ANZIV; SPINZ; Registered Valuer
[Environment Court Decision No 056](#). [2023] NZEnvC 056 (March 2023)
9. [Protection of Private Property Rights and Just Compensation](#) – Published on the NZ Treasury website in 2009
10. [WCC Methodology and guidance for evaluating Wellington’s historic heritage \(Feb 2021\)](#)

Stream 3: Hearing speaking notes

11. Submitter statement and speaking notes Hearing stream 3 – Historic heritage (this document)

Stream 3: Further submitter evidence and response to Minute 20

12. Statement of Evidence prepared by JOANNA THEODORE - ANZIA, registered architect and heritage specialist
13. Statement of Evidence prepared by JUDY KAVANAGH - An assessment of the evidence within the Council’s HHE

Preface

1. Our original submission is comprehensive. We sincerely appreciate the Commissioners' time and consideration of it, our further submission, responses to minutes, legal memoranda, submitter evidence, and supplementary material to support the hearings process. Our investment and full engagement in this process has come at a considerable cost to us – financially, socially, including to our family, our work, and our physical and mental health. We have made this investment because the scale and significance of the effects that are anticipated from the Council's proposal warrant it. Listing will irreversibly damage our wellbeing, yet we see no benefit to the community. Our position is the Council has failed to meet basic obligations under the RMA and established no compelling case, or almost any case at all, to support the listing of our home. That we are in this situation at all, is an immense frustration when more diligence and respect for the law and its obligations the Council could have avoided this very costly exercise.
2. The Council appears to have struggled with our submission, its comprehensive nature, and the level of supporting evidence we have provided. We are encouraged by their recommendation to the Panel to read the submission in full. However, we also note that this should not excuse the poor interpretation and limited attempts to distil points from our submission and address them the s42 reports. We do not have sympathy for the volume of work that this would entail – the Council must be prepared to resource their side of the burden they set upon us through their proposal. The Council has:
 - (a) Failed to establish a complete or accurate set of summary points to inform further submissions leading to our points being overlooked.
 - (b) Failed to address most of our submission within the s42A report for the hearing. For example, there are sections in the report focused on *Lack of evidence* (page 18 and paragraph 78), and *Incentives* (paragraph 158) which form substantial parts of our submission – yet gets no mention when compared to those from other submitters.
 - (c) Included many basic errors in the reports – for example the s42 (page 479) records us in opposition of Wētā FX and WingNut Films Productions Limited rather than in oppositions of the listing of the Miramar Bulk Storage Tank. While other points from our further submissions are simply ignored, 414.6 (Support of Vic Labour to delist Gordon Wilson), 182.45 (Opposing listing of operational infrastructure specifically cites The Bolton Street Overpass (paragraph 1018 in the 42A report) and the Mt Vic Tunnel (paragraphs 1019).
3. Democracy is best served by treating submitters and their submissions equally to ensure points are properly heard and considered. The apparent effect of the Councils approach to our submission has been to not breathe life into the points we raise and to limit the ability of others to discover and support our positions or to inform their own responses.
4. Unfortunately, our preparation for this hearing stream was impacted by Covid. We acknowledge that this has been challenging to both timeframes and process and appreciate the Chair's considered approach. In response Minute 20, we have provided two additional items of expert evidence that relate to the Historic Heritage Evaluation of our home presented by the Council. These are:
 - (a) A response from Johana Theodore – a registered architect and heritage specialist.
 - (b) An assessment of the evidence provided in the HHE from Judy Kavanagh – an evidence-based policy expert and academic.
5. Our focus in the hearing will be on the relief we seek from the Panel in relation to the proposed listing of our home in SCHED1 of the Plan and related topics. We simply have not had the bandwidth to cover the Council heritage provisions in detail as we might have with more time. However, our submission should stand in its entirety as an assessment of the Councils heritage protection regime and the issues with it.
6. In the hearing we'd like to both recap and expand on several important issues we have raised during this process and look forward to our discussion with the Panel.

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1 Relief sought from the Panel

1.1 Primary relief we seek from the Panel

7. Remove item 514 (our home) from SCHED 1 of the Proposed District Plan.
8. Remove 28 Robieson St from the Council's unlisted heritage items database.

1.2 Secondary relief we seek from the Panel

9. Make modifications to the District Plan heritage provisions, and language in the Plan, to remove bias and ensure it remains neutral and balanced for the benefit of all people and the broader Wellington community.
10. Remove new heritage sites proposed for listing in SCHED1 through the IPI as this is beyond the Council's powers under the RMA.
 - (a) It's redundant given the above point but recognise the Council has failed to meet the requirement of s77J regarding any assessment of the impact of *new* heritage buildings.
11. Consider whether the other provisions related to heritage that the Council has included in the IPI under the following sections of the RMA reflect the 'narrow and directive' nature of the IPI and meet the requirements of s80G. Remove any provisions from the IPI that cannot be included under the RMA within the IPI or otherwise make recommendations to address the issues the Commissioners find.
 - (a) Section 80E(a)(ii) and giving effect to Policy 4 is restricted to use for heritage provisions in the IPI that *accommodate a qualifying matter in the area by making relevant building height or density requirements less enabling of development* than required through the MDRS and Policy 3 of the NPS-UD.
 - (b) Section 80E(b)(iii) is restricted to heritage provisions (via related provisions in s80E(2)) that *support or are consequential on* the MDRS or Policy 3 or 4 of the NPS-UD.
12. Consider that there is no justification for the addition of modernist homes to SCHED1 as the Council now agrees (Ms Smith paragraph 366/367) that their entire premise for proposing them *"to fill gaps in modernism"* has no basis.
13. Discount the Council's Historic Heritage Evaluation (and the revised statements in Appendix 4 of the Council's heritage expert) in relation to our home as it does not meet the evidential standards to support decision making on matters of this scale and significance by the Commissioners.
14. Agree that the evidence in the HHE for our home does not establish, or meet the required standard to establish, that our home is significant and meets a threshold to be considered for listing.
15. Remove new heritage sites proposed for listing in SCHED1 that do not have *expressed consent* from the property owners as the Council has failed to meet basic and fundamental evaluation requirements of section 32 and 77J of the RMA needed to support these new listings.
16. Make a recommendation that the Council better inform their future approach regarding heritage, and their evaluation obligations under the RMA, with two fundamental pieces of evidence:
 - (a) A study to assess and quantify the value different segments or the community place on different types and age of heritage (eg isolated suburban homes being one) and compare these values against their views on other societal values for example, climate change, housing affordability, property rights etc. We have provided information in our submission on methods that can be used to make these types of assessment.
 - (b) A fundamental review of the performance of the heritage protection regime and its effects with regard to these different types of heritage and the costs and benefits. At minimum it should

- (i) Identify the effects and quantify these including for example: outcomes it achieves for listed and unlisted heritage, identification, unintended consequences, impacts on the efficient use of land, and any other efficiency impacts of the regime.
 - (ii) The incentives various actors including the Council within the regime.
 - (iii) Not exclude the complexities of addition or changes to any listings.
 - (iv) Consider the sustainability of the regime or its outcomes in response to both time (is any development permitted in 500 years' time?) and expected environmental disasters (like the Christchurch earthquakes).
 - (v) Alternative approaches to supporting 'understanding and appreciation' of our heritage than last century's solution which is to regulate use and change of physical sites.
17. Make a recommendation that the Council consider options for protection of heritage, including the role that charitable heritage trusts could play in the protection of heritage, and how these might be incentivised.
18. Recognising, that the IPI prevents any appeal to the Environment Court and has forced submitters to provide more work to the Hearing process than they might have otherwise done with no opportunity to recover these costs (it's a one-shot process after all). Make a recommendation to Council on appropriate consequences, sanctions, penalties, or compensation regarding the Council significant failings and use of false evidence (including s32) to justify actions that have created the significant, burden, stress, waste of time and energy, and otherwise negatively impacted submitters. Provide clear guidance of the quality of work the Panel expects to inform Plan changes in the hope we can avoid repeats of our ordeal for other affected parties in the future. The Environment Court makes allowances to consider such matters and may award costs to any party of the proceedings to compensate for unnecessary costs incurred as a result of the actions of other parties.

