

# Wellington City Council PDP Hearing

## Submitter 415 & FS 91 – Response to Minute 39, Commissioners scope to make recommendations

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
12. [Submitter presentation \(requested\)](#)

### Stream 3: Further submitter evidence and response to Minute 20

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

## **Stream 3 follow up: Response to Minute 39 – Toomath’s Building and matters of Commissioners scope**

15. Response to Minute 39, Toomath’s Buildings and Commissioners scope to make recommendations (this document)

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1. Thank you for the opportunity to submit in relation to heritage matters that have arisen in regarding the scope of the Panel in the aftermath of the fire within Toomath's Building and the Council's instruction to the owner to demolish the building. Our response to the question raised in paragraph 4 of Minute 39 is presented in section 2 below. However, we take this opportunity to provide some related context and pose several questions. We support the removal of Toomath's Building from schedule 1.

## 1 Toomath's Building and Edward Toomath

2. Firstly, we would like to take this opportunity to clarify again that the building referred to as Toomath's Building (#128), is named after the original owner, Edward Toomath, and was designed in 1900 by William Crichton. This property is unrelated to our home, 28 Robieson Street, built in 1964 for architect Bill Toomath.

## 2 Making recommendations to remove listings is within scope of the Commissioners

3. Our original submission discusses the purpose of the RMA and sets out failings of the Council in relation to their obligations under section 32 of the RMA, and with respect to other requirements and guidance.
4. Section 7.1 discusses the purpose of the RMA and NPS-UD and their objectives to achieve well-functioning urban environments; and to achieve the sustainable management of natural and physical resources. Sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety.
5. Section 8.4 of our submission (page 52) sets out the section 32 requirements to:
  - (a) Section 32(1)(a) & (b) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act, and whether the provisions in the proposal are the most appropriate way to achieve the objective by identifying reasonably practicable options and assessing efficiency and effectiveness.
  - (b) Section 32 (1)(c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
  - (c) Section 32 (2)(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions and quantify benefits if practicable.
6. Listing must only proceed if it is the most appropriate way to achieve the purpose of the RMA and NPS-US, and only where a clear net benefit to the community has been established.
7. The direct relief we sought (secondary relief item number 15) that we presented in Stream 3 and included in our speaking notes leaves no doubt that the Commissioners have scope in regard to *new heritage listings*.

"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."
8. We submit that existing heritage listings are also within the scope of our original submission and the material we presented in our hearing stream 1 and 3 and as such it is within scope for the Commissioners to recommend the removal any building or structure proposed for listing in schedule 1 of the PDP where they:

- (a) are not satisfied that listing is the most appropriate way to give effect to the purpose of the RMA, or that the Council has failed to meet the obligations under the RMA as we have detailed in our submission, or that...
- (b) after hearing evidence and examples of the costs listing imposes (including lost development and use value to the community) and benefits of listing throughout the hearing — the Panel are not satisfied that proceeding with listing will deliver net benefits for the community when the economic, social, and cultural costs and benefits have been correctly identified and weighed.

### **3 The Council has weighed any heritage value of Toomath's Building as low when balanced against disrupting Ghuznee street traffic**

- 9. In the aftermath of the fire, we understand the Council made a decision and instructed the owner to demolish the building. This decision is a pragmatic response given in the situation; no doubt supported but powers to protect public safety thus avoiding a lengthy and costly publicly notified consenting process.
- 10. However, public safety alone could have been achieved by a large cordon and deploying appropriate security. For example, the state the Christchurch Cathedral was held in for many years with fencing and frames to hold the fragile structure in place while its future was debated.
- 11. The instruction issued by the Council to the owner suggests they believed that the costs incurred of protecting the public via these more disruptive methods (such as indefinite street closures) were deemed too large when weighed against the heritage value of a now less structurally sound building. Essentially, they have made an assessment of the costs and benefits to the community for a single heritage building.

### **4 Has the Council invested in other options for heritage protection of Toomath's Building?**

- 12. Our submission discusses the failure of the Council to consider options for protecting and retaining heritage. Specifically, where this enabled a more pragmatic balance and compromise for the use and development of heritage buildings. We also highlighted the risk that Wellington has a 75 per cent probability of experiencing an Alpine Fault earthquake in the next 50 years and that the requirements within the building code are designed to preserve life in such an event – not buildings. In such an event we are likely to lose many listed buildings despite any strengthening.
- 13. We assume the Council believe that Toomath's building had significant heritage value. They had listed the Toomath's Building in the OPD and PDP, had gone to great lengths to prevent the owner exercising their option value by declining multiple applications or refusing to compromise on proposed designs, and had incurred considerable expense to attempt to force strengthening and pass these costs to the owner.
- 14. In this context, we question if the Council ever sought to, or invested in, a digital 3D record (historic BIM) of the property, or if this information is now lost with the building? We ask how does this reflect on the Council's role and where they deploy their resources in relation to the protection of heritage?

### **5 Where is the net benefit from listing Toomath's Building?**

- 15. The story of Toomath's Building provides a clear example that there has been no net benefit achieved for the community through its listing. In short, the Council has failed to protect what heritage they believed existed, and the design and operation of their heritage protection regime has directly contributed to poor outcomes for the social, economic, and cultural wellbeing of Wellingtonians that has resulted over the last decade.

16. The situation could have been vastly different if any of the numerous proposals submitted by the owners had received a more pragmatic response from the Council, or indeed had the building not been listed. It seems likely that Wellington could have had a development that was safe, functional, provided space for commerce/employment or accommodation for our residents, added to the amenity of the area over the last decade, and otherwise contributed to the community while retaining specific heritage aspects if there was value. Instead, we have had an unsafe building, loss of amenity with shipping containers on our footpaths more recently, supported inappropriate use by providing an environment for squatters, and have forgone economic value and/or accommodation over a period when it was desperately required within the community. Ultimately by preventing development that would have enabled economically viable use has led to the loss of the building.
17. This process has occurred within the shadow of the Council's own challenges with sky rocketing costs to strengthen the town hall that has now reached \$329 million (2023) which were originally \$30 million (2012) when the project was started. Would those who supported the strengthening programme at \$30 million have supported it if they had known the true cost of strengthening would be nearly \$329 million.
18. To be clear the total revenue from rates for Wellington city in 2022 was \$375 million. Essentially the Council has committed an entire year's rates revenue to the refurbishment of a single building that most residents will likely never enter.
19. How does the Council expect private building owners to undertake strengthening of heritage buildings at such extreme costs without a pragmatic approach to balancing preservation of heritage and social and economic value?
20. We remain unconvinced that the design of the Council's heritage protection regime, and the incentives it sets, provides any net benefit for the social, economic, or cultural wellbeing of Wellingtonians.

## 6 Appendix: Section 32 of the RMA and references

21. A copy of section 32 requirements is included below for reference along with other references.

### 32 Requirements for preparing and publishing evaluation reports

- (1) An evaluation report required under this Act must—
  - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
  - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
    - (i) identifying other reasonably practicable options for achieving the objectives; and
    - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
    - (iii) summarising the reasons for deciding on the provisions; and
  - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- (2) An assessment under subsection (1)(b)(ii) must—
  - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
    - (i) economic growth that are anticipated to be provided or reduced; and
    - (ii) employment that are anticipated to be provided or reduced; and
  - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
  - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

22. The following opinion piece provides relevant points of view from the community.

- (a) [Maybe the Toomath's building fire in Wellington wasn't such a bad thing](#)