

## COMMENTS ON THE DEMOLITION RULE IN THE OPERATIVE WELLINGTON CITY DISTRICT PLAN

### (POLICY 4.2.2.1 AND RELATED RULE 5.3.6)

Douglas Brett McKay (24 March 2023)

1. My name is Douglas Brett McKay, and I am known as Brett. I am a retired planner living in Wellington. I have a Diploma in Town Planning from the University of Auckland. Between 1980 and 2011 I was employed by the Wellington City Council as a Principal Planner. My major responsibility during the time was to oversee the introduction and completion of the first district plan for the city under the Resource Management Act 1991. While employed as a Council planner I was a full member of the New Zealand Planning Institute.
2. From 1989 until 2022 I resided in Thorndon and following my retirement from the Council in 2011 I became a member of the Thorndon Society, a local organisation committed to protecting the heritage and residential character of the suburb. I was a committee member and for 10 years edited the Society's historical publication the *Thorndon News*. During this time I researched and prepared many articles on the history and heritage of Thorndon. Last year I moved to what I describe as a heritage and character home in Berhampore.
3. I am a submitter on the proposed district plan (submitter number 069). The main concern raised in my submission is that the proposed district plan (PDP) will result in the irrevocable loss of the city's older housing stock which gives Wellington its special character and unique sense of place. I believe that the inner residential neighbourhoods can make an acceptable contribution to city growth without destroying the existing residential fabric.
4. I have been asked by Wellington's Character Charitable Trust to prepare a short history of the demolition rule which was approved as part of District Plan Variation 14 and included in the district plan before the plan became operative on 27 July 2000. I have also been asked to comment on the replacement demolition rule and policies for character precincts in the proposed district plan under consideration by the Panel.

### INTRODUCTION AND SUMMARY

5. Under the then Proposed District Plan (as notified in 1994) policies and rules had been introduced to maintain and enhance the residential character of the inner residential suburbs of Thorndon and Mount Victoria. After the hearing of submissions both the Thorndon Society and the Mount Victoria Residents Association appealed to the Environment Court requesting the adoption of stricter provisions to protect the suburbs from the ongoing demolition of the original housing stock and their replacement with unsympathetic development and uses. Through mediation processes it was agreed with the Court that a variation would be notified to introduce new provisions for Thorndon and Mount Victoria and include them in the district plan when it was ready for adoption.

6. The appeals and subsequent variation processes represented a continuation of a 30 year history to strengthen planning controls in Thorndon and Mount Victoria in the interests of maintaining and enhancing the heritage and character of the suburbs.
7. The proposed district plan proposes to water down the protection of residential character by reducing the spatial coverage of demolition controls on pre 1930 buildings, and also by significantly changing the wording of the demolition policy from the operative district plan. I do not support these developments. However, without detracting from my overriding concerns I have suggested an alternative drafting for the demolition policy in this statement.

## CHRONOLOGY

8. The origins of the demolition rule could be said to extend back to the notification of Wellington's first draft district plan in July 1967. Under this plan the Council formally proposed a high-density, high-rise future for the inner residential areas of the city. For years there had been talk of slum clearance and urban renewal and now the plan confirmed that the majority of houses within the town belt were both functionally and economically obsolete and should be amalgamated and replaced with high density housing.
9. The draft plan was eventually adopted in 1972 and by this time a dozen or so high-rise apartment towers had been constructed or consented in Thorndon, Mount Victoria and along the Terrace. These towers remain as a visible legacy of the city's first town plan.
10. However, opposition to the new vision for the inner residential suburbs soon gained momentum. This was within the context of societal changes that saw people interested in heritage and renovation returning to the inner-city suburbs and building liveable communities. In addition, the destruction of heritage housing wrought by the construction of the urban motorway and the adverse effects of high-rise development at the time also galvanised support for protecting the inner residential areas.
11. As early as 1976 the Council was responding to citizens' concerns and a plan change was initiated to reduce the maximum building height in the inner residential suburbs to 12m. This plan change did not proceed but the issue remained live and was to become an important matter of consideration under the first review of the district plan.
12. In 1979 the proposed reviewed scheme was publicly notified and clearly reflected a change in the Council's position towards that of encouraging the retention, rehabilitation and additions to existing inner residential to give a higher density of development. This policy was carried into the reviewed plan when it was adopted in 1985.
13. To support the Council's new policy position the 1985 plan included a range of revamped bulk and location provisions designed to ensure that development generally reflected the form and scale of existing housing development. Most importantly the maximum building height was set at 10m and building envelopes established to ensure the reasonable protection of sunlight and daylight to adjoining properties.