1.3 Further comments

19. Most of our energy and attention has been centred on the first two items above. However, the Panel must understand that those impacted by heritage provisions, at least as they apply to SCHED1 and private homes, are limited in their capacity to respond fully to the material that affects them. We are isolated parties without the resources or time of the Council, established interest groups, central government agencies, or our corporate peers.
20. We stand by our statements in Stream 1 – that the district plan, and the chapters within it, are for the whole Wellington community and they must be written in an impartial, neutral, and balanced tone for the whole community. As Judy Kavanagh remarks in her assessment of the evidence within the Historic Heritage Evaluation of our home – it is best described as a 'pitch' for protection rather than an impartial evaluation.
21. This observation reflects much of our experience with the material and engagement from the Council regarding heritage. They are clearly strong proponents of heritage protection through scheduling, however, appear to lack the depth and impartiality to undertake the necessary evaluation required by the Act.
22. It is not the place of the District Plan and its chapters to make a pitch for heritage. The Panel must protect the Plan from incorporating unbalanced or biased language and provisions - and against being unduly influenced by those narrow interests (including within the Council) and their goal to increase "heritage protection" through regulation that are not reflected by the broader Wellington community.
23. While we are not opposed to heritage – indeed far from it. What we do not support is the continued expansion of heritage schedules or the creep of Council control over scheduled heritage through increasingly prescriptive provisions at the cost of private owners and for the benefit of only a few. The Council has illustrated that it is blind to the broader effects of their heritage protection regime and consequences for people, the community, and the protection of heritage itself. We strongly believe that in many cases this approach leads to adverse outcomes for heritage.

2 A recap of our situation

24. We purchased a rundown house on a nice street in Wellington with plans to renovate when we have saved the funds needed to finance the project. As with most New Zealanders it is our largest financial asset. It represents our financial security and is the foundation of our retirement.
25. We did our due diligence when purchasing the home – nothing at all was recorded on the Lim from Council to signal any potential interest they had in heritage. It was an ordinary home, if in poor condition, of a style we appreciated. It had a lot of potential.
26. We have demonstrated the catastrophic impact listing our home would have to our financial wellbeing. The financial repercussions of listing can easily extend to issues with bank security held in the property. This Council has not identified any of these effects and failed quantify or otherwise account for them in any evaluation.
27. Banks require house insurance as security for mortgages The financial advice industry and govt agencies are clear in their alignment in recommending home insurance. Insurance is to protect, what is most people lucky enough to buy a home, is their largest asset from sudden and unexpected events that might damage homes. In short insurance protects the equity in the home and the financial wellbeing of owners in the event of a disaster.
28. The listing of our home would be significant financial disaster. However, no one sells insurance to protect against the financial impact of having the Council heritage list your home. There is no mechanism for people to provide for their own security against such initiatives.
29. We are left to simply rely on the diligent evaluation against the purpose of the RMA (social, financial, and cultural wellbeing of people and the community) of that requires these effects to be weighed and considered.
30. We have already devoted significant energy and finances to this Plan Change and Hearing process. This energy and these funds could have alternatively been directed toward our project and looking after our home and our family.

2.1 Questions from Commissioners in Stream 1

31. We appreciate the engagement of the Panel in our submission on the strategic objectives. While we answered these questions within the session, we thought there was some value in providing the further context on the questions below. Drawing these responses from our submission further illustrate the breadth and depth of our work and the value of the frameworks we have provided.
32. **Commissioner Lutz** asked about heritage that might not be valued today by the community but might value the future.
 - (a) The challenge with this is there is little evidence which can be provided to support arguments to the values of future communities. Irrespective of issues with natural bias, an expert today might believe something should have value in the future – but equally likely it might not be.
 - (b) This question is related to the discussion in our submission on non-use value for others (altruism / bequest) in Figure 11 (page 67) and section 9.6 (page 75) and specifically paragraph 320.

Existence values are typically supported through the revealed preference of some people exercising their optional use value. Earlier, we established that community 'option value' is low as not a single person has sought to enquire or view our home. This fact reveals the community has a little interest in our home and it has low 'existence value'.

- (c) Further in paragraph 309 – 311 we explained that we had had zero interest in our home since we have owned it – not a single person.

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.

33. **Commissioner Daysh** asked about what non-financial incentives could be used to promote the preservation heritage – on the reasoning the Panel may be limited in their ability to make recommendations that have a financial impact on the Council.
34. The Council has chosen to ignore our discussion on incentives entirely in their s42 report. We disagree with paragraph 169 that there are any effective incentives as there is little certainty and the sums are inconsequential compared to the burden we have demonstrated listing imposes.
35. Ultimately, the unbalanced incentives should be addressed by the Council. However, we provide some further thoughts and observation on this.
 - (a) It appears odd that Wellington City Council funds social housing services - but regulates the provision of heritage services where the cost is borne by private owners. To further illustrate the how bizarre this is, why doesn't the Council regulate that private landlords must provide social housing services at their own cost, as both are valued by the community.
 - (b) The regulated protection regime removes incentives for charitable heritage trusts to form with the purpose of *purchasing and protecting* heritage that the trust values. Instead, interest groups are incentivised to lobby for regulated protection to receive the benefit without paying for it. In other jurisdictions heritage trusts are used to protect heritage through ownership. They can provide an important platform to bequest property into trusts where this support the values of owners. We would encourage the Council to provide information to support the preservation of heritage through charitable trusts and the benefits of this.
 - (c) The Council could provide incentives through tradable development rights allowing owners of heritage to be compensated for their lost development potential. The Council appears to rule this out in s42 paragraph 171 without providing any reason. Although, we understand this has occurred in the past within Wellington, particularly in the CBD. The QEII trust provides an easy mechanism for owners to protect land. I understand it is not uncommon for Councils trade development rights (by providing an additional title say) for protection other aspects of land parcels.
 - (d) We emphasize our points in Chapter 8.3 (page 40) that the Council has failed to effectively consider any non-regulatory options for the protection of heritage despite the requirements in s32(1)(b)(1) to *identifying other reasonably practicable options for achieving the objectives*.

2.2 Council communication and engagement has been deficient

36. We all lead busy lives with busy and demanding jobs, family emergencies, events, our own health issues, and all the other demands that life throws at us. In short, our bandwidth is limited. The letter detailed in Figure 4 on page 26 of the s42 report which sought to notify owners of property that the Council had an interest in the heritage was deficient.
37. It was never personally addressed to owners; it simply starts with Kia Ora. Reading unaddressed letters from the Council is not on our to-do list. The underlying and reasonable assumption is that if it was important – it would be addressed by name.

38. The council manages to address our rates invoices. Why would we assume that the Council heritage team would be incapable of arranging a mail-merge for such an important communication? We took little notice of the letter. We recall the envelope was simply addressed to 'the homeowner'.
39. The other significant deficiencies in the letter are it:
- (a) Failed to inform recipients that the Council has the powers under the RMA to list without owner consent.
 - (b) Failed to identify to recipients the significant potential for negative consequences for them and the financial wellbeing of their family. In fact, it actively downplays the consequence of listing as "may need a resource consent to modify or demolish" when demolish is a restricted activity under the plan will require a consent.
 - (c) Failed to advise recipients to seek professional advice on the potential for significant impacts to their wellbeing and financial security (or indeed solvency) that could result from listing.
40. These deficiencies give rise to too main possibilities:
- (a) The Council and their heritage team is deliberate in not informing homeowners of these effects, hoping they can list the property of unsuspecting owners before they realise the gravity and significance of the consequence for them. This observation would align with the Council's approach to try to push new heritage through the ISPP process.
 - (b) The Council and their heritage team is in fact clueless to the effects and significance of listing on people and the community. This situation would appear to align with the inability of the Council to meet their requirements under sections 32 and 77J of the RMA and identify effects and undertake any evaluation to weigh the costs and benefits.
41. We have confirmed with Council that they made zero attempts to contact us except via this initial letter on the draft plan and the formal notification of listing in the PDP.
42. To be clear, the Council:
- (a) Made no attempts to confirm we received the first letter or subsequent HHE with the PDP
 - (b) Having not heard from us and despite the demonstrated seriousness of the consequence – made no attempts to check our position.
 - (c) Made no further attempts to engage in a discussion to explain the process or why they were interested in our home.
 - (d) Made no attempts to seek to arrange a site visit, by Council staff, or their consultants, despite this being a key step in their own heritage evaluation process (see [step 2](#)). Or otherwise engage with us to assess the validity of the assumptions made in the HHE, or to obtain other relevant information regarding our home.
 - (e) Made no attempts to discuss options for heritage conservation or protection in relation to our home.
 - (f) Made no attempts to understand or seek evidence of the effects on us or to quantify these to a *level of detail that corresponds to the scale and significance of the effects that are anticipated from listing*.
 - (g) Has made no attempt to or been able to answer question 5(d) illustrated on paragraph 221 of our submission regarding why they have dismissed costs to individual homeowners in their evaluation.
43. It is unclear to us why they would have assumed their communication had been successful received or that not getting a response from us in any way indicated we understood the process, the very significant impact listing could have for us, or any support for their proposal.

2.3 An example of possible financial impact on homeowners that the Council continues to dismiss and ignore

44. We have provided evidence from a certified valuer that the impact of listing our home is a 29 per cent fall in market value that equated to \$450k at the time of valuation. This impact alone vastly exceeds the "mere imposition" the Council and Mr. Whittington (paragraph 1.3) seems to continually dismiss it to be.

It is disappointing that these direct impacts, and the consequential impact for any heritage values continues to be ignored.

45. Let's consider an example to show how significant some of the direct impacts of the Council's heritage listing can be for an average house. Consider a couple who bought an average Wellington home a in Jun 2022 about a month before notification that it was notified for listing.
- (a) According to QV you would have paid **\$1,153k** if we assume an 80 % mortgage, you'd have **\$922k** mortgage.
 - (b) At 1 March 2023 your property would have fallen to **\$971k** due to a falling market and if you haven't fixed your mortgage rate your payments will have gone up considerable. However, you'd still have positive equity.
 - (c) However, if the home was similar to ours and in poor condition needing lots of remedial work, and the Council lists it as a heritage building in SCHED1, the value of the home would drop a further 30 per cent.
 - (d) Ignoring the payments of principal, you made since purchase (most of the payments would be interest) the property would fall to a market value of **\$680k** and you'd still have a mortgage in the order of **\$970k!**
 - (e) This situation puts you in a negative equity position **of \$290k** ie you owe the bank far more than the house is worth. At this point you could consider giving the keys back to the bank and declaring yourself bankrupt.

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 %

46. This above example clearly shows how the Council attempting to ruining our lives and the lives of others. However, the absurdity of the situation doesn't stop there.
- (a) You'd still find it challenging to sell the house.
 - (b) You'd have no ability to borrow to fund any remedial work despite the Council wanting you to protect the building,
 - (c) You'd be prevented from making changes that you planned when you bought the property.
 - (d) Any remedial work or changes you can afford to finance are now inflated in both cost and time ensuring less of your funds would make it into improving the home.
 - (e) You now have to live in a home that doesn't meet health home standards for years longer at a cost to your own enjoyment and health – and you can't rent it because you can't borrow the money to make the changes to meet the health homes standard.
 - (f) To top this all off - the Council now wants to further expand their powers through their provisions in relation to maintenance and neglect. Do they intend to force people who they have made insolvent to somehow maintain it? Quite how they imagine this is possible work is unclear.
47. Does this behaviour reflect a Council operating under the purpose of the RMA which is to provide for the social, financial, and cultural wellbeing of people and the community? How has this got this far? How can the Council in the face of the evidence we have provided still maintain their position, and continue to pursue the listing of our home?
48. We suggest an alternative view that more regulation and ever-expanding listings is not going to achieve the outcomes (we assume) that Council is seeking regarding heritage. We encourage them to inform their future approach with two fundamental pieces of evidence:

- (a) A study to assess and quantify how different segments of the community value different types of heritage (eg isolated suburban homes being one) and compared these values against their views on other societal values for example, climate change, housing affordability, property rights etc. We have provided information in our submission on methods that can be used to make this assessment.
- (b) Undertake a fundamental review of their heritage protection regime with regard to these different types of heritage including the cost incurred of the regime, outcomes it achieves for listed and unlisted heritage, unintended consequences, impacts on the efficient use of land, and any other inefficiencies that are created.

2.4 The effects of listing our home are not aligned with protection of heritage

- 49. Already, this process has diverted considerable time, energy, and finances away from the needs of our home and progressing our plans to address them.
- 50. The example above has clearly illustrated (as we have presented in our original submission) the severe financial consequences that arise for the owners through listing new heritage that is in poor condition. In addition to the significant negative impact on our own wellbeing, the half-million-dollar loss of equity in the property would leave us in no financial position to borrow further funds necessary to remediate the significant issues with our home.
- 51. Perplexingly the Council appears deeply entrenched in their view that this outcome makes no difference. Their narrow focus is on abstract assessments of heritage and an unrelenting pursuit of scheduling that overlooks any broader considerations – including what is best for the building, protecting any heritage, or the incentives their regime sets for owners on non-listed heritage.
- 52. The Council's view is held in distinct isolation from the people and community they and the Plan is designed to serve. Despite our best efforts to explain these effects in our original submission the Council has failed to acknowledge them or offer any view or solution of how they expect private homeowners to achieve the outcomes we assume they seek for through the protection heritage.
- 53. To put this plainly - the Council appears to be deliberately pursuing a path that is directly at odds with the intent of both section 6(f) and the purpose of the RMA.

2.5 Alternative and more preferable options are available to the Council

- 54. The Council officer highlights in paragraph 780 of the s42A report that the Dobson House by Toomath and Wilson exhibits similar values. Our view is that this property a better example of what the Council appears to be seeking to include in their listing – and might be expected to have a higher net benefit to the Community.
- 55. We have read the HHE report for the Dobson House (1958) and believe this to be a more iconic and distinctive example of modernism than Toomath house. The home exhibits the floor to ceiling windows and use of glass that were a strong feature of modernism. We do not know the house but note that this appears in near its original state and with a sympathetic renovation conducted in 1989 it appears to be in a far better condition than Toomath house. We have noted many significant failings with our home need for remedial work in our submissions.
- 56. The story of Bill Toomath is one of partnership with Derik Wilson and what they achieved together over nearly 30 years. It is this story of parentship that produced the Karori Teaches College – their most recognised and noted work. Importantly, the Dobson house was designed by Toomath and Wilson and better reflects this story.
- 57. Importantly, the listing appears to be supported by the owners, which we believe should be a prerequisite to the listing of isolated private homes.

2.6 Further comments on the section 42 report

- 58. We generally disagree with the following.

- (a) That any review of heritage schedules (paragraph 78), including issues and options papers, a thematic review of the heritage schedules, background reports and individualised building evaluations, meets the definition of 'detailed'.
- (b) That's this body of work (Paragraph 79) is extensively detailed in the section 32 report, or that the section 32 report has a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from its implementation (paragraph 765). The requirements are set in the RMA for section 32 – assessments of other jurisdictions have little relevance. That is for the constituents in those jurisdictions to challenge the quality of these reports (or not) against the requirements clearly set in within s32.
- (c) That The Council heritage expert evidence provides any view on efficiency, effectiveness, or reasonableness of listing our home (Paragraph 766)
- (d) That that there is no comprehensive national direction in regard to s6 – this direction is given by the RMA itself via the requirements of s32 (if completed properly as intended) under the purpose of the RMA. (paragraph 767).

59. We agree and are support of the following discussion.

- (a) The understanding that the options considered by the Council (the three options considered in s32) are all regulatory options. (paragraph 771)
- (b) That the RMA makes no such distinction between listed and unlisted heritage in the obligations it imposes on the Council (paragraph 772 and 777). The Council is accountable for the incentives their regime creates for owners of unlisted heritage to do exactly what the RAM sought to prevent. As we have discussed we have little confidence that the net-benefit for the Council's regime is positive for the community in general, or heritage itself. The Council has made no attempt to assess the broader impacts of their regime to know if they are doing more harm than good. This singular focus on regulatory options has occurred despite the highlighted example form MFE for consideration of options including non-regulatory options to provide for the protection of heritage. The Council officers concern with certainty for protection seems odd when the openly admit they can't even assess all items that have in their database. I suggest that far more heritage generally would be protected with a better designed incentive regime (or even reduced the disincentives the Council has created). While individually, it may not provide the certainty, neither does the current process. However, we believe such a regime would prove more reliable and sustainable overall and solve many of the Council's issues with internal resourcing, identification, consents, and regulation.