14. It is of interest to note that during the 1980s the Council supported planning provisions with a range of non-regulatory measures designed to maintain and enhance the character and qualities of the inner residential neighbourhoods. These included neighbourhood improvement schemes, the dissemination of information for the renovation of character houses and the establishment of local architectural advice offices.
15. While the 1980s saw significant renewal of inner residential neighbourhoods, issues remained with the ongoing demolition of houses particularly for the development of medium density apartment house complexes. While bulk and location requirements provided basic standards there was little or nothing that could be done to promote sympathetic development from an architectural or urban design perspective. In this regard the Council was keen to achieve a more qualitative approach to planning. Initial work was undertaken in the late 1980s promoting a character area for Courtenay Place including a design guide to be implemented as part of the regulatory provisions of the plan. This set the scene for the establishment of other character areas within the central area and inner-residential suburbs.
16. Following the enactment of the Resource Management Act in 1991 the character area approach became a foundation of the proposed new district plan notified in July 1994. Under the proposed plan the more densely developed inner residential areas were differentiated from the outer areas with rules applied to permit development in a way that would better reflect their general character. More specifically, town house developments were to be assessed against the Multi-Unit Housing Design Guide to promote excellence in design and ensure compatibility with surrounding houses.
17. In addition, local areas of special character within the inner residential zone were also identified and subject to more specific design control. As an example, the Thorndon Character Area covered a largely complete remnant of nineteenth century Thorndon of considerable historical significance. The design guide identified that while many of the buildings were not of particular merit, collectively they formed a unique heritage townscape. The design guide included the following three heritage objectives.
  - *To perpetuate the unique historical quality of the area and maintain the unity and consistency of its visual character.*
  - *To promote conservation of the historical features (including notable single buildings, groups of ordinary buildings and public spaces) that give this area its identity.*
  - *To encourage the continued retention of all existing pre-1930s buildings which establish the visual character of the area and which are collectively of historical significance.*
18. The proposed inner-residential provisions were subject to the usual submission and hearing processes and faced particular challenge from the Thorndon Society and the Mount Victoria Residents Association. In light of the ongoing loss of original inner-residential houses both organisations requested stricter controls on the vast majority of inner-residential housing

not within special character areas. Although generally sympathetic the Council, in deciding the submissions, retained the proposed provisions largely as notified.