3 Broader policy context

3.1 Intensification policies

- 60. The policy intent of the Enabling Housing Supply and Other Matters Amendment Bill that implemented is outlined in chapter 1.2 of the Department Report. The headings of this chapter are provided below and provide a clear purpose of the bill to take urgent action to increase the supply of housing for New Zealanders through intensification.
 - (a) Too many New Zealanders are experiencing housing stress
 - (b) There is no silver bullet to solve the housing crisis
 - (c) Housing intensification is a critical enabler of housing supply...
 - (d) *...but overly restrictive planning rules are a key barrier*
 - (e) Urgent action is needed so more New Zealanders have a place to call home
- 61. Nothing in the intent of the bill was to support the Council list new heritage within the IPI – and thus add new restrictive rules and barriers. If anything, the Bill is designed to specifically address the issues with overly restrictive planning rules. This purpose is directly opposed to the listing of new heritage.
- 62. This point gives rise to our continued disagreement with the Council that listing new heritage homes in SCHED1 has anything to do with intensification or the intent of these policies.

- 63. These new legislative mechanisms seek to cut through the restrictive policies that have built up over decades and rebalance planning to explicitly recognise future generations of inhabitants as stakeholders in these decisions and policies.
- 64. To date I have not come across any recognition from the Council or their heritage expert that Policy 6 and Objective 4 exist in the NPS-UD. These provisions exist to help balance debates around amenity values particularly in relation to heritage and character. They help to ensure people understand that amenity values must change, and while some members in society won't like the change, others will prefer the product that comes from it change. The fact these provisions get so little mention reflects incentives of the Council and the bias their pro listing agenda.

3.2 The Council fabricated evidence and has no mandate to expand modernist listings – there is no evidence of any gaps

- 65. In our submission we have shared our journey of being told multiple times by the Council, and having it quoted by (Ex) Mayor Foster, that the reason for proposing the listing of our home (and other modernist homes) was to “fill the gaps in modernism” in SCHED1.
- 66. We undertook significant work to understand where this “gaps in modernism” had come from, as it was the presented as the foundation reason for the proposed listing of our home. The Council’s own gap analysis was overseen by the Council’s heritage expert when they were a staff member.
- 67. The Council’s heritage expert agrees and has confirmed in paragraph 367 that, despite all their previous claims, and it being documenting in the *“Planning for Growth District Plan Review Historic Heritage Issues & Options Report”* (see paragraph 101 in our submission) that there is no evidential basis is to support their claims that modernism in SCHED1 is underrepresented.
- 68. To be clear the Council’s expert is admitting that the Council has fabricated evidence used to justify the listing of our home. A direct quote from the report is *“Listing buildings that fill these gaps will provide a more complete understanding of Wellington’s heritage”*. Further the s42 report falsely presents that *“A key principle established was that the review of listings should increase representation of those themes underrepresented in the story of Wellington’s heritage.”* (Paragrah 93, 98, 99). To our mind this is presenting false and misleading evidence to Panel.
- 69. Understandably the Council chooses to largely skip over this point in their response and has now, simply changed tact to the view that our home should be listed because the HHE finds it eligible.
- 70. We strongly disagree with the Council that the thematic review and prioritisation of listings has been *robust*, that it includes nominations from *“several years”* (our home was nominated 16 years ago), or that the *key principle of proposed listings was to increase representation of those themes underrepresented in the story of Wellington’s heritage* has been applied.

3.3 The Council’s position severely compromised

- 71. Consider the following simultaneous positions held by the Council on the standards required for themselves and submitters. The column on the left relates to the Councils treatment of themselves or their actions. The column on the right relates to their treatment or actions relating to submitters, like us, or the standard of our response by comparison. This list illustrates the point – it’d would be long if we added all the differences in these standards.

Standard used for Council	Standard used for submitters
The Council’s has limited resources to undertake necessary research and to assess items in their heritage list despite the fact that heritage is a matter of national importance in s6f of the RMA.	The Council dismisses private costs as irrelevant, and a mere imposition, and not worth identifying, weighing, or quantifying, as heritage is a matter of national importance in s6f of the RMA.

(Paragraph 92 of s42 report)	
The Central Library, Civic square, Michael Fowler Centre should be delisted and have their protection heritage removed to make it easier to refurbish them.	Condition has no bearing on heritage values and is no reason not to list.
All the 'understanding and appreciation' can be gained from a desktop study to undertake a complete Historic Heritage Evaluation suitable to justify listing your home with significant	Physical buildings need protecting because they contribute to an 'understanding and appreciation' of New Zealand's history, despite evidence no one has ever tried to visit.
No one from the Council bothered to visit our property we assume because it was inconvenient? (We note that eventually that Ms Smith visited the street? during her rebuttal)	The level of effort and resource we have had to apply to this process is significant and has come at a substantial cost to us. There appears little balance in standards of approach within this process.
Opinions and memorial articles meet the threshold as evidence.	We have provided substantial evidence from multiple sources and experts. Evidence is documented and referenced.
The Council can make up a justification and claim it to be evidence "gap in modernism".	Evidence and justification provided with footnotes and links to all supporting material.
The Council can make up evidence and present it in the s32 report to give the impression final report exist when in fact under a LGOIMA they do not.	Evidence and justification provided with footnotes and links to all supporting material.
The Council has no classification system or clear way to understand their listed heritage. The do not even understand which are homes.	We have undertaken the work to establish both which building are modernist and which are residential building in the heritage schedules.
The Council's heritage expert uses justification that buildings are less than 30 years old to not list them if they are theirs. Civic Administration Building (Paragraph 575). This concept is also repeated in paragraphs 687/688, and 806.	However, in our case they claim the 2007 study addition added nationally significant heritage value to the Toomath house despite the fact there is no "longevity of use" to demonstrate.

4 Listing new heritage through the IPI is beyond the powers of the Council

72. It has been established the allocation of topics or provisions between the IPI and First Schedule is important and impacts the hearing process, timelines for decisions, the role of Councillors' in making decisions, and appeal rights to the Environment Court.

4.1 The ISPP is narrow and directive in nature

73. The required implementation of the intensification policies was narrow and directive in scope. This is clear in the Department report on the bill. *"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."

74. It is this narrow and directive scope and the testing of the standards (MDRS) through select committee that supported this conclusion. This narrow and directive nature supports our position in relation to the correct interpretation of s77G(8) and for the IPI, 80E(1)(a) and 80E(1)(b)(iii) – that we understand was a late addition.
75. There is nothing within the MDRS, NPS-UD or its intended outcomes that expects or directs the scheduling *new* heritage buildings in the PDP. Far from it – our view is listing isolated *new* heritage buildings like our home is unrelated to the implementation of the intensification policies, is a substantive merits issue that is not appropriate to lose appeal rights, and is fundamentally outside the scope of the IPI.

4.2 The Council's incentives

76. The Council has natural incentives to overprovide heritage as discussed in Section 6.3 of our original submission. Further to this point interest groups who are understandably better informed and resourced than private homeowners are naturally incentivised to lobby for regulatory responses rather than incur costs through and protecting heritage themselves.
77. The Council's own experience and frustration with appeals (as presented in Paragraph 4.10 by the submission from Mr. Whittington) that there are downsides (for them) to allowing appeals to the Environment Court is a redundant argument. This position speaks to the incentives on the Council to apply the ISPP liberally to deliberately remove submitters appeal rights.

4.3 The value of appeal rights are wildly acknowledged

78. The Council repeatedly downplays the importance of these appeal rights, but the fact is that appeal rights and natural justice are widely valued. This value is highlighted by the points below including the Departmental Report on the Housing Enabling Bill which notes specifically in relation to merits issues like heritage – that it would not be appropriate to have no appeal rights.
 - (a) The Wellington City Council Standing Orders commitment to *"ensure that decision-making procedures and practices meet the standards of natural justice"*.
 - (b) Paragraph 84 of the Council's s42A overview report, records the strong preference expressed by Councillors *"who took a view that submitters retaining appeal rights was preferable."*
 - (c) The Departmental Report on the Housing Enabling Bill calls particular attention to matters where appeal rights should be preserved, highlighting this with an example analogous historic heritage. *"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)."*

4.4 New heritage was not specifically considered in the Council allocation decisions

79. Once again would appear that *new* heritage listings were not given proper attention and consideration when allocation topics and simply swept along with other items and heritage and SCHED1.
80. We note that little detail was provided on the plan schedules (they were not even named) in the allocation of ISPP topics that Councillors were asked to approve. They were listed as "any appendices and schedules that are directly relevant to any of the above". There was no consideration for how to treat different items within the individual schedules –which process is suitable for each:
 - (a) removal of protection of buildings (for example the Michael Fowler Centre and the Wellington Central Library) from the Civic Square Heritage Area to allow for re-development.
 - (b) retaining items within the SCHED1,
 - (c) or the addition of 52 new buildings to SCHED1 including our home, 28 Robieson St.

4.5 Environment Court Decision 56 and protection of property rights

81. We have provided supporting evidence from the Environment Court (Decision 56) that is related to our position. We understand that this has been appealed. The similarity exists between our situation and this case because listing a new wāhi tapu site is a substantive merits issue, like heritage, or indeed SNAs as mentioned by the Departmental Report on the Housing Enabling Bill in the section above (that it would not be appropriate to include in the IPI).
82. Respectfully, we disagree with Mr Whittington on the following.
- (a) That the consequences are not draconian (Paragraph 2.7). We have provided evidence of the scale of impact on ourselves – from our side the scale of the consequence coupled with the fact little evaluation has occurred, or that any net benefit has been established, meets the definition of draconian.
 - (b) That the requirements of s80E can be interpreted as broadly as *incorporating the MDRS, and giving effect to policy 3 of the NPS-UD “where appropriate”* (paragraph 2.16). The correct interpretation is much stronger than this. The Plan *must* incorporate the MDRS and give effect to Policy 3 and 4 of the NPS-UD. However, is intentionally difficult to reduce the effect of the intensification policies unless a qualifying matter either already exists, or it supports or is consequential on (ie follows) the implementation of these policies. The Council has no broad discretion to interpret where they believe the MDRS to be appropriate. The RMA is very directive. We expand on these points in section 4.7.
 - (c) That the mandatory category s80E(1)(a) can be interpreted as generally as “Give effect to policy 4 of the NPS-UD (*relating to qualifying matters*)” (paragraph 2.17(c)). Mr Whittington is overly generous with his use of “relating to” qualifying matters. We discuss this further in section 4.8.
 - (d) That that the Council can use s80E(1)(a) to list new heritage buildings. (paragraph 2.26)
 - (e) The there is any real distinction of drawn between “property” and “property rights” in relation to land with the imposition that if the property isn’t taken there is no issue. Property is simply the right to use or prevent others from using an area of land that amount to property rights. We have clearly shown the link between use rights and the loss of them on the value of the property. The two concepts are inextricable linked an unable to be separated.
 - (f) That having our home listed in SCED1 is a *mere imposition of a control or restriction on use*. Again, the language used seeks dismiss and reduce the significant impact we have demonstrated listing would have.
 - (g) That anything in s 6(f) of the RMA requires the protection of heritage to be provided for *at the expense of private interests* (paragraph 3.3). The Council simply chooses an approach that is at the expense of owners as an approach to try and meet their obligation. Apparently, this approach is so entrenched within the Council – they see no other way. This may explain their inability to identify alternate options to inform their approach and s32 analysis. Nothing prevents the use of non-regulatory options to meet the objective, or indeed, providing compensation or remissions to owners for the heritage service provided to the community. Our submission discusses non-regulatory options and remissions approaches.
 - (h) That a high bar or high standard is not required under statute to take property rights. The exercise of such powers should be used sparingly and only when there is a compelling net-benefit to the community that is beyond reasonable doubt or argument. This is especially the case in relation so heritage which is a substantive merits issue – the case to take property rights (via restricting use and development rights) must be established without doubt especially given the significant consequences.
83. However, we agree with Mr Whittington’s concluding remarks.
- (a) *“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”* (Paragraph 3.4). However, as we have shown the Council has failed to meet these statutory tests.

4.6 Section 77G(8) highlights implementation of the MDRS overrides any inconsistent RPS policy

84. Section 77G of the RMA requires the MDRS and Policy 3 to be implemented. 77G(8) further illustrates the intention that the intensification policies are implemented and should not be impeded by any provisions within our secondary legislation or planning instruments. Listing new heritage is not a supporting policy, so the Council cannot under the provision of Policy 21 of the RSP identify and list new heritage to prevent the MDRS from applying as the MDRS trumps the RPS. (We note that the RMA has no explicit requirement to identify heritage this is only in the RPS.)

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.

85. This logic would also seem to extend, that the Council is not able to apply the RPS criteria to evaluate a potential listing as the entire process seeks to limit the MDRS, and thus they are inconsistent with the requirement to implement it.
86. Clearly, there is no intention that new heritage be listed withing the IPI that the Council is required to use to implement the MDRS.

4.7 Section 80E(1)(b)(iii) only supports the inclusion of related provisions that support or are consequential on the MDRS etc – it does not support the listing of new heritage through the IPI

87. It would appear that we are, at least, in partially agreement with Mr Whittington that s80E(b)(iii) does not extend powers to the Council to include related provisions that do not *support and or are consequential on* the MDRS. At the very least – the Council has confirmed this is not the provision they are relying on to include new heritage listings in the IPI.
88. This was the main thrust of our arguments and context presented to the Panel in Stream 1, both through legal memorandum and our own submission. Our understanding of the Council's position arose from the s42 overview report and the comments on the use of discretion. However, Mr Whittington and the Council appeared to change tact in Stream 1 to rely on s80E(1)(a) and specifically 'give effect to' Policy 4 to empower them to include new heritage which we discuss below.
89. A full discussion on this is provided in our responses to Minute 7 with links on the front page of these speaking notes.
90. It remains that the Commissioner's should consider whether any provisions relating to heritage that the Council has included in the IPI under s80E(1)(b)(iii) are only those related to supporting or consequential on the MDRS etc. Any that do not pass the test within s80E(b)(iii) should be removed from the IPI as they would breach s80G of the RMA.

4.8 Section 80E(1)(a)(ii)(A) only supports "accommodating" qualifying matters through modifying the relevant building height or density requirements – it does not support listing new heritage through the IPI

91. Where we continue to diverge in agreement with the Council is in the interpretation of s80E(1)(a) and specifically regarding giving effect to Policy 4 of the NPS-UD. This is the provision Mr Whittington states that the Council has used to list new heritage items (paragraph 2.26). As described above respectfully disagree with this interpretation and believe the Council is operating beyond its powers in the use of this clause.
92. In our verbal response to Mr Whittington's evidence in Stream 1, we pointed to the key words and its importance in these clauses '*to accommodate*' a qualifying matter in that area. This accommodation is further limited by the preceding words "*modify the relevant building height or density requirements under Policy 3 only to the extent necessary*" which defines the form or method that the 'accommodation'

can take. This limits the scope to interpret accommodation more broadly. It would be incorrect to interpret this as enabling 'accommodation' of *new* qualifying matters within the IPI. There is no scope under Policy 4 to include establishing new heritage listings as qualifying matters and certainly not where these are significant merits issues.

93. Policy 4 is included below.

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.

94. The Oxford dictionary defines accommodate as "accommodate somebody/something to provide enough space for somebody/something". It does not extend to creating or establishing the somebody/something.

95. In the context of Policy 4, the word accommodate enables the MDRS and Policy 3 to be made less enabling to accommodate (or make space for) a qualifying matter in that area.

96. There is no doubt that 'making space' or accommodating (through applying less enabling building heights etc) a qualifying matter that already exists (ie listed heritage in the OPD), or indeed a qualifying matter that is included in the IPI through 80E(1)(b)(iii) is possible. However, there is no scope to accommodate an entire process, including and merits assessment, evaluation to establish if a new building should be listed that is required to establish a new qualifying matter in an area. This extends well beyond the beyond the scope of giving effect to Policy 4.

97. The intent of Policy 4 is to facilitate the implementation of the MDRS and Policy 3 while allowing Councils to modify these requirements to take account of existing qualifying matters or those that support or a consequential on the implementation of Policy 3. Thus, avoiding a situation where the implementation of the intensification polices enabled development where it has been established either previously or through other provisions that this should not occur.

98. This interpretation that the intent of Policy 4 is further supported by:

(a) The Departmental Report on the Housing Enabling Bill makes clear that the ISPP process was intended to assist the rapid implementation of intensification policies. Implementation was expected to be achieved through IPIs that augmented existing plans and that would be run independently from full plan reviews (as other councils have done –ie, a proposed plan and a variation or an operative plan and a plan change).