19. In response the Thorndon Society and the Mount Victoria Residents Association lodged appeals with the Environment Court in 1996. Through subsequent mediation and conference processes options for resolving the appeals by consent were explored. With compromises on both sides and with the consent of the Court it was eventually agreed that a variation would be initiated to the proposed district plan. The main components of the variation were a demolition rule for Thorndon and Mount Victoria requiring a resource consent for the demolition of pre-1930 houses. Additional character area controls were also proposed for multi-unit developments in Thorndon and Mount Victoria.
20. This variation became known as Variation 14 and was notified in December 1997. Although receiving some 100 original submissions it came through the hearing process in 1999 largely unscathed. Next the Environment Court disposed of all matters relating to the original appeals from the Thorndon Society and Mount Victoria Residents Association and some technical matters relating to Variation 14 by consent (Decision No WN 26/2000).
21. The completion of the Variation 14 process was achieved in time to be incorporated into the district plan document when it became operative on 27 July 2000. The full text of the Variation 14 provisions can be found in the following sections of the year 2000 plan:
  - Residential Area Policy 4.2.3.2 (page 4/8)
  - Residential Area Rule 5.3.11 (page 5/33)
  - Multi-Unit Developments Design Guide Appendix 1 Thorndon (pages 21-37)
  - Multi-Unit Developments Design Guide Appendix 2 Mount Victoria (pages 39-67)(I note that these numberings are those in the plan as operative in 2000 — the numberings were updated by subsequent plan changes as I now discuss).
22. To those individuals and organisations who had battled for over 30 years to achieve greater heritage/character protection for Thorndon and Mount Victoria the completion of the Variation 14 process represented a major planning advance. Subsequent monitoring and assessment work revealed that the demolition rule worked as largely as intended and saved the suburbs from a significant loss of original housing stock.
23. As a result of the successes in Thorndon and Mount Victoria the demolition rule was later applied to other Inner-residential suburbs. In 2008 Plan Change 39 included Newtown, Berhampore and Mount Cook and in 2009 Plan Change 50 applied similarly to the Aro Valley. It is also noted that in 2005 a new rule was included to prevent the removal of architectural detailing from the primary façade of dwellings. This was done to remove a loophole in the main demolition rule that would enable owners to strip architectural detailing from the primary façade to reduce contribution to streetscape prior to lodging a consent application for demolition.
24. Notwithstanding the general success of the demolition rule some implementation issues arose over time. The review of the residential chapter of the district plan as part of the Council's rolling review programme provided the opportunity to reconsider aspects of the demolition rule. The residential review was identified as District Plan Change 72.

25. With regard to the implementation of the demolition rule, there were concerns that consideration was first being given to the contribution of replacement buildings to the streetscape and undue weight in this regard was favouring demolition. This was contrary to the intent of the rule which to commence the application process with an assessment of the existing building. If the building was proved to be sound and made a positive contribution to the streetscape, then it should be retained. This matter was thoroughly scrutinised under the review and the revamped Policy 4.2.2.1 clarified the assessment process. The policy highlighted that when assessing a consent to demolish a pre-1930 building Council should first and foremost consider the contribution made by the existing building to townscape character and that there would be a strong presumption against demolition. These requirements came into force in November 2014 when Plan Change 72 was adopted.
26. It is also important to note that in Policy 4.2.2.1 is the acknowledgement that while the focus of the demolition rule is not heritage but townscape character, townscape character is nevertheless defined by heritage related qualities. This has made explicit what has been known for many years that character and heritage are intertwined and that rules may have heritage outcomes without being heritage rules per se. The heritage qualities of the inner-residential areas have clearly driven the progression of planning provisions designed to protect the city's original housing stock and the demolition rule reflects this process.

#### COMMENT ON PROVISIONS IN THE PROPOSED DISTRICT PLAN

27. Policy 4.2.2.1 and related Rule 5.3.6 (as renumbered under Plan Change 72) was the last iteration of the demolition rule before the current review process for the district plan began and led to the Proposed District Plan notified in 2022 (PDP).
28. The approach to the demolition controls in character precincts in the PDP is:
- a. An introductory description of character precincts (MRZ-PREC01);
  - b. Policies for the maintenance of character and restrictions on demolition (MRZ-PREC01-P1 and P2); and
  - c. A rule requiring resource consent on a restricted discretionary basis for demolition of any building or part of any building, excluding accessory buildings, constructed prior to 1930 (MRZ-PREC01-R4)
29. I disagree with the approach the Council has taken to the demolition controls in the PDP for the following reasons.
30. In Part 2 of the plan, it is stated that the PDP will protect character of the inner residential precincts (Part-2 Urban Form and Development-Introduction) while elsewhere it is specified that the aim is to manage the precincts to minimise the further erosion of their character (MRZ-PREC01).