(b) Subpart 6 (3.31(2)(a)) of the NPS-UD which requires the qualifying matter to be identified by location – implies the qualifying matter is already established and it just needs to be made clear where it is on a map. It is an operational reporting obligation. Subpart 6 has no requirement to assess or establish if a site meets the criteria to qualify as a specific qualifying matter (like heritage). It is implicit that this has already occurred outside this policy.

99. The Commissioners should consider whether the provisions relating to heritage that the Council has included in the IPI under s80E(1)(a)(ii)(A) are only those that modify the relevant building height or density requirements under Policy 3, and only to the extent necessary. Any provisions that extend beyond the scope of Policy 4 should be removed from the IPI as they would breach s80G of the RMA.

5 Heritage in Auckland vs Wellington

100. We have substantial experience in regulation, quantitative analysis, and policy analysis. To inform the results we presented in section 6.2 of our submission we engaged with the heritage team at Auckland Council and been provided the datasets that underlie the glossy heritage count reports that the Council's expert has read and posted.

101. We agree with the Council heritage experts Paragraph 79 – it further highlights our point that modernism really evolved beyond the WCC boundary and with great examples in Lower Hutt as evidenced in our submission. This is further explained by the Council expert in paragraph 85 where large suburban areas like the Hutt City and Porirua were substantially established post WW2. We again suggest they are looking in the wrong place for their modernist examples and should apply a regional approach, should they believe the region is underrepresented, as noted in paragraph 124 of our submission.
102. The Council's heritage expert discusses the differences between Wellington and Auckland, noting that the key difference is that Wellington is New Zealand's capital city with many of the nation's most significant heritage places.
103. This logic might explain why Wellington would be expected to have more government buildings reflected in their heritage schedule, or at a stretch more CBD buildings due to national importance, but we see little justification for having more protected homes relative to the housing stock in the region, or per person than Auckland. After all, having shelter and a home is a basic human need and is entirely unrelated to proximity to government.
104. The Council's heritage expert has not presented the same basis and level of rigour for comparison that we included in Figure 3 (page 21) of our submission. We believe what they have presented is of limited relevance. To be very clear on the differences to what we presented:
 - (a) We have presented individually protected homes (not areas) as a proportion of the housing stock (per 1000 homes) in each city (on the left) and all built heritage relative to the population (per 1000 people) on the right.
 - (i) In our analysis we have considered heritage homes that are residential houses and excluded apartments. For built heritage we have included any buildings, homes, and structures (for Wellington this includes structures listed in SCHED2). We have excluded archaeological sites and areas with significance to Māori as these are quite separate.
 - (b) The Council has presented a chart from Auckland's 2020 Annual Summary that includes all classifications of heritage including archaeological sites (Māori and European) and sites significant to Māori, which accounts for 24 per cent of the total listings. This chart only presents the number of any heritage sites per 1000 people and per square kilometre, the latter appears to have little relevance and is more a measure of density and spread.
105. A comparison of listed homes relative to the housing stock in our Figure 3 a far better measure that is relevant to the context of listing isolated heritage homes like ours. This clearly shows Wellington has a significantly higher proportion of housing stock individually protected than Auckland.
106. Differences aside, if we use the figures presented by the Council's heritage expert, they note in paragraph 86 that there are 1.55 protected places per 1000 people in Auckland. They appear reluctant to state the number for Wellington and the reader who is left picking this number off the chart in Figure 4 – which we read as 5.5 protected places per 1000 people, or 3.5 times Auckland. The Council heritage expert suggests this is similar to Takapuna and Waitimata. However, Takapuna reads as 4 places per 1000 people and by the measure they have presented Wellington exceeds this by some 37 per cent and it exceeds Waitamata (at 3.1) by 77 per cent – hardly what anyone would consider similar.
107. Moreover, the analysis the Council has presented is from 2020 and therefore will not include the expansion in listings the Council has proposed to include in the Plan that we are concerned with. This will have the effect of underrepresenting the Wellington listings as proposed. So, Wellington would rank even higher in their chart if this was updated. Obviously, population and the housing stock will have changed slightly in both cities too.

5.1 What about population through time?

108. Further to our original submission and in response to comments from the Council's expert that "Wellington is New Zealand's capital city with many of the nation's most significant heritage places" (paragraph 84) and "the density of heritage listed places in Wellington is not particularly remarkable" (paragraph 88), we have included a population through time chart for Wellington, Auckland, and Dunedin.
109. This chart clearly shows that both Dunedin and Auckland had larger populations (and homes/buildings) earlier than Wellington (pre 1900s). Dunedin was over three times the size of Wellington on occasions prior to 1900. Wellington did not surpass Dunedin's population until around 1900 around the time that my own ancestors moved from Dunedin to Wellington.
110. It stands to reason that a higher historical population there would influence the number of houses and buildings. From this larger number of older buildings (and inherent history) it would be reasonable to expect a greater number that would meet the eligibility criteria for listing. When considering this information there appears little justification for why Wellington should have so many more listed homes relative to Auckland.

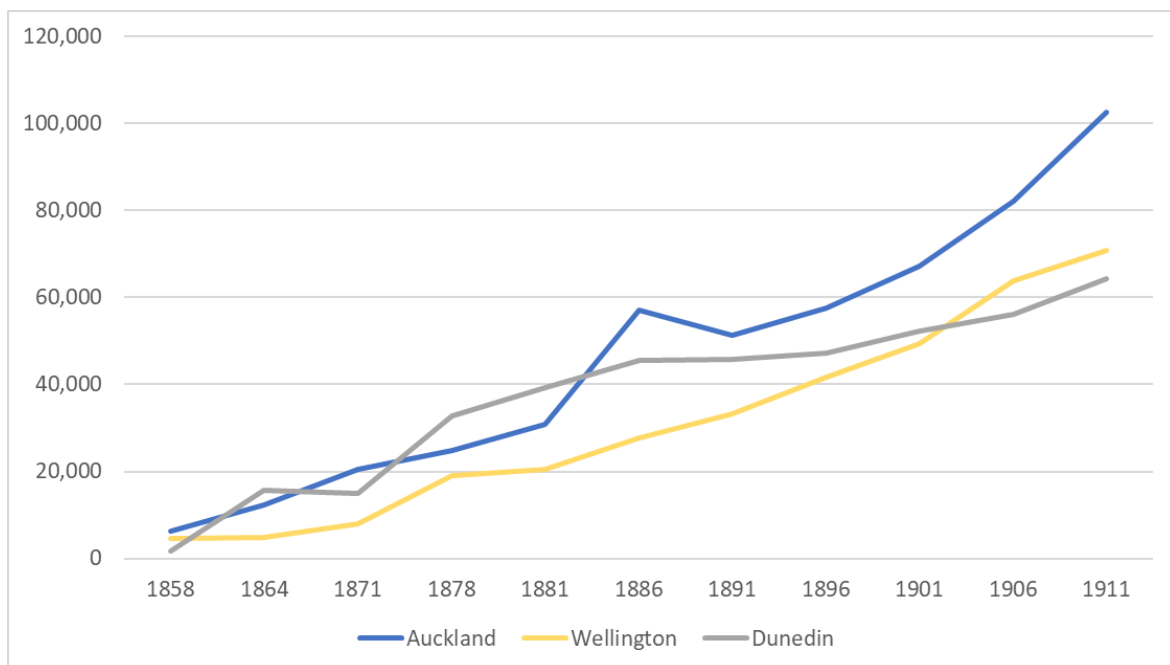


Figure 1: Population over time, Auckland, Wellington, Dunedin (Stats NZ)

111. There appears no strong historical reason why you would expect to see more heritage homes listed in Wellington than Auckland as a proportion of the housing stock.

5.2 A more plausible explanation is differences in each Council's approach to heritage

112. What remains is the point we made in our submission about the differences. Clearly Wellington has a significantly greater portion of its housing stock listed as heritage.
113. It is logical to consider, that these differences may not be explained by the underlying presence (or not) of heritage homes, but by each council's response to the unbalanced incentives and approach to heritage. Each council will have different processes, diligence (eg for evaluations), and restraint or enthusiasm to expand the reach of their listings from architecture relating to inner city or industrial architecture and into suburbia and how this has manifested in their policies and schedules over time.
114. The Council's expert has neglected to acknowledge this as a plausible rationale for the notable differences between Auckland and Wellington.

115. We again point to the view within our submission – that the Council continues to overreach in its protection of heritage as it is naturally incentivised to do.