31. There is clearly some uncertainty regarding the purpose of regulating the precincts but whatever the case I consider that the proposed PDP provisions will significantly weaken the present protections under the Operative District Plan (ODP). This will inevitably lead to the ongoing loss of pre-1930 houses in the character precincts and the diminution of their existing character. Indeed, the PDP specifies that the form, appearance and amenity of neighbourhoods will change over time. This will surely lead to the demolition of pre-1930 houses to provide for redevelopment.
32. Demolition and redevelopment is consistent with the overarching objectives of the PDP to promote containment, intensification, development and growth. In my view these objectives will likely outweigh the protection of pre-1930 houses when applications for demolition are considered.
33. The PDP character area proposals contrast with the provisions in the ODP which are firmly rooted in maintaining and enhancing the inner residential housing areas recognised for their significance in contributing to Wellington's unique sense of place. Through Objective 4.2.2 and Policy 4.2.2.1 the demolition provisions form part of a comprehensive range of measures designed to maintain and enhance the established townscape character.
34. It is important to note that under the ODP the Council has acknowledged that townscape character is defined to an extent by heritage related qualities and the residential design guides for the special inner residential character areas specifically reference the heritage significance of the areas. This is consistent with the link between heritage and character recently recognised by the Environment Court in a case about the Auckland Unitary Plan. The Court endorsed the following wording in an explanatory section about special character areas in the Auckland Unitary Plan:<sup>1</sup>

*“Historic heritage values may underlie the identification of special character areas and make a contribution to the character and amenity values of such areas, but the special character areas are dealt with differently from significant historic heritage identified and protected in terms of the separate policy framework for identifying and protecting Historic Heritage in 85.2. The attributes of the character and amenity values and the environmental quality of a special character area, including buildings and streetscape, might be derived from its historical legacy without being historic heritage.”*

35. It therefore seems apparent that while section 6(f) of the RMA does not protect character directly, historic heritage values that are protected by section 6(f) may form the basis of and be included in protection of character areas or precincts.
36. In my opinion the connection between heritage and character is also consistent with the commonly held view of Wellington City residents, heritage experts and others over a long

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<sup>1</sup> *Housing New Zealand Corporation v Auckland Council* [2018] NZEnvC 213 at [8].

period time that the old inner city housing stock represents a significant component of the City's heritage and is a resource worthy of protection. Past Wellington City Council reports and publications also accepted the inner residential areas as heritage.

37. Under the PDP the Council has now taken the position of removing the connection between heritage and character. It is specifically stated that in the proposed plan that the character precincts do not seek to protect historic heritage values. The plan instead is based on a definition of 'character' which in essence focuses mainly on physical characteristics including architecture and building typologies and omits any reference to heritage values.
38. I am convinced that by severing heritage from character the PDP will undermine the rationale for retaining the old city housing stock and lead to decisions that favour intensification, growth and development and the emergence of residential areas which have a new form, appearance and amenity.
39. In this regard the demolition provisions in the ODP have been significantly watered down with no real policy context or explanation. The provisions are proposed to be limited to the following matters of discretion taken from the ODP:

***MRZ-PREC01-P2***

*Restrictions on demolition*

*Only allow the demolition of pre-1930 buildings, including the demolition or removal of architectural features from the primary elevation of any pre-1930 building where either:*

*1. It can be demonstrated that the contribution of the building to the character of the area is low, with reference to:*

*(a) The level of visibility of the existing building from surrounding public spaces;*

*(b) Whether the building is consistent in form and style with other pre-1930 buildings that contribute positively to the character of the area;*

*(c) The extent to which the existing building retains its original design features relating to form, materials, and detailing and the extent to which those features have been modified;*

*(d) Whether the building is an integral part of a row of buildings that are consistent in form, scale, and siting; and*

*(e) Whether the building represents a rare or unique example of pre-1930 architecture;*

*2. The building is shown to be in poor condition, particularly in terms of:*

*(a) Its structural integrity, so that its retention is impractical or economically unviable;*

*(b) Whether the building presents a hazard and*

*(c) Whether the building presents a risk to life in the event of an earthquake.*

40. There are various amendments and omissions from the above criteria compared to the equivalent provisions in the ODP. My primary concern relates to the way item 2 covering the condition of buildings has simply been added on as an alternative (see the word “either” in the chapeau) to the matters identified in item 1. This will mean that a pre-1930s building could be demolished without any assessment of its character values or contribution to the character of the area. It will incentivise “demolition by neglect”, where the policy support for seeking resource consent to demolish a pre-1930s building is increased by the owner deliberately neglecting it and leaving it to fall into desuetude.
41. In the years following the introduction of the demolition rule in the ODP various issues arose regarding the implementation of the rule and it was found that the main problem resulted from giving primary consideration to the proposed replacement building and subsequent approval if it was deemed to be compatible with its surroundings. It was usually argued that the existing building was in poor condition and uneconomic to renovate. This approach had the potential to nullify the intent of the rule which was generally to retain pre 1930 buildings.
42. Under the review of the residential chapter of the ODP (Plan Change 72 adopted in 2014) amendments were made to the demolition rule to clarify matters relating to implementation. These are fully detailed under Policy 4.2.2.1 in the ODP and its explanatory text.
43. In essence the operative provisions specify that the Council will consider first and foremost the contribution made by the existing pre-1930 building to townscape character. If the assessment indicates that the existing building makes a positive contribution then, and only then will an assessment be made to determine if retention is impractical or unreasonable. It is spelt out that there will be a strong presumption against demolition unless analysis demonstrates that the existing building makes little contribution to townscape character. Only after demolition is shown to be justified will Council consider the townscape contribution of the replacement building.
44. To date the operative plan’s process has worked reasonably well to limit the loss of pre-1930 and this is confirmed by the Councils own section 32 analysis on the matter. However, in an environment where the Council is now promoting intensification, growth and development innovative ways are still being found to circumvent the demolition rule. In a recent Thorndon case, a surprising decision was made that demolition could be considered a residential activity if there was a direct link to the residential component of the consent – hence the applicant was required to offer conditions to link this consent to the new house.



On this basis it was accepted that the application for demolition comprised a residential activity and a sound pre-1930 house was eventually lost.

45. In addition to the weakening of the demolition rule I am also concerned that the effect of liberalising the bulk and location provisions or development standards applicable in the character precincts and increasing the scope for the establishment of non-residential uses will work to encourage new development and lead to increasing pressures for the demolition of pre 1930 houses. The proposed changes to these aspects of the plan are consistent with the promotion of intensification, growth and development and provide little confidence that the character areas will be protected.
46. To reduce my level of concern, although not eliminate it entirely, I consider that the following amendments ought to be made to MRZ-PREC01-P2, reflecting the wording of the equivalent policy in the operative district plan:

**MRZ-PREC01-P2**

*Restrictions on demolition*

*Only allow the demolition of pre-1930 buildings, including the demolition or removal of architectural features from the primary elevation of any pre-1930 building where either:*

*1. It can be demonstrated that the contribution of the building to the character of the area is low, with reference to:*

*(a) The level of visibility of the existing building from surrounding public spaces;*

*(b) Whether the building is consistent in form and style with other pre-1930 buildings that contribute positively to the character of the area;*

*(c) The extent to which the existing building retains its original design features relating to form, materials, and detailing and the extent to which those features have been modified;*

*(d) Whether the building is an integral part of a row of buildings that are consistent in form, scale, and siting; and*

*(e) Whether the building represents a rare or unique example of pre-1930 architecture;*

**(f) Whether the building is a distinctive element within the local townscape;**

**2. Retention of the existing building is impractical or unreasonable**

*The building is shown to be in poor condition, particularly in terms of:*

*(a) Its structural integrity, so that its retention **would render it incapable of reasonable use** is impractical or economically unviable;*

*(b) Whether the building presents a hazard; and*

*(c) Whether the building presents a risk to life in the event of an earthquake.*

47. In light of the above comments, I therefore support the advocacy by Wellington's Character Charitable Trust and others to increase the level of protection to the proposed character areas by way of improvements to the demolition rule and associated policies. I also consider that, once the issues I have been explained are addressed, the policy direction and values that require protection should support a much wider spatial extent of character precincts than those in the plan as notified.