6 The Historic Heritage Evaluation for our home

116. The historic heritage evaluation for our home is covered in Section 9 of our original submission.

6.1 We have provided responses from three experts on the HHE

117. We have procured at our own cost and provided three supporting pieces of expert evidence in relation to the HHE. We have not sought to repeat the content from these in this section but provide a one-line conclusion. These are listed below.

- (a) A legal review of the HHE from KERRY ANDERSON, DLA Piper (included in our original submission).
 - (i) The Heritage Assessment supporting listing this building does not provide a sufficient evidential basis for listing.
- (b) A review of the HHE by JOANNAH THEODORE, a registered architect and heritage specialist.
 - (i) The Strategic Objectives of the PDP, notably HHSASM-O1, state that: “Significant buildings, structures, areas, and sites that exemplify Wellington’s historical and cultural values are identified, recognised and protected”. The subject building does not exemplify Wellington’s historical and cultural values.
- (c) A review of the evidence within the HHE by JUDY KAVANAGH, an evidence-based policy expert and academic.
 - (i) 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.

6.2 Matters of heritage value

118. There appears a disagreement between us and the Council’s heritage expert in relation to the definition of “heritage value”. They consider simply saying something is “significant” (with limited rationale to support this other than its their opinion) is a measure of the heritage value. This approach leaves them unprepared to meet the evaluation requirements and obligations within the RMA.
119. Our opinion differs and is better reflected as evaluating the *benefits or value the heritage provides to the community*. Our interpretation is aligned with the requirements within s32 of the RMA.
120. Without the ability weigh the value our home provides to the community in relation to its heritage in any meaningful way, or to establish that this value is somehow drastically less if our home is not listed, the Council has not been able to inform their evaluation and has failed to present any compelling case for listing.
121. The Council appears to have no understanding at all on the value different segments of our community places on heritage at all, let alone and understanding of the value placed on different types of heritage. The Council approach is somewhat binary in nature and is unable to distinguish the value to the community for different items, their opinion is simply that they are significant. It seems likely this inability to leads to the inefficiency in consenting processes where balance is required rather than rigidity and inflexibility.
122. The Council makes no attempt to describe anyone within our community would benefit from listing our home (ie identify the effects of listing).
123. We fundamentally disagree with the approach of Council’s heritage expert that it is appropriate to simply edit the conclusions of the assessment at the 11th hour in response to significant failings of the

HHE. The criteria that have been found to be incorrect should be discounted or the must be reevaluated. We do not believe the Council's heritage experts response meets the definition of re-evaluated.

124. The inappropriate inclusion of irrelevant material (eg the interior) that is fundamental to the evaluation report and the conclusions it reaches, along with the fact this was peer reviewed by the Council's heritage expert (and accepted), further demonstrates the deficiencies of the Councils work. As our experts agree – the HHE does not provide the evidential basis for listing, and the heritage is overstated.

6.3 The HEE recommendation overreaches the design and purpose of the report by making a recommendation for listing our home

125. 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. This purpose is set out in the Council own methodology and guidance (on page 22) that we have tabled for this hearing.
126. This is an appropriate limitation given what the report is designed to cover. The methodology almost implies that if a building passed the eligibility test, it will then be assessed further. Logically this would be to identify effects and weigh the costs and benefits as required under the RMA.
127. However, the HHE for our home goes beyond the scope that is intended and makes a recommendation to list without addressing the necessary evaluation and obligations for further assessment before such a recommendation could be made. This is inappropriate as the report (notwithstanding the quality issues in this instance) does not cover the material necessary to make this recommendation. The recommendation should be discounted.
128. Assessing eligibility is only one of many steps required to make an assessment to inform a recommendation for listing. As outlined in our submission, others include identifying and evaluating options, identifying effects, weighing the costs and benefits (including quantifying these where practicable).

7 The Council's evaluation does not meet the requirements under the RMA

129. We covered the Councils evaluation of new heritage under section 32 in section 8 of our submission. The Council's evaluation efforts are inadequate with respect to new heritage and fail to meet the requirements set out within the RMA.
130. This trend continues with respect to the additional requirements to section 32 in section 77J for the IPI. We expand our submission with the following points.

7.1 The Council makes no attempt to acknowledge other values within our society or effects listing imposes on them

131. The Council has not sought to identify the effects of listing new heritage, and has failed to identify or account for the values of society that listing impacts.
 - (a) Property rights are highly valued in society and people care when they are taken. That property rights are respected and forms the foundation of society expectations of natural law and fairness. The expectation of society that such powers would be used sparingly, and that is a compelling public benefit (and net benefit) would be established that is beyond reasonable doubt before they would be used.
 - (b) We have demonstrated within our tabled evidence that these rights are valued and that are real costs to exercising powers that take property rights. This includes a loss of economic efficiency as people otherwise unaffected respond with their desire to invest or not invest in properties that may be perceived at risk of such draconian measures.
 - (c) Our home is clad in redwood, which is an iconic species in California, much like Kauri is here. The post World War II housing and economic boom caused the majority of old-growth redwoods to be clear cut. In just a few decades, hundreds of thousands of acres of old-growth redwoods were

logged. By the 1960s, industrial logging had removed almost ninety percent of all the original redwoods. Yet, the Council wishes to celebrate this, and somehow call it an emphasis on local materials? Many in society would place little value on this and would argue that's this is nothing to be celebrated about the deforestation that occurred in North America at this time and its contribution to climate change.

- (d) Other societal values include the values of fairness and to be treated equitably. Not to be treated differently from your neighbour, and not to be treated differently because of status, wealth, or a disability etc (with reference to the mobility ramps at the front of the railway station).

132. We intend to highlight this further in our hearing in relation to evaluation matrix in Figure 12 and Figure 17 from our submission.

7.2 The Council has failed to account for the costs of making the MDRS and Policy 3 less enabling in relation to new heritage

133. We have already established that it is not within the powers of the Council to include new heritage building in SCHED1 through the IPI.

134. However, given this is what they have proposed, they have failed to meet the additional evaluation requirements (to support making the MDRS and Policy 3 less enabling of development) set in s77J that expand on the requirements of s32 of the RMA.

135. The Council has provided a report titled *Wellington City Qualifying Matters Capacity Assessment – November 2022*¹. This report was completed by Property Economics and was published *after* submissions on the PDP had closed in September 2022.

136. The report appears to be the source for Phillip Osborne's statement of evidence in relation to Stream 1 although is primarily focused on capacity.

137. The general context provided on page 33 of the November report provides useful context.

In general, imposing more restrictive controls on development will result in a greater number and extent of economic costs than economic benefits. This is because restrictive controls add costs and reduce the efficiency of the market's ability to allocate resources appropriately.

7.3 The analysis appears to underrepresent the impact that isolated heritage has on capacity

138. The report does not include the details and assumption to understand what has been taken into account as only presents aggregated results for the impact of heritage on development capacity across all types of heritage protection. We are concerned that it underrepresents the impact of heritage on capacity, particularly from isolated heritage.

139. Paragraph 214 of our submission illustrated that the Council's figures in relation to the proposed listings would impact about 1.3 per cent of the housing stock in Wellington City. The Council believed this is small to "*in the scheme of all properties in the city is small*". The analysis presented in this report – appears to have considered the face value impact on capacity. For example, the assumption appears to be that a qualifying matter relating to a single house (eg heritage item) is only one house that has development restricted.

140. While this may be appropriate for a qualifying matter relating to a flood zone, or other natural hazards, as these matters are expected to affect a contiguous set of sites. It misses the magnifying impact having a qualifying matter (such as heritage) that impacts isolated homes spread through the housing stock

¹ <https://wellington.govt.nz/-/media/your-council/plans-policies-and-bylaws/district-plan/proposed-district-plan/reports/supplementary-documents/wellington-city-qualifying-matters-capacity-assessment-november-2022.pdf?la=en&hash=2A26924CECFB7D27FE028655F6F1B51DA2DD962D>

has on development and the MDRS. This dispersed effect can have a significant impact on the economics of brown field developments across the city that the MDRS is designed to facilitate.

141. We provide a brief example to illustrate our concerns. Consider the highly stylised example, illustrated in Figure 2. This presents a grid of ten by three house sites – 30 individual sites – perhaps a row of homes with back sections and a row accessed from another street. Imagine a developer requires a scale of a three-by-three lot to efficiently and economically build a multi-unit development or set of apartments with all the necessary services under the MDRS standards.

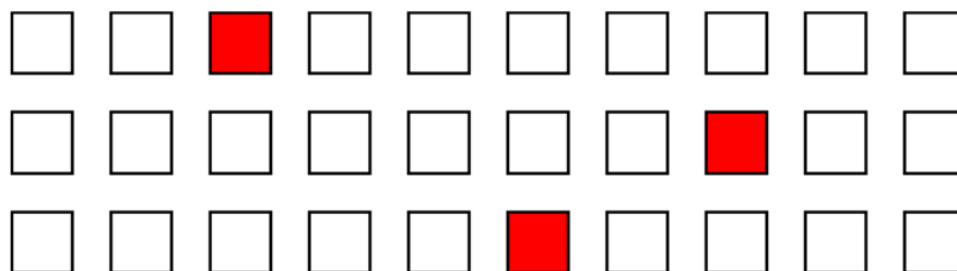


Figure 2: Illustrative example of the magnifying effect of removing one per cent of isolated sites due to a qualifying matter

142. By removing just one per cent of these sites (the three red squares above) using heritage as a qualifying matter to limit the MDRS leaves the developer with no suitable sites for their development. This example demonstrates that the isolated listings have a far more significant impact on capacity and the efficient use of land than the Council has acknowledged or taken into account within their assessment.
143. The current assessment appears to only consider the impact on the three sites and has failed to account for these larger impacts.

7.4 The benefits and costs considered make it clear that new heritage is missing from the analysis

144. The November 2022 report includes a table that seeks to evaluate the economic benefits and costs in relation to heritage buildings, structures, and areas (at least in terms of capacity). We do not support this large grouping of quite different types of heritage as the effects and costs differ greatly. It would appear the intent of this work is to inform an evaluation for the purpose of meeting the requirements of s77J of the RMA. We do not believe it is suitable in regard to assessing the costs of isolated heritage or new additions of isolated heritage as qualifying matters and their impact on MDRS.
145. A careful read of highlighted red box in the table in Figure 4 clearly states that this analysis does not account for new heritage listings *"However, these controls are already in play within the ODP and therefore should already be reflected in the market value."*
146. Given the analysis is only accounting for items already in the OPD loss of property rights of the owners will already be reflected in the market value. Obviously, this is not the case of new heritage. It is clear that new heritage has been missed out again and the Council has therefore failed to meet the requirements of 77J.
147. We also note that similar to our own assessment, none of the stated benefits apply to our home (an isolated suburban home with limited visibility and no access). We have denoted this with a red cross in Figure 3. In contrast all but one of the costs in Figure 4 apply to our home. At least the authors have rightly identified this is an issue of fairness.
148. We also note that the assessment is only concerned with capacity. It has not sought to account for the impact on capacity in different locations/zones or the different amenities that are near the capacity. For example, brown field developments near centres zone or public transport vs green field development far away from the city centre. Clearly all capacity in the city is not equal.

Economic Benefit	Economic Consequence / Probability	Comments/Notes
Wellington tourism economy would directly benefit from the preservation of the current character and amenity and cultural significance of the Heritage Buildings and Areas. ✘	Moderate/ MEDIUM	
If the areas are subject to a QFM, the public's appreciation of the heritage values of these sites and areas would be enhanced. This would further lead to a more cautiously planned land use of the area. ✘	Meaningful / MEDIUM	
A QFM would safeguard the economy of industries that rely on the existing character and amenity of these heritage areas (e.g., the tourism and movie industries) ✘	Moderate/ HIGH	A previous survey done by Tourism NZ indicated a very large number of visitors (one-third of international visitors) are not only coming to New Zealand for its landscape and wildlife, but also to participate in, and understand its cultural heritage.
Retaining the current heritage value of the areas through a QFM would secure the potential for increased property valuation where heritage is appreciated ✘	Moderate / MEDIUM	Auckland Council's 2018 research found that properties located within 50m of a scheduled heritage place have a price premium of 2.3 per cent – around \$21k more than the average Auckland house price. Within 100m of a heritage place, properties have a 1.6 per cent premium – \$15k more than the average house price.
Secure the employment opportunities for specialists in heritage protection and promotion (relative to the demolition of heritage buildings for new development) ✘	Minor / HIGH	
Without further intensification development, the heritage properties with the current offerings may facilitate the floorspace requirement of small businesses ✘	Minor / MEDIUM	Start-up businesses are often not located in the office park or the shopping centre as they cannot afford the rents there. Heritage buildings with comparatively more affordable rents can be expected to better accommodate the office demand of these businesses.

Figure 3: Economic benefits of heritage buildings structures and areas (Page 34)

Economic Costs	Economic Consequence	Comments/Notes
Controls on heritage development may lead to fewer brownfield development capacity if further intensification is not enabled. As a result, more greenfield land may need to be rezoned to accommodate housing demand, consuming a proportion of the productive land in Wellington City or the Wellington Region requiring additional infrastructure and reducing greenspace. +	Critical / LOW	Given the quantum residential capacity estimated in this report relative to the demand, the likelihood that heritage protection will have a material impact on the development is minimal.
The property owners affected by these constraints incur a cost in the form of lost development potential. +	Moderate / HIGH	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.
The heritage features of some buildings would be able to incorporate higher-intensification development. Subjecting to a QFM may prevent these buildings and properties from further development opportunities	Moderate / MEDIUM	This cost depends on the locational characteristics and current structure of the heritage buildings and properties.
A cost would occur to the wider community through less efficient urban form through the decreased ability for intensification. +	Moderate - Critical / LOW	Although the potential cost of this is high, the likelihood of it becoming an issue within the next 30 years is extremely low. This is based on the total supply and demand making it unlikely the loss of these sites will undermine intensification.

Figure 4: Economic costs of heritage buildings structures and areas (Page 35)

7.5 Heritage, valuations, and impact of the housing market

149. As described in our submission section 8.4, s 32(2)(b) of the RMA requires the Council to identify the effects and quantify these costs is practicable to do so. We have procured at our own expense an independent registered valuation prepared by a qualified valuer at a reputable valuation firm. This quantifies the one effects on us of listing – the direct impact on the value of our property and our financial wellbeing.
150. The Council has rejected our illustration of the potential impact of collective listings of \$300 million. Yet has gone to no effort to provide any reasonable alternative assessment of the collective impact as required under s32(2)(a).
151. The extrapolation to a potential total of \$300 million – is not intended to be accurate, this simply isn't our job, it's the Councils. What this \$300 million figure does is provide an indication of the potential magnitude of the anticipated impact of listings. Providing a figure for this anticipated impact is more than the Council has done. It is not provided it as justification – but motivation for the Council to invest properly in their approach to evaluation, and show that they have *failed to contain a level of detail that corresponds to the scale and significance of the effects anticipated* as required in s32(1)(c).

152. There are several significant weaknesses with the general arguments put forward by the Council's heritage expert relating to other market impacts studies. Firstly, none are in Wellington.

- (a) It is not appropriate to make heritage price comparisons to other jurisdictions without understanding and considering the policies that limit activity in relation to their listed heritage buildings or the support that is provided to owners (rates relief for example). Another example, we understand Auckland Council is more pragmatic in their assessment and approach to proposed changes and what's best for the heritage of buildings. Whereas the Wellington Council heritage team is more conservative and rigid in their approach to proposals and resource consents.
- (b) Heritage areas and listed buildings within heritage areas are an entirely different prospect to isolated homes like ours.
 - (i) This indicates a lack of understanding on the Council's part for how property markets work and what purchases of houses are revealing they value. In a heritage area, while you face restrictions on development – you benefit from a guarantee that everyone else restricted too. In Auckland many of these heritage areas are in desirable suburbs near the CBD where these undeveloped properties are naturally scarce.
 - (ii) Studies that fail to distinguish the fundamental difference between our situation and a heritage area are not relevant and must be discounted. In our case the thing that society as revealed through property market values is being taken from us through listing – that's is the option value to develop our section or home to suit our needs just as anyone else on our street can.
- (c) Any such analysis needs to be carefully normalised for location effects. It is not clear that this has occurred in these studies.

Regardless of the general studies the Council has presented, we have provided specific evidence from a registered valuer on the impact listing our home would have. This evidence clearly demonstrates both the impact of listing on property values, but also that it was *practicable to quantify these costs* as required under s32(2)(b) – something the Council has failed to do.